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Bill of Complaint.

(Filed February 7, 1925.)

In Chancery of New Jersey 10

To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:

The complainants, Joseph Edelman and Sarah Edelman, his wife, of the City of New Jersey, County of Hudson and State of New Jersey, respectfully shows that:

1. On June 10th, 1924, they entered into a written contract with the defendants, Alter Nidetch and Hyman Daves, wherein they agreed to convey by warranty deed, free from all encumbrances, except as therein stated, the premises described in the said contract, for the sum of \$36,000.00. A true copy of the said contract is hereto annexed, marked Schedule 1 and made part hereof. 20

2. Although the title was to have been closed August 1st, 1924, according to the terms of the contract, the date of closing was postponed by the respective parties by mutual consent from time to time. 30

3. The defendants, after the date set for the closing of title, raised a number of questions and objections relative to this title which were all satisfactorily disposed of.

4. One of the objections made by the defendants for their failure to take title was the fact that the complainants owned 72.60 feet in width, 40

Bill of Complaint.

10 whereas the contract called for at least 74 feet
in width. These complainants charge that such
objection and other objections were not made in
good faith, but nevertheless these complainants
obtained title to an additional strip of land of
one and five-tenths (1.5) feet, so that they were
enabled to convey lands of more than the dimen-
sions shown in the contract, but the defendants
nevertheless declined thereafter to take title.

20 5. On January 15th, 1925, a notice, a true copy
of which is hereto annexed, marked Schedule 2
and made part hereof, was served upon the de-
fendants by the complainants, but on January
26th, 1925, the time designated as the time to be
of the essence of the closing of the transaction,
the defendants appeared and stated that they
would decline to take title not for any reasons
urged by them heretofore, but because of an al-
leged altercation between the complainants and
former tenants in the premises; that the said de-
fendants thereupon stated that they would not
take title under any circumstances and that they
would decline to carry out the terms of the said
contract.

30 6. The complainants were ready to deliver a
deed for said premises, a copy of the description
in said deed is hereto annexed, marked Schedule
3 and made part hereof.

40 7. On January 26th, 1925, at the time desig-
nated in the aforesaid notice marked Schedule 2,
the complainants were ready and able to convey
a marketable title to the premises described in
Schedule 3 in accordance with the terms of the
contract, but the defendants nevertheless declined

Bill of Complaint.

to pay the balance of the purchase price as re-
quired to do under said contract, or to execute
the purchase money bond and mortgage as re-
quired to do under the contract or perform any
of the covenants required of them set forth in
the said contract.

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

(a) That the defendants in this suit, Alter Ni-
detch and Hyman Daves, may answer this bill of
complaint without oath and each statement there-
in made.

(b) That it be decreed that the written contract
be in all things specifically performed by the de-
fendants in accordance with the terms thereof.

(c) That the defendants, by decree of this Hon-
orable Court, be compelled to execute and deliver
the bonds and mortgages mentioned in the con-
tract and that they pay the balance of the pur-
chase price.

(d) That the defendants be compelled to pay
all interest on the mortgages from the date they
were to be executed and that all adjustments and
apportionments be made as of August 1st, 1924,
or such other date as this Court may hold to be
equitable.

(e) That the defendants be required to pay the
costs of this suit.

(f) That the defendants be required to compen-
sate the complainants for all losses of rent and
other damages sustained by them because of the
failure of the defendants to culminate their agree-
ment as they were required to do.

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(g) That the complainants be granted such other and further relief in the premises as may be equitable.

10 (h) That a writ of subpoena may issue to the said defendants commanding them and each of them to answer to this bill of complaint without oath and to abide by such decree as this Court may make in the premises and as may be agreeable to equity and good conscience.

ALEXANDER SECLOW,
Solicitor and of Counsel with
Complainant.

SCHEDULE I.

20 ARTICLES OF AGREEMENT, made the tenth day of June, in the year of Our Lord One Thousand Nine Hundred and Twenty Four BETWEEN Joseph Edalman and Sarah Edalman, his wife, of the City of Jersey City, in the County of Hudson and State of New Jersey, parties of the first part; AND Alter Nidetch and Hyman Daves, of the City of Jersey City, in the County of Hudson and State of New Jersey, parties of the second part;

30 WITNESSETH, That the said party of the first part, for and in consideration of the sum of Thirty six Thousand Dollars (\$36,000.00) to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said parties of the first part, will well and sufficiently convey to the said parties of the second part, their heirs and assigns, by Deed of full
40

Bill of Complaint.

coventry and warrantee free from all encumbrance on or before the First day of August next ensuing the date hereof, all those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey being known and designated at #23, #25, #27 East 19th Street, Bayonne, N. J. and being Seventy-Four (74) feet or more in width on East 19th St. by One Hundred Fifty (150) feet or more in depth upon which is erected three (3) story frame dwelling houses, each house containing Twelve (12) families, all three containing Thirty Six (36) families. It is represented by the parties of the first part that in house #23 East 19th Street, there are now Four (4) tenants; the tenant on the first floor pays Twenty-Two Dollars (\$22.00) per month but has a notice to move \$22.00
another tenant on the ground floor front pays Twenty Dollars 20.00
a tenant on the first floor back right-hand side pays Thirteen Dollars 13.00
Another tenant on the second floor for four rooms front pays Twenty One Dollars .. 21.00 30
House #25 East 19th St., there are eight tenants who pay an aggrated rental of One Hundred and Twenty Dollars 120.00
House #27 East 19th St. has an aggrated rental of One Hundred and Seventy Nine Dollars 179.00
out of which janitor receives rent free of Fourteen Dollars (\$14.00). 40

Bill of Complaint.

There are thirteen flats empty of which it is represented that Eight (8) in #23 East 19th St. rented for One Hundred and Fifty Dollars 150.00

10 Four of which in house #25 East 19th St. rented for Seventy Dollars 70.00

One of which in house #27 East 19th St. rented for Sixteen Dollars 16.00

20 AND the said parties of the second part for themselves, their heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that they, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part the sum of Thirty-Six thousand Dollars (\$36,000.00) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

30 On Execution of this agreement for which this is also a receipt— Five Hundred Dollars \$500.00

On delivery of deed, cash—Ninety-Five Hundred Dollars 9,500.00

40 On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and installment default clauses, and on agreement not to claim credit on the interest payable on bond and mortgage by reason of any tax assessed, or to assessments against the premises, with interest at 6%, payable semi-annually for five years—said bond and mortgage to apply on #23 East 19th Street 9,000.00

Bill of Complaint.

On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and installment default clauses, and an agreement not to claim credit on the interest payable on bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at 6% payable semi-annually for 5 years, said bond and mortgage to apply on house #25 East 19th Street 8,000.00

20 On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and installment default clauses, and on agreement not to claim credit on the interest payable on bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at 6% payable semi-annually for Five years. Said bond and mortgage to apply on house at #27 East 19th Street—Nine Thousand Dollars 9,000.00 30

\$36,000.00

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

And the said party of the first part hereby agrees to pay to E. Grodberg & Son and Asher Nessian- 40

Bill of Complaint.

baum a commission of \$800.00 on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale; said commission to be paid when title passes.

10

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

20

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Irving D. Grodberg, #590 Avenue C, Bayonne, N. J. between the hours of nine in the forenoon and five o'clock in the afternoon on the said first day of August next ensuing the date hereof.

The rents of said premises, insurance premiums, water rents, taxes and interest on mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

30

Gas and chandeliers, carpets, linoleum, mats and matting in halls, screens, shades, awnings, ash cans, if any, and all other personal property appurtenant to or used in the operation of said premises is represented to be owned by seller and is included in this sale.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part.

40

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part, shall repair the damage before the date set

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for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as endorsed by the State Board of Tenement House Supervision, to be shown by the report of the department or board endorsing the same where such ordinances, regulations and said act apply, excepting and subject to tenement house violation as to painting.

10

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings or any Act for the Sale of Land for non-payment of the municipal taxes or assessments.

20

The premises above described are sold subject to restrictions appearing of record, if any.

If at the time for the delivery of the deeds, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

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Bill of Complaint.

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

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

JOSEPH EDELMAN.
ALTER NIDETCH.
HYMAN DAVES
SARAH EDALMAN.

Signed, sealed and delivered in the presence of: IRVING D. GRODBERG

State of New Jersey, }
County of Hudson, } ss.:

BE IT REMEMBERED, That on this tenth day of June, in the year of our Lord One Thousand Nine Hundred and Twenty Four before me, the subscriber, An Attorney at Law, personally appeared Joseph Edalman and Sarah Edalman, his wife, who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

IRVING D. GRODBERG,
An Attorney at Law of N. J.

Bill of Complaint.

SCHEDULE 2.

To:

Alter Nidetch and Hyman Daves:

SIRS:

TAKE NOTICE that we shall be present at the office of Irving D. Grodberg, Esq., at No. 590 Avenue C, Bayonne, New Jersey, on Monday, January 26th, 1925, at three o'clock in the afternoon of said day to tender you a deed for the premises which we contracted to convey to you on June 10th, 1924, said premises being commonly known as 23-25-27 East 19th Street, in the City of Bayonne, County of Hudson and State of New Jersey, being seventy-four (74) feet in width.

AND YOU ARE FURTHER NOTIFIED, that we shall deem time to be of the essence as of the said January 26th, 1925, at three o'clock in the afternoon.

Dated January 15th, 1925.

Yours &c.

Signed JOSEPH EDELMAN
SARAH EDELMAN
By ALEXANDER SECLOW.

Copy to Irving D. Grodberg, by registered mail.

Copies to Alter Nidetch and Hyman Daves by Registered Mail and to be served personally.

SCHEDULE 3.

FIRST TRACT.—ALL that certain tract or parcel of land and premises, hereinafter particularly de-

Bill of Complaint.

scribed, situate, lying and being in the City of Bayonne, County of Hudson and State of New Jersey. BEGINNING at a point in the Northeasterly side of East 19th Street, at a point of intersection with the Southeasterly line of the building erected on the lot adjoining the premises hereby conveyed on the west, and the continuance of the line of said building, which point is distant southeasterly 10 Three hundred thirty seven and seventy five hundredths (337.75) feet from the corner formed by the intersection of the Northwesterly side of East 19th Street, and the Southeasterly side of Avenue D, and from thence running (1) Northeasterly parallel with Avenue D, and along the Southeasterly line of the building aforesaid, and its continuation 20 One hundred fifty eight and sixty seven hundredths (158.67) feet to a point; thence (2) Southeasterly and parallel with East 19th Street, One and five tenths (1.5) feet to a point; thence (3) Southwesterly and again parallel with Avenue D, One hundred fifty eight and sixty seven one hundredths (158.67) feet to a point in the Northeasterly side of East 19th Street and thence (4) Northwesterly along the Northeasterly side of East 19th Street, One and five tenths (1.5) feet to the point or place of Beginning. BEING the 30 Westerly one and one-half feet of the premises which were conveyed by the Mechanics' Trust Company to Sarah Atkins, wife of Nathan Atkins, by deed dated November 21st, 1921, and recorded in the Register's Office of Hudson County in Book 1426 of Deeds for the said County page 196.

40 SECOND TRACT.—All those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City

Bill of Complaint.

of Bayonne, in the County of Hudson and State of New Jersey.

BEGINNING at a point on the Northerly side of East Nineteenth Street, distant thereon easterly Two hundred and sixty five and fifteen hundredths (265.15) feet Easterly from the corner formed by the intersection of the Northerly side of East Nineteenth Street with the Easterly side of Broadway; thence (1) running Northerly and parallel with Broadway, one hundred and fifty eight and sixty seven hundredths (158.67) feet; thence (2) Easterly parallel with East Nineteenth Street, Seventy three and twenty hundredths (73.20) feet; thence (3) Southerly and parallel with the first course, one hundred and fifty eight and sixty seven hundredths (158.67) feet to the Northerly side of East Nineteenth Street, thence (4) Westerly and along the Northerly side of East Nineteenth Street seventy-two and sixty hundredths (72.60) feet to the point or place of beginning. BEING known as Lots Numbers 4B, 5, 6, 7B in Block 316 on the Tax Map of the City of Bayonne in use at the present time.

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Answer and Counterclaim.

(Filed March 7, 1925.)

IN CHANCERY OF NEW JERSEY.

10

JOSEPH EDELMAN and SARAH EDELMAN, his wife,
Complainants,

v.

ALTER NIDETCH and HYMAN DAVES,
Defendants.

On Bill, &c.

The answer of the defendants, Alter Nidetch and Hyman Daves.

20

These defendants, Alter Nidetch and Hyman Daves, answering the bill of complaint, say that:

Paragraph One is admitted.

2. So much of Paragraph Two (2) as stated the title was to have been closed August 1st, 1924, is admitted. That part of Paragraph Two (2) which states the date of closing was postponed by the respective parties by mutual consent from time to time, is denied.

30

3. So much of Paragraph Three (3) as states that the defendants raised a number of questions and objections relative to this title is admitted, but the statements that these objections were raised after the date set for the closing of title, and that these objections were all satisfactorily disposed of, is denied.

40

4. All of Paragraph Four (4) is denied, excepting the statement that one of the objections made

Answer and Counterclaim.

by the defendants for their failure to take title was the fact that the complainants owned 72.60 feet in width, whereas the contract called for at least 74 feet in width, which is admitted.

10

5. All of Paragraph Five (5) is denied, excepting that the defendants admit service of the said notice on January 15, 1925.

6. These defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraph Six (6).

20

7. So much of Paragraph Seven (7) as states that the defendants nevertheless declined to pay the balance under purchase price as required to do in said contract, or to execute a purchase money bond and mortgage as required to do under the contract, to perform any of the covenants required of them set forth in said contract is admitted, but the balance of Paragraph Seven (7) is denied.

30

8. On June 10th, 1924, the defendants were induced to enter into a contract with the complainants and to execute said contract marked Schedule 1, through the fraud of said complainants, in that complainants wilfully and fraudulently represented to these defendants, before the execution of said contract, that the vacant apartments in the premises to be conveyed were vacant because the complainants had dispossessed the several tenants that had prior thereto occupied the premises; and further that said tenants had been dispossessed from the premises because the complainants desired the apartments vacant in order to comply with the demands of a prospective buyer (not the defendants) who desired the entire premises vacant for the purpose of alterations; which repre-

40

Answer and Counterclaim.

10 presentations were known to said complainants to be false and were made to induce these defendants to enter into the contract for the purchase of said lands and buildings; whereas the said apartments were vacant because some of the tenants failed to pay their rent and were evicted for that reason, and because of certain raids made in the said buildings by the police, and because of the disorderly conduct of certain other tenants in the building, and for several other reasons, the said tenants having vacated voluntarily and without proceedings having been brought in any court to dispossess them. The defendants, relying upon said misrepresentations, agreed to purchase the said premises, and executed the contract for the purchase of said premises marked Schedule 1 and annexed to complainants' complaint.

20 9. The defendants further say that the complainants were at no time able to convey a marketable title to the premises, and that the complainants, having designated January 26th, 1925, as the time to be of the essence of the closing of the transactions, did not have at such time a good, marketable title.

30 10. Defendants further say that the buildings did not, on January 26th, 1925, nor at any time between the making of the contract and that date, comply with the Municipal Ordinances and Regulations and the Provisions of the New Jersey State Tenement House Act as endorsed by the New Jersey State Board of Tenement House Supervision, there being other violations of said act in addition to the violation as to painting, although the contract dated June 10th, 1924, provided as follows:

40 "It is understood and agreed that the

Answer and Counterclaim.

buildings comply with the municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as endorsed by the State Board of Tenement House Supervision, to be shown by the report of the department or board endorsing the same where such ordinances, regulations and said act apply, excepting and subject to tenement house violation as to painting."

11. The defendants further say that the complainants have been unable to comply with or perform the terms, conditions, covenants and agreements entered into by them in the said contract, dated June 10th, 1924, and have utterly failed to comply with said contract.

By way of counterclaim against the complainants, Joseph Edelman and Sarah Edelman, his wife, the defendants say that:

1. They, the defendants, have deposited with the complainants the sum of five hundred dollars (\$500.00) upon the execution of the contract dated June 10th, 1924, and have caused the title to said premises to be searched by an attorney-at-law of New Jersey, and have paid to the said attorney-at-law of New Jersey a reasonable sum of money in payment of said services rendered by him; and have caused the premises to be surveyed, and have paid to the said surveyors a reasonable fee for said services rendered.

2. That the complainants have refused to comply with and perform the covenants and agreements entered into by them in said contract, and further that the title to said premises is not a good, marketable title, and that the complainants have

Replication and Answer.

been unable to convey to the defendants a good, marketable title to the premises.

The defendants therefore, pray:

1. That said complainants, Joseph Edelman and Sarah Edelman, his wife, may answer this counterclaim and each statement herein made.

2. That said complainants may be decreed to pay to these defendants, Alter Nidetch and Hyman Daves, the amount found to be due these defendants by this honorable Court.

IRVING D. GRODBERG,
Solicitor of Defendants, Alter
Nidetch and Hyman Daves.

Replication to Bill and Answer to Counterclaim.

(Filed March 11, 1925.)

IN CHANCERY OF NEW JERSEY.

JOSEPH EDELMAN and SARAH EDELMAN,
his wife,
Complainants,

v.

ALTER NIDETCH and HYMAN DAVES,
Defendants.

On Bill, &c.

By way of replication to the answer of the defendants the complainant joins issue with them upon their answer.

By way of answer to the counterclaim the complainants say that:

Replication and Answer.

1. They admit the allegation of Paragraph 1 of the counterclaim relative to the payment of the deposit, but not having any information as to the other allegations of said paragraph, they leave the defendants to their proof.

2. The allegations of Paragraph 2 of the counterclaim are denied.

3. The complainants allege that because they were ready to convey the premises in accordance with the terms of their contract and because of the unwarranted refusal of the defendants to take title, they are not entitled to the return of their deposit or the fees and costs mentioned in the counterclaim and these complainants hence pray that the counterclaim be dismissed, with costs.

ALEXANDER SECLOW,
Attorney of Complainants.

Notice addressed to the answer:

TO THE DEFENDANTS:

TAKE NOTICE that at or before the hearing of the above entitled cause, these complainants will move to strike out the answer on the ground that such answer does not set forth an equitable defense.

ALEXANDER SECLOW,
Solicitor of Complainants.

Minutes of Final Hearing.

IN CHANCERY OF NEW JERSEY.

Before—HON JOHN GRIFFIN, Vice-Chancellor.

10 Between
 JOSEPH EDELMAN, and wife,
 Complainants,
 and
 ALTER NIDETCH and HYMAN DAVES,
 Defendants.

} On Bill, etc.

APPEARANCES:

20 For the Complainants, Mr. SECLOW, solicitor, and Mr. DEMBE, of counsel.
 For the Defendants, Mr. GRODBERG, solicitor, and Mr. BRENNER, of counsel.

Chancery Chambers, Jersey City, N. J., September 24, 1925.

30 Mr. Dembe: If the Court please, as I understand the pleadings, the complainant's case is practically all in, and it is a matter of defense; and the defendant may go on, because the making of the contract, the service of the notice making time of the essence, and the tender of the deed are admitted.

The Vice-Chancellor: Do you rest your case?
 Mr. Dembe: Yes, sir.

Mr. Brenner: Well, the contract is not in evidence yet.

The Vice-Chancellor: Well, the contract is not in evidence yet.

40 (Mr. Dembe offers in evidence the contract in

Irving D. Grodberg, direct.

suit, which is admitted and marked Exhibit C-1; also the notice making time of the essence, which is admitted and marked Exhibit C-2; and also the deed, which is admitted and marked Exhibit C-3.)

The Complainants Rest. 10

THE CASE FOR THE DEFENDANTS.

IRVING D. GRODBERG, Esq., sworn.

Direct examination by Mr. Brenner:

Q. Mr. Grodberg, you are a member of the Bar of this State? A. I am.

Q. And practicing in Bayonne? A. I am.

Q. Where is your office in Bayonne? A. 590 Avenue C corner of Twenty-sixth Street. 20

Q. And how many years have you been a practicing lawyer? A. Since 1921.

Q. Did you engage in the real estate business prior to that time? A. Prior, and up to the present time.

Q. Did you draw the contract between the parties to this action? A. I did.

Q. I show you a paper, and ask you if that is the contract you drew between Joseph Edelman and Sarah Edelman, his wife, and Alter Nieditch and Hyman Daves, marked Exhibit C-1? A. It is. 30

Q. Where was that contract drawn? A. In my office.

Q. And who was present at the time of the drawing of the contract? A. Mr. Edelman the seller, Messrs. Daves and Nieditch the buyers, Mr. Nessianbaum, myself and the stenographer.

Q. The Mr. Nessianbaum you refer to—is that the man referred to in this contract as one of the brokers? A. He is one of the brokers. 40

Irving D. Grodberg, direct.

Q. And you are mentioned as the other broker?

A. Yes, the firm of which I am a partner. D. Grodberg & Son, is the other broker in the transaction.

Q. And, under this contract, you and Nessenbaum were to receive a commission if this deal went through? A. Only if the deal went through.

Q. And that commission was in the sum of eight hundred dollars? A. That is right.

Q. And the provision of the contract is that you were only to receive that commission in case title passed? A. That is right.

Q. Now, prior to the time of drawing this contract you were acting with Mr. Nessenbaum as broker for Mr. Edelman? A. For Mr. Edelman—we were both acting together as brokers.

Q. You and Mr. Nessenbaum? A. That is right.

Q. You and Mr. Nessenbaum, then, were the ones that procured Nieditch and Daves as customers for the purchase of the property? A. That is right.

Q. You then held a conference in your office for the purpose of drawing this contract? A. That is right.

Q. Now, at the time when the meeting was held in your office, prior to the drawing of the contract, was there anything mentioned concerning this property—the rentals of it, or the condition of it? A. Well, there was several things spoken of relative to the property. In the first place, they had to agree upon—

Mr. Dembe: I object to the offer of any testimony to vary the terms of the contract.

Mr. Brenner: We do not intend to offer any testimony varying the terms. The defense to this contract is fraud and misrepresentation. We intend to offer this evidence for the purpose of showing that there

Irving D. Grodberg, direct.

was fraud in the inducement of the contract.

The Vice-Chancellor: That is, you attempt to set aside the contract *in toto*?

Mr. Brenner: Exactly.

The Vice-Chancellor: I will permit it, for that purpose. 10

A. Well, Mr. Daves and Mr. Nieditch came down to Bayonne, after a telephone conversation with me—after I told them we had some property for them to buy. We went down to the property, on East Nineteenth Street. When we got there with Mr. Nessenbaum we found Mr. Edelman at the property. He took us through the property, and it appeared there were thirteen empties out of thirty-six families—that is, thirteen vacancies at that time out of thirty-six. 20

Q. What type of building or buildings is this property? A. Three twelve-family frame houses.

Q. So there would be thirty-six tenants in all? A. Thirty-six in all.

Q. And of those thirty-six apartments you found that thirteen were vacant? A. Thirteen apartments vacant.

Q. Now, where did the vacancies exist, in which building? A. Well, I would have to refer to the contract there to remember exactly. 30

(Contract shown the witness.)

The Vice-Chancellor: Well, does the contract truly state where the vacancies existed?

Mr. Brenner: The contract states where the vacancies are.

The Vice-Chancellor: Well, that speaks for itself. 40

Irving D. Grodberg, direct.

Q. Did the vacancies exist in the building as shown in the contract? A. They did.

10 Q. Was there any talk regarding those vacancies and the cause for those vacancies, on the part of the sellers? A. When Messrs. Nieditch and Daves saw that there were thirteen vacancies, they said that, there being more than one-third—they didn't exactly use those words—but, there being thirteen vacancies out of thirty-six, they would not entertain any proposition of buying those houses.

Q. Where was that conversation? A. Right at the property.

20 Q. Was Mr. Edelman there? A. Mr. Edelman was there at the time, on East Nineteenth Street. We were trying to induce Messrs. Daves and Nieditch (we, the brokers, Mr. Nessianbaum and myself) and Mr. Edelman was there, and he was trying to persuade them also, to buy the property; and Mr. Edelman said, "Why, those thirteen families would be there if it were not for the fact that I had put them out," he says; "I served them all with notices, and took them into the District Court, where they were dispossessed." Daves and Nieditch asked them, "Why did you do anything like that?" He said, "I had a Polish party that
30 wanted to buy one of the houses, and the condition upon which he would take that house was that the entire building had to be emptied before he would take it, because he intended making alterations on the building, and did not want to have the trouble, due to the laws in New Jersey here at the present time relative to tenants. He didn't want to have the trouble of putting those tenants out, and therefore he wanted that one building completely empty."
40

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Q. And that was twelve families? A. Twelve families.

Q. Was one house completely vacated? A. It was not.

Q. How many tenants were in it? A. In the house that was to be purchased there was eight empty, and four in there. 10

Q. That is, the house that these Polish people were to buy? A. In the one this Polish party was to buy there was four in the house.

Q. And eight vacancies? A. And eight vacancies. He also represented that, out of that four one of them had a notice to move, leaving three, and he was going to shift those three into the other two houses, so as to have one completely empty. 20

Q. So that his claim was that these people did not move voluntarily, or these places were not vacated voluntarily, but because of the fact that he had given them notice, so as to completely vacate this building?

The Vice-Chancellor: And that he went into the District Court to eject them?

A. That he went into the District Court to eject them. 30

The Vice-Chancellor: Is that true?

The Witness: That is what he represented. It was not true.

Q. Was all of that conversation had at the building during the time of the inspection? A. Well, it was brought up and discussed mainly at that time; it might have been referred to again, but I wouldn't say that it was because I don't remember it. I know that at the time we had the con- 40

Irving D. Grodberg, direct.

versation it was right there at the building; we were standing right outside of the building, in the front.

10 Q. Now, at the time that representation was made to Nieditch and Daves, did they then agree to go into the making of this contract? A. After other terms were arranged. They would not entertain the proposition at all when they saw the thirteen empties; then when he told them about his having dispossessed all these tenants, they then agreed to enter into the proposition upon terms, of course.

Q. And is that when you went to the office with them for the purpose of drawing this contract? A. That is right.

20 Q. Did you subsequently make an investigation for the purpose of verifying whether or not these tenants had moved as a result of notice and dispossession in the District Court? A. Well, Mr. Daves and Mr. Nieditch made an inspection before passing the title, and they were advised that nobody had been dispossessed in that building, that they had moved voluntarily.

