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BILL OF COMPLAINT.

In Chancery of New Jersey

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

The complainants, Harry S. Katzin and Bes-
sie V. Katzin, his wife; Herman Z. Baum and
Freda Baum, his wife; Moritz L. Cohen and
Sarah Cohen, his wife, and Samuel Katzin and
Ida Katzin, his wife, residing in the City of
Newark, County of Essex and State of New
Jersey, respectfully show:

10

1. That on the 17th day of September, 1925,
complainants entered into a written agreement
with one Harry Kruvant, of the City of Newark,
County of Essex and State of New Jersey, for
the sale of certain premises in the City of New-
ark, aforesaid, a copy of which agreement is
hereto attached, made part hereof and marked
"Exhibit A."

20

2. In and by said agreement it was provided
that the party of the second part would pay to
the said complainants, for the premises men-
tioned in said agreement, the sum of \$155,000.00,
to be paid as follows: \$2,000.00 on the execu-
tion of said agreement; \$3,000.00 as additional
deposit to be paid on or before September 30,
1925; cash upon passing of title, \$45,000.00; as-
suming the payment of a mortgage held by the
U. S. Savings Bank, in the sum of \$20,000.00;
and executing a purchase money mortgage to
complainants in the sum of \$85,000.00.

30

3. The premises referred to are described in
said agreement as being "located on the south-

40

Bill of Complaint.

west corner of Plane and Academy streets, Newark, N. J., and being better described in a survey made by Lehlbach Bros., dated October 23, 1920, and known as No. 46371, as described on the said survey, said conveyance is to include the entire tract with the exception of that part of the tract which is set out on the said survey, which is marked '6.61 over line,' which is in rear of the tract to be conveyed, and it being on the left side of the rear, that part being formerly owned by one Vliet." The conveyance was further made subject to tenancies mentioned in said agreement.

4. Said agreement further provided that conveyance was to be made by the complainants to the said Harry Kruvant, the defendant herein, on or before the 17th day of December, next ensuing the date thereof.

5. Said agreement was duly signed by all of the complainants herein named, as well as the said defendant, and delivery was made of a copy of the same to the said Harry Kruvant, who accepted the same, paying, in accordance with the terms of said agreement, the sum of \$2,000.00, in cash, on the execution of said agreement, and the further sum of \$3,000.00, in accordance with the terms of said agreement.

6. Complainants have heretofore tendered themselves ready, able and willing to perform all of the covenants and conditions by them to be performed, as provided in said agreement mentioned, and they did, on December 17, 1925, and all days subsequent thereto, tender to the said defendant, a good and sufficient deed in law, and in accordance with the terms and conditions of said agreement, properly executed by them,

Bill of Complaint.

and they did, in return therefor, demand that the consideration agreed to be paid and given, be paid and given by the said defendant, but he, the said defendant, has hitherto wholly refused and still does refuse to take a conveyance of said mentioned premises, and to pay for the same in accordance with the terms and conditions of said agreement mentioned. 10

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

1. That Harry Kruvant, the defendant herein, may answer this bill of complaint, without oath, and each and every statement herein made.

2. That the said defendant, Harry Kruvant, be decreed specifically to perform his part of the said agreement, so entered into between him and said complainants, and to perform each and every act, matter and thing on his part to be performed, as this Court may direct. 20

3. Complainants further pray that a writ of subpoena may issue commanding the said Harry Kruvant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

And your complainants will ever pray, etc. 30

BENJAMIN M. WEINBERG,
Solicitor for Complainants.

Bill of Complaint—Exhibit A.

“EXHIBIT A.”

THIS AGREEMENT, made the Seventeenth day of September, in the year of our Lord One Thousand Nine Hundred and Twenty-five, between Harry S. Katzin, Bessie V. Katzin, his wife, Herman Z. Baum and Freda Baum, his wife,
10 Moritz L. Cohen and Sarah Cohen, his wife, and Samuel Katzin and Ida Katzin, his wife, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part; and Harry Kruvant, of the City of Newark, in the County of Essex and State of New Jersey, party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Hundred Fifty-five Thousand Dollars
20 (\$155,000.00), 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 party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by deed of Warranty, free of all encumbrances, except
30 as hereinafter mentioned, on or before the Seventeenth day of December, next ensuing the date hereof, ALL that lot, tract, or parcel of land and premises, hereinafter particularly described situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

Being the premises located on the southwest corner of Plane and Academy Streets, Newark, N. J.; and better described in a survey made by Lehlbach Bros. dated October 23rd., 1920 and
40 known as No. 46371 as described on the said

Bill of Complaint—Exhibit A.

survey, said conveyance is to include the entire tract with the exception of that part of the tract which is set out on the said survey which is marked "6.61 over line" which is in rear of the tract to be conveyed and it being on the left side of the rear, that part being formerly owned by one Vliet.

10

The deed of conveyance is to be made subject to existing present tenancies and also subject to the leases that now cover the premises which leases are held by Michael H. Demitry and Pete Callas, which lease is dated April 20, 1924, for the shed and stable at 277 Plane Street and the lease held by Harry Katz dated March 1st., 1925 for the store and part of cellar at 275 Plane Street and also the premises known as 104 Academy Street including the cellar thereof and also subject to whatever rights Messrs. Friedman & Schwartz may have in and to a lease dated May 9th, 1923 for the store on the ground floor and one apartment above the ground floor known as 373 Plane Street also subject to whatever rights one Angelo Manos may have in and to lease dated September 1st, 1924.

20

And the said Harry Kruvant, for himself, his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, . . . heirs, executors, administrators and assigns, that the said party of the second part will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of One Hundred Fifty-five Thousand Dollars (\$155,000.00), as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

30

40

Bill of Complaint—Exhibit A.

	On execution of this agreement, which is a receipt therefor.....	\$ 2,000.00
	By additional deposit of.....	3,000.00
	to be paid on or before September 30, 1925.	
	Upon closing of title in cash or certified check	45,000.00
10	By assuming the payment of a mortgage now held by the U. S. Savings Bank in the sum of.....	20,000.00
	which mortgage bears interest at 6% payable semi-annually	
	By the party of the second part executing a purchase money mortgage to the party of the first part in the sum of	85,000.00
20	which mortgage shall be for a period of three years from the date of closing of title and which mortgage shall bear interest at the rate 6% and to be payable semi-annually, said mortgage to be accompanied by a bond in the penal sum of \$170,000.00, said bond and mortgage to be prepared by Silver & Silver in accordance with a form satisfactory to the	
30	parties of the first part and the said mortgage to contain the usual 30 and 60 day default clauses.	