30 Q. And what did you do as a result of that information being carried to you? A. I had an inspection of the docket of the Bayonne District Court made, and found that no such dispossessions had been made by Mr. Edelman in those buildings.

Q. What did your examination to the District Court docket show as to the number of dispossessions that there had been, and how those dispossessions came about? A. I did not personally make the inspection, my clerk made it, and he is in court.

40 Q. And the Clerk of the Court is here to testify to it? A. The Clerk of the Court is also here, and the clerk in my office who inspected it.

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Q. Did you make known to the sellers of this property what you had found out concerning these vacancies—that his representation was not true? A. Mr. Edelman came around at the time of passing title, which was a couple of days before—two or three days before—and I spoke to him about it; and I also told him about some objections to the title. He came in two or three times in between this—

10

The Vice-Chancellor: You say two or three days before the title was passed?

The Witness: That is right—about the 26th or 27th.

Q. Before the time fixed for passing the title? A. Before the time fixed for passing the title; the time was August 1st, I believe, and this was about July 27th—two or three days before.

20

Q. You say that you spoke to him at that time about this situation, and also as to other objections? A. That is right.

Q. What other objections did you call to his attention at that time? A. Well, technical objections, as to the Tenement House violations.

Q. Did you get a report from the Tenement House Commission? A. I did.

30

Q. And have you that report on file, or in your files? A. I have it here, and we also have the Inspector in Court that made the inspection.

Q. Will you produce the report that you had from the Tenement House Commission? A. I have it here (producing a paper); July 28th. There was several inspections made—that is, two, I believe.

Q. And is this the report? A. That is the last one.

Q. This is the last report, made November 29,

40

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1924? A. That is right; and there may have been another one. I just want to make sure that there is no other (re-examining his papers); and one July 28th, 1924.

10 Q. So that you have a report of an inspection both before and after the time fixed for passing of title? A. That is right.

Q. So that in November, long after the time fixed for passing the title, there was still objection shown? A. That is right.

(The report of inspection produced by the witness was marked A, B, 1 for identification.)

20 Q. Did you, at that conference with Mr. Edelman, make known to him the Tenement House violations? A. As to the first inspection, I gave him a copy of them.

By the Vice-Chancellor:

Q. That is the one of July 28th? A. The one of July 28th. I don't remember whether I mailed it or handed it to them, I wouldn't say which it was.

30 *By Mr. Brenner:*

Q. A copy was given to him? A. I know a copy was given to him.

Q. Then you subsequently had a second inspection made, for the purpose of ascertaining whether those violations had been cured? A. That is right.

Q. And in November you got a report that the violations had not been cured? A. Some had been.

40 Q. But others had not? A. Others had not.

Q. What other objections did you make known

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to Mr. Edelman at that time? A. Objections that turned up in the search of the property, of the title.

Q. Have those objections since been cured? A. Some have.

10 Q. Will you refer to those which have not been cured, and tell us what those objections were? A. There was an executor's deed, which has "one dollar" as its consideration for the deed.

Q. Can you tell, without referring to the abstract, which deed that is? A. I would prefer to refer to the abstract; I don't believe I could tell you.

Q. Now, by referring to the abstract, please state? A. I have it here before me: Deed 739, Records of the Register's Office of Hudson County, Book 431. 20

By the Vice-Chancellor:

Q. Whom is that deed from, and to? A. Mary L. McCreedy, as executrix of the last will and testament of Benjamin W. McCreedy, deceased, to Abraham Potkin.

Q. What date? A. Dated December 22nd, 1899.

Q. Recorded when? A. Recorded December 28, 1899; acknowledged December 22, 1899; Book 739, page 431. 30

By Mr. Brenner:

Q. Is that deed a part of the chain of title of this property? A. It is.

Q. And you say that that deed, although it is an executor's deed, shows "one dollar" consideration? A. "One dollar" consideration—executor's deed.

Q. What other objections did you indicate to Mr. Edelman at that time which have not been since cured? A. There was, at that time, a short- 40

Irving D. Grodberg, direct.

age in the description of the land; it was not as wide as he had represented it to be. In making his contract, the contract shows that it was to be 74 feet or more.

10 The Vice-Chancellor: Well, that has been cured.

Mr. Brenner: Yes, that has been cured.

By the Vice-Chancellor:

Q. That, since, has been cured, has it not? A. That I don't know; they represent that it has been; they represent that they have a deed for it.

The Vice-Chancellor: Well, has it, Mr. Brenner?

20 Mr. Brenner: We don't know. Mr. Dembe says he has a deed for it.

Mr. Dembe: We have a deed for it, your Honor.

The Vice-Chancellor: The record shows it.

30 Q. I show you a deed dated December 19, 1924, from Sarah Atkins to Joseph Edelman—have you ever seen that deed before? A. Mr. Seclow did write to me that he had the title to that foot and a half; I did not actually see the deed, but he did write to me that he had it.

Q. Now, looking at that deed, it having not been exhibited to you, would you say that that cures that defect? I simply want to get the record straight on it. Is it substantially correct—that is all I want? A. (After examining the paper.) It is substantially correct.

40 Q. And that would cover the objection that you then raised of the property not being the proper width? A. That is right.

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Mr. Brenner: As long as it has been referred to, I presume that it had better be marked in evidence.

(The paper was thereupon admitted, without objection, and marked Exhibit D-1.)

The Vice-Chancellor: Then that objection is waived? 10

Mr. Brenner: That objection is waived.

The Witness (to Mr. Brenner): Are you asking now for the objections that still exist?

Q. I mean only those which exist at the present time, not those that you raised at that time that have since been cured? A. An incorrect description is a title deed.

Q. What was the matter with that description? 20
A. It omitted—

The Vice-Chancellor: What deed is it?

A. Deed from Harry Uslan and Annie Uslan, his wife, to Joseph Edelman, dated March 28, 1919; acknowledged March 28, 1919; recorded May 9, 1919.

Mr. Dembe: We have the original deed in court, if the Court please. They may offer it if they want it (handing a paper to Mr. Brenner). 30

Q. Is this the deed that you refer to—I show you deed dated March 28, 1919, between Harry Uslan and wife and Joseph Edelman? A. That is the deed.

Mr. Brenner: I will offer the deed in evidence.

(Admitted and marked Exhibit D-2.)

Q. What complaint did you make concerning the 40

Irving D. Grodberg, direct.

description in that deed? A. Lot 7-A, which is part of the tract, was omitted from the description when referring to the lot and block numbers.

Q. Has that, to your knowledge, since been cured? A. It has not.

10 Q. Now, what further objection was raised?

By the Vice-Chancellor:

Q. One moment: Before passing from that, does the particular description include Lot 7-A? A. It does.

Q. You say the particular description here covers Lot 7-A? A. The particular description does cover Lot 7-A.

20 Q. Then, if no reference has been made at the foot of the description of the lot numbers in Plot 316, there would be no objection to that deed, would there? A. There would be no objection. My purpose in raising the objection was to have the deed corrected, if possible.

The Vice-Chancellor: Well, that is O. K.

By Mr. Brenner:

30 Q. Now, is there any further objection that you raised at that time that has not since been cured? A. No further objection.

The Vice-Chancellor: Now, the only objection to the title of record is that a deed from executors contained a consideration of one dollar only?

Mr. Brenner: Yes, sir—that is, to the title itself.

40 The Vice-Chancellor: Have you looked into that question as to whether a deed given by executors for "one dollar" is not good?

Irving D. Grodberg, cross.

Mr. Brenner: I did some time ago; I have not recently.

The Vice-Chancellor: Well, haven't you the result of that investigation with you now?

Mr. Brenner: No, sir. 10

The Vice-Chancellor: Oh, why didn't you bring it in with you?

Mr. Brenner: I desire to say to your Honor that I only got into this case yesterday—

The Vice-Chancellor: Oh, I suppose that is so.

Mr. Brenner: —and I did not examine any law concerning it; nor do I consider that one of the main objections. The important objection in the case, I will frankly say to the Court, is the question of fraud. These other objections are incidental to it. I am just bringing them up because they were, at that time, one of the reasons why title was not passed. 20

The Vice-Chancellor: Had you known of all of these objections, Mr. Dembe?

Mr. Dembe: Why, I am in the same position as Judge Brenner was in—I got into the case yesterday. If I can explain to your Honor what the thing is, I think you can dispose of it very readily: Our position is that Mr. Grodberg waived all objection, in one of the conferences. 30

The Vice-Chancellor: All right; that will come in on your side of the case. Proceed.

Cross examination by Mr. Dembe:

Q. You had several conferences with Mr. Seclow, 40

Irving D. Grodberg, cross.

did you, in regard to this title? A. Two or three—
one, a conference, and the other just meeting him
on the street or in the District Court.

10 Q. Now, with regard to this objection that you
still raise—the executor's deed—you have the
whole abstract of the title there, have you not? A.
I have.

Q. Have you the will of Benjamin W. Mc-
Creardy? A. I have.

Q. And who was the beneficiary under that will?
A. Mary Louisa McCreardy.

Q. That is the executrix who made this Botkin
Deed? A. I believe that it is; that is right.

20 Q. And you gave Mr. Seclow this information
yourself, did you not, that she was the sole devisee
there under the will, with the exception of a be-
quest of two thousand dollars for nursing—is not
that right? A. I didn't give him that information.

Q. Well, did he give you the information? A.
Why, I may have given him the abstract, at his
request (don't recollect now), and he may have
determined that from the abstract.

Q. Well, didn't you and he agree that that ob-
jection was eliminated from your objections at that
time? A. Oh, no; absolutely not.

30 Q. By reason of the fact that, in the first place,
it covered only six-tenths of a foot? A. Those
were the arguments advanced by Mr. Seclow.

By the Vice-Chancellor:

Q. Well, what is the fact—how much did this
deed cover? A. Approximately six-tenths of a
foot.

40 The Vice-Chancellor: Just have the will
marked for identification.

Irving D. Grodberg, cross.

Mr. Dembe: I have no objection to it be-
ing marked in evidence.

(The will was thereupon marked Exhibit
D-4.)

The Vice-Chancellor: Now, you had bet-
ter mark the McCreardy Deed in evidence, 10
too.

(And the same is admitted, without objec-
tion, and marked Exhibit D-5.)

The Vice-Chancellor: That legacy you
mentioned there was \$2,000, you say?

Mr. Dembe: \$2,000.

The Vice-Chancellor: Was it a legacy?

The Stenographer: The question stated
that it was a "bequest."

20 Mr. Dembe: It says here (referring to
the abstract) that "the nurse is to get \$2,-
000."

The Vice-Chancellor: Well, as a matter
of fact, was that a legacy?

Mr. Dembe: I have never examined the
will myself, if the Court please; that is all
we had to go by—the abstract, at that time.

The Vice-Chancellor: Well, that, I sup-
pose, is a legacy of \$2,000.

30 The Witness: I believe that is what it
was.

The Vice-Chancellor: That is twenty-six
years ago.

Q. This conference that you had with Mr. Seclow
was some time in August, was it not? A. It would
be some time subsequent to August 13th; now,
whether it was the early part of September, or
the latter part of August, I wouldn't say.

40 Q. And that was after you had written this letter

Irving D. Grodberg, cross.

of August 14th, I presume (showing the witness letter)? A. That is right.

(The letter identified by the witness is marked for identification H. D. 1.)

10 Q. And how long after the letter was written was it that you had this conference? A. I wouldn't say. I would say it was after that date. On the 13th or 14th of August that letter was written, and it might have been any time within two weeks or a month, or perhaps right after that; I wouldn't want to say now.

20 (The letter H. D. 1, was then offered in evidence by Mr. Dembe, and, counsel not objecting, the same was admitted and marked Exhibit C-4.)

The Vice-Chancellor: This (referring to Exhibit C-4) says this property encroaches on the adjoining property—that objection is waived, I understand?

Mr. Dembe: No, that is not attacked at all.

30 Mr. Brenner: We found that that did not exist. The actual survey showed that it did not exist.

Mr. Dembe: Of course the pencil notations are our own.

The Vice-Chancellor: Yes; they are not in evidence.

Q. Now, Mr. Seclow called upon you with this letter, did he not? A. I believe he had the letter with him.

40 Q. And took up with you, paragraph by paragraph, or, that is, numerically, the various objections that you made? A. That is right.

Irving D. Grodberg, cross.

Q. Now, there is an objection you made regarding a *lis pendens* on the property—do you recall that? A. I do.

Q. Did you discuss that with Mr. Seclow? A. I did.

10 Q. Right then and there? A. Well, I might have; I took it under consideration; I have since eliminated it.

20 Q. Well, that *lis pendens* had nothing to do with the owner's title, had it? A. In going through the letter with Mr. Seclow, when he called my attention to that fact, I told him I would consider everything he had said and go through my abstract again, and go over the several matters, and everything that could be removed we would put out of the way as an objection.

Q. Well, when was it that you informed Mr. Seclow that that objection was removed? A. I wouldn't want to say that offhand now.

Q. You never did it by letter? A. I wouldn't want to say; I don't think I did by letter.

Q. Well, was it done at a subsequent conference? A. It might have been.

30 Q. Now, the next objection raised in this letter was regarding a Sheriff's deed of Frank to Hass—do you recall that? A. I do.

Mr. Brenner: I do not see the materiality of that. I do not want to needlessly object, but we are not raising objection to that at the present time.

The Vice-Chancellor: I think I will let it go on. You charge fraud.

40 Q. And did you eliminate that? A. After I had a search made in Chancery, showing that the deed that was put on record was subsequent to the

Irving D. Grodberg, cross.

actual date of the filing of the bill of foreclosure. Now, whether I had that search in Chancery made at the time of the conversation with Mr. Seclow I do not recall; but I subsequently checked up that in the Chancery Court and had it eliminated.

10 Q. When did you inform Mr. Seclow of the elimination of that? A. I do not want to say whether it was by letter I informed him, or not.

Q. Another objection raised was the omission of the lot number in the deed from Uslan to Edelman? A. Yes.

Q. Didn't you agree to eliminate that? A. I did not.

20 Q. You did not? A. No, I did not, because I felt that that deed should be produced and corrected, and put on record, or else that question would turn up every time that property had to be sold.

Q. Did not Mr. Seclow have that deed with him? A. At the time, no.

Q. The deed from Uslan to Edelman? A. No.

Q. He hadn't? A. He didn't have it with him at that time.

30 Q. And didn't he call your attention to the fact that the description was correct by metes and bounds? A. Oh, that was his contention at that time; my abstract showed that.

Q. And didn't he also call your attention to the fact that there was a further recital that it was the same premises that had been conveyed by Wilder to Uslan? A. He might have done that. It would be natural to do that. I conclude that he did.

40 Q. Did you ask Mr. Seclow then to get a corrected deed for you? A. I wouldn't want to say that I did or did not. It would be most natural

Irving D. Grodberg, cross.

that I did, because I would want that description corrected, putting in "Lot 7 A."

10 Q. Well, the deed from Wilder to Uslan is correct, is it not—the prior deed in the chain of title? A. I haven't the abstract before me. (The abstract being now shown the witness.) It is.

Q. And the recital in the Uslan deed to Edelman referring back to the deed of Wilder to Uslan, is a correct recital, is it not? A. It is.

Q. Did Mr. Seclow call your attention to that? A. I do not recall whether he did, or did not. I think he would have called my attention to that at the time of the conversation because he was trying to persuade me to waive some of these objections.

20 Q. And yet you do not remember whether you formed any opinion at that time as to the validity of the deed? A. I don't remember having formed any, at the present time.

The Vice-Chancellor: Was that the deed to Edelman that recited the fact that it was the same premises?

Mr. Dembe: Yes, sir—"as was conveyed by Wilder to Uslan."

30 The Witness: In referring to my abstract I find that it did refer to that deed, but not by book and page number; but I do not think I raised that at that time with Mr. Seclow; I merely listened to what he said.

The Vice-Chancellor: The particular description governs in all cases.

40 Q. At the time you wrote Mr. Edelman the letter of August 14th you made no reference to the shortage in the land, did you? A. That was omitted from my letter by mistake at that time.

Irving D. Grodberg, cross.

Q. Had you actual knowledge of it at that time?
A. I had my abstract before me and had knowledge of it; and I forgot to refer to it in my letter.

Q. Did you ever advise Mr. Seclow by a subsequent letter of the omission? A. He knew of the omission.

Q. How? A. I don't know whether it was by letter, or by—

Q. (Interrupting.) Did you send him any letter? A. I may have.

Q. Haven't you your copy of the correspondence here? A. (The witness examined his papers.)

Q. Well, do not bother with it now. A. You have the letter there, if I sent it.

Q. Now, you say that Mr. Edelman, the complainant, called upon you a day or two before the time set for passing the title? A. That is right.

Q. When you gave him a list of the objections you had to the title—is that right? A. Verbally, yes.

Q. That is, verbally told him of what the objections were? A. That is right.

Q. Now, when did you talk to Mr. Edelman again? A. Mr. Edelman came in a few times in between that and the 14th.

30 The Vice-Chancellor: In between what?

The Witness: The 12th of August; because my letter is the 14th; and I don't know whether he came in at that time, but, representing both parties at the time, I conveyed them verbally to him. Then he said that he would like to have my objections in writing, and I assumed that he had obtained other people—

40 Mr. Dembe: I object to that.

Irving D. Grodberg, cross.

A. I told him I would send him a letter, embodying my list of objections in the letter.

Q. Well, up to the time you sent the letter, you acted both for Mr. Edelman and the defendants, the purchasers? A. That is right.

Q. When you originally gave him your list of objections to the title, hadn't he referred you to Judge Roberson, who had made the previous search? He knew nothing about his legal title, did he, himself? A. I don't know whether he had or hadn't; it is past a year now, and I wouldn't say that he had or had not.

Q. Well, didn't you tell Mr. Edelman that you would look into the matter with Judge Roberson and find out what explanation there was to these various things you thought were objectionable, and would let him hear from you again? A. It is possible that I did, and before I had a chance of going over it—it may be that I called him; I don't know what happened. Sometimes you try to get another lawyer and he will be out of town—and before I had a chance to go over it with Judge Roberson he had retained Mr. Seclow—or I don't know who he retained, but I wrote him a letter embodying the objections.

Q. Mr. Seclow got in touch with you a short time after that letter? A. He did.

Q. I show you your letter of September 3d, addressed to Mr. Seclow—you sent that, did you not? A. That is right.

Q. And Mr. Seclow responded to that under date of September 4th—have you his letter; or is this a copy of it (showing witness copy of letter)? A. (After examining the copy.) That is right.

Mr. Brenner: I have no objection to that letter and copy.

Irving D. Grodberg, cross.

(The letter and copy were thereupon offered in evidence by Mr. Dembe, admitted and marked, respectively, Exhibit C-5, and Exhibit C-6.)

10 Q. Now, did you respond to Mr. Seclow's letter of September 4th by mail? A. I believe, after I received that letter I met Mr. Seclow in the District Court, if I am not mistaken, and I took the matter up with him and told him of my position in it—that I was trying to get my people to take the title, and I was having trouble with them on account of the misrepresentations made by Mr. Edelman. I was naturally interested in seeing the transaction close; and Mr. Seclow tried to tie me down, from time to time, to one or two objections. 20 He said, "There is nothing to the other objections. I will have the tenement violations removed." And I told him he could do as he pleased about those matters—about removing the violations—and in the meantime I was trying to get my people to take the property and lose sight of these representations that had been made to them.

By the Vice-Chancellor:

30 Q. What representations? A. Relative to the dispossessing of the tenants in the building.

Q. When did you find out that those representations were untrue? A. About three or four days before August 1st—about the 27th of July.

Q. Then, when you wrote your objections to the taking of the title you never included any objection on this misrepresentation? A. It is included in that.

40 Q. Where? A. In that letter that I wrote to Mr. Edelman.

Irving D. Grodberg, cross.

(Mr. Dembe handed the letter referred to to the Court.)

By Mr. Dembe:

Q. When you met Mr. Seclow, as you say in the District Court early in September, you say Mr. Seclow wanted to know from you what objections you still had to the title—is not that right? 10 A. Mr. Seclow wanted to know if I couldn't close the thing up. He said there was something happened and he wanted to get the thing cleaned up. I said I was doubly anxious to see the thing closed up because I was a broker in it and I would like to see the thing closed, that I was having trouble with my people, due to the fact of the misrepresentations made by Edelman, and I was trying to 20 ease them up a little bit on it and arrange a conference and see if we couldn't get together on some proposition; and, in the meantime, Mr. Seclow had to get the objections cleaned up.

Q. What objections did you want him to get cleaned up when you talked to him in September—you say there were some objections, now, what objections did you want him to clear? A. Well, I believe there was technical objections which I raised which I felt could be cleaned up by the original deeds; and Mr. Seclow might have advised me that, at the proper time, he could get that done—I wouldn't say now whether he did, or not. 30

By the Vice-Chancellor:

Q. What do you mean by that? A. The objections to Lot 7-A in the description; and there was something else there about the *lis pendens*, and stuff he was to get cleaned up. The one which Mr. Seclow put forward mostly was the Tenement 40

Irving D. Grodberg, cross.

House violations—he kept pressing that fact—that “I don’t want to get those violations cleaned up unless you are going to take the property.”

By Mr. Dembe:

10 Q. At that time, was there any talk or mention ever made of there being a shortage in the amount of land owned by Mr. Edelman? A. I believe there was; I am almost positive of it.

20 Q. Then you could not possibly have arranged or talked about closing the title— A. (Interrupting.) Oh, I will explain that: Your brother, Charlie Dembe, called me on the ’phone—I recollect it now—he said he represented a Mrs. Atkins and that, at the proper time, if we should want a deed from Mrs. Atkins, it was arranged that he could secure that deed for the foot and a half shortage, or something to that effect. So that was hanging in the balance, subject to being able to secure the deed that he said he could get.

Q. When was that? A. I wouldn’t say, Mr. Dembe; it is too far back; I couldn’t remember the date.

30 Q. Was that prior to the time you met Seclow, or subsequent? A. I couldn’t exactly say because it is over a year ago, and I wouldn’t want to fix the time.

40 Q. Well, is it not the fact that the call you received from my brother was to the effect that he had already procured the deed? A. No, it was not; I will say absolutely not. When he ’phoned me he said he didn’t want to get the deed unless we were going to get the title. I said, “I can’t commit myself, I won’t say that we would take it if you get the foot and a half,” or whatever the amount of ground it was there.

Irving D. Grodberg, cross.

By the Vice-Chancellor:

Q. Whom did you represent at that time? A. At that time I represented Messrs. Daves and Neiditch, and Mr. Edelman was represented by Mr. Seclow.

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By Mr. Dembe:

Q. Didn’t you receive a letter from Mr. Seclow under date of November 14, 1924? A. If you will show me a copy of it, I would remember whether I received it or not. (Paper shown the witness.) I did.

Mr. Dembe: I offer that in evidence.

(The copy of letter is admitted in evidence, without objection, and marked Exhibit C-7.)

20

Q. Did you respond to that letter in writing? A. In writing? I don’t know whether I had or not; I know I met Mr. Seclow after that letter.

Q. You did meet him after that? A. I did meet him after receiving it.

Q. How long after? A. That I wouldn’t say; it was subsequent to receiving that letter I know I met him.

30 Q. And did you have a conference with him at that time? A. I spoke to him.

Q. And what was the nature of that “talk,” as you put it? A. I explained to him exactly my position in the matter, that I was in a peculiar position, being both the attorney and an agent in the transaction; and I explained that to him, and I told him, “Here,” I said, “now these legal objections to the title” (by “legal” I mean in the abstract and the Tenement House violations) “are the outstand-

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Irving D. Grodberg, cross.

ing objections; now, as far as I, as the attorney, am concerned, that as far as the misrepresentations that were made is concerned, that is a matter entirely up to my clients; they did not pass that to me at all; that is a matter entirely up to themselves; and if I can tell them that these objections as to the title are out of the way, then we will have a conference, and I will see if I cannot persuade them to overlook the misrepresentations made; but before that was done I was in no position to talk with reference to the misrepresentations." 10

Q. At the time, then, of this last talk that you have just referred to, the only thing on which you wanted to be satisfied was the deed from Atkins, is that right? A. What is that?

Q. The Atkins deed for the one and a half feet? A. No. Mr. Seclow, throughout the entire proposition, was jumping from one thing to another; he would first center it on one proposition, then center it on another. First he centered on the Tenement House violation, and I had concluded he had received the Atkins Deed; and the next thing I would hear from him he would be talking about the Atkins Deed; and I was only interested in wanting the objections cleaned up so I could then persuade my people to take the property on the strength of the fact that I would try and influence them, as the broker, to take it. 20 30

Q. Did you ever advise Mr. Seclow that they would not take it? A. Mr. Seclow knew their position throughout.

By the Vice-Chancellor:

Q. No, did you advise Mr. Seclow? A. I advised Mr. Seclow that they didn't want to take it; yes. 40

Irving D. Grodberg, cross.

By Mr. Dembe:

Q. When did you advise him of that? A. In all my conversations with him.

Q. Always told him that they did not want to take it? A. That they did not want to take it. 10

Q. But that if he cleared up all the other objections that you had, you might be able to induce them to change their minds? A. I would try to induce them to, yes.

Q. Didn't Mr. Seclow say to you, "Why go to the expense of purchasing this foot and a half, and why go to the expense of putting windows in the rooms, as required by the Tenement House Board, unless your people will take the title after those things are done?" A. Mr. Seclow, when he spoke to me on that— 20

Q. (Interrupting) Did he say that? A. He did.

Q. What did you say in answer to that? A. I answered and said, "that was a matter entirely for yourself." In fact, I didn't know they had bought the foot and a half until he came and tendered me the deed; and this was a short time before that; because I understood he was holding that one point in abeyance until this conference we wanted to hold. I wrote him asking for a conference. 30

Q. Didn't he write you, in his letter of November 14th, which I have already shown you, to that very effect—that he did not want to buy that foot and a half and go to that expense unless you would take the title? A. That is true, and I did not think that he had; I didn't think he had acquired it. In fact, only that I received Mr. Seclow's word on it, I didn't think, up to the time he tendered the deed and said that he had acquired the foot and a half, that he actually did have that foot and a half. I 40

Irving D. Grodberg, cross.

understood that he was holding that one point over until we held the conference. Mr. Seclow has the letter I wrote asking for a conference between the parties, and I assumed that that foot and a half could be secured at any time.