It is further understood and agreed by and between the parties hereto that if in the event the parties of the first part desire to pay off the mortgage of Twenty Thousand Dollars (\$20,000) held by the U. S. Savings Bank, that the party of the second part will hereby consent to permit the parties of the first part to pay off the aforementioned mortgage and the party of the second

40

Bill of Complaint—Exhibit A.

part agrees to execute in favor of the parties of the first part a new mortgage which shall be added to the balance due on the aforementioned purchase money mortgage of \$85,000.00, so that the parties of the first part shall have as a lien against the aforementioned premises the mortgage, to wit, in the sum of \$105,000.00, which mortgage shall be due and payable within three years from the date of closing of title in accordance with the terms hereinbefore mentioned. 10

It is further expressly understood and agreed by and between the parties hereto that the party of the second part will accept title to the premises hereinbefore mentioned subject to a certain padlock proceedings now pending against premises 273 Plane street, Newark, N. J., in which the U. S. of America is complainant and Herman Schwartz, Harry S. Katzin, Morris L. Cohen, Samuel Katzin and Herman Z. Baum are defendants, which proceedings are now pending in the United States District Court for the District of N. J. 20

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. 30

AND IT IS FURTHER AGREED, by the parties to these presents, that the said parties of the second part, his heirs and assigns, may enter into and upon the said land and premises on the 17th day of December, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

And it is further agreed, by the parties hereto that the said deed of Warranty shall be delivered and received at the office of Silver & Silver, 31 40

Bill of Complaint—Exhibit A.

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.

And the said Bessie V. Katzin, wife of Harry S. Katzin, Freda Baum, wife of Herman Z. Baum, Sarah Cohen, wife of Moritz Cohen and Ida Katzin, wife of Samuel Katzin, being by me privately examined, separate and apart from their said husbands, further acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, Freely, without any fear, threats or compulsion of their said husbands. 10

PAUL C. NAGEL, 20
Notary Public of N. J.

30

40

*Answer.***ANSWER.**

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}	
10	HARRY S. KATZIN, <i>et al.</i> , Complainants,		<i>On Bill, etc.</i>
	<i>and</i>		<i>Answer.</i>
	HARRY KRUVANT, Defendant.		

The defendant, answering the bill of complaint filed herein, says:

- 20
1. He admits paragraphs 1, 2, 3, 4 and 5.
 2. He denies paragraph 6.

FIRST SEPARATE DEFENSE.

30

1. That the time of closing of the contract mentioned and described in the bill of complaint herein was from time to time extended from December 17, 1925, to January 15, 1926, at which time the defendant appeared at the place set forth in the agreement, at the office of Silver & Silver, 31 Clinton street, Newark, New Jersey, and was then and there ready, able and willing to perform all of the covenants and conditions of the agreement mentioned and set forth in "Schedule A" annexed to the bill of complaint, but that the complainants failed to appear at said time and place or to produce or offer any deed whatever for the premises mentioned and described in the bill of complaint herein.

40

Answer.

SECOND SEPARATE DEFENSE.

1. That on or about the fifteenth day of January, 1926, the complainants tendered to the defendant at the office of Maurice S. Maurer, at about 4 o'clock in the afternoon of the said date, a deed for the premises mentioned in said agreement, which said deed contained certain conditions, reservations, and exceptions not in accordance with the terms and conditions of the said agreement of sale, but in controvention thereof, provided "That this conveyance is made expressly subject to such facts which are disclosed in the survey heretofore mentioned," which survey referred to a survey of Lehlbach Bros., made and dated the seventeenth day of October, 1925. 10

2. That the conditions and exceptions contained in said survey showed many and divers encroachments and encumbrances on said land, which said encroachments were of such vital importance and of such a serious character, and of such an extensive nature, consisting of the fact that there were no rear walls to the said premises; that there were no southerly walls to the said premises; that there were encroachments upon streets and highways known as Plane street and Academy street, in the said City of Newark, and that the said contract by reason of the said encroachments and defects were so material and of such a substantial nature that a Court of Equity would not, in the exercise of its sound discretion, enforce said contract. As to these defects and encroachments, the nature and extent of which, the said defendant might by the very nature thereof become involved in a lawsuit with the adjacent owners respecting the 20 30 40

Answer.

right to use said walls and with the City of Newark respecting the right to maintain area-ways, cellar ways, bay-windows, etc., and if the said adjacent buildings should be removed the buildings now erected upon said premises might be and become wholly valueless to this defendant and these encroachments affect materially the salability and marketability of the said title.

10

THIRD SEPARATE DEFENSE.

1. This defendant says that the complainants, nor any of them, have ever been able to convey the lands and premises set out in the bill of complaint, and in the agreement thereunto annexed, in accordance with the terms, conditions, and covenants contained in said agreement.

20

FOURTH SEPARATE DEFENSE.

1. This defendant has never refused and does not now refuse to accept a deed for the said premises, in accordance with the terms of said agreement, and tenders himself ready and willing to perform said contract, in accordance with the terms of said agreement.

Dated, February 11, 1926.

30

MAURICE S. MAURER,
Attorney of Defendant.

40

Offer of Documentary Evidence.

IN CHANCERY OF NEW JERSEY.

May 13, 1926.

*Between*HARRY KATZIN, *et al.*,
*Complainants,**and*HARRY KRUVANT,
Defendant.

10

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chambers, Newark, New Jersey, in the presence of Benjamin M. Weinberg, Esq., for complainants; Jacob L. Newman, Esq., for defendant. 20

Mr. Weinberg. I offer contract dated September 17, 1925, made between the parties to this suit.

(Paper marked Exhibit C. 1.)

Mr. Weinberg: I offer in evidence certificate 46371, dated October 23, 1925, by Lehlbach Brothers, referred to in the contract. 30

(Paper marked Exhibit C. 2.)

Mr. Weinberg: Will you admit a tender of that deed?

Mr. Newman: I admit that there was a deed tendered on—what was the date? January 15th. If you will let me see the deed and I look at the bottom of it, I can tell whether that is the deed that was tendered. Oh, yes, this is the deed that was tendered. "This conveyance is made expressly subject to such fact as is disclosed in such survey." I admit that deed. 40

Herman D. Lehlbach, direct.

Mr. Weinberg: There are no stamps on it, but the proof will show that we had a hundred and thirty-five dollars in stamps.

Mr. Newman: We do not raise any question about that.

10 The Court: Well, let the deed be marked.
(Paper marked Exhibit C. 3.)

Mr. Weinberg: Is there any question as to whether the tender was made in or out of time? I understand you folks were not ready on that day and Mr. Silver fixed the day.

Mr. Newman: What do you mean we were not ready—we refused to take the title?

20 Mr. Weinberg: You make no point of the question of time of the tender of this deed?

Mr. Newman: Oh, no.

Mr. Weinberg: We will get down to the main question involved.