10 Q. You also said that you had the assurance of my brother that he would give you the deed any time you wanted it? A. Not give it to me, but that he was in a position to deliver the deed to Edelman any time when he wanted that deed.

Q. You fix that as early in September? A. I won't fix the date, Mr. Dembe, because I don't know, candidly.

20 Q. You say you wrote one or two letters to Mr. Seclow to arrange for a conference—have you the date of those letters? A. I have.

Q. Suppose I show you your original letter (showing the witness a letter)? A. That is right—October 24th.

Q. That was prior, then, to the letter which you got from Mr. Seclow? A. That is right; and then he has another letter from me.

30 Q. Did you have that conference? A. No conference was held between the parties. I have another letter that I have written to Mr. Seclow in the matter.

(The letter last shown the witness is offered in evidence, admitted and marked Exhibit C-8.)

Q. (Showing the witness another paper.) Is this the letter that you refer to? A. That is the letter I refer to.

40 (The same is offered in evidence by Mr. Dembe, admitted and marked Exhibit C-9.)

Irving D. Grodberg, cross.

Q. That was still before Mr. Seclow's letter of November 14th? A. I would like to see that letter of November 14th again, if I may. (The same is handed to the witness.) It appears from this letter that he entirely ignored my letter with reference to the conference, unless I received one other letter in between-time. I wrote requesting a conference, and this is the letter I got.

10

Q. Well, you have already testified, unless you were mistaken about it, that you had a conference with Mr. Seclow subsequent to the letter of November 14th? A. Oh, subsequent?

Q. Yes. A. Yes, subsequent—with Mr. Seclow, not with all parties together. If you read my letter you will see that it requests that we all would be together—my clients and his client—and see if we could not reach a general understanding in the matter, because the outstanding objection in the matter was one which they had control over and I had not—and that is as to the misrepresentations; and I wanted to see if we could not get them together on that point.

20

Q. Did you, subsequent to this letter of November 14, and subsequent to this conversation that you say you had with Mr. Seclow, fix any time for a conference? A. That was up to Mr. Seclow; I put that squarely up to him in my letters, asking him to advise me as to whether he would consent to such a conference and get together and see if we could have a general discussion on that. They were not interested in the legal objections, only that I had told them concerning them, and they left them to me.

30

Q. Well, you did meet Mr. Seclow some time in November, didn't you, subsequent to this letter? A. I am almost positive that I had.

40

Irving D. Grodberg, cross.

Q. And, at that time he was to get his people together, you say, and arrange for a further conference, is that right? A. He was to get his people together and we were to have a conference.

10 Q. And you were to get your people then and have a general conference of all the parties? A. Yes, sir; right.

Q. That conference, you say, never took place? A. The conference did not take place.

20 Q. You did not communicate with Mr. Seclow any further regarding that conference? A. Oh, I met Mr. Edelman a couple of times, and I don't remember whether I met Mr. Seclow. I met Mr. Edelman and ask him in regard to this—whether he was arranging to come up to a conference so we could get together and discuss the whole thing.

Q. Did not Mr. Seclow talk to you on two or three occasions between the middle of November and early in January, in regard to fixing the time for a conference on passing the title? A. Mr. Seclow was anxious to fix a time for closing the title. I was not in a position to fix that, because there was that point which my people strenuously objected to, which was the misrepresentations as to the dispossession.

30 Q. Didn't he ask you to fix a time when the people might get together? A. I think I put that up to him to fix.

40 Q. Well, didn't he serve you with a notice itself, on January 15th, telling you, as the notice recites, and fixing a time when he would call at your office and tender the deed? A. Oh, yes; that is the first time that he fixed, only for the purpose of suit, he made time of the essence. That was the only conference he consented to, or came up to.

Irving D. Grodberg, cross.

Q. Who fixed the date? A. It was not a conference, it was a tender.

Q. Who fixed that time—he, or you? A. He fixed that time.

10 Q. Did you fix any time prior to that when Mr. Seclow failed to attend? A. I did not fix any time; I did not fix any time prior to that.

Q. You say Mr. Seclow served you with this notice for the purposes of suit, and that was the only date that he fixed? A. That is right.

Q. I say did you ever fix a date for closing that he did not attend? A. We never intended closing until my people—

The Vice-Chancellor: Oh, no.

20 A. I did not, is the answer to that.

Q. Did you ever advise him that you would not take the title? A. He knew that right along. I advised him of that.

30 Q. When did you advise him of that? A. In conversations that I had with him. I did not say we would not take the title, understand me on that; I told him that my people objected to taking the title because of what had been said by Mr. Edelman—that I was anxious to arrange a conference between all parties—not in the sense of making time of the essence, or for the purpose of passing title, but merely that we should get together and have a discussion. They understood my position; I made it plain—to see if I could, as broker, induce my people to take the property.

By the Vice-Chancellor:

40 Q. Then, as matter of fact, so far as you, as a lawyer, was concerned, outside of these objections that you say were legal, the real objection to pass-

Irving D. Grodberg, cross.

ing the title was the fact of these misrepresentations? A. That is right.

Q. Now, did Mr. Seclow appear, on January 26th, at your office, as stated in the notice? A. He did.

10 Q. Did he have his deed with him? A. He said he had. He had something in his hand that I assume was his deed.

Q. Did he offer it to you? A. He did.

Q. You did not even look at it? A. No, I did not.

Mr. Brenner: We do not dispute at all that the deed was tendered.

The Vice-Chancellor: The legal tender is not disputed.

20 Q. Didn't you tell Mr. Seclow, on one or two occasions, that your clients would not take the title unless Mr. Edelman could deliver a deed for the 74 feet? A. That was natural; absolutely I told him that; that was natural to tell him that. They had bought at least 74 feet; and I told him, before we could discuss the other matters he would have to have that cleared up, or to deliver to us what he agreed to give us. I did not understand he was buying that foot and a half, because your

30 brother told me that there would be no conveyance made until he was assured that this other transaction was going through. That is what your brother Charles told me, that he would be in a position at any time to deliver that foot, or foot and a half, or whatever the shortage was.

40 Q. Did I understand you correctly that my brother Charlie had some interest in this case, before? A. Your brother Charlie 'phoned me, and asked me whether we were going to take title. I told him there was something holding the taking

Irving D. Grodberg, cross.

of title back, that there was some objection had to it, along with some legal objections I had to it; and he said, "Yes, I know the one about the shortage of land." I said, "What interest have you in it?" He said, "I represent the adjoining property owner, Mrs. Attkins"—in fact, I believe he said she was related in some way, if I remember correctly—and he said, "Seclow doesn't want to take this property for Edelman unless the title is going through." I said, "Well, I cannot assure you that this title is going through or not," I said, "because of the objections my people have to it." "Well," he said, "I want to let you know that I am in a position to deliver that foot and some odd inches to you at any time."

20 Q. How long were you negotiating between these parties before you actually made the contract which you drew? A. They came up some time in the afternoon, if I remember correctly; I don't know whether it was somewhere between one and three o'clock. We went down to the property and met Mr. Edelman there; I guess that was toward the evening, later in the afternoon; and it was somewhere around nine or ten o'clock in the evening before we closed our deal—that is, actually had the signatures. We had to go to Jersey City and get Mrs. Edelman's signature.

30

Q. Was that the first day you began to negotiate on it? A. We started that afternoon, and finished that evening and closed the deal.

40 Q. When had Mr. Edelman authorized you to get a customer for it? A. I met Mr. Edelman with Mr. Nessianbaum—I was with Mr. Nessianbaum, who was associated with me in transactions, and we negotiate sales through our office—and I met him at an auction sale at 31st Street and Avenue

Irving D. Grodberg, cross.

C several weeks before June 10th,—I believe the Cohen boys were selling some house up there; and I met Mr. Edelman, and he authorized me to sell it.

10 Q. Did you get any terms from him at that time? A. At that time we were discussing an exchange for a house on Garfield Avenue, which we were trying to exchange for the Nineteenth Street property. He immediately jumped into my car—was going to the Court House—and we took him down and showed him that Garfield Avenue house.

20 Q. Won't you please answer my question—did Mr. Edelman give you the terms? A. That is the answer—the terms that he gave me were relative to an exchange, which were different terms than at a cash sale.

Q. Well, did you, at that time, get a description of the property from Mr. Edelman as to the tenancies and the amount of rent this property yielded, etc.? A. I don't believe we did at that time; in fact, I am almost positive we did not, because he set a fabulous price on the property for the purpose of exchange, and we just dropped the whole thing right there.

30 Q. And who was the owner of that Garfield Avenue property? A. I believe the house is one that was at one time owned by Hyman Borsch; I don't remember who was the owner at that particular time, but it was a house that Mr. Borsch owned on Garfield Avenue. I think that Mr. Sedlick had it for a while, and Moses Stern. It was not the brown-faced house, it was still another one there, that changed hands several times.

40 Q. You don't know who the owner of that property was? A. I did at that time, but I don't recollect now who it was, because it changed hands several times.

Irving D. Grodberg, cross.

Q. And from that day when you had this talk about the exchange up to the day of the contract you had not seen Mr. Edelman nor talked with him? A. Mr. Nessianbaum had.

10 Q. But you had not? A. I don't believe I had; I am almost positive I had not seen him up to that time.

Q. Now, these houses on 19th Street, involved in this suit, are they high-class property? A. No, they are not.

Q. Who occupies them? A. Tenants.

Q. I understand that, but of what nature are the tenants of the buildings? A. I don't know just what you mean.

20 Q. Are there colored people in the buildings? A. Yes.

Q. As matter of fact, that is a colored settlement, is it not? A. No, not exactly; there are colored and white; there is a mixed class in there.

Q. And it was originally occupied by whites, is that right? A. That is right.

Q. You are familiar with the property, aren't you? A. To be candid with you, I am not.

30 Q. You are not? A. No, not with that particular parcel, because I got it through Mr. Nessianbaum; but in transactions I never came across that particular parcel. I did know who owned it—a Mr. Wilder—at one time; but aside from that I never had any dealings with it.

Q. Now, when Mr. Wilder owned the property it was occupied by foreigners, wasn't it? A. That I don't know; I cannot tell you that I know much about that property.

40 Q. How many white families were there in the property at the time you made your examination? A. I wouldn't say; it didn't make any difference

Irving D. Grodberg, cross.

to my people whether they were colored or white, so we did not check up on the colored or white. We knew there were colored and white in there.

10 Q. That was not discussed, at all? A. Oh, it may have been discussed, the fact that there were colored people in there; but I didn't ask how many colored and white were there; we didn't make any check-up.

Q. Did not Mr. Edelman give, as the reason for the vacancies, that he had there, the fact that the Polish and Slavish people who had been in the house did not want to stay there when the colored people had moved in? A. Absolutely not.

Q. No such talk as that? A. No, absolutely not.

20 Q. And that all the white families were moving out and colored families moving in? A. No; he said he had put out several colored families as well as white.

30 Q. He told you he had put out two colored families, did he not? A. No; the way he put it was that the place was always rented, that he "had a waiting list," was what he said; and that he had this Polish party that wanted the end house, No. 23, and they wanted the entire building vacant, and he ejected certain tenants from the building and he was going to shift the balance of them from 23 into the other houses; that he wanted at least twelve empties in the house; and he took them into the District Court—that they would not move on notice—and he put them out.

Q. Did you believe that? A. Why shouldn't I? The man did not look like the type that would lie; I placed confidence in him.

40 Q. Did you believe that Mr. Edelman had actually served notice of dispossession on all of the families in that building, in anticipation of selling the house to another party?

Irving D. Grodberg, cross.

Mr. Brenner: I object to that, as absolutely immaterial, what Mr. Grodberg, either as broker at that time, or as attorney at law, should believe; it was what the parties to this contract believed.

The Vice-Chancellor: I do not see that 10 it is material; he was the agent of both parties at that time.

Mr. Dembe: My purpose in asking the question, I will be very frank to say, is this—that Mr. Grodberg, as a lawyer, ought to know that that could not be done.

The Witness: It can be done.

The Vice-Chancellor: What could not be done?

20 Mr. Dembe: That you could not dispossess a tenant except for non-payment of rent or disorderly conduct. Mr. Grodberg said that some Polish person was contemplating buying this property, and he told Edelman he would buy the property provided he first ejected the tenants—

The Vice-Chancellor: He could get them out under a month's notice, couldn't he?

30 Mr. Dembe: Not under the Rent Laws, if the Court please. There is no such thing, under the Rent Laws. You cannot put a tenant out unless he does not pay the rent, or is disorderly, or you actually want the rooms for your own purpose. The Supreme Court has gone so far as to say that when a man gave a notice that he wanted the premises for himself, and there was a daughter of his who was being married and he wanted the premises for his daughter, that he would not be permitted to dispossess. 40

Irving D. Grodberg, cross.

The Vice-Chancellor: Not under a three-months' notice?

Mr. Dembe: No, sir.

The Vice-Chancellor: I think it must have been changed since I was at the Bar.

10 Mr. Dembe: It has. A landlord cannot get rid of a tenant only if he doesn't pay the rent—

The Vice-Chancellor (to the witness): Well, you may answer that question.

A. In answer to that question—

Mr. Brenner: I am objecting to it.

The Vice-Chancellor: I think I will overrule the objection; I may learn something.

20 (To the witness.) Go ahead and answer it.

A. In answer to that question, the answer that I filed in this case will show just what his representations were, and that was this—that this Polish party wanted to make alterations in the building, and that is one of the reasons for which you can dispossess a tenant under our rent laws.

30 Q. If the owner wants it? A. Well, I was not sitting as Judge of the District Court. Now, the owner alleged that he wanted to have those vacancies for the purposes of alteration, and I assume that, for that reason, he got them out of the house.

Q. You say the answer sets forth the representations? A. What is that?

Q. That the answer you filed in this case sets forth the representations that were made? A. That is right.

Q. You drew the answer yourself, did you not?

40 A. That is right.

Q. Didn't you tell Mr. Seclow prior to your fil-

Irving D. Grodberg, redirect.

ing your answer that the misrepresentations consisted of the fact that the tenants had been dispossessed by the police in raids, as a matter of fact, and that Edelman did not tell you so? A. Oh, no, I did not say anything about that "Edelman didn't tell me so"; I stated that the misrepresentation as made by Edelman did not correspond with the truth of the facts as they actually existed, as to the reasons for these empties.

10

Q. And that his representation was that he had ejected the tenants for the sake of making repairs or alterations, in contemplation of making this deal, and that, as matter of actual fact, the tenants were dispossessed by police raids? A. Oh, there was several raids on the place—not one, but several.

20

Q. Please answer my question—did you make that statement? A. As one of the reasons for the empties as they existed; I gave that as one of the reasons for the empties as they existed.

Redirect examination by Mr. Brenner:

Q. Do you know whether the conditions improved between the time of making the contract and the time fixed for passing the title—whether there were more empties or fewer empties, or whether it was about the same? A. Well, to be candid, we were not concerned with what happened after the time of the making of the contract.

30

The Vice-Chancellor: You don't know?

The Witness: I don't know.

Q. Do you know what the condition is at the present time? A. There are eight tenants and twenty-eight empties.

40

Mr. Dembe: I object to what the condition is now.

Irving D. Grodberg, redirect.

The Vice-Chancellor: How is that material at this time?

Mr. Brenner: I will withdraw it; it may become material on rebuttal, and I would like to have the right to recall Mr. Grodberg on that point.

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Q. At the time that the tender of this deed was made in your office in pursuance of the notice making time of the essence of the contract, did Mr. Seclow appear in your office alone, or did he appear with his clients? A. Alone.

20

Q. So that there was no opportunity, at that particular time, of having this conference that you previously suggested, at which you intended to persuade your clients to accept the title to the premises, regardless of the existence of these false representations? A. Mr. Seclow came up alone, and we never had that conference at which I requested that all parties being present.

30

Q. Did he ever agree, or did Edelman ever agree, to have that conference for the purpose of settling the differences that existed as the result of these misrepresentations? A. I met Mr. Edelman on the street, and I advised Mr. Seclow in a letter, right after meeting Mr. Edelman, who told me that Mr. Seclow had informed him that I had written requesting a conference, and that he would arrange with Mr. Seclow for such a conference.

Q. Do you know when that was, that this conversation was had? A. I believe, according to my letters, it was in October.

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Q. Was that arrangement ever suggested after that time by either Mr. Edelman or Mr. Seclow? A. In my conversations throughout I always tried to get my parties together,—

Irving D. Grodberg, redirect.

Q. Did they ever suggest it, or fix a time for the holding of such a conference? A. I don't believe they did; I am almost positive they did not, because we were always ready to meet them.

Mr. Brenner: There is one other phase of this case, if the Court please; I do not know whether you want us to go into it at this time; that is, as to our counterclaim for the expense of preparing the abstract, etc.

10

The Vice-Chancellor: Well, that is covered by the statute, is it not?

Mr. Brenner: Except as to the proof of it.

The Vice-Chancellor: Well, you may prove the amount paid for the search.

Q. What amount did you charge for the preparation of the contract, and any other legal documents that you had prepared, and the making of the search on this property? A. \$100, in addition to the survey fee, which I believe was \$55.00.

20

Q. \$55.00 was paid for your survey? A. That is right.

Q. Was that paid by you? A. I believe it was paid by my check, or it may have been paid with their check.

Q. And were you reimbursed for that, if it was paid by your check? A. I was reimbursed, if it was paid by my check. I would like to refer to my papers.

30

The Vice-Chancellor: It goes to the defendants, anyhow, doesn't it, under the statute?

Mr. Brenner: Yes.

The Witness: I am positive it was \$55.00.

Q. And the \$100, does that cover all of your

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Irving D. Grodberg, recross.

services in the matter? A. It does; that would not have been the charge had the title gone through, because then we give a certificate, and it is based on so much per thousand.

10 Mr. Dembe: We admit that.

Mr. Brenner: If the defendants are entitled to recover on the counterclaim they are entitled to recover this \$655.00?

Mr. Dembe: Yes.

Recross examination by Mr. Dembe:

20 Q. Did you ever tell Mr. Edelman, during the period between August and January, 1925, to rent the vacant flats? A. Why, he told me that he was in a position where he didn't know whether to rent the empty flats, or not. I told him, in my opinion, the way the contract was phrased, there was nothing to prevent him from renting them, if he wanted to rent them for less. I was concluding at that time, or taking it for granted, that the thing would go through, and, if that went through, that we would accept the place subject to the additional tenants; that he could go ahead and rent them, if he wanted to.

30 Q. What did Edelman say to that? A. Edelman he could rent the flats for less money than what he had specified was the rental of those apartments in the houses.

Q. Well, had he specified the rentals of the vacant flats, too? A. I believe he had, yes.

Q. In the contract? A. In the contract. I specified that in there—what he represented to be the rental—if I remember correctly.

40 Q. For the vacant flats? A. Yes, I am almost positive.

Irving D. Grodberg, recross.

Q. Just point out what part of the contract refers to the rental of the vacant flats.

The Vice-Chancellor: Why, it is there, plainly.

A. It is in here: "There are thirteen flats empty, of which it is represented that 8 in 23 East Nineteenth Street rented for \$150, total, and 7 in house 25 East Nineteenth Street rented for \$70"—that is a total of all four—"1 of which in house 27 East Nineteenth Street rented for \$16.00."

Q. Well, Edelman came to you and told you he had tenants to rent them at lower rent than specified, is that correct? A. Right.

Q. And wanted to know whether he could go and rent to those people? A. That is right.

Q. And didn't you tell him you took the matter up with your clients, the defendants here, to find out if they would be satisfied? A. I did.

Q. And did you take it up with them, and bring back word that it was all right, to go on and rent it? A. No, I told Mr. Edelman, "My people are raising objection to the taking of title—"

Q. (Interrupting.) Won't you please answer my question? A. Well, it requires explanation.

Q. I asked you what you represented to Mr. Edelman, as a result of your taking the matter up with Mr. Nieditch, regarding the renting at lower rates? A. I reported to him that we would not set that up as an additional objection to the taking of the title.

Q. That it would be all right for him to go and rent it at lower rates? A. That if he wanted it as an assurance that we would not set it up as an additional objection, I would give it to him in writing.

Irving D. Grodberg, recross.

Q. Is it not the fact that he asked you for that writing and you would not give it to him? A. There is no truth in that, at all.

Q. Yet you offered to give it to him in writing, and he would not take it? A. We offered to give it to him in writing—the right to rent any of these places for lower rent. There was one proviso—that he take a deposit, and advise us as to what amount of rent he was getting. I assured him personally I could make my people consent to the agreement without an objection, notwithstanding he specified what the rent was to be.

Q. What did he say? A. He was not looking for it, because he could not get tenants for the floor.

Q. What did he say? A. He said, "All right, he will try to get the tenants, and when he gets them he will let us know."

Q. I am asking about the writing, Mr. Grodberg—you say you offered to give him a consent in writing—what did he say to that? A. Understand me, that writing—

The Vice-Chancellor: Why don't you answer the question—did he say anything to you when you told him that?

A. Well, the writing that we were to give him was to apply to each tenant that he would get for the premises; and the understanding was, or he told me then, "I will try and rent it; I have got a man by the name of Magad on Nineteenth Street who is trying to get them rented, and if he gets less rent I will tell you, and I will get the papers," but he never came back with the papers.

Q. When did that take place? A. Oh, that was while all this whole thing was going on, subsequent to August 1st.

Halsey R. Brant, direct.

Q. Have you any idea whether it was September, October or November? A. I would not want to fix on what time; it was while we were having the discussion with Mr. Seclow.

Q. Well, you have not fixed any time of the discussion with Mr. Seclow—cannot you give us any definite time as to when it happened? A. It was subsequent to September 1st, I will say that, 1924. It would therefore have to be between September and January of the following year.

HALSEY R. BRANT, sworn.

Direct examination by Mr. Brenner:

Q. You are connected with the Tenement House Board of the State of New Jersey? A. I am.

Q. Did you make an inspection or inspections of property on Nineteenth Street belonging to Edelman, the numbers being 23, 25 and 27 East Nineteenth Street? A. I did.

Q. I show you letters from your Board, which have not been marked in evidence, one under date of July 28, 1924, the other under date of November 19, 1924, both of which set forth objections, or violations in all three of those houses: Did those violations exist, and did you report them to your Board at the time that these letters bear date? A. Yes, sir. No. 23—do you want to know the violations in that?

Q. Well, the violations are in the report? A. Yes, sir.

Q. And have the violations which appear in the letter of November 19th, 1924, since been cured? Well, let me withdraw that for a moment: Has there been an inspection made since November 19th, 1924, for the purpose of checking up as to

Halsey R. Brant, direct.

whether any or all the objections appearing in that letter have been overcome? A. Yes, sir.

Q. When was it? A. 6/8/25—June 8th, 1925.

Q. And does the inspection of June 8th, 1925, indicate that those objections have since been cured? A. Some of them; yes, sir.

Q. What objection, or objections, are there that appear in the communication of November 19th, 1924, which are still uncured? A. "Walls and ceilings of the cellar"—this is the building No. 23—"walls and ceilings of the cellar need white-washing; ceilings need repair; walls and ceilings and the wood-work of the halls dirty and needs painting; walls and ceilings of all water-closet apartments need paint."

Mr. Dembe: I might call your Honor's attention to the fact that we are not required to do any painting under the contract.

Mr. Brenner: That is true.

The Vice-Chancellor: He is only giving the report of what is on the card.

A: (Resuming.) "Also fire escape needs painting. No railings around the stair opening. Front stack must be provided with proper counter-balance; drop ladder."

Q. That is all in No. 23? A. That is No. 23.

Q. Now, No. 25—what did you find in No. 25 that has not been cured since your letter of November 19, 1924?

The Vice-Chancellor: Well, now, do these objections which are still existent appear in the letter of November 28th?

The Witness: Well, we will have to check this up; in checking this up, when the inspector goes out he checks it up.

Halsey R. Brant, direct.

The Vice-Chancellor: Some of these things might have arisen since. Can you tell whether any of these objections that you are now reading were in existence at the time you made the other two inspections?

The Witness: The other inspections?

The Vice-Chancellor: Yes.

Mr. Dembe: The inspection of June, 1924?

The Witness: Yes, sir; I have here—

The Vice-Chancellor: Well, you say they were in existence?

The Witness: Yes, sir; I have it here, "10/28/1924."

Mr. Dembe: Well, we were required to pass title on August 1st, and the report they have in evidence is July 28th.

Mr. Brenner: July 28th, and since that time.

The Vice-Chancellor: Well, you can check up the two, and see if they compare. Go to your next card.

The Witness: Now, you want No. 25?

Q. Yes, 25? A. The date of this re-inspection was 10/28/24.

Q. Has there been any inspection since on that house? A. There is—on 6/8/25.

Q. And what do you find on your report of June 8, 1925—what do you find is still objectionable, that has not been cured since your previous inspection? A. The original notice that you got there was prior to the 10/28/24. Those violations existed at the time when I went there myself on the 10/28/24; those violations still existed; otherwise they would have been checked off.

Halsey R. Brant, cross.

Q. And none of them had been cured between July and November? A. Well, no, not then; but on the 6/8/25 I find that the yard that was dirty, the rubbish has been removed; and the "floors and halls about the house, dirty," that has been removed. "Water closets throughout the house," as it calls for, "dirty and needing repair, and adequate flush," has been removed—them violations.

Q. And the other objections still remain? A. Well, that is the only one that I see on this card; I cannot say in regards to the others; I can only give you the data that is on the card.

Q. Now, take the last house, No. 27? A. In addition to that, I wish to state—

Q. No, just answer the question, please—on the 10/28/24? A. This is No. 27: "The fire escape needed painting. 10/28/24; outside walls"—all this existed at that time.

Q. Well, they existed, as it appears on this report of November 19, 1924? A. Yes. Now, the violations were removed on 6/8/25.

Q. And what violations were overcome at the time you made that inspection? A. "In yards, the grass and rubbish was removed." The violation was removed. "The ceilings of the cellar needed repair—removed." "Floor of the second floor hall needs cleaning—removed." "Stair to the roof encumbered—removed." Those violations were removed. The fire escape needs painting.

Cross examination by Mr. Dembe:

Q. Was there anything outside of the painting that was not removed at the time of your last inspection? A. Yes, sir; at the last inspection it says here, "Glass out of the windows; also the walls and ceiling needs cleaning; also the wood-

Halsey R. Brant, cross.

work of all halls needs cleaning and painting; walls and ceiling of rooms throughout the house needs cleaning." That is the record.

Q. What do you mean by "cleaning"? A. Anything where you have a wall that is dirty and needs cleaning.

Q. By that you mean painted up, don't you? A. Well, not necessarily.

By the Vice-Chancellor:

Q. It may be papered or kalsomined? A. It may be kalsomined, or washed off. Such objections often exist.

By Mr. Dembe:

Q. Is it not the fact that when he goes to these houses violations such as are enumerated here would appear on practically every examination?

Mr. Brenner: I object to that.

Q. In other words, the rubbish in the yard is continuously accumulating and continually being removed, as matter of fact, is it not? A. No.

Q. You raise as an objection "rubbish in the yard"? A. Yes.

Q. Assuming that that appeared in your report of November— A. Yes, sir.

Q. In your report of July 19, 1925, six months later, would that be the same rubbish? A. No; between the former inspection down to this inspection, it had been removed.

The Vice-Chancellor: Well, that is not anything that I think would justify the rejection of the title. Anyone could remove rubbish; but the fire escapes, and the painting of the house, and repair of walls and

Halsey R. Brant, cross.

floors and doors and interior structure, are all things that ought to be done strictly under the terms of the contract.

10 Mr. Brenner: I might say we are not raising objection to the Court regarding this rubbish, or things of that kind, and would not, of course, have refused title on that ground. We are simply putting in those things because they are part of the report, so that the whole report goes in; we couldn't put in a part of it.

Q. Now, in your report of inspection of July 28, 1924,—refer to the letter, please? A. Which house is that? This is 23.

20 Q. Was there anything about fire escape violation at that time? A. Yes, sir.

The Vice-Chancellor: Well, does it really make any difference what those things amounted to? You have refused this title, primarily on the ground of false representations; now, is not the only question involved in this case whether those representations were false or true?

30 Mr. Dembe: Well, that is exactly as I look on the case, but the fact is they put this evidence in, and I did not want it to go in unanswered or unexplained.

Mr. Brenner: No, I think we have the right, if the Court please, to claim on the double ground; if the premises were not put in the condition that they were supposed to be put in, under this contract (the contract providing against Tenement House violations), we have the right to raise an objection to that. The mere fact that Mr. Grod-

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Halsey R. Brant, cross.

berg says that he did not have any serious objection to it, and would try to put this title through, of course has no effect upon the individuals themselves, who are parties to this contract and have a right to rest upon every violation and every breach of the contract. 10

The Vice-Chancellor: I know, but what I am driving at is this: Here are some things that the vendor has to go to the expense of removing; now, you have not said yet that you would take the title if they are removed. You have said, "I refuse to take the title because you represented to me that these premises were thus and so, and they are not; the representation is false and fraudulent, and, therefore I won't take the property." Now, was he bound to attend to any of those things until you gave him notice that you were ready to take the title? 20

Mr. Brenner: They were bound to do it under the State law.

The Vice-Chancellor: Oh, I don't care about that. You are dealing now with the law; I am dealing now with the fact as to whether or not you can take advantage of that when you put yourself on other grounds. 30

Mr. Brenner: Only as to this, if the Court please: We, of course, cannot determine in advance what the Court is going to find as to whether or not these representations were made, or not. Now, in the event that the Court finds against us on that point, if these violations had existed we are entitled to have them cured up before we are compelled to take this title. 40

Halsey R. Brant, cross.

The Vice-Chancellor: Oh, there is no question about that.

Mr. Brenner: It is only put in for that purpose.

10 The Vice-Chancellor: As I see it now, the point you make is this—during all these negotiations,—apart from the items that were eliminated, such as the want of the foot and a half, and the other things that are now eliminated,—the one troublesome feature of the case which caused your client to reject the title was certain representations made before the signing of the contract which induced him to sign the contract, which you say are materially false and fraudulent and untrue, so that it justifies you in declaring the contract void?

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Mr. Brenner: That is correct.

The Vice-Chancellor: Now, is not that all there is to it?

Mr. Brenner: Yes, on the main issue in the cause, that is all there is to it.

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The Vice-Chancellor: Now, of course, if you are compelled to take the title it would be on terms that all of these items of Tenement House violations will be cleaned up.

Mr. Brenner: That is the only reason that that is put in at the present time.

The Vice-Chancellor: I see. Well, I do not think you need go any further on that.

Mr. Brenner: That is all.

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The Vice-Chancellor: For that matter, if necessary, a reference could be made to a Master to attend on the passing of the title, and see that all those things are cleaned up, so that you can get what your contract calls for.

Fred. Feinberg, direct.

FRED. FEINBERG, sworn.

Direct examination by Mr. Brenner:

Q. You are employed by Mr. Grodberg in his office? A. Yes, sir.

Q. And did you, at his request, go to the Bayonne District Court and examine the dispossession dockets there for the purpose of determining how many dispossession actions had been brought by Mr. Edelman against tenants in the premises 23, 25 and 27 East Nineteenth Street? A. Yes, sir. 10

Q. How long a period of time did that examination cover, of the dockets? A. Why, I believe it covered a period of time between September, 1923, or June, 1923—I have the instructions down on a piece of paper, if I may look at it. 20

Q. Refer to your memorandum: when did your examination start, of the docket (handing the witness a paper)? A. It started October, 1923, until September, 1924.

Q. And, covering that period of time, how many dispossession actions had been instituted? A. Why, regarding the property in question, I found two dispossession actions were instituted.

Q. And what pages are they on in the docket? A. Why, the dockets are numbered. 30

Q. Well, in the dockets, what pages do they cover? A. The number is 40888 for one, and another one 41229.

Q. Those are the docket numbers? A. Yes.

Q. And what pages of the docket do those dispossession actions appear on? A. Well, they were indexed under the name of the plaintiff.

Q. And, from the index, you determine how many dispossession actions had been instituted during that time? A. Yes, sir. 40

Gustav F. Ruh, direct.

Q. And you could only find two? A. Only these two were started, and one was discontinued.

By the Vice-Chancellor:

10 Q. Were they started to dispossess persons in the premises in question here? A. Yes, sir; for non-payment of rent; and one was discontinued.

Mr. Brenner: We have the dockets here, your Honor. This is only for the purpose of referring to the dockets themselves.

The Vice-Chancellor: Well, produce and mark them.

Cross examination by Mr. Dembe:

20 Q. What was the date of your inspection? A. Why, the beginning of this week.

Q. The beginning of this week? A. Yes, sir.

By Mr. Brenner:

Q. That was done in the preparation of this case? A. Yes, sir.

GUSTAV F. RUH, sworn.

Direct examination by Mr. Brenner:

30 Q. Mr. Ruh, you are the Clerk of the Bayonne District Court? A. Yes, sir.

Q. And have you the docket showing the dispossess actions by Mr. Edelman covering the period commencing October, 1923, and ending September, 1924? A. I have.

40 Q. And covering the property 23, 25 and 27 East Nineteenth Street, how many dispossess actions were instituted in the District Court? A. Well, I have two actions here against 23 East Nineteenth Street.

Gustav F. Ruh, direct.

Q. When were those actions instituted? A. The first action was April 11, 1924.

Q. Against whom? A. Against Charlotte McKnight.

Q. And the second action? A. Was against M. Tymes. 10

Q. And instituted when? A. June 6, 1924.

Q. And those actions were instituted for what—for non-payment of rent, or for some other cause? A. For non-payment of rent, on both of them.

Q. Both of them were for non-payment of rent? A. Non-payment of rent.

Q. And neither of them, then, were under notice because of alterations of building, or any other reason? A. No, sir.

Q. That docket covers the period commencing when, and ending when? A. This docket is from February 1st, 1924. 20

Q. From February 1st, 1924? A. Up to date.

Q. And that covers every dispossess, then, from February, 1924, up to the present moment? A. Yes, sir.

Q. In House No. 25 how many dispossesses were there? A. We haven't any.

Q. None at all? A. No.

Q. In House No. 27, how many were there? A. We haven't any. 30

Q. So, in those three buildings, covering the period from 1924 up to the present moment, there have been only two dispossessions, and both of those for non-payment of rent? A. Yes; on House No. 23.

Q. What happened in those cases? A. In the case against McKnight it was discontinued.

Q. What about the other case? A. Against Tymes, it has been adjourned a few times, and then marked "Not Moved." 40

Alter Nieditch, direct.

Q. And "not moved" is equivalent to a discontinuance? A. Yes.

Q. So, as far as your record shows, it shows that neither of those cases—the only two cases which you have found—have gone to trial and judgment? A. No, sir.

No Cross Examination.

Mr. Brenner: It is conceded, as a matter of law, that any action for dispossession must be instituted in the municipality in which the building is located, or the buildings are located. The reason of that concession at this time was to eliminate the necessity of bringing up the proof from other municipality.

Mr. Dembe: We dispute that any such representation was made, that he did bring these actions.

The Vice-Chancellor: That will be shown in your proof, of course.

ALTER NIEDITCH, sworn.

Direct examination by Mr. Brenner:

Q. Mr. Nieditch, you are the man who is mentioned as being the prospective purchaser of this property, 23, 25 and 27 East Nineteenth Street, in the City of Bayonne? A. Yes, sir.

Q. And were you procured as a customer for that property by Mr. Grodberg and Mr. Nessianbaum? A. Yes, sir; that means I was a customer?

Q. Yes. At the time, or at a time before drawing this contract, did you make an inspection of the building, or of those buildings? A. Yes.

Q. And how many vacancies did you find exist-

Alter Nieditch, cross.

ing in those buildings at the time you made your inspection? A. Thirteen.

Q. Was anything said by you to Mr. Edelman, or by anybody to Mr. Edelman, about those vacancies? A. I asked him why he has got so many vacancies. He told me he had a Polish buyer to buy No. 23 East Nineteenth Street, and he says he wanted to get the property for an alteration, that he should get it vacant, and that he dispossessed all the tenants; that meant that eight tenancies was vacant, and he told me he was going to take the four tenants into the other houses and clear out the house entirely; and he says he got them all dispossessed; that he took them to court and dispossessed them.

Q. Did he say, whether or not, before these dispossesses, the buildings were always occupied by tenants? A. Yes.

Q. And they were always occupied? A. Yes.

Q. And that he had dispossessed them? A. Yes.

Q. When he told you that, did you believe it? A. Yes, sir.

Q. If you had known that those buildings were vacant because he did not have the tenants for them, or for any other reason than that which he gave you, would you have accepted it, or entered into the contract for the purchase of this property?

Mr. Dembe: I think the question is leading.

The Vice-Chancellor: I suppose the question is, yet I will permit the question; it is a common form of question?

A. No, sir.

Cross examination by Mr. Dembe:

Q. Who was there at the time of this talk? A.

Alter Nieditch, cross.

Mr. Grodberg, Mr. Nessianbaum, Mr. Edelman, and myself and Mr. Daves.

Q. And when did that talk take place? A. June 10th, in the afternoon, late in the afternoon—1924.

10 Q. And where? A. I called up Mr. Grodberg about something, and he told me, "Nieditch," he says, "come over; I have something to show you." Well, it didn't take very long—it took us about a half-an-hour or so, and we came over to Mr. Grodberg's office, and he took us down. I found Mr. Nessianbaum and Mr. Grodberg in the office, and I took Mr. Daves with me.

20 Q. Did you go all through the houses? A. We didn't go through all the houses, no; we were only in some of the rooms in No. 23, in two apartments at the most. We went down cellar and we looked at the cellar.

Q. How many rooms did you go into, altogether, in the three houses that you were contemplating buying? A. About two apartments, that is all.

Q. Then, how did you know there were thirteen vacancies? A. Well, he told us that—Mr. Edelman himself.

30 Q. Told you there were thirteen vacancies? A. Yes, sir.

Q. But you did not go through the houses and count the number of apartments that were empty, did you? A. No; I didn't want to go through all the houses; I go and take his word.

Q. And how did he come to tell you he had thirteen vacant apartments? A. He told me, because he had a Polish buyer.

Q. Did you ask him anything about it? A. Yes, sir.

40 Q. What did you ask him? A. I asked him, "Why do you have so many vacancies here?"

Alter Nieditch, cross.

Q. I know, but how did he come to tell you before you asked him that—what led him, if you know, to tell you that he had thirteen vacancies in the house—did you ask him anything about it? A. I asked him; yes, sir.

10 Q. You asked him what? A. I asked him why he has got so many vacancies.

Q. You do not understand me: You say that Mr. Edelman told you that he had thirteen vacancies? A. Yes, sir.

20 Q. I say, was that in response to any questions that you, or anybody else that was with you, had asked him; or did he simply volunteer that information to you? A. He didn't know exactly about the houses, how many vacancies was there; but then by the contract he stated that he has got thirteen vacancies.

By the Vice-Chancellor:

Q. You do not get the question: How did you know that there were thirteen vacancies? A. Well, Mr. Edelman told us.

Q. When? A. Right by the contract.

Q. Did you ask him how many vacancies there were? A. Yes.

30 Q. And he told you? A. Yes.

Q. Then you got this explanation as to the reasons for the vacancies? A. Yes.

By Mr. Dembe:

Q. And that was when the contract was being made? A. Yes, sir.

Q. In Mr. Grodberg's office? A. Yes, sir.

Q. Then it was, for the first time, that he told you that he had thirteen vacancies in the houses?

40 A. Yes, sir; by the contract.

Hyman Daves, direct.

Q. And you wanted to know why he had thirteen vacancies? A. Yes.

Q. He told you because he had ejected the tenants to satisfy a Polish buyer? A. Yes, sir.

10 Q. And that was the first conversation that you had with Edelman regarding the vacancies? A. Yes, sir.

Q. In Mr. Grodberg's office? A. Yes, sir.

HYMAN DAVES, sworn.

Direct examination by Mr. Brenner:

Q. Mr. Daves, you are a partner of Mr. Nieditch in this contract that has been referred to? A. Yes, sir.

20 Q. And did you go down with Mr. Nieditch to the buildings on East Nineteenth Street with Mr. Grodberg? A. Yes.

Q. Either at the buildings, or in Mr. Grodberg's office, was there some mention made of the vacancies in those three buildings? A. Yes; Mr. Edelman told me he had thirteen vacancies.

30 Q. And did he tell you what brought about those thirteen vacancies? A. He told us that he make the tenants to move because he had a customer to buy that house, No. 23 East Nineteenth Street.

Q. And how many vacancies were there in No. 23? A. In No. 23 was eight.

Q. And did he say what he intended to do as far as the other four were concerned? A. Yes, he would take the four tenants to the different houses, to give that man the house, because the man wanted to alter the house.

40 Q. And what is your recollection as to where that conversation was had—was it at the buildings, or at Mr. Grodberg's office? A. It was outside

Hyman Daves, cross.

of the building at East Nineteenth Street. Then, after that, we had the same talk in the office, too, you know.

Q. You mean you had the talk in both places? A. Yes, sir.

Cross examination by Mr. Dembe:

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Q. Did you go through the buildings? A. Well, I was in a couple of houses, to look through, you know.

Q. How many apartments did you go through? A. I went through three.

Q. Three apartments? A. Yes.

Q. Did you count the number of tenants in the building, at that time? A. No, I didn't count them.

20

Q. You did not count the number of vacancies, either, at that time, did you? A. No, because he told us how many vacancies he had.

Q. How did he come to tell you that? A. Because he had, you know, a Polish buyer to buy that No. 23 house in East Nineteenth Street; and I told him "What is the idea to move out all the tenants?" He says, "Well, the man wanted to alter the house, so I make them to move in court, you know; they wouldn't leave the house without the court," and he make them to move by court in dis-

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possess. Q. What did you say to that? A. Well, it was funny to me; and I said, "What is the idea to move them out?" And he said, "Well, that is the way the man wants it; he wants to alter the house."

Q. Did Mr. Edelman come and tell you about the vacancies, or did you ask him how many vacancies there was there? A. Yes, I asked him, sure.

40

Hyman Daves, cross.

Q. And he said he had thirteen vacancies? A. Thirteen vacancies.

Q. Did you ask him how much rent the tenants were paying? A. Yes, sir.

10 Q. Did he tell you what each tenant was paying? A. Yes.

Q. Did you ask him how much the vacant flats had been rented for before? A. Yes.

Q. And did he tell you how much he rented them for? A. Yes.

Q. And all that, you say, was at the making of the contract, at Grodberg's office? A. In Grodberg's office.

20 Q. I am talking about at the building. You say, while you were at the building, looking over the building, you did not know how many vacancies there were, did you? A. No, sir.

Q. You did not count them, and nothing was said about them?

The Vice-Chancellor: One moment. Was anything said to you, at the building, about the number of vacancies?

The Witness: Not in the building; I just saw two or three floors empty.

30 Q. When you got to Mr. Grodberg's office, ready to make the contract, Mr. Grodberg began asking questions, didn't he, and making notes? A. Yes.

Q. And the first thing he asked about was the price, wasn't it? A. Yes.

Q. Then the number of tenants in the houses, is that right? A. Yes.

Q. And then how much each tenant was paying? A. Yes.

40 Q. And wasn't it then that Mr. Edelman told you that there were thirteen vacancies in the houses?

A. Yes, he told us.

Hyman Daves, cross.

Q. And he put these thirteen vacancies right into the contract? A. Yes, he put it in.

Q. As matter of fact, didn't he tell you that one of the four tenants that remained in the building had already been served with a notice to move? A. Not with a notice; he told me he was going to make him to move to the other house; he didn't tell me he had any notice. 10

Q. Did you read the contract before you signed it? A. Well, I am a poor reader, you know; I couldn't read.

Q. Was the contract read to you before you signed it? A. Yes.

Q. Don't you know it was in the contract that one of the tenants had been served with a notice to move? A. I think there was one tenant. 20

Q. And did he give you any reason for making that tenant move? A. He told me to give up the property, you know—to empty the property.

Q. Didn't he tell you something about a fight having taken place there? A. No.

Q. Between two tenants? A. No, nothing.

Q. He did not? A. No.

Q. You did not ask him to recall that notice that was served upon the tenant to move, did you? A. No; I didn't tell him to make him to move, you know, because I didn't know the reason to make him move. 30

Q. You told me Mr. Edelman told you the reason he wanted the tenants to move out was that he wanted to clear the house for the other buyer? A. Yes.

Q. When you were making the contract for the house he told you that he had served a notice on one of the tenants to move—was that right? A. He told us he was going to give a notice to move the tenants into the other houses. 40

Hyman Daves, cross.

Q. You were a party to the contract. You put in the contract that one of these tenants had been served with notice? A. Yes.

Q. I say, did you ask Mr. Edelman not to dispossess that tenant, after you made the contract?

10 A. No, I told him not to dispossess him.

Q. When did you tell him that? A. When I was making the contract.

Q. You told him that? A. Yes.

Q. "Not to bother with putting him out"? A. No, I didn't say "not to put him out," because I didn't know what reason he was going to put him out for, you know. He told me of the notice he was going to give him.

20 Q. He did not give you any reason for giving the notice? A. No.

Q. Sure about that? A. He told me he gave him a notice because he wanted him to move in the other house; that is all he said to me.

Q. You have not spoken to Mr. Edelman since that day in Grodberg's office? A. I never seen Edelman all the time; this is the second time I seen him, now.

Q. The first time was the day of the making of the contract? A. Yes.

30 Q. And you haven't seen him since? A. No; this is the second time I have seen him—right here.

Q. What time did you get back from your inspection of the property on Nineteenth Street that day? A. Well, it was late—about four or five o'clock.

Q. Four or five o'clock? A. Yes.

Q. And what time was the contract finished?

40 A. It was pretty near ten o'clock.

Q. And between four and ten o'clock you were all at Mr. Grodberg's office? A. Yes.

Hyman Daves, redirect.

Q. Arranging the terms of the deal? A. Yes.

Q. Is that right? A. Yes.

Q. It took you, in other words, about six hours to arrange the terms of this deal? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And the vacancies were not discussed until the contract was being drawn, and you wanted to know how much rent each tenant was paying?

10 A. Yes, sir.

Q. Is that right? A. Yes, sir.

Redirect examination by Mr. Brenner:

Q. Did you see any of the apartments vacant when you were down at the buildings? A. Well, I seen three or four empty, you know; that is all I went through.

20

Q. Did you say anything, at that time, to Mr. Edelman about it? A. Well, I asked him the reason why it was empty, you know.

Q. Now, you said, Mr. Daves, once, that that talk was at the building, and the second time you said it was in Mr. Grodberg's office; now, I want you to straighten this out as to your recollection of where it was? A. It was in Grodberg's office.

Q. That is where you first talked about the number of vacancies and the reason for them? A. Yes.

30

Q. But you did notice, when you were at the place, that there were some vacancies? A. No, I didn't say it when I was in the place.

Q. Did you see that there were any vacancies when you were at the place? A. Yes, I seen three.

Q. You saw three vacancies? A. Yes, that is all I seen.

Q. Then when you asked Mr. Edelman, in Grodberg's office, how many vacancies there were that is when he told you there were thirteen? A. Yes.

40

Hyman Daves, recross.

10 Q. There is a question I forgot to ask you: If you knew that this statement that Mr. Edelman made that the tenants had been put out of the building by him as the result of dispossess proceedings was not true, would you have entered into this contract? A. No, I wouldn't have gone into it.

Q. You would not? A. No.

Recross examination by Mr. Dembe:

20 Q. When did you first find out that the statement that Mr. Edelman made to you was not true? A. Well, when I went in, you know, to take the title—a few days before title; I was supposed to take title on the 1st of August, and I went down in the last days of July to look through the building, with Mr. Nieditch, and I found out that it was a disorderly house, that it was a rough house.

Q. And it was because of the fact that the tenants told you this was a disorderly house that you did not want to take the property, is not that right? A. Yes, sir.

Q. You tried to sell this house after you made the contract, didn't you, to other people? A. No, sir.

30 Q. Weren't you down there with buyers? A. Well, there was a couple of buyers asking about the price, you know, and I told them that I bought it and I wanted to take the title, and when I found out what had gone on I wouldn't take the title, you know—when I found out.

Q. On account of what? A. On account that it was a rough house, you know.

40 Q. So it did not make any difference to you whether the tenants had moved out of their own accord, or had moved out because of the Court—

Hyman Daves, recross.

the reason you did not want to take the title was because you found out there were disorderly tenants there? A. Yes; before, you know, he told us he had made them move through the Court, and I was thinking he made them move himself.

10 Q. These houses, the three of them, are occupied almost entirely by colored people, aren't they? A. It is no difference to me whether they are colored or white.

Q. I am not asking you that, I am asking you if it is not a fact that they are mostly all colored people in the houses? A. No, there is some Polish people, and Slavish people.

20 Q. How many? A. Well, I don't care how many; I seen there was plenty of white people there; very little colored people there was.

Q. How many? A. I don't know how many; I know there was very little.

Q. Did you go through all the rooms? A. No.

Q. How many flats did you visit? A. I went into three empty ones; that is all I went into.

30 Q. I am talking now about when you say you went back to the houses again? A. No, I went through the house to look at the roof and the cellars and the floors and halls, you know, and that is all I went through.

Q. When was that? A. That was the end of July.

Q. Yourself, and somebody else with you? A. What?

Q. Were you alone, or somebody with you? A. No, I was with Mr. Nieditch.

Q. And was it then that you found out that it was a disorderly house? A. Yes.

40 Q. Well, how many flats did you go into at that time? A. I didn't went into no flats at all; I just went through the house to look around.

Hyman Daves, recross.

Q. You mean you went through the hallways and the cellar? A. Yes; and on the roof I went.

Q. The roof? A. Yes.

Q. Well, which tenant told you it was a disorderly house? A. A few tenants, you know—Polish tenants told me, you know. 10

Q. How did they come to tell you that? A. Well, I started to ask him why the people happened to move in and move out, you know.

Q. Where did you meet these tenants that you were asking this question? A. Right in the hall; there was a big bunch there.

Q. Did you know them before? A. No.

Q. Did you ever talk to them before? A. No.

Q. You didn't know their names? A. No, I didn't know their names. 20

Q. How did you know they were tenants? A. Because they told me they lived there.

Q. They did not know you as the owner of the house, did they? A. No, no.

Q. Did you tell them that you had bought the house? A. Well, I told the janitor I had bought the house, and the janitor told me the same thing; I asked him why they were empty, and he told me why they were empty—because there was an awful lot of trouble in that house, that it was a rough house, you know. 30

Q. What do you mean by "rough house"? A. You know there was a lot of trouble—fights and raidings.

Q. Raidings by the police? A. Yes; that is what they told me, you know. Mr. Edelman told me he had dispossessed the tenants, and afterwards I found out he did not dispossess them, that they ran out themselves. 40

Hyman Daves, recross.

Q. But he told you there was a lot of fights in there by the different tenants? A. Yes.

Q. And it was raided by the police? A. Yes.

Q. And did he tell you that the police made the families move? A. No.

Q. He did not tell you that? A. No; they ran out themselves, you know. 10

Q. Do you remember, some time in September or October, Mr. Grodberg telling you that Edelman was in a position to rent the rooms for less money? A. In October?

Q. Either September or October; did Mr. Grodberg ever talk to you about Edelman's telling him that he could rent the rooms for less money? A. Yes, he told me, you know.

Q. When was that? A. That was, you know, after I was supposed to take the title. 20

Q. When—how long after? A. Well, it was the middle of the winter, I think.

Q. The middle of the winter? A. Yes.

Q. And what did you tell Grodberg? A. I didn't want the house, you know, because it was a raided house and I didn't want it.

Q. You told him you didn't want it? A. Didn't want it, no.

Q. You didn't tell Mr. Grodberg it would be all right for Edelman to rent it for less money? A. No such thing. 30

Q. Never told him that? A. No.

Q. But that you wanted to know each bargain that was made with a tenant before you consented to it? A. No.

Q. No such talk ever took place between you and Mr. Grodberg? A. No.

Defendants Rest.

Alexander Seclow, direct.

Mr. Dembe: In order to simplify the matter, if your Honor please, I want to ask what legal objection Mr. Brenner has to the title, so we can confine ourselves to that.