The Court: Mr. Newman makes no point of that.

30 Mr. Weinberg: Title never passed and you never paid any money. I think the complainant ought to rest.

Mr. Newman: All right. Mr. Lehlbach.

HERMAN D. LEHLBACH, sworn for the defendant.

Direct examination by Mr. Newman.

Q Mr. Lehlbach, you made this survey that has been offered in evidence here? A It was made in our office.

40 Q Are you familiar with it? A Yes.

Herman D. Lehlbach, direct.

Q Will you tell me whether the second floor wall and chimney of the building adjoining on the west is built on the top of the first floor wall of our building?

Mr. Weinberg: I object.

Q (Continuing.) And to what extent—

10

Mr. Weinberg: I object to the question on the ground—

Q (Continuing.) —and to what extent does it give the adjoining land owner the right of support?

Mr. Weinberg: I object to the question on the ground that it is wholly immaterial unless it appears that the question now refers to some condition which is not shown on the survey dated October the 17th, 1925, known as 46371.

20

The Court: Does that situation appear on that map?

Witness: I don't see it, Mr. Newman.

Q Well, let us see whether we can show it to you. This is the same, isn't it (indicating)?

30

A This is the survey made at the later date.

Q What does this show? A This here. I understood you to say chimney.

Q Well, second floor wall? A Yes, that is true. I understood you to say chimney.

Q Does that survey show that condition? A Yes.

Q And to what extent, what month?

Mr. Weinberg: Now, one moment. I do not—

40

Herman D. Lehlbach, direct.

Mr. Newman: Why, that is your survey.

The Court: I do not see any reason why Mr. Newman cannot bring out on the survey that you introduced in evidence—

Mr. Newman: That is what I am going to do.

10 Mr. Weinberg: I am objecting to it for the reason— Pardon me. My first objection is predicated on the notion that he was examining on the later survey. I object on the ground, further, that irrespective of what is shown on the survey the defendant has contracted to take the property.

Mr. Newman: That is your point.

Mr. Weinberg: I feel the objection should be placed now with the testimony.

20 The Court: I will overrule the objection.

A About thirty feet.

Q Isn't that the extent, 88.49? A What was your question?

Q To what extent does the second floor wall of the adjoining building rest on the top of our wall, first floor?

30 Mr. Weinberg: Will you make your question include the fact that it is shown on our survey?

Q (Continuing.) As shown on this survey.

Mr. Newman: Everything that I say is shown on your survey.

A About sixty feet.

40 Q Now, will you take a look at the first floor wall of the premises in question on the west and

Herman D. Lehlbach, direct.

tell me how much it leans over on the adjoining land, and to what length, on the survey offered in evidence by you?

Mr. Weinberg: To save time, it will be understood, inasmuch as Mr. Newman says that all of his questions are relating to the state of facts shown on Certification 46371, that I need but place one objection, then. 10

The Court: Yes, that is all.

Mr. Weinberg: It says this wall is eight one-hundredths over the line.

Q For what distance? A Just at the corner.

Q Just at the corner. Will you look at the southwest part of the building on the premises in question for twenty-eight feet and state whether it was opened and has no wall at all? 20

A It has no wall.

Q And will you state whether the roof of the premises in question is being supported by the wall of the adjoining land owner and there is no division wall in the crack between the premises and the adjoining lands for a distance of at least twenty-eight feet? A That is true.

Q Now, will you look at the most westerly side of the south wall of the premises in question and see whether it is built approximately three inches over the line against the adjoining building to the extent of about twenty feet? A It is entered on this survey, this building bulges one and a half inches over the line, on line at the bottom just at the corner. 30

Q To what extent? A Just at the corner.

Q Will you tell me whether the wall running north to south in the southwestern corner of the premises in question supports the roof of the 40

Herman D. Lehlbach, direct.

adjoining building, which has no wall, giving the adjoining land owner right to the roof support to the extent of approximately twenty-two feet?

A That is true.

Mr. Weinberg: I object to that question.

10 Mr. Newman: If your survey shows it?

Mr. Weinberg: I object to that because you include the legal proposition.

The Court: Yes.

Q Well, omitting that part, just tell what it shows in your own words. That will be better.

A It shows that this building has no wall—uses the adjoining building to the east for roof support.

20 Q All right. Does the survey in front of you also indicate a right of way over the southwest portion of the roof by the adjoining land owner over the bridge and boardwalk on the roof? A It indicates a passageway, but whether it is a right of way I don't know.

Q And indicates the platform there? A Yes, sir.

Q And the boardwalk? A Yes.

30 Q Yes. And does the survey before you indicate any encroachment along Plane and Academy streets?

Mr. Weinberg: I object to the use of the word "encroachment."

The Court: Yes.

Q Well, what does the survey there show along Plane and Academy?

40 Mr. Weinberg: Let me get the objection in. I object to the use of the word "en-

Herman D. Lehlbach, cross.

croachment." The physical situation may be given, but that word "encroachment" also has a legal meaning.

The Court: I will sustain the objection.

Q Will you tell us what the survey shows as to the condition of the building along Plane and Academy streets? A The survey shows that the southerly corner of the street, number 277, is on the street line. It shows that the north-easterly corner of the street, number 271, encroaches twenty one-hundredths of a foot in the street. It also shows that the steps, cellarways, show windows, areas and railing, railings and stoops encroach beyond the street line. 10

Mr. Weinberg: Will you say "extend" rather than "encroaches," please? 20

Witness: Well, "extends."

Cross examination by Mr. Weinberg.

Q To make it perfectly clear, you have been using your own certificate 46371? A Blue print copy of it, yes.

Q Made September or October 17, 1925? A October 23, 1920.

Q You have made another survey since that date? A Made in our office, yes. 30

Q And did you personally make either one? A No, neither one.

Q Do you know how long those things that you have referred to have existed? A I can't say.

Mr. Newman: I object to that. I do not see how that is material.

The Court: He says he can't say. 40

Herman D. Lehlbach, cross.

Q Do you recall the property in question?

A Yes.

Q Can you tell us what kind of property it is?

10 Mr. Newman: I object to that. I do not think that is important. Immaterial.

The Court: I will allow it.

Mr. Newman: All right. Allow me an exception.

A It is obsolete property. It consists of old frame and brick buildings.

Q A number of them in the nature of sheds?

Mr. Newman: I object to that because it is leading.

20 The Court: I will sustain the objection.

Q (By the Court.) What kind of buildings are there on there? A They are old buildings.

Q Does the daylight come through some of the roofs? A Well, I can't say.

Q Do you know how old they are, Mr. Lehlbach? A I have known most of them for over forty years.