10 Mr. Brenner: On the fraud and misrepresentation.

Complainants' Rebuttal.

ALEXANDER SECLOW, ESQ., sworn.

Direct examination by Mr. Dembe:

Q. You represented Mr. Edelman in this transaction, or you are representing him now? A. Yes, sir.

20 Q. When did you get into the case, Mr. Seclow?
A. Some time after August 14, 1924, when Edelman brought me a letter marked Exhibit C-4 for identification.

Q. You said "some time after"—was that weeks, months or days? A. Well, a day or two after.

30 Q. Did you go over the list of objections then with Mr. Grodberg? A. Well, it took a little while; I think Mr. Grodberg was busy at one time or another, and I was; and we finally did go over them some time later.

Q. And did you reach any conclusion between you in regard to the objections that were raised? A. Well, I don't think they were all disposed of. I tried to explain those objections to Mr. Grodberg, giving him my reasons why they should not be considered; and he said he would take it into consideration and let me know.

40 Q. Well, now, do you remember getting a deed from Mrs. Atkins in December, 1924, for the foot and a half? A. I think that deed came from your office.

Alexander Seclow, direct.

Q. Well, do you recall the incident of the deed being procured? A. Yes.

Q. Now, had you had any conversation with Mr. Grodberg, prior to procuring that deed, with regard to the same? A. Yes; I saw Mr. Grodberg on an occasion and spoke to him about this matter. Sometime after August 14th, after we discussed the first objections, something else came in, and that was the encroachment, which, at that time, obscured everything else; it seemed to have been very serious; and I think a few weeks went by, or some period went by, before Mr. Grodberg finally informed me that that was all right, that there was no encroachment, that there was an error of some kind; but that was the major objection at one time.

Q. Well, did Mr. Grodberg complain to you about the misrepresentation? A. Mr. Grodberg did tell me once or twice that his people were kicking about taking the property because they found out that there had been tenants in there—one or two tenants—that fought around with each other, and that, as a result of that, the patrol wagon went down there once, and that it kind of gave the houses a black eye. He did tell me that. And he said they could not make up their minds whether or not they would take it, and he was trying to get them to go through and make an early closing on it, as soon as the other objections were cleared up.

Q. And what time did you fix that, approximately? A. Well, we never fixed any time.

Q. Well, I say, what time do you fix for that conversation you had with Mr. Grodberg? A. This probably went on around November and December, during all the time we tried to fix up the other

Alexander Seclow, direct.

10 matters—that was the matter of the Tenement House violations; and the second matter of importance, after the encroachment was cleared off, was that strip of land—he told me that his people would insist on getting the full width of the land there; that that is what they bargained for, and they insisted on getting it.

Q. I direct your attention to your letter there of November 14th, for the purpose of fixing the time—do you recall having a conversation with Mr. Grodberg subsequent to that? A. Yes; we spoke together after that about this matter.

20 Q. Now, tell us what that conversation was. A. Well, I tried to induce him to waive this matter of the getting or obtaining that strip of land, that it would cost money, and that they really did not need it; that it was simply an inadvertence that it was put in the contract, because the land was actually 158 feet in depth and 72 plus, whereas the contract stated, I think, 74x150—they really got more land in depth than they had expected; but he said that they would insist upon getting the full measure that they bargained for.

30 Q. When was this? A. This was after November 14, 1924. And, therefore, we went out and got that deed. It took quite a while before I could meet him and get him to take a decided stand on this.

40 Q. What I want to get at, Mr. Seclow, is the full discussion that took place with you at that time, and the agreement, if any, that was reached between you as to what you were willing to do in order that title could pass? A. Well, Mr. Grodberg was not taking any definite stand at all; I could never get him to commit himself on anything. In each particular, as he stated, he would

Alexander Seclow, direct.

hedge; as to each particular matter that I brought up to him, he would say he “would see his people about it” (which doubtless he had to do), and it took quite a while before I knew that they would insist on this deed, and then I advised Mr. Edelman to get it. 10

Q. At the time of telling you that he would insist upon this deed was there anything else that still remained to be done, or he was insisting upon, that stood in the way of passing the title? A. I don't know whether the Tenement House violations had been entirely cleared up, but I told him that if there was a matter of any violations there, they could always be fixed up, or some indemnity given at the title.

20 Q. Now, between this time in November, just before you were to get this deed, or he told you that you ought to get the deed, was there anything whatever said about the representations? A. Well, I couldn't say, “Yes,” or “No.” We did talk about the matter several times; we did not speak of them as “representations,”—they were spoken of as a reason for these men not taking title to the houses because they did not get what they had expected to get; they found they had not gotten as good a bargain as they thought they had; and they looked for reasons, and they thought they had found a reason. That seemed to be our talk. 30

By the Vice-Chancellor:

40 Q. When were you first informed that they objected to the title because of these misrepresentations as to the tenancies? A. That was in the letter of August 14th, Mr. Grodberg's letter; it was in this letter; and when I took up the other matters with him we did not stress that very much; I did not think it was a matter of major importance—

Alexander Seclow, direct.

Mr. Brenner: I object to what he thought.

The Vice-Chancellor: Yes, that is not evidence.

By Mr. Dembe:

10 Q. Now, after getting this deed from Atkins for the one-and-a-half feet, did you get in touch with Mr. Grodberg again with regard to passing the title? A. Yes, I spoke to Mr. Grodberg, and he told me, as before, that he would take the matter up with his clients; and finally, in order to bring the matter to a head, I served him with a notice—I served his clients with a notice, and sent a copy to him—and came there to tender a deed.

20 Q. On January 26th? A. Well, whatever time is set in that notice.

Q. Now, what conversation, if any, was had between you at that time? A. Well, they would not take the property, Nieditch and the other man. I don't think Daves spoke to me, but Nieditch spoke to me, and he suggested that I try to settle the matter somehow; he said they wouldn't take the property, and he suggested that they were willing to drop the deposit at that time.

30 Q. What reason did they give you at that time, on January 26th, the time of tendering the deed, if any, as to why they would not take the title? A. I do not recall. My impression is that I was only there about five minutes; I just came there to make the tender, and Mr. Nieditch spoke to me as I was going out, as to whether I could try and adjust the matter, and they were willing to drop the deposit.

40 Q. Was there any reason given to you, on January 26th, by either Mr. Grodberg or the defendants, as to why they would not pass the title? A. I

Alexander Seclow, cross.

don't know; my impression is that my stay there was very short, and there was no conversation, excepting that I asked them to take the property, and they said "No." But I do remember, as I was going out, Nieditch spoke to me. Now, they may have said something, giving reasons—Mr. Grodberg may have said something; I wouldn't say "Yes," or "No."

10

Cross examination by Mr. Brenner:

Q. Did Mr. Edelman see you prior to the time that he brought you the letter from Mr. Grodberg? A. I don't think so. I think—my best recollection is—that that is the first time that I was in that matter.

Q. And you say that it was just about the time that this letter bears date that Mr. Edelman came to your office? A. Within a few days after.

20

Q. And the time fixed for passing title was August 1st? A. Yes.

Q. And that had been extended, had it not, for the purpose of overcoming these objections? A. Well it had not been extended as is usually done; Mr. Grodberg was not ready with his survey, and nothing was done about it.

Q. In other words, it was the usual extension that Bayonne lawyers have, without entering into any written extension? A. That is right.

30

Q. So that when Mr. Edelman came to your office with this letter of August 14th, you then knew that there was an objection to the fact that Mr. Edelman had represented one cause as being the cause for the empty flats, and that the fact developed that there was another cause? A. Something like that.

Q. You knew that at that time? A. Yes.

40

Alexander Seclow, cross.

Q. And did you discuss that then with Mr. Edelman, as well as discussing with him the other objections? A. I may have.

10 Q. I do not want to know what the conversation was, but did you discuss that with him, as well as discuss with him the other objections? A. I probably did.

Q. Did Mr. Grodberg, at any time during all of the time that the negotiations were going on, from this date up to the time fixed in your notice for passing title, ever say that his clients would waive that representation—say so in direct language? A. Did he ever use those words? No.

20 Q. Did he ever tell you that his clients would waive—not by using the term “waive” necessarily—but did he ever say that they would not insist upon that as a valid objection to the passing of title? A. Very often he told me that he thought that they would go through with it.

Q. Didn't he tell you he was going to try to get them to go through with it? A. He said that.

Q. And didn't he say he was interested in getting his commission, and that was one of the reasons why he would like to see the deal go through? A. Yes.

30 Q. You read the contract, didn't you, Mr. Seclow? A. I don't remember whether I did or not.

Q. Did you notice the broker's provision in that contract—that “no brokerage was to be paid unless title passes”? A. I can't recall, but I think I have learned otherwise—that is, from other sources—that his commission was contingent on the title being consummated.

40 Q. Well, did he discuss that with you in saying to you that he was anxious to have the title go through so that he could make a part or all of

Alexander Seclow, cross.

this eight hundred dollars? A. Yes, he told me that.

Q. So that he was, instead of trying to complicate you in putting this deal through, wanting to help you put it through? A. Yes, but—

The Vice-Chancellor: I think that is quite 10
apparent from his own testimony.

The Witness: Yes; he was peeved at his own clients for not going through with it.

Q. Now, you say that Mr. Grodberg never, for his clients, waived the objection that was made in this letter of August 14th; did you ever talk to Nieditch or Daves, or have any conversation or have any communication with them, in which either of them said that they would waive the objection they had to the representations mentioned? A. The question is a double question. As I understand the question, it is that Grodberg never waived. He never waived it, in exact words. 20

Q. I will withdraw the question and reframe it: Did Mr. Nieditch or Mr. Daves ever say to you that they would not take advantage of the misrepresentations that they claimed by this letter? A. I never saw them until January 26th—that is, concerning this matter. 30

Q. And January 26th was the date which you fixed in your notice as the time for the closing of the title? A. Yes, sir.

Q. Was that the date of the service of the notice, or when it became due? A. I think that was the return day of the notice.

Q. Where did you see them on that date? A. In Mr. Grodberg's office.

Q. They were there at the time? A. When I came in they were there. 40

Alexander Seclow, redirect.

Q. You had the deed, and came into Mr. Grodberg's office, and found both Mr. Daves and Mr. Nieditch there? A. They were there.

Q. At that time Edelman was not with you? A. He was not with me. I had an executed deed.

10 Q. But he did not appear there and discuss anything whatsoever? A. No.

Q. Had there been some talk between you and Grodberg about having some conference between these people—his clients and your clients? A. Well, I don't know; there may have been. Grodberg, at one time or another, thought that if he could bring the people together—

Q. (Interrupting.) Just give me a direct answer to that. A. Yes.

20 Q. He had suggested a conference? A. Yes.

Q. No conference was ever arranged for—no definite date for a conference? A. No.

Redirect examination by Mr. Dembe:

Q. Just one question in redirect: Did Grodberg, or anybody else on behalf of Nieditch and Daves, ever tell you that they would not take title because of these representations? A. No; I always thought, until—

30 Mr. Brenner: I object to what he thought.
The Vice-Chancellor: No; your answer is "No."

(Recess until two o'clock, P. M.)

Alexander Seclow, recross.

AFTERNOON SESSION.

(Hearing of the cause resumed at two o'clock P. M., pursuant to adjournment.)

ALEXANDER SECLOW, Esq., recalled. 10

By the Vice-Chancellor:

Q. Was anything said to you, and if so, who said it, touching the objection of the defendants that they would not take the title because it had been represented to them that the families in this building No. 23 had been put out because there was some offer to attempt to sell to some Polish people who wanted to remodel the property? A. No, sir.

Q. Nothing of the kind was ever said to you? A. Well, something of the kind, but not about somebody buying the property to remodel it,— 20

Mr. Brenner: May I ask a question, before that is answered? If Mr. Seclow is going to relate a conversation, I would like to know whom that conversation was with, so as to find out whether it is relevant.

The Witness: Personally, nobody ever refused to take this property. Mr. Grodberg never told me that these people would refuse to take the time until we came up to the return day of the notice to make time of the essence—I think it was January 26th; and, secondly, there was no talk with me about Edelman having stated to anybody that he had had the tenants dispossessed for a purchaser. 30

By Mr. Brenner:

Q. You did know, however, Mr. Seclow, when you read the letter of August 14th, that there was 40

Alexander Seclow, recross.

some claim that it had been misrepresented that the tenants were dispossessed, whereas, as a matter of fact, they had left voluntarily: that came to your attention by this letter of August 14th? A. Yes.

10 Q. Did you ever discuss with Mr. Grodberg what he meant by that provision? A. Yes, sir.

Q. And did he tell you that it was the claim of Daves and Nieditch that Edelman had represented that he had dispossessed the tenants, whereas, the fact was, or the contrary was the fact, that the tenants had not been dispossessed, but that they had moved voluntarily? A. No. Mr. Grodberg had told me that these tenants had moved because there were fights in the house, and that, on one occasion, a patrol wagon was down there, and that is why they did not want to take title.

20 Q. In other words, that they had moved voluntarily—that is a voluntary moving, is it not? A. I suppose so, yes. There was nothing ever said to me about the house being made vacant for a possible purchaser.

Q. I am not asking about the house being made vacant; what I am talking about is this: You had knowledge by this letter that there was a claim that the representation was made that these tenants had been dispossessed—you knew that from the context of this letter? A. Well, that is what the letter says, I believe; but Mr. Grodberg spoke to me—

30 Q. I am not talking about Mr. Grodberg now, I am talking about the letter itself. From this letter you knew that there was a claimed misrepresentation? A. Of some kind, yes.

40 Q. Well, didn't you know just what it was? A. No.

Alexander Seclow, recross.

Q. Let me read this portion of the letter to you: "I have advised you of the objections of Daves and Nieditch relative to the trouble had by the police with tenants in this property. They state that this is the real cause of the empties, and not, as you stated, that you had dispossessed all the tenants who had previously occupied the flats that were empty." Now, that did call to your attention immediately that there was a claimed misrepresentation that those tenants in the empty apartments had left voluntarily, and had not been dispossessed, as claimed by Edelman? A. Yes.

Q. That was so clear to you that there was not any need to discuss the matter with Grodberg, was there? A. No, it was not clear to me.

Q. You did discuss it with Grodberg? A. I did discuss it with him.

Q. And Grodberg then told you that he found out that the real reason why these tenants had left the premises was because of the fact that there had been fights there, and the patrol wagon had rolled up to the door? A. Well, that was one of the things he said, yes.

Q. That is one of the things that he said in connection with this claimed misrepresentation? A. No, he said that as giving a reason why they were reluctant to close the title—that because the policemen had been there it might deter tenants from going in there. That is the only phase that I ever considered of any importance. I did not know that it would be claimed that the tenants had been supposed to have been put out for a supposed purchaser.

Q. Well, the letter said that to you, didn't it, Mr. Seclow? A. I don't know.

Q. Just read it; it does say that in plain words.

Alexander Seclow, recross.

The Vice-Chancellor: That "they were put out for a possible purchaser"?

Mr. Brenner: Not "for a possible purchaser".

10 A. No, it does not say so; and I never knew that any claim had been made for that. I simply thought that these people thought that the house would have a bad repute, and that was their objection.

Mr. Brenner: I object to what Mr. Seclow's thought was; I ask that it be stricken out.

The Vice-Chancellor: What was said to you is all you can testify to .

20 *By the Vice-Chancellor:*

Q. All I want to get at is this—here is an allegation in the answer as to what constitutes the fraud; I want to know how much of that was communicated to you in your discussions with Mr. Grodberg, or anyone else connected with this case? A. Mr. Grodberg told me that these people were making a claim because the police had raided that place, and a patrol wagon had been there.

30 *By Mr. Brenner:*

Q. What Mr. Grodberg did say to you, Mr. Seclow, supplemented what was contained in that letter, and in explanation of what is in that letter? A. I don't know. I spoke to him about this matter, and that is what he told me.

By the Vice-Chancellor:

40 Q. What did he tell you? A. He told me that these people were kicking about taking the title, and this was one of the reasons he gave; one of

Alexander Seclow, recross.

them was that they didn't have their 74 feet; another was that—

Q. Do not bother with that—come down to this one question of misrepresentation—state just what he said to you about the misrepresentation. A. He told me that he found out, or they had ascertained that the patrol wagon had been there once, that there had been some fights among the tenants, some of them had been disorderly, and they took them away in the patrol wagon, and that is what they were kicking about. 10

By Mr. Brenner:

Q. And did he say, at the same time, that the tenants had moved because of that situation, or that there were tenants who moved because of that situation? A. I don't know. 20

By the Vice-Chancellor:

Q. Well, doesn't he say so in that letter? A. I don't know.

The Vice-Chancellor (to Mr. Brenner): Well, it says so in the letter, doesn't it?

Mr. Brenner: I am talking now of after the writing of the letter, if your Honor please—whether Mr. Grodberg did not say that verbally? 30

A. He may have.

By Mr. Brenner:

Q. You are not able, at this time, to recall everything that Mr. Grodberg emphasized in connection with that objection? A. Well, I can recall some things he did not say.

Q. I am not talking about the things he did not say, I am asking you whether you can recall 40

Joseph Edelman, direct.

everything that he did say? A. I can recall whether I remember it or not.

By the Vice-Chancellor:

10 Q. Well, what I want to get at is this: Did Mr. Grodberg say that the complainants here represented to them that the reason why there were eight vacancies in one building was that the property was under a contract and attempted to be sold to a Polish party, and that they wanted to remodel the house, and therefore wanted the tenants out, and that is why they were put out? A. No, sir.

Q. Did he ever say that to you? A. No, sir.

Redirect examination by Mr. Dembe:

20 Q. When was the first time that you learned of that allegation? A. Why, when I saw the answer. It is in there, with the other reasons.

Q. That was the first time? A. That was the first time I knew that he was supposed to have made any such representation—when I read the answer, as to that phase. The others are set forth there.

By Mr. Brenner:

30 Q. But you did know, from that letter, and from subsequent conversations with Mr. Grodberg, that there was a claimed misrepresentation? A. Yes, sir.

The Vice-Chancellor: A misrepresentation as stated in the letter. That will do.

JOSEPH EDELMAN, sworn:

Direct examination by Mr. Dembe:

40 Q. You are the owner of this property on Nineteenth Street, are you not? A. Yes, sir.

Joseph Edelman, direct.

Q. How long have you known it? A. About six years.

Q. Now, what class of tenants is in the property? A. Before, it was all Polish people.

Q. When you say "before," you mean before when? A. Before, it was all Polish people living in this place. 10

Q. How long ago? A. About four years ago—about three years ago it was all Polish people.

Q. And then what happened? A. Afterwards some people moved out, the Polish people; some moved out and I couldn't get tenants, so I rented to colored people.

Q. And from that time on—from two years ago, when you started renting to colored people—how many colored families did you have in the houses after that? A. After that I got about fifteen. 20

Q. Colored families? A. Yes.

Q. In those three houses? A. Yes, sir.

Q. Now, at the time that you made this contract with Nieditch and Daves how many colored families were in the houses? A. At this time there was about fifteen families of colored people.

Q. About fifteen? A. Fifteen families.

Q. Now, were Nieditch and Daves at the property before they bought it—did they come to see the property before they bought it? A. Yes. 30

Q. How many times? A. There was one time.

Q. One time? A. Yes.

Q. And was that the time that Mr. Grodberg and Mr. Nessianbaum were also there? A. Yes.

Q. And what happened then? A. They go and looked at the property, inside.

Q. Well, tell us all that happened at that time? A. I don't understand. 40

Joseph Edelman, direct.

Q. You say they were there to look at the properties themselves, is that right? A. Yes.

Q. Now, what part of the property did they look at when they were there? A. He was in 23 and he was in 25 and he was in 27.

10 Q. Well, what part of the houses were they in—in the cellar, or on the roof—where did they go?

A. He was in the cellar, and he was in the houses, and he was in the top of the flats; and he told me he was satisfied if he got the flats; that is what he told me; he didn't want any more to see it.

Q. Well, how many flats did they see, all together? A. All together, he seen in 23 about three or four flats; and he see in 25 and he see in 27.

20 Q. How many vacancies did you have in the three houses on that day? A. I got about thirteen.

Q. In the three houses? A. Yes, in all three houses.

Q. Did you talk with Nieditch and Daves about the vacancies? A. Yes.

Q. And where? A. Right away, when he go look at it; when he look at the house I tell him I have got thirteen empties.

Q. Now, did they ask you why you had so many vacancies? A. Yes.

30 Q. And what did you tell them? A. I tell them "before I got first colored people—first I get Polish people, and then I get colored people; and they said "Why, we don't want to live with colored people."

Q. Mr. Nieditch says that you told him, when he ask you why you had so many vacancies, that you had dispossessed the tenants from the building because a man wanted to buy the house from you and wanted you to give him the house all empty? A. No, sir.

40

Joseph Edelman, direct.

Q. Did you tell him that? A. No.

The Vice-Chancellor: That was No. 23.

Mr. Dembe: Yes, that is the house in question.

Q. Did you ever have a contract to sell any one of these houses, before this contract? 10

Mr. Brenner: I object to that as being immaterial.

The Vice-Chancellor: Oh, it is not material, but he desires simply to contradict the statement that he made any such representation. (Question allowed.)

A. No.

Q. Now, the house at No. 23—how many tenants were in the property at that time? A. In 23, about four tenants; eight had moved out. 20

Q. Eight had moved out, and there were four tenants in there? A. Yes.

Q. Did you say anything to Nieditch and Daves with regard to the four families that were still in the house? A. What do you mean?

The Vice-Chancellor: Put the question as based on their statement. 30

Q. Did you tell Nieditch or Daves that the other four families you were going to put into the next house, in order to have this whole house entirely empty? A. No, sir.

Q. On the day of the contract were all of the four families that were still in that house to remain there? A. What do you mean "remain there"? I don't know what you are talking about.

Q. Did you serve any notices upon any one of the four families that were still in that house? A. 40

Joseph Edelman, direct.

No, sir; I sent a notice before; I said to one tenant I sent a notice, where he got in a fight with another tenant; I sent him a notice to move. That was before.

10 Q. That was before the contract was made? A. Yes, that was before the contract.

Q. And did you tell him about it, when you made the contract? A. Yes, I told him.

Q. What did you tell him about that one tenant? A. I told him I sent the notice, and the tenant had three or four days to move out; and he moved after the three or four days.

Q. And did you tell him why you gave the notice? A. I told him why I gave the notice—that he got into a fight with another tenant.

20 Q. And that is the reason you gave him the notice? A. Yes.

Q. Now, did you have any chance of renting the empty rooms, after making the contract with Nieditch and Daves? A. Yes.

Q. Did you talk to anybody about it? A. Yes.

Q. Whom did you talk to? A. I talk to Mr. Grodberg.

30 Q. And what did you tell him? A. I talked to him, "I can rent the rooms a little cheaper, if the buyers will give me a writing," but he didn't give it to me.

Q. Who didn't give it to you? A. Mr. Grodberg.

Q. What did he say to you?

The Vice-Chancellor: When you told him you wanted a paper from him, what did he say?

A. Why, I got on the contract I give him the rent—

40 Q. What did he say? A. That is just what he said to me—that he wouldn't give me a writing.

Joseph Edelman, cross.

Cross examination by Mr. Brenner:

Q. Do you know who the tenants were who wanted to rent the place from you at a cheaper price? A. I don't remember; somebody came and offered me a dollar and two dollars cheaper; I don't know the names of the tenants. 10

Q. How many people came to you, all together? A. There was plenty of people, the janitor told me; the janitor and his son came.

Q. The janitor told you that there were people there? A. Yes.

Q. So that you learned that from the janitor, is that right? A. Yes, I came there some time ago—

20 Q. Wait a minute, please—they didn't come to you and ask you to rent, they came to the janitor, and the janitor told you—is that right? A. Yes.

Q. And then you went to Mr. Grodberg and told him that you had tenants for less money? A. Yes.

Q. And he told you it was all right to rent them, didn't he? A. Yes.

Q. And you said that you wanted a writing for that, didn't you? A. I said—

30 Q. Did you say that, or didn't you?

The Vice-Chancellor: Did you say you wanted a writing for it?

The Witness: No, I said I wouldn't rent it before I got a writing from the buyer who bought it.

Q. You wanted the consent of the buyer? A. I needed—

40 The Vice-Chancellor: Stop and listen—you wanted the consent of the buyer, didn't

Joseph Edelman, cross.

you—you wanted a signing from the buyer before you would rent?

A. When I got a signing from the buyer that I can rent cheaper, I would do it.

10 Q. Did you ever go back to Mr. Grodberg to get the paper where the buyers would consent? A. Yes.

Q. About how many times did you go back for it? A. About three times, I think it was.

Q. About three times? A. Yes.

Q. And you do not know one of those tenants that was there, is that right? A. No, sid.

Q. You haven't any of those tenants here, have you? A. Not at this time. Some moved out, and at other times—

20 Q. (Interrupting.) You did not get the names of anybody who asked you to rent them this place? A. Oh, I can't give you the names. Sometimes I wasn't there. I no was in the place, it was the janitor.

Q. You either did, or you did not?

The Vice-Chancellor: He says he did not.
Mr. Dembe: He says he was not there.

30 *By the Vice-Chancellor:*

Q. Do you know the names of any persons who tried to rent from the janitor? A. I don't know them.

By Mr. Brenner:

Q. You had eight vacancies in 23, hadn't you? A. Yes, sir.

40 Q. Now, the four people who lived in 23—were they white or colored? A. The four people was colored people.

Joseph Edelman, cross.

Q. All four of them were colored? A. Colored people, yes.

Q. And the eight people who moved out, were they all white, or were some of them white and some of them colored? A. They was white.

By the Vice-Chancellor:

10

Q. All of them? A. Yes.

By Mr. Brenner:

Q. How long before you made this contract did these people move out? A. They moved out in about two months.

Q. Two months? A. Yes.

Q. During that whole two months nobody rented the other eight apartments, did they? A. Yes; some people have moved in and moved out.

20

Q. How many times did they change during those two months? A. Well, at this time, in two months, I got about three or four tenants that moved in and out.

Q. Moved in and out again? A. Yes.

Q. Were they white or colored? A. There were a few white, and a few colored.

Q. Well, these whites came in at the time the colored people were already in, didn't they? A. Well, the white people, they were in one months, and the second month they moved out, too, and told me they didn't want to live with colored people.