30 Q And, without leading you, are they dilapidated? A They are not in good condition.

Mr. Newman: We know they are old buildings. That is admitted. I do not think it is necessary to go into that. They are very old.

Q Did you tell us about the extension of that old building, 661, over the line in the corner, in the southwest corner of the property? I don't
40 think you were asked concerning it.

Herman D. Lehlbach, re-direct—re-cross.

Mr. Newman: Here. It says the end of wall built 023 over the line against the adjoining building, but this is what you want.

Mr. Weinberg: What they call the left side rear.

The Court: Extension 661.

Q Then you do find that that survey, marked 661, over the line on the southwest corner of the premises in question? A Yes, sir. 10

Q And that was found, of course, by you or your office to have existed at the time you made that survey? A Yes, sir.

Re-direct examination by Mr. Newman.

Q You have made another survey in 1925, which I show you. A It was made in our office. 20

Q And it shows substantially the same things, does it not? A Well, I haven't examined it. I think it does. This is merely a re-survey of the first one and I think the conditions are about the same with the addition of this note.

Q Addition to what note? A We have marked a note: "Caution—This survey should be checked after the buildings are removed for construction purposes." 30

Mr. Weinberg: What was the date of the survey made by your office just referred to?

Mr. Newman: October 17, 1925.

Re-cross examination by Mr. Weinberg.

Q There are no other objections, or, as you call them, encroachments shown on the survey made by your office, October, 1925? 40

Harry Kruvant, direct.

Mr. Newman: I object to the question because he uses the word "encroachment."

Mr. Weinberg: I said "as you call them."

Mr. Newman: Oh, that is what you call them.

10 A I don't know. For this reason I have not compared the two surveys.

Mr. Weinberg: It is admitted that the premises are in the same condition at the time of the tender of the deed as they were shown on the survey of October 17, 1925.

20 HARRY KRUVANT, sworn for the defendant.

Direct examination by Mr. Newman.

Q Mr. Kruvant, you are the defendant in this case and you signed the contract that has been offered in evidence and marked C. 1 here? A Yes, sir.

30 Q Did you ever see the survey which lies in front of you there—do not answer until I am through—prior to the time you signed this agreement, or at the time you signed this agreement?

Mr. Weinberg: Objected to on the ground it is wholly immaterial, because the contract provides for it. If he cares to pass it up, that is his carelessness.

The Court: Well, he signed this contract with his eyes open.

40 Mr. Newman: There is no doubt about it.

Harry Kruvant, direct.

Mr. Weinberg: And he must, perhaps, abide by the contents of the contract.

Mr. Newman: He will have to abide, by your construction, by the contents of this contract. I desire to say—I want to make an offer, and then your Honor may overrule it, that at no time prior to the making of this contract, or at the time of the making of the contract did this gentleman see the survey. That is all I desire to say—or was any survey offered to be shown to him. 10

The Court: I cannot see what that has to do with it, because the contract, if it is an enforceable contract, says he must take it according to the survey, mentioning the survey.

Mr. Weinberg: “As described in the survey.” 20

The Court: Yes. If he did not want to take it according to the survey, it is his fault. I think the objection is well taken.

Mr. Newman: Very well. Allow me an exception, or note my objection, rather.

Q Mr. Kruvant, you did not take title to this property? A No, sir.

Q And you refused to take it, did you? A I did. 30

Q And your reason for the refusal was what?

Mr. Weinberg: If the reason was stated, it is material; if it was not, it is immaterial.

Mr. Newman: What do you mean, “stated”?

Mr. Weinberg: Stated to us, not a secret reason. 40

Maurice S. Maurer, direct.

Q (By the Court.) Did you state your objection to the sale to anybody? A I did.

Q Who did you speak to about it? A Mr. Maurer. Mr. Maurer read the letter.

10 Mr. Newman: Never mind. That is all, sir. I won't press it.

Cross examination by Mr. Weinberg.

Q Did you have some person representing you as agent in the purchase of this property? A I did not.

Q Wasn't Mr. Nagel of the E. J. Meyer Company— A He was their agent.

Q Did he represent you in the purchase of the property? A No, sir.

20 Q Did he tell you about the property first? A Yes, sir.

Q Did he present the contract to you for signature? A Yes, sir.

Q Did you see him have a blue print? A No, sir.

30 MAURICE S. MAURER, sworn for the defendant.

Direct examination by Mr. Newman.

Q Mr. Maurer, you are an attorney at law? A That is right.

Q And you represented Mr. Krivant in this transaction, did you? A Not at the drawing of the contract.

40 Q But after the drawing of the contract did you represent him? A Yes.

Maurice S. Maurer, direct.

Q And did you order the search from the Fidelity? A No.

Q It was ordered? A It was ordered before they retained me.

Q And did you talk with Mr. Silver, the attorney for the complainant in this case? A I first wrote them a letter, then I had a talk with them. 10

Q Yes. And did you tell Mr. Silver why your client would not take the title? A I sent him a letter advising him of certain questions that had arisen upon the title. That is why we had a conversation later on about it.

Q Is this the letter you refer to, November 5, 1925? Have you the original letter? A That is correct.

Q They said there was no letter of November 5, 1925, ever written. So is this a copy of the letter you sent to Silver & Silver? A That is right. 20

Q That is what you call a carbon copy of it? A Yes, sir.

Q Of an original? A Yes, sir.

Q And did you mail the original of it to Mr. Silver? A To Silver & Silver.

Q Did you ever receive a reply to that letter? A Yes, sir. Mr. Silver. 30

Mr. Weinberg: Will you pardon me, in order to clear up something that you do not intend, possibly, Mr. Newman. I notice that the letter which Mr. Newman has just been referring to, the yellow copy of the letter which you say is dated November the 5th, seems to be the carbon copy of a letter of your original letter to us dated November 7, 1925. Look at it and see if that is so. 40

Maurice S. Maurer, direct.

Witness: That is right.

Mr. Newman: The contents is the same.

Witness: I beg your pardon. That is correct. The date on the carbon is November 5th and you will find on the original it was erased and it was sent on November
10 the 7th and the young lady probably forgot to make the correction on the carbon copy as she did on the original.

Q Very well. Then what you mean to say is that the letter was written to Mr. Silver on November the 7th? A It was written on November 5th, but, for some reason I can't remember now, it was not sent until November 7th.

Q But it went through the mails as a letter
20 written November 7th? A Correct.

Mr. Newman: Then we will offer the original dated November 7th.

(Letter marked Exhibit D. 1.)

Q Did you receive any answer to that letter?

A Not by letter, but by 'phone.

Q From Mr. Silver? A From David Silver.

Q And what was the answer to the letter with
30 regard to the objections that you made therein? A Well, it was merely to the effect that he would take it up with his client. There is nothing definite stated.

Mr. Weinberg: Where is the reply?

Mr. Newman: There was no reply.

Mr. Weinberg: Just conversation.

Mr. Newman: Yes.

Q Did you write him a letter on December 14,
40 1925, with reference to this matter? A I did.

Maurice S. Maurer, direct.

Mr. Newman: Have you that letter?

Mr. Weinberg: I have. I will give you the three that you asked for.

(Discussion.)

Mr. Newman: Will your Honor read them?

The Court: Certainly. 10

Mr. Newman: Letter dated December 24, 1925, that is offered in evidence, and a letter dated January 20, 1926.

Witness: All to Silver & Silver.

Mr. Newman: All written to Mr. David Silver.

(Three letters marked Exhibits D. 2, D. 3 and D. 4.)

Q Did you communicate to Mr. Silver the fact that—or the reason why the title was rejected? A In the first letter of November 7th all the reasons were set forth. 20

Q Did you talk to him about it after that? A Yes, sir.

Q What did you say, won't you tell us? A I told him that because of all those questions—

Q What questions?

The Court: In the letter of November 7th. 30

A Set forth in the letter as to the walls, one case where there was no wall, several instances where the roof of the other building was supported by the walls of this building on the premises, my client would not take title.

Maurice S. Maurer, cross.

Cross examination by Mr. Weinberg.

10 Q The objections, without going into them, for the purpose of saving time, Mr. Maurer, were objections which you found appearing on the face of the survey made at your request by Lehlbach? A The survey was made by the Fidelity Union Title—

Q Answer the question. A They sent a report to Mr. Kruvant setting forth all those questions, which report Mr. Kruvant gave to me. That was the first time Mr. Kruvant retained me.

Q Then I understand that the letters which you had written to Mr. Silver, contain objections to the title which were gotten from a report made by the Fidelity? A Correct.

20 Q Did you take the trouble to check up those objections to see whether there are any that relate to matters other than those shown on the survey? A I checked up with the survey.

Q And you found those objections that were raised to the title are all shown on the survey? A Correct.

The Court: All the objections which are pressed in the letter are on the survey.

30 Q Mr. Maurer, did you receive any reply to any of those letters from Mr. Silver by mail? A I don't remember whether I received any letter by mail, outside of the notice which he served me on December 22nd.

Q Where is that? A Mr. Newman has it.

Mr. Newman: That is to make time the essence of the deed.

40 Witness: For January 15th. It is the first one in my folder.

Maurice S. Maurer, re-direct—re-cross.

Mr. Weinberg: Let us have that marked for identification.

Witness: The pencil notation is my own, of course.

(Paper marked Exhibit C. 4.)

Q C. 4, this is the notice that was sent you by Mr. Silver, attorney for Mr. Katzin and others? A Correct. 10

Q But it did not have the things you have written on in lead pencil? A It did not have these last two lines.

Q When did you see the survey which you say was ordered by the Fidelity? A The early part of November when Mr. Kruvant brought the report and the survey to me—within the first week of November. 20

Re-direct examination by Mr. Newman.

Q That survey that you referred to that you got through the Fidelity is this survey here? A Yes, sir. That is this survey. It is not the survey which Mr. Weinberg introduced originally.

Mr. Newman: Now, I offer that survey in evidence. 30

(Survey marked Exhibit D. 6.)

Re-cross examination by Mr. Weinberg.

Q You answered my question by saying there was no other correspondence from Mr. Silver, did you? A I do not recall.

Q The only conversation you recall is the one in which you spoke to him about taking this title and he said that he would take up these defects with his client? A No, I didn't say that. 40

Maurice S. Maurer, re-cross.

Q I thought that was what you said. A Oh, no, I didn't say that was the only conversation. The—

Q Never mind, Mr. Maurer. That conversation occurred, though, did it? A That conversation occurred.

10 Q You are sure about that? A What conversation?

Q And Mr. Silver said he would take up the question of the phases that you had raised with his client? A Yes.

Q Was that over the telephone? A Yes.

Q You are certain? A Oh, I know that I spoke to him over the phone about it, but whether I also received a letter to that effect, I don't recall.

20 Q Mr. Silver simply didn't say to you over the phone, when you started to talk about your objections, that he thought your client was getting cold feet. Isn't that what happened? A Whether he wrote me a letter to that effect?

30 Q No, no. When you called him up or spoke to him about the matter over the telephone, when you stated the objections and asked him what his client was going to do about it, didn't he say to you, "What is the matter? Is your client getting cold feet?" A He might have said that, I don't remember.

Q That is all he did say. He didn't say he would take up the question of these defects with his client, did he? A Oh, no. He said he would take up the question of the defects with his clients.

40 Mr. Weinberg: Mr. Kruvant. May I recall him for one question? I don't know whether it is material or not. I will let the Court rule on it.

Harry Krivant, direct.

HARRY KRUVANT, recalled.

Direct examination by Mr. Weinberg.

Q You didn't state what you do for an occupation. You are a general builder, are you not?

A I am.

Q And you have been in the building business for a long time, haven't you? A I have.

Q You understand buildings and properties in the City of Newark pretty well, do you not? A Yes.

Q Put up a number of large buildings in this town? A Yes.

Q And bought and sold considerably? A Yes.

Q Will you look at this edition of the Sunday Call of September 20, 1925, and tell us whether you were instrumental in having that article inserted therein.

Mr. Newman. I do not think it is material at all. We are not before a jury. I do not think it is material, but, if the Court does, of course, I will permit it to go in, but I object to it on the ground it is utterly immaterial.

The Court: I will sustain the objection. What we are trying to do now is to construe this contract. He may have said that he wanted to put up a theatre or an apartment, but that doesn't make any difference.

(Discussion.)

David Silver, direct.

DAVID SILVER, sworn for the complainant.

Direct examination by Mr. Weinberg.

10 Q Mr. Silver, you are the attorney mentioned by Mr. Maurer as the one who represented Baum, Katzin and the others in this case? A Yes, sir.

Q And I show you a paper, that was marked for identification, C. 4, and ask if that paper was sent by your office to Mr. Maurer? A Yes, sir.

Mr. Weinberg: I offer that in evidence on behalf of the complainant.

Witness: Without the notation.

Mr. Weinberg: And I ask that the notation in lead pencil be erased therefrom.

20 The Court: No, I won't—you cannot erase it. You may disregard it.

Mr. Weinberg: I can erase it with an eraser.

The Court: It will be admitted just as it is, but I will take your objection that you do not want me to consider the notation, because it was not on there when Mr. Silver sent it.

30 Q After receiving this notice did you hear from the parties? A I did not receive it. I sent it.

Q I mean, after sending this notice, did the parties come? A Mr. Maurer came with Mr. Krivant and another gentleman, I think, some time in January at my office and Mr. Maurer said he was not prepared to take the property.