30

Q. Those four colored families, how long had they lived in this house before you made this contract? A. They lived there about a couple of months.

Q. How many months? A. About eight or nine months.

40

Joseph Edelman, cross.

Q. So that the white people that moved in and moved out again during these few months all came in there when the colored people were there, didn't they? A. I don't understand.

10 The Vice-Chancellor: Well, they are there yet, aren't they.

Mr. Brenner: No, he said they moved out there in the two months.

The Vice-Chancellor: I know, but the colored people are still there.

Mr. Brenner: I don't know whether they are still there, or not.

By the Vice-Chancellor:

20 Q. Are the colored people still there? A. No, sir.

Q. When did they move out? A. All together, I got about one colored family moved in, and the rest there was Polish people.

By Mr. Brenner:

Q. How many families are in the house now—in No. 23? A. I have got five families.

30 Q. Are they colored or white families? A. White families.

Q. All white? A. One colored.

Q. So that how many colored families moved out and let these white families come in? A. Three.

Q. Three colored families moved out, and four white families moved in? A. Yes.

Q. In No. 25, how many colored families did you have, and how many white families?

40 The Vice-Chancellor: There is no question about 25. This whole thing moves on 23, doesn't it? The only allegation was that

Joseph Edelman, cross.

he put out the people in 23 for the purpose of accommodating a prospective buyer; there was not a word said about the other property; is not that right?

10 Mr. Brenner: The allegation mentioned thirteen vacancies; and he says the reason for the thirteen vacancies was that he had dispossessed the people in 23 for the purpose of filling that house with Polish people.

The Vice-Chancellor: Yes, and he was going to move the other four tenants into the other houses.

Mr. Brenner: Yes.

The Vice-Chancellor: True; now, the only allegation is that a buyer was going to buy 23.

20 Mr. Brenner: The allegation was as to the reason for the existence of the thirteen vacancies.

The Vice-Chancellor: I do not care about that; what I am concerned with is this allegation that he represented that some Polish people were going to buy 23, and that was the reason he put out eight tenants, and he was going to transfer the other four to the vacancies in the other houses.

30 Mr. Brenner: But that is only a part, if the Court please, of our claim. The general statement was that none of those people had moved voluntarily—that is, as to the three houses—

The Vice-Chancellor: None of the eight.

Mr. Brenner: Not only as to the eight, but as to all; they had all been dispossessed.

40 The Vice-Chancellor: I think it follows logically that it is all based on that Polish transaction.

Joseph Edelman, cross.

10 Mr. Brenner: Here is the allegation: "That complainant wilfully and fraudulently represented to these defendants, before the execution of said contract, that the vacant apartments in the premises to be conveyed were vacant because the complainant had dispossessed the several tenants that had, prior thereto, occupied the premises; and, further, that said tenants had been dispossessed from the premises because the complainant desired the apartments vacant."

20 The Vice-Chancellor: Certainly; in other words, that the tenants were dispossessed because he wanted the entire premises vacated for the purpose of alterations. Well, that is only No. 23 that they were buying.

Mr. Brenner: No, there is a double assertion, as far as that is concerned.

The Vice-Chancellor: Well, I would like to know what the truth is. As I take it, the statement of Mr. Grodberg is that he (the complainant) said this 23 was to be sold to some person, and he put the tenants out because of the prospective purchaser's wanting him to do it.

30 Mr. Brenner: That is all true; but the general allegation is, and the general statement—

The Vice-Chancellor: Well, there is no evidence as to a "general statement"; the allegation is that he was going to take four tenants out of 23 to fill the other place.

Mr. Brenner: Exactly; and this place had been made vacant for that very purpose.

40 The Vice-Chancellor: I do not understand the testimony is to that effect.

Joseph Edelman, cross.

Mr. Brenner: That is my understanding of the testimony.

The Vice-Chancellor: There is no evidence here as to that. Well, you can go ahead, if you want to. I do not see it.

10 Q. In No. 25, how many white families and how many colored families were there? A. Eight families was colored.

Q. And four families white? There were how many families white? A. Four families was white and eight was colored.

Q. Now, you had some vacancies in 25, hadn't you? A. Well, about three in 25.

Q. Three vacancies? A. Yes.

20 Q. So there were only nine families in there? A. Nine.

Q. How many were white and how many colored? A. Six was colored and three was white.

Q. And how many were there in No. 27? A. In 27 there was two colored, and the rest was white people.

Q. And how many vacancies were there in No. 27? A. In 27 there was two colored and the rest were white people.

Q. The rest were white? A. Yes.

30 Q. There were eight vacancies in 23, three vacancies in 25— A. Yes.

Q. —and two in 27? A. Two in 27.

Q. The people in 25 and 27, the white people there, did not move out when the colored people came in, did they? A. They move out when they can get better rooms; when they got better rooms they moved out.

40 Q. But in 23 eight families moved out because colored people moved in—is that right? A. No; all together they moved out.

Joseph Edelman, cross.

Q. But there were eight white families that moved out after you had rented to colored people, in No. 23; but the white people in 25 and 27 did not move out, did they? A. What do you mean, 27?

10 Q. You had colored people in 25 and 27? A. I have got white and colored people.

Q. You had both white and colored? A. Yes.

Q. But in 25 and 27 you only had three vacancies in one and two in the other? A. Yes.

Q. So that the white people in there did not move out when the colored people came there, did they? A. When the white people moved out I had to rent to colored people.

20 Q. But you had been renting to colored people in all three of these houses for over a year, hadn't you? A. Yes.

Q. And it was only in 23 that the white people moved out? A. The white people couldn't get other rooms; when they did—

Q. (Interrupting) I didn't ask you that; I am asking you wasn't it only in the one building that they moved out? A. They moved out in a year's time.

30 Q. In a year's time there were eight families that moved out? A. Yes.

Q. But in No. 25 there were only three families moved out? A. Yes.

Q. And in 27 there were only two families moved out, is that right? A. What do you mean, "moved out"?

By the Vice-Chancellor:

40 Q. Well, you know what "moving out" is? A. The white people moved out.

Joseph Edelman, cross.

By Mr. Brenner:

Q. But there were only three in 25 that moved out, weren't there? A. There was three, yes.

Q. And only two in 27? A. In 27.

Q. But in 23 the whole eight families moved out? A. All together they moved out; they moved out, and the colored moved in. 10

Q. Mr. Grodberg was your agent, wasn't he? A. Yes, sir.

Q. And you came down to the building and met Nieditch and Daves the same day that the contract was made? A. Yes, sir.

Q. You talked about the empties or the vacant apartments at the building, didn't you? A. No, sir.

Q. Didn't say a word about it there? A. No. 20

Q. But you did talk about the vacant property, or the vacant apartments, up in Mr. Grodberg's office, didn't you? A. Afterwards, yes, sir.

Q. And who said that there were thirteen vacant apartments? A. I told him this—I told him, I says, "I have got four Polish people—"

The Vice-Chancellor: No, who said it?

Q. Who said there were thirteen apartments—who told Nieditch and Daves that? A. I told them. 30

Q. You told them? A. Yes.

Q. Did they ask you how many vacancies you had there? A. Yes, yes; and I told them.

Q. Did they tell you why they wanted to know that? A. They didn't tell me that.

Q. Didn't tell you that? A. No.

Q. You said there were thirteen vacancies, didn't you? A. Yes.

Q. And they said to you, "Well, what is the matter that you have got so many people out of it?" 40

Joseph Edelman, cross.

Didn't they? A. They didn't tell me that before; they told me afterwards.

Q. When did they tell you that? A. Afterwards, when I was by the contract itself.

Q. After the contract was signed? A. Yes.

10 The Vice-Chancellor: You ought to have an interpreter here for this man.

Mr. Dembe: We have a man we can use as an interpreter.

The Vice-Chancellor: What do you say to using an interpreter?

Mr. Brenner: I haven't any objection. I haven't very much more to ask him.

The Vice-Chancellor: Well, go ahead.

20 Q. It was after the contract was signed that you had the first talk about these empty places? A. Yes.

Q. And how long after the contract was signed? A. Why, right away, after we make the contract—about two or three days afterwards.

Q. How long after? A. Two or three days after.

Q. Two or three days after the contract was signed? A. Yes.

30 *By Mr. Dembe:*

Q. What happened two or three days after the contract was signed? A. Oh, he goes to see the houses; I go with him and show him everything right; I tell him, "I have thirteen empty flats"; and I told him the reason I have thirteen empty—

Mr. Dembe: I think we had better use the interpreter.

By Mr. Brenner:

40 Q. When was the first time you were asked

Joseph Edelman, cross.

about the empty apartments? A. The first time, I told him when he came back.

Q. When? A. When he came back.

Q. Where? A. This time that Mr. Grodberg and Mr. Nessianbaum and Nieditch came.

Q. Where did they come? A. They came right away— 10

Q. Where did they come? A. He came to my house.

Q. That was the first time you told him? A. That was the first time.

Q. That was before the contract was made? A. Yes.

Q. And was there any talk about the empties when the contract was made? A. That was what he told me, yes. 20

Q. Do you understand me? What did I ask you?

Mr. Brenner (to the Court): You don't get much talking to this man. I would like to examine him sensibly. We are having the trouble we always have with this type of witness.

The Vice-Chancellor: Well, of course it appears in the contract itself here that they got the information when the contract was drawn. 30

Mr. Brenner: The trouble with this man is that he says it was after the contract was drawn; and that attacks his whole credibility.

By the Vice-Chancellor:

Q. When you had the talk before Mr. Grodberg, did you talk in Yiddish or English? A. I talk in Yiddish. 40

Joseph Edelman, cross.

Q. And the conversation with you and Daves and Nieditch, was that in Yiddish, too? A. Yiddish, yes, sir.

10 The Vice-Chancellor: Well, I cannot help counsel in their case.

(At this point Mr. Alexander Seclow was accepted by counsel for both parties as interpreter, administration of the oath being waived; and the examination proceeded through the interpreter.)

By Mr. Brenner:

20 Q. When was the first time that there was any talk about the vacant apartments in these three properties? A. That was at the time that they came to make the contract.

Q. Was that while they were at the building, or was it in Mr. Grodberg's office? A. When we were at the office.

Q. And was it before the contract was signed, or after the contract was signed? A. Before.

Q. And who started the talk about the empty rooms? A. Mr. Grodberg.

30 Q. And what did Mr. Grodberg say to you about the rooms being empty? A. He asked me why are they vacant.

Q. Did you tell him how many vacancies there were? A. Yes, I did.

Q. And what did you tell him was the reason for them being vacant? A. I told him the reason was this—that prior thereto there had lived there Polish people, and I rented to colored people, and after I rented to colored people a couple of Polish people moved out.

40 Q. Did Nieditch or Daves say anything when you

Joseph Edelman, cross.

told that to Grodberg? A. No, they said nothing; they seemed to be satisfied.

Q. They were perfectly satisfied with the thirteen vacant apartments—they didn't say anything about that? A. They didn't say anything.

10 Q. Where did you agree on the price,—at the building, or in Mr. Grodberg's office? A. In Mr. Grodberg's office.

Q. Didn't you say anything about the price at the buildings? A. We made the price in the office.

Q. Well, didn't you make a price when you gave Mr. Grodberg these buildings to sell? A. I didn't give it; these people came to me.

20 Q. Well, wasn't Mr. Grodberg your agent to sell this property? A. No, sir.

Q. Was not Mr. Nessenbaum an agent of yours to sell this property? A. No.

Q. Did you agree to pay them a commission? A. Yes.

Q. And you agreed to pay them a commission of eight hundred dollars, didn't you? A. Yes.

Q. And still you say that they were not your agents?

30 The Vice-Chancellor: You must be referring to before the contract was signed.

Mr. Brenner: Yes.

A. They were not my agents before; but at that time they came with the customers. They found me at the houses.

Q. Well, when they came to you with the customers didn't they ask you what you wanted for the property? A. Yes, they did.

40 Q. And what did you tell them that you wanted? A. I told them that I wanted \$40,000.

Joseph Edelman, cross.

Q. And did they agree to pay you \$40,000? A. They commenced making bids; they bid \$32,000, then \$34,000, and finally I sold it for \$36,000.

10 Q. And where were they making bids—at the property, or at Mr. Grodberg's office? A. In Mr. Grodberg's office.

Q. And did they finally agree to pay \$36,000 before Mr. Grodberg started to draw the contract? A. Yes.

Q. And that was before you had the talk about the empties, wasn't it? A. We spoke about the vacant rooms before that.

20 Q. Then it was not when Mr. Grodberg was talking the terms for the contract that you spoke about the empties, was it? A. There were vacant rooms at that time.

Q. How much had they agreed to pay you before you started to talk about the empties? A. They were satisfied to pay \$36,000.

Q. And when you started talking about the empties they did not start any argument, at all, did they—didn't start complaining about it? A. No, sir.

Q. Perfectly satisfied to go in there with one house with eight vacancies in it? A. Yes.

30 Q. And they took your word when you said that white people had moved out because colored people had moved in? A. Yes.

The Vice-Chancellor: I don't know that he said that before—that he told them that "white people moved out before colored people moved in."

40 Mr. Brenner: "When they moved in." Did I say "before"? He testified previously that the white people moved out because the colored moved in.

Joseph Edelman, cross.

Mr. Dembe: He testified to that on direct examination.

The Vice-Chancellor: He did; but he did not say he told it to them.

10 Mr. Brenner: Oh, yes, he did; he said they asked him why there were thirteen vacancies, and he said the reason was because the white people moved out because the colored people moved it.

Q. Did they ask you how long you had had colored people in that house? A. Yes, sir.

Q. And how long did you tell them that you had colored people in the house—in No. 23? A. About two years.

20 Q. And did they want to know whether you had eight empties in the house for two years? A. No.

Q. Well, you said that the reason that you had eight empties in that house was because colored people moved there, now is that so? A. That is so.

Q. Well, did you have eight vacant apartments for nearly two years? A. No, sir.

Q. Were there other colored families in there who moved out? A. Yes.

30 Q. Then the reason that you had eight empty apartments was not because colored people moved there, was it? A. Well, some people moved out because they wanted better rooms, with improvements.

Q. Then when you told them that the reason you had eight empty apartments in that house was because colored people moved in, that was not so, was it?

The Interpreter: He does not understand that.

Ashea Nessianbaum, direct.

Q. (Question repeated.) A. It was the truth.

Mr. Brenner: That is all.

The Vice-Chancellor: Now, have you got your own story in there straight, Mr. Dembe?

10

Mr. Dembe: Well, I had it in there on direct examination, unless your Honor wants me to go over it again.

The Vice-Chancellor: Well, call your next witness.

ASHEA NESSANBAUM, sworn:

Direct examination by Mr. Dembe:

20

Q. You are one of the agents in this deal, Mr. Nessianbaum, are you not? A. Yes.

Q. You and Grodberg were partners? A. Yes, sir.

Q. And you were present when the deal was made? A. Yes, sir.

Q. Now, were you at the house together, looking over the houses? A. Yes, me and Grodberg and Nieditch.

30

Q. Were you also at the office of Mr. Grodberg when the contract was drawn? A. Yes.

Q. Was there any talk about vacant flats in the buildings? A. He told them he had got thirteen vacancies, that is all; and they were satisfied to take it.

Q. Where was this talk—in the office of Mr. Grodberg? A. That was by the property; and he told them the same thing—that he had thirteen vacancies; and they was satisfied.

40

Q. Was there any reason given by Mr. Edelman for the vacancies? A. No, no; I didn't hear that.

Ashea Nessianbaum, cross.

Q. How did the question of vacancies arise—who raised the question? A. I don't know; I didn't hear anybody who raised it—nobody who asked him any question about the vacancies.

Q. Who was the first that asked about the vacancies? A. I am telling you nobody asked him about the vacancies. He told them he had thirteen vacancies, that is all; and they didn't ask anything else; they was satisfied to take it. And he said he had plenty of money there, there was plenty of rent there at that time.

10

Q. Did you ever talk with Mr. Grodberg regarding the renting of the vacant flats? A. Yes, sir.

Q. At lower prices? A. Yes, sir.

Q. Who was with you? A. I, myself—I came up and I asked him—Mr. Edelman asked Mr. Grodberg if he should rent the apartments, that he could rent them cheaper; and a couple of times he wanted the signature, and he didn't give him the signature, and he said he didn't rent it.

20

Cross examination by Mr. Brenner:

Q. Mr. Grodberg said to Mr. Edelman, "You get your tenants, and I will get you the signature that it is all right to rent it"? A. Yes, but he wanted the signature before.

30

Q. Edelman said before he tried to rent them he wanted the signature? A. He wanted the signature of Mr. Nieditch.

Q. Now, you went with Grodberg, Nieditch, Daves and Edelman down to the property in Nineteenth Street, didn't you? A. Yes, sir.

Q. And Nieditch and Daves went through the property, didn't they? A. I wasn't through; he was through himself—Nieditch and Daves.

Q. But you say that Edelman said at the prop-

40

Ashea Nessianbaum, cross.

erty, "There are thirteen vacancies in this property"? A. Yes.

Q. He told them that? A. Yes.

Q. And did he say to them, at the property, "There is eight vacancies in No. 23"? A. I don't
10 remember how many vacancies in each property; I know he told him "thirteen," that is all.

Q. But, at the property, Edelman particularly said "I have thirteen vacancies in these three properties"? A. Yes, sir.

Q. Did anybody ask Edelman how many vacancies he had? A. No, sir.

Q. There was no reason for him to say that there was? A. No, sir, I don't remember that there was.

Q. He just came up to these two people (and that
20 being before any price was agreed upon), and said, "Gentlemen, I have thirteen vacancies in this property"? A. That is it.

Q. You are sure of that now? A. I am sure of it, because I told them myself; I was the agent.

Q. I am talking about what Edelman said, not you. Edelman said to them, "I have thirteen vacancies in this property." A. He asked him how many vacancies, and he told them "thirteen vacancies."
30

Q. Before he told them, who asked that? A. No, Mr. Grodberg asked him how many vacancies he had got.

Q. I am talking now about down at the buildings, when you said that Edelman, without anybody asking him, said "I have thirteen vacancies"? A. Yes, that was by the houses, when we came there with Nieditch and Mr. Edelman.

Q. Were they in the house? A. That was by
40 the house on Nineteenth Street, when we came to look over the houses.

Ashea Nessianbaum, cross.

Q. (Last question repeated.) A. Yes, sir.

Q. And Edelman, without anybody asking him, said, "I have thirteen vacancies"? A. He asked him how much he had vacancies, and he told him.

Q. Who asked him? A. Nieditch and Daves.

Q. Didn't you say, a moment ago, that the first
10 time that anybody asked that was in Mr. Grodberg's office? A. It was said in the contract, at Grodberg's office; he asked him how much vacancies he had—he asked him how much he has got vacancies.

Q. I am asking you what was said at the buildings about vacancies—now, was there anything said at the buildings, or not? A. No.

Q. Didn't you say, three or four times, in answer to my questions, that Edelman said it at the
20 buildings? A. He said it at the building when he came to look it over.

Q. When he came to look over the buildings? A. Yes.

Q. Which is right—when they came to look over the buildings and were at the buildings, or was it in Grodberg's office? A. There was a different time—for the second time—when he put it in the contract.
30

Q. Now, when it was said at the buildings, Edelman said, "I have thirteen vacancies." Did anybody ask him how many vacancies he had? A. No.

Q. Nobody asked him, at all? A. I don't remember that, about somebody asking him, now.

Q. As far as you could see, was there any reason for him to say that at that time? A. No, sir; I don't remember that.

Q. Was Grodberg there when that was said?
40 A. Yes, sir.

Ashea Nessianbaum, cross.

Q. And Nieditch and Daves did not ask the reason for the vacancies, did they? A. No.

Q. They simply said, "We are satisfied to take it with the vacancies"? A. Yes, sir.

Q. Had you agreed on the price at that time?
10 A. Yes.

Q. Agreed on the price at the buildings? A. In the office.

Q. I am talking about at the buildings—was there any price agreed on—was any price talked about at the buildings? A. Yes, sir—a bigger price.

Q. What price was talked there? A. \$40,000 he asked there.

Q. And what price did Nieditch and Daves say, at the buildings, that they would pay? A. That
20 was in the office, when we came back.

Q. I am talking of at the buildings—did they say how much they would give? A. They didn't answer anything.

Q. Then they went up to the office and discussed the price, didn't they? A. They went to the office and they made the price.

Q. And that is when Daves and Nieditch offered him \$36,000? A. Yes.

Q. And then you say they talked about the vacancies all over again? A. No, sir; then they put
30 it in the contract; he asked him how many vacancies, and he put in the contract how much vacancies.

Q. Grodberg then asked, in the office, "How many vacancies have you got?" A. Yes.

Q. Well, Grodberg was there when Edelman had already said there were thirteen, wasn't he? A. That is what he told him to put in the contract—
40 "thirteen vacancies."

Ashea Nessianbaum, cross.

Q. Told who? A. Grodberg.

Q. Told who? A. Edelman told Grodberg about the vacancies, and he had it put in the contract.

Q. Edelman had told him at the buildings, hadn't he? A. Yes.

Q. Was there any reason, that you could see, to
10 tell him a second time that there were thirteen vacancies? A. I understood you were talking about at the time they put it in the contract, that is all.

Q. But Edelman said, a second time, without anybody asking him, "I have thirteen vacancies." A. I don't know whether he asked him anything; he put it in the contract.

Q. Nobody asked him, at all; Nieditch and Daves did not ask him that? A. I tell you I can't remember.
20

Q. And they did not ask the reasons for the vacancies there? A. No, sir; I don't remember that.

Q. As soon as they were told there were thirteen vacancies there they said, "That don't make any difference; we are satisfied to take the property"? A. Yes.

Q. You are sure of that? A. I am sure of that; and I am sure of another thing—

Q. Never mind that; you are sure of that? A. Of what?
30

Q. That, as soon as Edelman said, "There is thirteen vacancies," they said, "That don't make any difference, we are satisfied to take it"? A. Yes.

Q. You are sure of that? A. I am sure of that, because they put it in the contract.

Q. Don't tell me why you are sure; I am asking you if you are sure, and you are? A. Yes, sir; I am sure he told him "thirteen vacancies," that
40 is all.

Ashea Nessianbaum, cross.

Q. And you are sure there was no question asked as to the reason for the vacancies? A. I didn't hear any reason.

Q. You did not hear Edelman say anything about any reason? A. Why, they didn't talk about anything else. 10

Q. You did not hear Edelman say why there were vacancies in that property? A. No.

Q. Did you ever talk to Edelman about it after that? A. No, sir.

Q. Were you ever there when Nieditch or Daves were with Edelman, and Edelman told them why they were vacant? A. I never saw Daves and Nieditch after the contract, only once.

Q. You are interested in this contract going through, aren't you? A. Yes. 20

Q. And if this contract goes through you get \$400? A. Yes, sir.

Q. And that is your interest in it, is it not? A. I am interested in my commission because I am interested in my services; and, excuse me—

By the Vice-Chancellor:

Q. No, we will not excuse you. Did you hear any statement made by Mr. Nieditch to Mr. Edelman that he had made a contract to sell any property to a Pole? A. No, sir. 30

Q. Did you hear him say that he put out the tenants in the building because these Poles he contracted to sell to were going to remodel the building? A. No, sir; I don't remember that.

Q. Did you ever hear of that before? A. No, sir; I didn't hear that.

By Mr. Brenner:

Q. Did you ever hear him say that white people 40

Ashea Nessianbaum, cross.

moved out because colored people moved in? A. No, sir.

Q. You were there all the time, weren't you? A. Where, all the time?

Q. At Grodberg's office, and at the buildings when they were talking about empties—you were in Grodberg's office when this deal was being talked about, and at the buildings when this deal was talked about—you were there and heard everything that was said, weren't you? A. Yes. 10

Q. Did you hear Edelman say anything about white people moving out of that building because colored people moved in? A. I don't remember that, Judge Brenner.

Q. Was there any such thing said by Edelman? A. I don't remember; I will tell you the truth, I don't remember. 20

Q. Well, you remembered when the Judge asked you about the other people, the Polish man buying the building—you remembered that was not said? A. I never heard that.

Q. That was not said, at all? A. I never heard that.

Q. And you did not hear, either, about any colored people moving in and the white people moving out? A. No, sir. 30

Q. And all you were interested in was your commission, and you did not pay much attention to what was said by one party or the other? A. Well, if you want me to answer the question, and let me talk—

The Vice-Chancellor: Oh, we don't want you to talk. Answer the question. You didn't pay very much attention to what was said by one or the other, about this deal, 40

Memorandum of Opinion.

until it came to the time of your commission, and then you suddenly became very much interested.

The Witness: Certainly.

The Complainant Rests.

Both Sides Close.

(After oral argument, the case was held for briefs.)

Memorandum of Opinion.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH EDELMAN, *et ux.*,
Complainant,

and

ALTER NEIDITCH, *et al.*,
Defendants.

Memorandum.

Decided May 24th, 1926.

For the Complainant, ALEXANDER SECLOW,
ESQ.; Mr. HARRY DEMBE, of Counsel.

For the Defendants, IRVING D. GRODBERG,
ESQ., Mr. ALFRED BRENNER, of Counsel.

GRIFFIN, V. C.:

In this case counsel agree that there is but one question to determine—whether the complainant made the representation that a Pole was seeking a contract to buy Lot 23, and whether the complainant, when asked as to the eight vacancies (there were thirteen vacancies, eight of which

Memorandum of Opinion.

were in Lot 23) stated that this Pole was seeking a contract to purchase the property, and that he desired to remodel the building and would not execute the contract until the complainant evicted all the tenants. The complainant and Nessenbaum (Grodberg's partner) swear one way, and Grodberg and the defendants swear the other. Grodberg, a member of the Bar, who drew the contract, was also in the real estate business, as was Nessenbaum, the other broker. By the terms of the contract, Grodberg and Nessenbaum were to get eight hundred dollars only if title passed, so that each would be naturally interested in seeing the title passed to make their eight hundred dollars.