40 Q Did he say why? A For the reasons he claimed there were encroachments there on the

David Silver, direct.

survey that he claimed his client did not agree to buy.

Q Then after that meeting did you have any other meeting with him? A I believe the same day we made an appointment in his office at four o'clock and I went to my client and we tendered him the deed in accordance with the contract. 10

Q Did you have a conversation with Mr. Maurer in which you told him that you would put these questions, defects up to your client? A I never said anything of the kind to him.

Q What did you say to him? A I spoke to him on the wire and I asked him whether or not his client was getting cold feet. That was the gist of the whole conversation.

Q Did he answer? A He said, no, these people had found encroachments and they wouldn't go through with it. 20

Mr. Newman: No questions except this—

The Court: That is all.

Mr. Newman: Pardon me. One thing. (To witness): This deed that you said was tendered is the deed that has been offered in evidence?

Witness: The only deed I tendered. 30

By Mr. Newman.

Q You did not follow the language of the agreement, in preparing this deed, did you?

The Court: Do not ask him that.

Mr. Newman: That speaks for itself, I suppose.

The Court: Yes, it certainly does. Is that the case? 40

David Silver, direct.

Mr. Newman: I would like to submit a brief on this.

The Court: Yes. I must have the benefit of your superior understanding.

Mr. Weinberg: I am prepared to argue it.

10 The Court: No. I would prefer the memorandum.

Mr. Weinberg: May I have the case reopened? I do not know how material it is, but I want to put in a letter.

The Court: All right. Put it in.

Mr. Newman: I won't admit this. It has nothing to do with the case.

20 The Court: I will admit it over your objection. I don't think it has, either, but I am trying to satisfy Mr. Weinberg.

(Letter theoretically marked Exhibit C. 5, not physically marked.)

30

40

Exhibit C. 1.

EXHIBIT C. 1.

THIS AGREEMENT made the seventeenth day of September, in the year of our Lord One Thousand Nine Hundred and twenty-five

BETWEEN Harry S. Katzin, Bessie V. Katzin, his wife, Herman Z. Baum and Freda Baum, his wife, Moritz L. Cohen and Sarah Cohen, his wife, Samuel Katzin and Ida Katzin, his wife; of the City of Newark in the County of Essex and State of New Jersey, party of the first part; 10

AND Harry Kruvant of the City of Newark in the County of Essex and State of New Jersey party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Hundred and Fifty-five Thousand Dollars (\$155,000.00) 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 party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free of all encumbrances except as hereinafter mentioned on or before the seventeenth day of December next ensuring the date hereof, ALL that lot tract, or parcel, of land and premises, hereinafter particularly described situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey, 20 30

Being the premises located on the southwest corner of Plane and Academy Streets, Newark, N. J., and better described in a survey made by Lehlbach Bros. dated October 23rd., 1920 and 40

Exhibit C. 1.

known as No. 46371 as described on the said survey, said conveyance is to include the entire tract with the exception of that part of the tract which is set out on the said survey which is marked "6.61 over line" which is in rear of the tract to be conveyed and it being on the left side of the rear, that part being formerly owned by

10 one Vliet.

The deed of conveyance is to be made subject to existing present tenancies and also subject to the leases that now cover the premises which leases are held by Michael H. Demitry and Pete Callas which lease is dated April 29, 1924 for the shed and stable at 277 Plane Street and the lease held by Harry Katz dated March 1st., 1925 for the store and part of cellar at 275 Plane Street and also the premises known as 104 Academy

20 Street including the cellar thereof and also subject to whatever rights Messrs. Friedman & Schwartz may have in and to a lease dated May 9th, 1923 for the store on the ground floor and one apartment above the ground floor known as 373 Plane Street also subject to whatever rights one Angelo Manos may have in and to a lease dated September 1st., 1924.

AND the said Harry Kruvant for himself,

30 his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, heirs, executors, administrators and assigns, that the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of One Hundred Fifty-five Thousand Dollars (\$155,000.00) as and for the purchase money of the foregoing described land and premises, in the

40 following manner, that is to say:

Exhibit C. 1.

On execution of this agreement, which this is a receipt therefor..... \$2,000.00

By additional deposit of..... \$3,000.00
to be paid on or before September 30th, 1925.

Upon closing of title in cash or certified check\$45,000.00

By assuming the payment of a mortgage now held by the U. S. Savings Bank in the sum of\$20,000.00
which mortgage bears interest at 6% payable semi-annually. 10

By the party of the second part executing a purchase money mortgage to the party of the first part in the sum of.....\$85,000.00
which mortgage shall be for a period of three years from the date of closing of title and which mortgage shall bear interest at the rate of 6% and to be payable semi-annually, said mortgage to be accompanied by a bond in the penal sum of \$170,000.00, said bond and mortgage to be prepared by Silver & Silver in accordance with a form satisfactory to the parties of the first part and the said mortgage to contain the usual 30 and 60 day default clauses. 20

It is further understood and agreed by and between the parties hereto that if in the event the parties of the first part desire to pay off the mortgage of Twenty Thousand Dollars (\$20,000.00) held by the U. S. Savings Bank that the party of the second part will hereby consent to permit the parties of the first part to pay off the aforementioned mortgage and the party of the second part agrees to execute in favor of the parties of the first part a new mortgage which shall be added to the balance due on the aforementioned purchase money mortgage of \$85,000.00 so that the parties of the first part shall have as a lien against the aforementioned prem- 30 40

Exhibit C. 1.

ises the mortgage, to wit, in the sum of \$105,000.00 which mortgage shall be due and payable within three years from the date of closing of title in accordance with the terms herein before mentioned.

10 It is further expressly understood and agreed by and between the parties hereto that the party of the second part will accept title to the premises hereinbefore mentioned subject to certain pad lock proceedings now pending against premises 273 Plane Street, Newark, N. J., in which the U. S. of America is complainant and Herman Schwartz, Harry S. Katzin, Morris L. Cohen, Samuel Katzin and Herman Z. Baum are defendants which proceedings are now pending in the United States District Court for the District of N. J.

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

And the said party of the part hereby agrees to pay to the licensed and authorized agent a commission of % on the purchase price aforesaid.

30 AND IT IS FURTHER AGREED, by the parties to these presents, that the said part of the second part, his heirs and assigns may enter into and upon the said land and premises on the 17th day of December next ensuing the date hereof, and from thence take the rents, issues and profits to and their use.

40 AND IT IS FURTHER AGREED, by the parties hereto that the said deed of Warranty shall be delivered and received at office of Silver & Silver, 31 Clinton Street, Newark, N. J., be-

Exhibit C. 1.

tween the hours of 10 o'clock in the forenoon and 2 o'clock in the afternoon on the said seventeenth day of December next ensuing the date hereof.