Grodberg drew the agreement, and stated specifically in the agreement the number of vacancies in each of the three houses, and the statement is correct. Grodberg swears that the statement was made. Nessenbaum, the co-broker, who was equally interested with Grodberg in the commission, swears that he was with the parties and never heard any such statement made. Grodberg made a better witness. The reason given, however, for the vacancies, namely, that the complainant put the tenants out because of this Polish incident, seems rather absurd, as he was to put the tenants out before a contract was signed, when a contract might have been signed with an agreement that it should not become effective until the tenants were put out. In addition to this the defendants say that the complainant said that he dispossessed the tenants, and an examination of the District Court proceedings showed that only two proceedings in dispossession were taken, one of which was against a tenant in No. 23, which was

Memorandum of Opinion.

10 commenced some four or six days before the contract in suit was signed, and that never proceeded to judgment. This is also denied by Edelman, who says that one tenant got into a fight, and, three or four days before the contract was signed, he gave him a three-day notice, but that the tenant moved and the suit was not proceeded with.

The reason why there were so many vacancies in this house, it is suggested, is that there were both Poles and negroes in the house—four negro families, I think, and six Polish—that there was a fight in the premises and the police patrol came up to the house to arrest them, and that this gave a black eye to the place so that it could not be rented.

20 The evidence, as I see it, taking the view most favorable to the defendants, is that the testimony as to this representation is in balance, and, therefore, insufficient to overcome the force and effect of a solemn written instrument. But counsel for the defendants cite a number of cases—first, *Miller v. Weiss*, 91 N. J. Eq. 321; 109 A. R. 357. This case, in view of my finding of fact, is not in point.

The same may be said of *Bowker v. Cunningham*, 78 N. J. Eq. 458.

30 In *Carskaddon v. Kennedy*, 40 N. J. Eq. 259, at p. 277, Mr. Justice DIXON said, "The complainant could not be compelled to realize the hopes which his statements had engendered; but it was essential to his bill that he had been honest in his dealings. It is therefore proper to inquire whether these representations were fraudulent. The dishonesty of the assertion made cannot be presumed, and we think it is not proved," and the Court held that the complainant was entitled to
40 specific performance.

Memorandum of Opinion.

Wuesthoff v. Seymour and Wheelock, 22 N. J. Eq. 66, does not help the defendants.

Miller v. Chetwood, 2 N. J. Eq. 199, does not aid the defendants because of the above finding of facts.

Counsel for the complainant also argued that the long period elapsed from about August 1, 1924, when the defendants had full knowledge of the facts, down to January, 1925, when the deed was tendered, during which time counsel for the complainant was in conference with counsel for the defendants endeavoring to remove objections to the title apart from the question of fraud, during all of which time the defendants did not declare specifically their election to rescind the contract, amounts to an election to stand by the contract; citing *Dennis v. Jones*, 44 N. J. Eq. 513; *Conlin v. Roemer*, 52 N. J. Law, 53; *Reed v. Benzine-ated Soap Company*, 81 N. J. Eq. 182; 86 A. R. 263. While this argument is rather persuasive, I do not consider it necessary to pass upon it by reason of the finding above reached.

I will advise a decree in favor of the complainant.

The foregoing memorandum is merely for the guidance of counsel in ascertaining the views of the Court, and is not to be printed, published nor filed; if an appeal is taken, however, counsel will notify me of that fact in writing, have the testimony transcribed and forwarded to me, whereupon I will prepare and file a formal opinion.

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Opinion of Vice-Chancellor.

921 Bergen Ave.,

Jersey City, N. J., Oct. 11, 1926.

IRVING D. GRODBERG, Esq., 590 Avenue C.,
Bayonne, N. J.10 ALEXANDER SECLOW, Esq., 473 Broadway,
Bayonne, N. J.*Edelman v. Nidetch.*

Gentlemen:

The complainants entered into an agreement with the defendants to sell to the defendants certain lands in the City of Bayonne whereby the title was to pass on the 1st day of August, 1924, and possession was to be rendered to the defendants at that time. The defendants failed to take the title, and notice was given to them on January 15th, 1925, that time would be made of the essence of the contract on January 26th, 1925. No extension of time was granted by the complainants to the defendants for passing title. The case was tried and decided on May 24th, 1926, in a letter to counsel. On April 2nd, 1924, the premises were practically destroyed by fire, after which date the premises were injured somewhat by hoodlums. The complainants did all in their power to protect the premises, had the assistance of the police, and had some of the boys arrested.

When the decree was presented for signature the defendants presented affidavits to show that the premises were in a greatly damaged condition, and they claim that, under their authorities, by virtue of the contract, the complainants were bound to deliver to them the premises in as good state and

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Opinion of Vice-Chancellor.

condition as they were in at the time of the signing of the contract, reasonable wear and tear excepted; and they ask that a rehearing be granted to the end that they may be relieved from the performance of the contract.

The clauses of the contract under which the defendants claim that the burden of the loss should fall on the complainants are as follows:

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"The risk of loss or damage to said premises by fire or otherwise, until the delivery of said deed, is assumed by the party of the first part.

"In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part shall repair the damage before the date set for the delivery of said deed, or make an appropriate deduction from the purchase price herein stated."

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I think these two clauses, read together, mean that the risk to the complainants continued down to the date set for the delivery of the deed, either by the terms of the contract, or by any agreement for the extension of the time of passing title. There was no agreement extending the time of passing title, but the complainants gave notice attempting to make time of the essence of the contract, fixing the date for the passage of title January 26th, 1925, and filed their bill February 7th, 1925.

30

In *Cropper v. Brown*, 76 N. J. Eq. 406, Vice-Chancellor GARRISON held that the delivery of the deed by the sheriff has relation back to the time of the sale, of which it is the consummation, in the same manner that the delivery of a deed under a private contract of sale had relation back to the time

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Opinion of Vice-Chancellor.

when the contract is signed. And in that case he refused to relieve a purchaser from his bid because, immediately after the sale, the premises were partially destroyed by fire.

10 The defendants, however, claim that under the case of *Green v. Kelly*, 20 N. J. Law 544, and 18 N. J. Law 246, under the language of this contract, the risk is on the vendor until the deed is delivered. The case in 18 N. J. Law turned on a demurrer to the declaration. In the case in 20th Law it appears that the defendant was "to deliver to the plaintiff the peaceful possession of the premises in as good repair as they then were, natural and reasonable wear and tear always excepted." Under the terms of the agreement, the conveyance was to be made on the 1st day of April, 1836. 20 A subsequent agreement was made by which it was mutually agreed that the deed should be delivered on the 1st day of April, 1837. The declaration alleged that on the 18th of March, 1837, sixty feet of the dam which had been erected to supply the sawmill with water, was carried away by a freshet. This case was also argued on demurrer to the declaration. It was urged by the defendant that the covenant to deliver in as good repair, etc. applied only to the original contract which was to be performed on April 2nd, 1836. The Court held that the extension agreement continued in force this covenant for another year; and Justice Randolph said the extension put the case in the same position as if the original agreement had been to deliver the deed on the 1st of April, 1837. In that case the plaintiff was clearly within his rights. The title was not to pass until April 1st, 1837, and the freshet occurred in March, 1837; so that at 40 the date fixed for the delivery of the deed the

Opinion of Vice-Chancellor.

defendant did not deliver the premises in the same plight as they were when the contract was signed, injured only by the natural wear and tear.

If the defendants here had taken title after the damage, but at or before the time fixed by the contract for passing title, they might sue for the damages, as in the *Green-Kelly* case; or, if they had not taken title, they might set it up as a defense against the bill for specific performance. But the time had long since passed by when the title was to be passed. They refused to take title, and first asserted their claim almost a month after the case was decided, and they had knowledge of the damage for at least a month or six weeks before the decision of the cause. 10

The conclusion that I have reached is that these clauses, which are intended for the benefit of the defendants, continued in force until the date when the defendants should have accepted the deed, and thereafter they were at an end. If it were otherwise, the defendants, by refusing to take title, would be attempting to take advantage of their own wrong, and putting a burden upon the complainants which the contract by its terms did not impose, nor was intended to be imposed. 20

In *Wells v. Calanan*, 107 Mass., p. 514 (518), the fire occurred on the day appointed for the conveyance. This case does not help the defendants, and it is possibly in conflict with the case of *Cropper v. Brown*, *supra*. 30

I will deny the defendants' application. Counsel may now present their decree.

The foregoing memorandum, being merely for the guidance of counsel in ascertaining the views of the Court, is not to be printed, published nor filed; if an appeal is taken, however, counsel will 40

Decree.

notify me in writing to that effect, whereupon I will prepare and file a formal opinion.

Yours truly,

JOHN GRIFFIN.

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Decree.

(Filed December 6th, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH EDELMAN and SARAH EDELMAN, his wife,

Complainants,

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and

ALTER NIDETCH and HYMAN DAVES, Defendants.

On Bill, &c.

This cause coming on to be heard in the presence of Alexander Seclow, Esquire, Solicitor of the Complainants, and Harry B. Dembe, Esquire, of Counsel, and in the presence of Irving D. Grodberg, Esquire, solicitor of the defendants, and Alfred Brenner, Esquire, of Counsel, and the Court having taken the evidence submitted by the respective parties hereto, read the pleadings and heard the arguments of the respective Counsel and duly considered the same, and it satisfactorily appearing to the Court that by virtue of an Agreement in writing made and executed by and between the Complainants and the defendants on the 10th day of June, 1924, that the defendants agreed to purchase from the complainants the lands and premises described in the Bill of Complaint; and it

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Decree.

Further appearing that the Complainants have, at all times, been and still are willing and able in all things to comply with the terms and provisions of the said Agreement, and that the Complainants are entitled to the specific performance of the said Agreement on the part of the said defendants as prayed for in the Bill of Complaint,

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It is on this sixth day of December, 1926, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED and DECREED, that the said Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE and DECREE,

1. That the Agreement for the sale and conveyance of the lands and premises referred to and set up in the Bill of Complaint, is a valid and subsisting Agreement and that the Complainants are entitled to specific performance thereof.

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2. That the said defendants do specifically perform the said Agreement by paying unto the complainants the balance of the purchase price fixed under the said Agreement, viz.:

By paying unto the Complainants in cash upon delivery of a good and sufficient deed, the sum of as required under the Agreement \$9,500.00

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By the defendants executing and delivering unto the Complainants a purchase money mortgage for the sum of 9,000.00

to be due in five years from January 26, 1925, with interest at

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Decree.

10 6% per annum from the date fixed for the passing of title, said interest to be payable semi-annually. Said bond and mortgage to contain interest and municipal lien default clause and insurance clause, and said mortgage to cover premises commonly known as #23 East 19th Street, Bayonne, N. J., in accordance with a more particular description by metes and bounds, as an accurate survey thereof will show, and as may be fixed by the Master hereinafter designated.

20 By the defendants executing and delivering unto the complainants a purchase money mortgage for the sum of 8,000.00 to be due in five years from January 26, 1925, with interest at 6% per annum from the date fixed for the passing of title, said interest to be payable semi-annually. Said bond and mortgage to contain interest and municipal lien default clause and insurance clause, and said mortgage to cover premises commonly known as #25 East 19th Street, Bayonne, N. J., in accordance with a more particular description by metes and bounds, as an accurate survey thereof will show, and as may be fixed by the Master hereinafter designated.

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Decree.

By the defendants executing and delivering unto the complainants a purchase money mortgage for the sum of 9,000.00 to be due in five years from January 26th, 1925, with interest at 6% per annum, from the date fixed for the passing of title, said interest to be payable semi-annually, Said bond and mortgage to contain interest and municipal lien default clause and insurance clause, and said mortgage to cover premises commonly known as #27 East 19th Street, Bayonne, N. J., in accordance with a more particular description by metes and bounds, as an accurate survey thereof will show, and as may be fixed by the Master hereinafter designated.

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3. That the amount already paid on account of the purchase price by the defendants shall be considered as applied on account of the purchase price; the defendants shall receive credit on account of the purchase price for all money received by the complainants by way of insurance on the property described in the contract which was damaged by fire.

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4. That the rents of the said premises, taxes, water rents and premiums on all policies of insurance shall be adjusted and apportioned and that all computations with respect to the amounts due from the defendants to the complainants upon the balance of the purchase price shall be com-

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Decree.

puted as of the date which the Master may fix for the passing of the title and that title shall be passed and the rights of the parties adjusted as of that date.

10 5. That the said title be passed under the direction of Peter Stillwell, Esquire, 496 Broadway, Bayonne, New Jersey, one of the Masters of this Court at a time fixed by him not more than thirty days from the date of this decree, and of which date he will give the complainants and the defendants five days' notice by notice of their respective Solicitors.

20 6. That if the parties by their respective Solicitors can agree with respect to the details of the closing of the transaction and the passing of title, then there need be no action by the Master or proceedings before him.

30 7. That if the defendants shall fail or neglect to pay the balance of the purchase price together with the Counsel fee and taxed costs and to deliver the bonds and mortgages as required by them to be done under the said agreement at the time and place fixed by the Master so to do, then and in that event upon a tender of a deed by the complainants, the amount which will be found due and owing from the defendants to the complainants as the balance of the purchase price under the said agreement together with the counsel fee and taxed costs of this suit shall be and become and are hereby impressed as a lien upon the said lands and premises described in the Bill of Complaint in favor of the Complainants and to the end that the said lands and premises may be sold pursuant to law and under the direction of this Court
40 to satisfy said lien and that in case a deficiency

Decree.

should arise upon such sale the defendants may be ordered by this Court to pay such deficiency.

8. That the complainants recover against the defendants their taxed costs of this suit in which will be included a Counsel fee of \$500.00, and which said taxed costs shall be added to the amount found to be due from the defendants to the complainants under the said agreement as aforesaid. 10

9. That either party and the Master shall have leave to apply to this Court for further directions with respect to the carrying out of the provisions of this decree upon five days' notice to the parties interested. 20

10. That true but uncertified copies of this decree and of the said taxed costs be served on the Solicitor of the said defendants within ten days from the date hereof. 20

Respectfully advised,

E. R. WALKER,
C.

JOHN GRIFFIN,
V. C.

We hereby consent to the form of the above Decree. 30

ALEXANDER SECLAW,
Solicitor of the Complainants.

IRVING D. GRODBERG,
Solicitor of the Defendants. 40

Notice of Appeal.

(Filed December 20, 1926.)

IN CHANCERY OF NEW JERSEY.

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Between JOSEPH EDELMAN and SARAH EDELMAN, his wife, Complainants, and ALTER NIDETCH and HYMAN DAVES, Defendants.	}	On Bill, &c.
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The defendants hereby appeal from the whole and every part of the final decree made in this Court, in the above stated cause, as declares that the complainants have at all times been and still are willing and able in all things to comply with the terms and provisions of an agreement made between the complainants and the defendants, and are entitled to the specific performance of the said agreement on the part of the said defendants, as prayed for in the bill of complaint, and as orders, adjudges and decrees that the agreement for the sale and conveyance of the lands and premises referred to and set up in the bill of complaint is a valid and subsisting agreement, and that the complainants are entitled to a specific performance thereof, and as orders, adjudges and decrees that the defendants do specifically perform the said agreement by paying unto the complainants the balance of the purchase price fixed under said agreement; and as orders, adjudges and decrees that the amount paid on account of the purchase

Notice of Appeal.

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price by the defendants shall be considered as applied on account of the purchase price, and that the defendants receive credit on account of the purchase price for money received by the complainants by way of insurance on the property described in the contract which was damaged by fire; and as orders, adjudges and decrees that the taxes, water rents and premiums on policies of insurance shall be adjusted and apportioned with respect to the amounts due from the defendants to the complainants upon the balance of the purchase price to be fixed by a Master therein designated; and as orders, adjudges and decrees that if the defendants fail or neglect to pay the balance of the purchase price, together with the counsel fee and taxed costs and to deliver the bonds and mortgages as required by them at the time and place fixed by the Master so to do that such purchase price, counsel fee and taxed costs be impressed as a lien upon the lands mentioned and described in the bill of complaint, and that the same be sold to satisfy the same, and if the amount realized upon such sale be insufficient that then the defendants be ordered to pay the deficiency.

TO THE COURT OF ERRORS AND APPEALS IN THE LAST
RESORT IN ALL CAUSES.

Dated December 16, 1926.

IRVING D. GRODBERG,
Solicitor of Defendants.

ALFRED BRENNER,
Of Counsel.

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

ALFRED BRENNER,
Of Counsel with Defendants.

Amended Notice of Appeal.

(Filed December 23, 1926.)

IN CHANCERY OF NEW JERSEY.)

10	Between JOSEPH EDELMAN and SARAH EDELMAN, his wife, Complainants, and ALTER NIDETCH and HYMAN DAVES, Defendants.	} On Bill, &c.
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20 The defendants hereby appeal from the whole and every part of the final decree made in this Court by the Chancellor on the advice of the Honorable JOHN GRIFFIN, Vice-Chancellor, in the above stated cause as declares that the complainants have at all times been and still are willing and able in all things to comply with the terms and provisions of an agreement made between the complainants and the defendants, and are entitled to the specific performance of the said agreement on the part of the said defendants, as prayed for in the bill of complaint, and as orders, adjudges and decrees that the agreement for the sale and conveyance of the lands and premises referred to and set up in the bill of complaint is a valid and subsisting agreement, and that the complainants are entitled to a specific performance thereof, and as orders, adjudges and decrees that the defendants do specifically perform the said agreement by paying unto the complainants the balance of the purchase price fixed under said agreement;

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Amended Notice of Appeal.

and as orders, adjudges and decrees that the amount paid on account of the purchase price by the defendants shall be considered as applied on account of the purchase price, and that the defendants receive credit on account of the purchase price for money received by the complainants by way of insurance on the property described in the contract which was damaged by fire, and as orders, adjudges and decrees that the taxes, water rents and premiums on policies of insurance shall be adjusted and apportioned with respect to the amounts due from the defendants to the complainants upon the balance of the purchase price to be fixed by a Master therein designated; and as orders, adjudges and decrees that if the defendant fail or neglect to pay the balance of the purchase price, together with the counsel fee and taxed costs and to deliver the bonds and mortgages as required by them at the time and place fixed by the Master so to do that such purchase price, counsel fee and taxed costs be impressed as a lien upon the lands mentioned and described in the bill of complaint, and that the same be sold to satisfy the same, and if the amount realized upon such sale be insufficient, that then the defendants be ordered to pay the deficiency to the Court of Errors and Appeals in the last resort in all causes.

Dated, December 23, 1926.

IRVING D. GRODBERG,
Solicitor of Defendants.

ALFRED BRENNER,
Of Counsel.

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Petition of Appeal.

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

ALFRED BRENNER,
Of Counsel with Defendants.

10 We hereby consent to the filing of the above amended notice of appeal.

IRVING D. GRODBERG,
Solicitor of Defendants.

ALEXANDER SECLAW,
Solicitor of Complainants.

Petition of Appeal.

(Filed January 4, 1927.)

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JOSEPH EDELMAN and SARAH EDELMAN, his wife,
Complainants,

and

30 ALTER NIDETCH and HYMAN DAVES,
Defendants.

On Appeal from the Court of Chancery.

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

40 The petition of Alter Nidetch and Hyman Daves, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker,

Petition of Appeal.

Chancellor of New Jersey, bearing date the 6th day of December, in the year one thousand nine hundred and twenty-six, wherein the said Joseph Edelman and Sarah Edelman, his wife, were complainants, and the said Alter Nidetch and Hyman Daves, were defendants, in this respect, to wit: 10

That the said decree adjudges that,

1. The complainants have at all times been and still are willing and able in all things to comply with the terms and provisions of the said agreement, and that the complainants are entitled to the specific performance thereof, as prayed for in the bill of complaint.

2. That the agreement for the sale and conveyance of the lands and premises referred to and set up in the bill of complaint is a valid and subsisting agreement and that the complainants are entitled to the specific performance thereof. 20

3. That the defendants do specifically perform the said agreement by paying unto the complainants the balance of the purchase price fixed under said agreement.

4. That the amount already paid on account of the purchase price by the defendants shall be considered as applied on account of the purchase price; the defendants shall receive credit on account of the purchase price for all money received by the complainants by way of insurance on the property described in the contract which was damaged by fire. 30

AND your petitioners humbly appeal from that part of the decree of the Chancellor which decrees, as aforesaid, upon the ground that the same is erroneous for that, 40

Petition of Appeal.

10 1. Complainants are not and have not at all times been willing and able in all things to comply with the terms and provisions of the agreement made between the complainants and the defendants, and complainants are not, therefore, entitled to the specific performance thereof.

2. That the agreement for the sale and conveyance of the terms referred to and set up in the bill of complaint is not a valid and subsisting agreement, and the complainants are, therefore, not entitled to the specific performance thereof.

20 3. That title to the premises mentioned and described in the bill of complaint, the agreement for the sale of which is sought to be specifically performed, is defective and title to the same can, therefore, by reason thereof, not be delivered by the complainants to the defendants.

4. That the agreement entered into between the complainants and the defendants was procured by fraudulent means and the complainants are not, therefore, entitled to the specific performance thereof.

30 5. That the premises described in the agreement sought to be specifically performed were, through the negligence of the complainants, permitted to come into a dilapidated condition, to deteriorate in value, to become untenanted and remain untenanted and unfit for human habitation, with the result that the value has so far depreciated that to compel the defendants to accept title thereto would work an irreparable injury and damage to the defendants, thereby making it inequitable to enforce said agreement.

40 Your petitioners, therefore, pray that the said

Answer to Petition of Appeal.

decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

And that your petitioners may have such relief in the premises as to this Honorable Court may seem meet.

10

IRVING D. GRODBERG,
Solicitor of Appellants.

ALFRED BRENNER,
Of Counsel with Appellants.

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

ALFRED BRENNER,
Of Counsel with Defendants.

20

Answer to Petition of Appeal.

(Filed April 13, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JOSEPH EDELMAN and SARAH EDELMAN, his wife,
Complainants-Appellees,

and

ALTER NIDETCH and HYMAN DAVES,
Defendants-Appellants.

On Appeal from Chancery.

30

The answer of Joseph Edelman and Sarah Edelman, his wife, the above named appellees, to the petition of appeal of Alter Nidetch and Hyman Daves, the above named appellants.

40

Answer to Petition of Appeal.

10 These appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that a decree was on December 6th, 1926, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these appellees beg leave to refer thereto when the same shall be produced.

These appellees are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

20 SECLOW & NESSANBAUM,
Solicitors of Appellees

ALEXANDER SECLOW,
HARRY B. DEMBE,
Of Counsel with Appellees.

30

40

12 OCT. 1. 1927

New Jersey Court of Errors and Appeals

Between

JOSEPH EDELMAN and SARAH
EDELMAN,
Complainants-Appellees,

v.

ALTER NIDETCH and HYMAN
DAVES,
Defendants-Appellants.

On Appeal.

BRIEF OF APPELLANTS.**Statement of Facts.**

On June 10th, 1924, Joseph Edelman and Sarah Edelman, his wife, entered into a contract with Alter Nidetch and Hyman Daves, under and by the terms of which Edelman and his wife agreed to convey, and Nidetch and Daves agreed to purchase property in the City of Bayonne, known as 23-25-27 East 19th Street, the consideration being the sum of \$36,000, to be paid partly in cash and partly by the execution of bonds secured by mortgages. It was agreed that title was to be passed on August 1st, 1924 (C., pp. 4-10).

Specific performance was prayed for in a bill of complaint filed by the plaintiffs upon the refusal of the defendants to accept title. Numerous objections were raised by the defendants as a basis for their refusal to accept title, none of which, however, are important in the determination of this appeal, with the exception of the one

in which it is claimed that the defendants should be relieved of performance by reason of the fraud of the complainants in misrepresenting the cause of the vacancies existing in the buildings in question, this being the only ground relied on at the trial of the case (C., p. 90, lines 1-10).

The Court, after final hearing, determined that fraud had not been established and a decree was allowed commanding the defendants to specifically perform the contract made. From this decree an appeal has been taken into this Court.

Argument.

In view of the decisions rendered in this Court, it can be considered the settled law that specific performance will not be granted where a contract is procured by fraud.

Muller v. Weiss, 91 N. J. E. 321; 109 A. 357.

The only question, therefore, to be determined is whether the proof was sufficient to warrant the Trial Court in determining that the contract in question was procured by fraud and that the defendants should by reason thereof be relieved of performance.

The contention made at the trial was and still is that fraud was established and that the Court, therefore, erred in granting the decree appealed from, and, to determine the merit of this contention, it will be necessary to review the evidence.

Irving D. Grodberg, who is a member of the Bar of this State, having been admitted to practice in 1921 (C., p. 21, lines 21-22) testified that as the result of a telephone conversation, he went to the property described in the contract and was shown through the same by Edelman, and learned that there were thirteen vacancies in the buildings,

which had been so constructed that they could be occupied by thirty-six families (C., p. 23, lines 12-22); that in view of this fact Nidetch and Daves would not entertain the proposition of purchasing the same (C., p. 24, lines 5-15), but were finally induced to enter into the contract as the result of a representation made by Edelman that the vacancies were caused as the result of court proceedings instituted by him to compel the tenants to remove from the buildings, and not because they had voluntarily removed therefrom, the exact testimony being as follows (C., p. 24, lines 17-40):

“Q. Was Mr. Edelman there? A. Mr. Edelman was there at the time, on East Nineteenth Street. We were trying to induce Messrs. Daves and Nieditch (we, the brokers, Mr. Nesanbaum and myself) and Mr. Edelman was there, and he was trying to persuade them also, to buy the property; and Mr. Edelman said, ‘Why, those thirteen families would be there if it were not for the fact that I had put them out,’ he says; ‘I served them all with notices, and took them into the District Court, where they were dispossessed.’ Daves and Nieditch asked them, ‘Why did you do anything like that?’ He said, ‘I had a Polish party that wanted to buy one of the houses, and the condition upon which he would take that house was that the entire building had to be emptied before he would take it, because he intended making alterations on the building, and did not want to have the trouble, due to the laws in New Jersey here at the present time relative to tenants. He didn’t want to have the trouble of putting those tenants out, and therefore he wanted that one building completely empty.’”

This evidence is corroborated by the defendant Nidetch (C., p. 77, lines 2-20), who says that had he known that the buildings were vacant as the result of the inability of Edelman to procure ten-

ants, instead of as represented by Edelman that he had caused the tenants to remove therefrom, he would not have entered into the contract (C., p. 77, lines 25-40).