It is further understood and agreed by and between the parties hereto that all taxes, assessments, water rents, insurance rentals shall be apportioned as of the date of closing of title. 10

It is understood and agreed that the purchase money mortgage of \$85,000.00 as mentioned hereinbefore is to cover both the land and the buildings thereon.

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

Signed, Sealed and Delivered
in the presence of 20

ADA S. KATZIN
SARAH COHEN
SAMUEL KATZIN
MORITZ L. COHEN
HARRY S. KATZIN
BESSIE V. KATZIN
FREDA BAUM
HENRY Z. BAUM
HARRY KRUVANT 30

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

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

40

Exhibit C. 1.

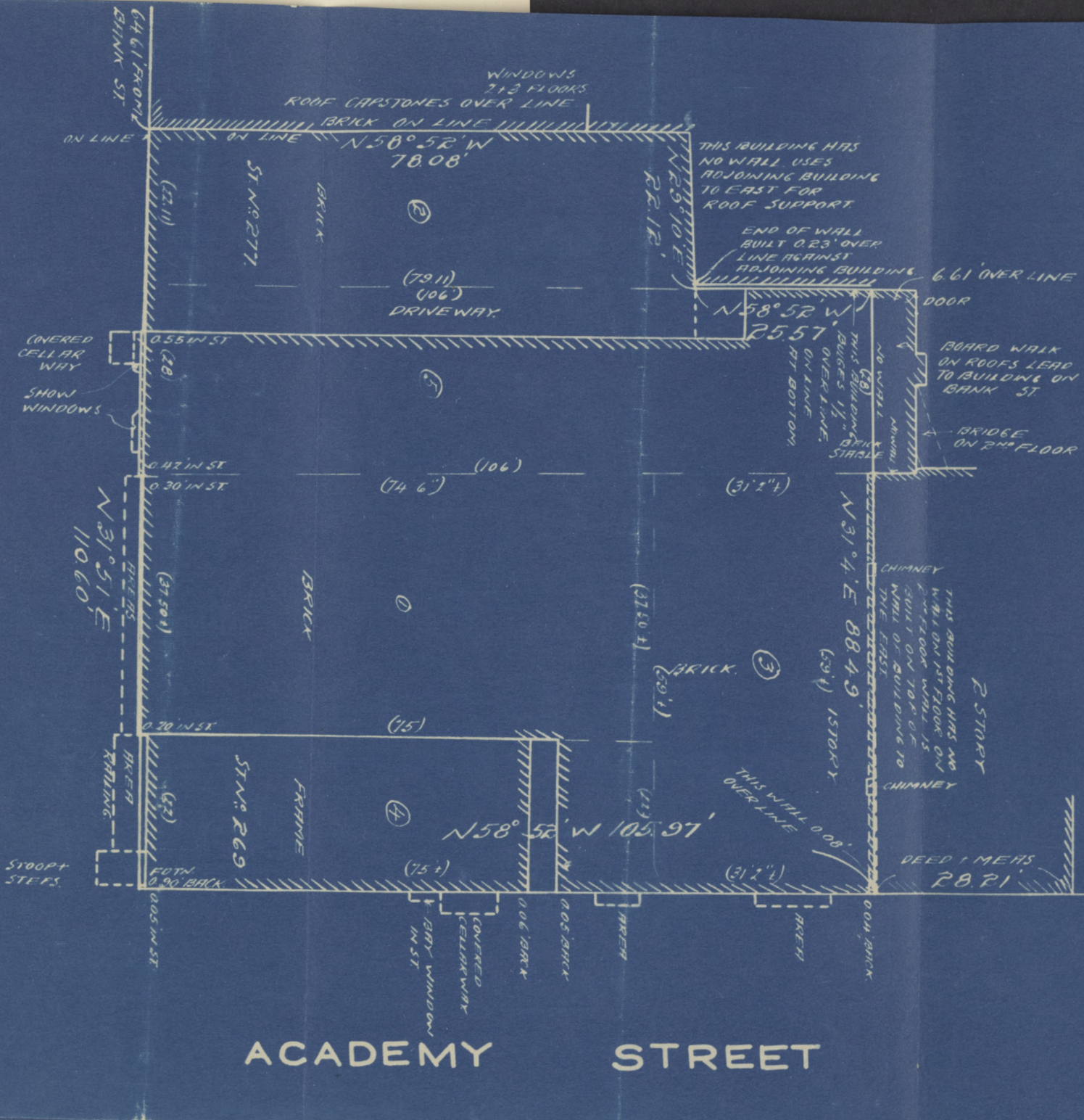
STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

BE IT REMEMBERED, that on this 17th day of September in the year of our Lord One Thousand Nine Hundred and twenty-five, before me the subscriber, personally appeared Harry S. Katzin and Bessie V. Katzin, his wife, Herman Z. Baum and Freda Baum, his wife, Moritz L. Cohen and Sarah Cohen, his wife. Samuel Katzin and Ida Katzin, 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.

And the said Bessie V. Katzin, wife of Harry S. Katzin, Freda Baum, wife of Herman Z. Baum and Sarah Cohen, wife of Moritz Cohen, Ida Katzin, wife of Samuel Katzin, being by me privately examined, separate and apart from their said husband, further acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, FREELY, without any fear, threats or compulsion of their said husbands.

PAUL C. NAGLE,
 Notary Public N. J.

PLANE STREET



ACADEMY STREET

LEHLBACH BROTHERS
CIVIL ENGINEERS AND SURVEYORS
BONNELL BUILDING, 196 MARKET STREET
NEWARK, N. J.

This survey is made upon a requisition of Fidelity Trust Company,
No. 46371
and follows the instructions therein contained.
DATED OCTOBER-23-1920
Michael J. McNamee



Exhibit C. 3.

EXHIBIT C. 3.

THIS INDENTURE, Made the Fifteenth day of December, in the year of our Lord One Thousand Nine Hundred and twenty-five

10 BETWEEN Harry S. Katzin, Bessie V. Katzin, his wife, Herman Z. Baum and Freda Baum, his wife, Moritz L. Cohen and Sarah Cohen, his wife, Samuel Katzin and Ida Katzin, his wife, of the City of Newark in the County of Essex and State of New Jersey, party of the first part;

AND Harry Kruvant of the City of Newark in the County of Essex and State of New Jersey party of the second part:

20 WITNESSETH, That the said party of the first part, for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable considerations lawful money of the United States of America, to us in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these
30 presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey,

40 BEGINNING at the corner formed by the intersection of the southerly side of Academy Street with the westerly side of Plane

Exhibit C. 3.