There is further corroboration by the other defendant Daves, who testifies to the same conversation (C., p. 80, lines 20-40; p. 81, lines 1-10). Daves likewise insists that he would not have executed the contract except for the representations made (C., p. 86, lines 1-13).

Grodberg further testifies that as the result of information brought to him by Daves and Nidetch, he caused an inspection to be made of the records to determine whether dispossess proceedings had been instituted as claimed by Edelman (C., p. 26, lines 1-13).

Grodberg further testifies that as the result of information brought to him by Daves and Nidetch, he caused an inspection to be made of the records to determine whether dispossess proceedings had been instituted as claimed by Edelman (C., p. 26, lines 28-33). The result of this inspection is shown by the testimony of Gustav F. Ruh, the Clerk of the Bayonne District Court, who testified that only two actions had been instituted in that Court to dispossess tenants (C., p. 74, lines 35-40), the first of which was brought April 11th, 1924; the second on June 6th of the same year, both of which were for non-payment of rent, and not as claimed by Edelman in his representation as the result of a notice to move (C., p. 75, lines 1-40). At the conclusion of his testimony it was conceded that the Bayonne District Court was the only Court that would have jurisdiction over dispossess proceedings involving the buildings in question.

After learning this situation, the attention of Edelman was directed thereto by Grodberg, about July 27th, 1924, a few days before it was agreed

that title was to be passed (C., p. 27, lines 19-25), which was later supplemented by a letter under date of August 13th, 1924, which it is admitted was received and which is here set forth at length because of same being inadvertently omitted from the State of the Case:

"August 13th, 1924.

Mr. Joseph Edalman,
131 Cator Avenue,
Jersey City, N. J.

Dear Sir:

As requested by you when at my office a few days ago, I am setting forth in writing my objections to the title to 23-5-7 East 19th Street, Bayonne sold by you to Nidetch and Davis. They are as follows:

1. There are Tenement House Violations, a copy of which has already been served you.
2. Lis pendens filed on mortgage.
3. Deed 1025-649 made to Frank Haas. It does not appear that Frank Haas ever deeded the property nor does his name appear in the sheriff's deed. What has become of Frank Haas' interest?
4. Deed 739-431 is an executor's deed recites One Dollar consideration.
5. Incorrect description in title deed as it omits lot 7A.
6. This property encroaches on adjoining property.

I have advised you of the objections of Davis and Nidetch relative to the trouble had by the police with the tenants in this property. They state that this is the real cause of the empties as not the fact, as you stated, that you have dispossessed all the tenants who had occupied the flats that were then empty.

Yours very truly,

IDG:BL

(Signed) IRVING D. GRODBERG."

There is no dispute about the fact that the thirteen vacancies existed, the same being mentioned and admitted by the contract (C., p. 6, lines 1-15).

There is denial, however, that the representation was made that the vacancies were created by the act of Edelman in causing the tenants to be involuntarily removed.

Edelman corroborates the testimony of Grodberg, Nidetch and Daves to the effect that the reason was asked for the unusual amount of empty apartments, but claims that he gave as the cause therefor that white people had removed from the buildings because he had rented some of the apartments to colored people (C., p. 106, lines 1-35).

In considering his testimony, however, the fact must be recognized that being a party to the suit, it would be most natural that he would not hesitate to color his testimony so that he might gain the benefit of a decree, and an examination of his testimony will undoubtedly leave the impression that in furtherance of this end he was both evasive and contradictory. Although he testifies that the reason for the vacancies was, due to the fact that colored tenants had been permitted to rent the premises, he admits that during the entire time such colored tenants were in the property that families, both white and colored, had moved in and out over a period of two years, so that this could not be the real cause of apartments being vacant.

Little credit can be given to the testimony of Nessenbaum, the witness produced by Edelman. Although all other witnesses agree on the fact that it was Daves and Nidetch who broached the subject of vacancies, Nessenbaum testifies to the contrary, that Edelman, without prompting and without suggestion from anyone, volunteered the information that thirteen vacancies existed (C.,

p. 126, lines 1-25). This same witness likewise disagrees with all other witnesses concerning the question as to whether or not a reason was assigned for the apartments being vacant. He was unquestionably present both at the buildings and later in Grodberg's office when the contract was prepared, and states that he has no recollection of any reason being assigned as the cause of the vacancies (C., p. 131, lines 1-35). Although all other witnesses agree that there was considerable discussion concerning this subject, he asserts that no particular attention was paid to it, but that Daves and Nidetch immediately agreed to execute the contract claiming that it made no difference to them, his testimony being,—

“Q. And they did not ask the reasons for the vacancies there? A. No, sir; I don't remember that.

“Q. As soon as they were told there were thirteen vacancies there they said, ‘That don't make any difference; we are satisfied to take the property’? A. Yes.

“Q. You are sure of that? A. I am sure of that; and I am sure of another thing—

“Q. Never mind that; you are sure of that? A. Of what?

“Q. That, as soon as Edelman said, ‘There is thirteen vacancies,’ they said, ‘That don't make any difference, we are satisfied to take it’? A. Yes” (C., p. 129, lines 22-35).

Alexander Seclow, a member of the Bar of this State, and a witness produced by the defense, says very frankly that he did not become interested in this contract until Edelman came to him after the receipt of the letter of August 14th. He admits that there was considerable discussion between himself and Mr. Grodberg concerning the representations which were alleged were made as an inducement to procure an execution of the contract by Daves and Nidetch (C., pp. 99-102).

There is nothing in the testimony of Seclow, therefore, which can be helpful in determining whether or not the claimed representations had been made and it must be determined whether the truth was told by Edelman and Nessenbaum on the one hand, or by Grodberg, Nidetch and Daves on the other.

As previously indicated Edelman was interested and testified in such a rambling, contradictory and evasive manner as to make his story incredible of belief. No corroboration is afforded by Nessenbaum's testimony, who seems to have no recollection whatsoever concerning any statement that might have been made relative to the reason for the vacancies.

To the contrary, the stories of Nidetch and Daves, although interested parties, remain unshaken under cross examination.

The testimony of Grodberg certainly merits serious consideration. He is a member of the Bar of this State, in good standing, and it must be presumed necessarily realizes the sanctity of his oath. Coupled with this is the further fact that there was every possible reason for him to desire that the contract should be consummated. He was acting in the dual capacity of broker, as well as attorney, and his evidence stands uncontradicted that as broker he was to receive a commission, which was contingent upon title being passed (C., p. 22, lines 1-15).

Certainly, it cannot be assumed that a member of the Bar, realizing the penalty that might be inflicted for giving false testimony, would deliberately commit perjury realizing that in so doing he would deprive himself of earning the commission which all parties agree was to be paid only in the event that title passed.

It is, therefore, our contention that his testimony should have been taken as true, and if so accepted, then it cannot be disputed that a false representation had been made, that the same was material, that it induced the making of a contract and because of its falsity should defeat the right of the complainants from receiving the benefit of the remedy accorded to them.

We, therefore, respectfully urge that there was error in the determination of the Court below which warrants a reversal.

Respectfully submitted,

ALFRED BRENNER,
Of Counsel with Appellants.

12 OCT. T. 1927

New Jersey Court of Errors and Appeals

Between

JOSEPH EDELMAN and SARAH
EDELMAN,
Complainants-Appellees,

v.

ALTER NIDETCH and HYMAN
DAVES,
Defendants-Appellants.

On Appeal.

BRIEF OF APPELLEES.

Statement of Facts.

This is an appeal from a decree of the Court of Chancery entered December 6th, 1926, wherein the Court specifically directed the defendants to perform a contract entered into between them and the complainants on June 10th, 1924, a copy of which contract is annexed to the bill of complaint and is set forth at length in the State of the Case (Case, pp. 4 to 10 inclusive). From the decree so entered, the defendants appeal, replying solely upon the ground that fraud was perpetrated by the complainants in misrepresenting the cause of the vacancies existing in the buildings sold.

POINT I.

The rule of caveat emptor applies.

There was no relation of trust between the parties. In the case of *Freedman v. Kensico Realty Co.*, 131 Atl. Rep. 916, it was held that

"The doctrine of *caveat emptor* is applicable to the purchase of real estate, and is applied as well in equity as at law."

Assuming as true that the manner in which one of the houses became partly vacant was honestly considered by the defendants as an inducing cause to purchase, it would have been quite an easy matter for them to have checked up this information by examining the records of the Bayonne District Court. In the case of *Freedman v. Kensico Realty Co.*, *supra*, it was held that

"Courts do not aid a purchaser of real estate who is carelessly indifferent to the use of ordinary caution before entering into a contract, when he is left free and uninfluenced to make examination of the property and to exercise his own judgment in determining whether or not to buy."

POINT II.

The defendants were not justified in relying and did not rely upon the alleged misrepresentations.

It is an established principle that there must be a reliance upon the fraudulent misrepresentations. Prof. Pomeroy, in Vol. 2, page 890, lays down the rule that

"Unless an untrue statement is believed and acted upon, it can occasion no legal injury. It is essential, therefore, that the party addressed should trust the representation, and be so thoroughly induced by it that, judging from the ordinary experience of mankind, in the absence of it he would not, in all reasonable probability, have entered into the contract or other transaction."

In the light of this rule, can it be maintained that

the defendants relied upon the alleged representation and that they were induced to rely upon it? The premises consisted of three large tenement houses and it is quite obvious that they were of the poorest type as will appear by reference to the contract (Case, pp. 5 and 6), the rentals being \$4 and \$5 a room. The testimony further discloses that the houses were occupied by foreigners and negroes. As a matter of fact, Hyman Daves, one of the defendants, testified (Case, p. 87, line 10) that it was immaterial to him whether the tenants were colored or white:

"Q. These houses, the three of them, are occupied almost entirely by colored people, aren't they? A. It is no difference to me whether they are colored or white."

And Hyman Daves further testified (Case, p. 89):

"Q. But he told you there was a lot of fights in there by the different tenants? A. Yes.

"Q. And it was raided by the police? A. Yes."

This testimony referred to a conversation which the defendant Daves is admitted to have had with Edelman. In view of the character of the houses, the class of tenants inhabiting them and the obvious difference of the purchasers to such an important matter as whether the tenants were white or colored, and in view of the willingness of the defendants to purchase property after being told that there had been many cases of disorder in the property and raids by the police, it seems incomprehensible that the defendants could have been swayed one way or the other because of the circumstances under which some of the tenants had already removed from the premises.

Although Grodberg was apparently acting for seller and buyers, his testimony, if credited, would show unusual solicitude for the interests of the

defendants. At the time negotiations were going on, rent laws were in effect which made it practically impossible to dispossess a tenant except for the non-payment of rent. These laws were a matter of common knowledge and were certainly known to Mr. Grodberg. Yet when the alleged statement of the dispossession of the tenants was made to him, he made no further inquiry. The defendants and Grodberg state that they were informed that Edelman had stated to them that he had actually dispossessed eight tenants because a prospective purchaser had expressed an intention to alter the building. It seems inconceivable that three men of the intelligence of the purchasers and their attorney could have placed the slightest credence on such a statement had it been made. The testimony shows that there were vacancies in the two other houses at the time the contract was made, and yet the complainant is alleged to have stated to the defendants and their attorney that without entering into any contract at all, but because of the possibility of entering into a contract with a prospective purchaser who desired to make alterations, he had dispossessed two-thirds of the tenants in the building. Aside from the fact that Grodberg must have known the impossibility of dispossessing tenants because a prospective buyer might possibly want to make alterations, the entire representation runs so counter to the ordinary experience of mankind that no reasonable men could have relied upon it. In view of the then existing landlord and tenant legislation, such a representation as is alleged to have been made should have caused an immediate examination of the records which were available in the Bayonne District Court. The failure to make such inquiry proves either that no such representation was made, and that even if made, was considered of little importance.

POINT III.

The defendants are estopped because of their failure to promptly disaffirm.

Pomeroy, Vol. 2, page 897, lays down the rule that

“All these considerations as to the nature of misrepresentations require great punctuality and promptness of action by the deceived party upon his discovery of the fraud. The person who has been misled is required, as soon as he learns the truth, with all reasonable diligence to disaffirm the contract, or abandon the transaction, and give the other party an opportunity of rescinding it, and of restoring both of them to their original position. He is not allowed to go on and derive all possible benefits from the transaction, and then claim to be relieved from his own obligations by a rescission or a refusal to perform on his own part. If after discovering the untruth of the representations, he conducts himself with reference to the transaction as though it were still subsisting and binding, he thereby waives all benefit of and relief from the misrepresentations.”

This principle has been applied in the case of *Faulkner v. Wassmer*, 77 N. J. Eq. 537, 77 Atl. Rep. 341.

The contract was dated June 10th, 1924. The deed was to have been delivered August 1st next ensuing the date of the contract. That on August 14th, 1924, a list of objections was handed to the complainant by Mr. Grodberg, seven in number. This list was in the form of a letter and marked “Exhibit C-6,” and although a copy of it does not appear in the state of the case, it may be found on page 5 of the appellants’ brief. In the state of the case, the letters which passed between the attorneys of the parties are not set forth. The

following letters were written by Mr. Seclow to Mr. Grodberg:

EXHIBIT C-5

Alexander Seclow
473 Broadway
Bayonne, N. J.

September 4th, 1924

Irving Grodberg, Esq.
590 Avenue C
Bayonne, N. J.

Dear Sir:

With further reference to the Edelman title, you do not state in your letter your attitude toward the other objections in your letter of the 14th ult. Am I to understand you are satisfied as to all the matters except the tenement house violations? If so, will you also kindly inform me whether or not your client will take title if all tenement house violations other than painting are removed?

Mr. Edelman informs me that if your client is willing to take title if the violations are removed, he can have such violations remedied within one week from the date you notify him that you will take title.

Very truly yours,

ALEXANDER SECLOW

AP:5807

EXHIBIT C-7.

Alexander Seclow
473 Broadway
Bayonne, N. J.

November 14th 1924

Irving Grodberg, Esq.
590 Avenue C
Bayonne, N. J.

Dear Sir:

With further reference to the matter of the Edelman-Nidetch & Daves contract, Mr. Edalman can acquire a strip of land 1.40 feet in width, if your clients will state that they will take title when such strip is acquired.

You will appreciate the fact that Edalman does not desire to acquire this land if your clients have no intention of consummating their contract. All the original objections have been disposed of and your last claim concerning the shortage of land certainly should have been made before Edalman went to the expense of placing the houses in condition complying with the tenement house laws. Mr. Edalman questions the good faith of your clients in raising this point at this time as they certainly must have had some prior knowledge of it.

Kindly advise?

Very truly yours,

AP:5807

ALEXANDER SECLOW

These letters and the testimony of the witnesses, Grodberg and Seclow, conclusively negate any suggestion of a rescission. The defendants conducted themselves in such manner as to conserve any benefit that could arise from the transaction. The letter from the witness Grodberg to Seclow, which follows, again shows that the defendants had no intention of rescinding for if they had felt themselves aggrieved by fraud, there would have

been no necessity of any conference to reach an "understanding":

EXHIBIT C-8.

Irving D. Grodberg
590 Avenue C
Bayonne, N. J.

October 24th 1924

Alexander Seclow, Esq.
473 Broadway
Bayonne, N. J.

Re: Davis to Nidetch.

Dear Sir:

I would like to arrange a conference between yourself, Mr. Adelman, Mr. Davis, Mr. Nidetch and myself, to see if we can reach an understanding in the above entitled matter.

Very truly yours,

IDG:BL

IRVING D. GRODBERG.

There would have been nothing to negotiate over. The only reasonable action that they would have taken under such circumstances would have been a peremptory demand for the return of their deposit and expenses.

POINT IV.

The very subject-matter of the alleged misrepresentations was considered and disposed of by the written agreement of the parties.

The contract, which was prepared by Mr. Grodberg, who was certainly not unfriendly to the defendants, contains this clause:

"This contract is entered into upon the knowledge of the parties as to the value of the

land and whatever buildings are upon the same, and not on any representations made as to the character or quality" (Case, p. 7, lines 34 to 38).

The misrepresentations are alleged to have been made concerning the occupancy of one of the buildings. Conveyancers with wide experience will readily note the unusual fulness of detail as to this very subject-matter (Case, p. 5). These elaborate particulars would indicate that every possible phase of the matter of tenants and their rentals had been reduced to writing. Yet the defendants now contend that a most important and material matter was discussed, but was not inserted in the contract. These details are prefaced by the introduction "It is represented by the parties of the first part," etc. (Case, p. 5, line 18) and then follows a recital of a notice given to a tenant for removal. It would indeed be a dangerous precedent to permit testimony to supplement a matter that was so painstakingly provided for by the parties themselves in writing.

POINT V.

The testimony is convincing that no misrepresentations were made.

The defendants in their brief attempt to build up a case of fraud by extolling the veracity of their own witnesses and more especially the lofty disinterestedness of Grodberg, and on the other hand they endeavor to demonstrate the utter worthlessness of the testimony of the complainant and his witnesses. It must occur to any person who has observed a witness on the stand that it is impossible to translate into cold print the manner and demeanor of the witness, the favorable or unfavorable atmosphere and effect created by

the testifying witnesses, the impression left upon the hearer as to the mentality of the witness and the reaction upon the hearer by the intonation of the voice, the gestures, the faltering manner, or his overaggressiveness in answering. The complainant is alleged to have inveigled the defendants into a contract which they otherwise would not have made. With an affirmation on one side and a denial on the other, in determining the truthfulness of the witnesses, who is more competent than the Vice-Chancellor who sat and observed and heard the witnesses?

But while the impression made upon the Vice-Chancellor should have great persuasive force in a situation where evidence is so conflicting, the printed record alone repudiates the charge of fraud. We have already stated that it was highly unreasonable that the alleged representation, even if made, could have been given serious consideration by the purchasers. Under the tenancy laws as then in effect, the tenants could not be dispossessed by the complainant and the defendant and their attorney undoubtedly knew it. Their statement that they believed that on the strength of a possible sale the complainant had almost emptied his building of tenants, is absurd, especially in view of the vacancies in the other two houses. Their story lacks plausibility and its mere narration creates an atmosphere of unbelief; it imposes a severe strain on one's reason that such a representation was made and credited.

The record presents instances of contradictory testimony upon the part of the defendants which must have been very damaging to them at the hearing. Mr. Grodberg states that he ascertained that the representations were untrue about July 27th (Case, p. 42, line 32). On Case, p. 26, lines 20 to 41; p. 27, lines 1 to 25, the witness, Grodberg, testified as follows:

"Q. Did you subsequently make an investigation for the purpose of verifying whether or not these tenants had moved as a result of notice and dispossession in the District Court?

A. Well, Mr. Daves and Mr. Nieditch made an inspection before passing the title, and they were advised that nobody had been dispossessed in that building, that they had moved voluntarily.

"Q. And what did you do as a result of that information being carried to you? A. I had an inspection of the docket of the Bayonne District Court made, and found that no such dispossessions had been made by Mr. Edelman in those buildings.

"Q. What did your examination to the District Court docket show as to the number of dispossessions that there had been, and how those dispossessions came about? A. I did not personally make the inspection, my clerk made it, and he is in court.

"Q. And the Clerk of the Court is here to testify to it? A. The Clerk of the Court is also here, and the clerk in my office who inspected it.

"Q. Did you make known to the sellers of this property what you had found out concerning these vacancies—that his representations were not true? A. Mr. Edelman came around at the time of passing title, which was a couple of days before—two or three days before—and I spoke to him about it; and I also told him about some objections to the title. He came in two or three times in between this—

"The Vice-Chancellor: You say two or three days before the title was passed?

"The Witness: That is right—about the 26th or 27th.

"Q. Before the time fixed for passing the title? A. Before the time fixed for passing the title; the time was August 1st, I believe, and this was about July 27th—two or three days before.

"Q. You say that you spoke to him at that time about this situation, and also as to other objections? A. That is right."

His clerk, Fred Feinberg (Case, p. 74, lines 19 to 21), testified that the inspection was made by him the week of the hearing in the Court of Chancery, *a year and one month* after title was scheduled to have closed. The witness Grodberg testified (Case, p. 24, lines 15 to 20) that the misrepresentation was made at the property. The witness Nidetch testified that the misrepresentation was made for the first time when the contract was being prepared in Mr. Grodberg's office (Case, p. 79, line 35). The other defendant, Daves, obviously sensing the conflict, sprang into the breach and attempted to save the situation and he testified that the statements were made in both places (Case, p. 80, line 41; p. 81, lines 1 to 5), but even the printed record of his testimony lacks conviction because the question was evidently aimed to elicit a favorable answer:

"Q. And what is your recollection as to where that conversation was had—was it at the buildings, or at Mr. Grodberg's office? A. It was outside of the building at East Nineteenth Street. Then, after that, we had the same talk in the office, too, you know.

"Q. You mean you had the talk in both places? A. Yes, sir."

The defendant, Daves, must have again left a most unfavorable impression in the following testimony (Case, p. 81, lines 33 to 37):

"Q. What did you say to that? A. Well, it was funny to me; and I said, 'What is the idea to move them out?' And he said, 'Well, that is the way the man wants it; he wants to alter the house.'"

It is difficult to believe that the defendant Daves did not continue to believe that the idea of dispossessing tenants was "funny" even in view of the alleged reason given by complainant.

But the untruthful witness, even though shrewd, is often caught unaware, for he not only contradicted the testimony of Grodberg, but his own testimony (Case, p. 82, lines 18 to 29) when he shifted the scene of discussion as to the vacancies to Grodberg's office. Daves contradicts Grodberg and the defendant, Nidetch, in the instance already mentioned (Case, p. 89, lines 1 to 3), wherein he testified that he knew of fights and police raids in the premises. There was no testimony that Daves ever had any conversations with the complainant except in the presence of Grodberg and the co-defendant, Nidetch. Yet, the two last-named witnesses had heard nothing about the disorders and the raids until a long time after the contract. Daves, on the other hand, apparently had no objections to buying a house which had been inhabited by tenants of mixed color and which was the scene of fights and police raids. Opposed to the testimony of the defendants and their witness, Grodberg, which in many material respects cannot be reconciled, there is the testimony of the witness Ashea Nessenbaum and of Alexander Seclow. The testimony of Edelman is reasonable and must carry conviction. Nessenbaum, who is a co-broker with Grodberg, corroborates Edelman and the testimony of Alexander Seclow stands entirely uncontradicted. Seclow testifies that no mention was made by Grodberg to him of the dispossession of tenants for a prospective purchaser who desired to alter the property. His testimony which stands uncontradicted was to the effect that the houses were the scene of fights among the tenants. He testified to the effect that Grodberg told him the houses were in bad repute because of a visit by the patrol wagon in consequence of a fight among the tenants (Case, p. 91, lines 21 to 35). There had been no question of any misrepresentations,

but it was rather the effect upon the houses by events that had transpired. This was again brought out (Case, pp. 99 and 100). Much light is thrown upon the situation by the testimony of Seclow concerning the negotiations carried on between them concerning the various infirmities in the title and mentioned in Grodberg's letter of August 14th. These negotiations were carried on over a period of months and at no time did Grodberg state that his clients would not take title, but that the discussions were for the purpose of straightening out any imperfections in the title and as a result Seclow went to considerable effort for this purpose. That even at the time of the tender of the deed in Grodberg's office, nearly one-half year after title was to have closed, no complaint had been made by the defendants, Daves and Nidetch, about any misrepresentations. That as a matter of fact, Nidetch at that time (Case, p. 94, line 35) was willing to forfeit the deposit if he could be released from further obligation under the contract.

The complainant testified that he had requested Grodberg for permission in writing from the defendants to rent vacant apartments at a lower rental (Case, p. 108, lines 22 to 40; p. 109, lines 1 to 40; p. 110, lines 1 to 20). In this Edelman is corroborated by Grodberg (Case, p. 62, lines 15 to 31; p. 63, lines 17 to 40, and by Nessenbaum (Case, p. 125, lines 17 to 33). Grodberg testified that he took up with his clients the matter of renting at reduced rates and that he informed Edelman that it would be all right to do so (Case, p. 63, lines 28 to 40). Strangely enough Daves emphatically denies that he consented to the renting at lower rental or authorized Grodberg to consent to the same. A more decided conflict would be difficult to conceive (Case, p. 89, lines 30 to 40).

The testimony of the complainant as to the dis-

possession of the disorderly tenant shows that he concealed nothing (Case, p. 107, lines 39 and 40; p. 108, lines 1 to 21) and this very information was embodied in the contract.

The defendants in their brief on page 8 seem to stress the infallibility of Grodberg's testimony because of his vocation, and also because of his testimony apparently against his pecuniary interests. We are not impressed that the oath of a member of this bar is more sanctified than that of any other witness. As to the matter of the contingency of his commission, it is at least probable that his reward in the event of the defendants' success in this matter would greatly exceed his share of the brokerage commission which is but \$400. Not only does the evidence of the complainant and his witnesses greatly outweigh the evidence of the defendants and their witnesses, but even if there was an even balance, the complainant would still be entitled to his decree. It was held in *Babirecki v. Virgil*, 130 Atl. Rep. 728, 98 N. J. Eq. 118:

"Where a transaction is capable of two constructions, one that comports with honesty and one with dishonesty, the former should be adopted by the courts."

CONCLUSION.

The record of the case is illuminating upon the conduct of the defendants and their motives throughout the entire transaction. At about the time the title was to have been closed doubts began to creep into their minds concerning the wisdom of their purchase. They evidently were not sure that they had made a bad bargain and probably desired to hold the matter *in fieri* for as long a period as they could so that in the meantime they could resell, or hold on if property enhanced

in value, but as time went on they found that real estate values were declining, and while hitherto they had seized upon every available pretext to delay the closing, the notice to make time of the essence brought an end to this temporizing and they were forced to take or leave the property. Although they contended that from the very beginning they had been deluded about the tenancies they nevertheless exhibited sufficient attachment to the property to cause the complainant to make extensive repairs and alterations for the removal of tenement house violations, and caused him to purchase a strip of land because of an error in the description made in the contract. They undoubtedly speculated upon the chances of the property increasing in value and when they found that it was otherwise they offered to forfeit their deposit rather than take the property, and when this was refused they claimed misrepresentation.

We therefore respectfully urge that there was no error in the determination of the Court below and that its judgment should be affirmed.

Respectfully submitted,

ALEXANDER SECLOW,
HARRY B. DEMBE,
Of Counsel with
Complainant-Appellee.