Street and running thence (1) along the westerly side of Plane Street south thirty-one degrees (31) fifty-one minutes (51) west one hundred ten feet and sixty hundredths of a foot (110.60) to a point, which point is distant sixty-four feet and sixty-one hundredths of a foot (64.61) from the northerly side of Bank Street; thence (2) north fifty-eight degrees (58) fifty-two minutes (52) west seventy-eight feet and eight hundredths of a foot (78.08) to a point; thence (3) north twenty-nine degrees (29) ten minutes (10) east twenty-two feet and twelve hundredths of a foot (22.12) to a point; thence (4) north fifty-eight (58) degrees fifty-two (52) minutes west twenty-five feet and fifty-seven hundredths of a foot (25.57) to a point; thence (5) north thirty-one degrees (31) four (4) minutes east eighty-eight feet and forty-nine hundredths of a foot (88.49) to a point in the southerly side of Academy Street aforesaid; thence (6) along the southerly side of Academy Street south fifty-eight (58) degrees fifty-two minutes (52) east one hundred five feet and ninety-seven hundredths of a foot (105.97) to the point or place of BEGINNING.

The above description being in accordance with survey made by Lehlbach Bros. dated October 23rd., 1920, survey being known as No. 46371.

This conveyance is made expressly subject to such facts as are disclosed in said survey heretofore mentioned.

This conveyance is also made expressly subject to a mortgage held by the German Savings Bank of Newark, New Jersey, said German Savings Bank having changed its name to the United

Exhibit C. 3.

States Savings Bank, and the amount of the mortgage being Twenty Thousand Dollars (\$20,000.00) with interest, however, and which mortgage was made by August Noll and Mary Noll, his wife, Peter William Tiedemann and Emma Tiedemann, his wife to the said German Savings Bank of Newark, New Jersey, said
 10 mortgage being dated May 28th, 1904 and recorded in the Register's office of Essex County on May 31st., 1904 in book T-17 of mortgages pages 491 etc., which mortgage the party of the second part assumes and agrees to pay.

This conveyance is also made expressly subject to a purchase money mortgage in the sum of Eighty-five Thousand Dollars (\$85,000.00), which mortgage is to be given as part of the purchase price of the within described premises, which mortgage shall be for a period of
 20 three years from the date of closing of title with interest at the rate of 6% payable semi-annually, said mortgage to be accompanied by a bond in the penal sum of One Hundred Seventy Thousand Dollars (\$170,000.00), said mortgage to contain the usual thirty and sixty days default clauses and to be drawn in accordance with the form satisfactory to the parties of the first
 30 part.

The said mortgage of Eighty-five Thousand Dollars (\$85,000.00) is to be recorded simultaneously with the recording of this deed and is to be executed by the party of the second part at the time of closing of title.

This conveyance is also made expressly subject to certain pad lock proceedings now open of record in the United States District Court of the District of New Jersey against premises No.
 40

Exhibit C. 3.

273 Plane Street, Newark, N. J., which are part of the premises heretofore described.

This conveyance is also made subject to certain leases covering the premises, which leases were called to the attention of the party of the second part and also subject to certain monthly tenancies.

10

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever:

20

AND the said parties of the first part do for themselves, their heirs, executors and administrators covenant and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and prem-

30

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Exhibit C. 3.

ises, can or may be changed, charged, altered or defeated in any way whatsoever: except as hereinbefore mentioned.

AND ALSO that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid;

10 AND ALSO, that parties of the first part will WARRANT, secure, and forever defend the said land and premises unto the said Harry Kruvant, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever, except as hereinbefore mentioned.

20 IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

HARRY S. KATZIN	L. S.
BESSIE V. KATZIN	L. S.
HERMAN Z. BAUM	L. S.
FREDA BAUM	L. S.
MORITZ L. COHEN	L. S.
SARAH COHEN	L. S.
SAMUEL KATZIN	L. S.
IDA KATZIN	L. S.

30

Signed, Sealed and Delivered
in the Presence of

IRVING SILVER.

40

Exhibit C. 3.

STATE OF NEW JERSEY, ss.
COUNTY OF ESSEX.

BE IT REMEMBERED, That on this Fifteenth day of December in the year of our Lord One Thousand Nine Hundred and twenty-five before me, the subscriber, an Attorney At Law of New Jersey, personally appeared Harry S. Katzin and Bessie V. Katzin, his wife, Herman Z. Baum and Freda Baum, his wife, Moritz L. Cohen and Sarah Cohen, his wife, Samuel Katzin and Ida Katzin, 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. 10

And the said Bessie V. Katzin, wife of Harry S. Katzin, Freda Baum, wife of Herman Z. Baum, Sarah Cohen, wife of Moritz L. Cohen and Ida Katzin, wife of Samuel Katzin being by me privately examined, separate and apart from their said husbands, further acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, FREELY, without any fear, threats or compulsion of their said husbands. 20
30

IRVING SILVER,
An Attorney at Law of New Jersey.

Exhibit C. 4.

EXHIBIT C. 4.

To Maurice S. Maurer, Esq.,
Attorney for Harry Kruvant,
207 Market Street,
Newark, N. J.

- 10 YOU ARE HEREBY NOTIFIED, that the under-
signed shall be ready, willing and able to close
title to premises located on the southwest corner
of Plane and Academy Streets, Newark, New
Jersey, known as Nos. 269-271-273-275-277 Plane
Street and 104 Academy Street and better
described in a survey made by Lehlbach Bros.,
dated Oct. 23rd., 1920 and known as survey No.
46371 with the exception of that part of the tract
which is set out on the said survey and is marked
20 6.61 feet over line, according to the terms of the
agreement dated September 17th, 1925, on Janu-
ary 15th, 1926 at 2 o'clock in the afternoon, at
the offices of Silver & Silver, 31 Clinton Street,
Newark, New Jersey.

This notice is given you for the purpose of
making time of the essence of this contract, you
having failed to close title in accordance with
the terms thereof.

30

HARRY S. KATZIN
BESSIE V. KATZIN
HERMAN Z. BAUM
FREDA BAUM
MORITZ L. COHEN
SARAH COHEN
SAMUEL KATZIN
IDA KATZIN

By DAVID SILVER,

Attorney.

Newark, N. J.,
40 December 22nd., 1925.

Exhibit C. 5.

(Notation in pencil.)

Appeared at 2 P. M. at Silver's office with H. Kruvant, J. H. Mayzel and P. J. Wedell and only D. Silver present. No deed offered.

EXHIBIT C. 5.

10

Law Offices
VOIGT & OTTO
National State Bank Building
810 Broad Street
Newark, N. J.

Frank Voigt

Richard Otto

November 16, 1920.

To the Purchasers of property
Plane & Academy Streets, ad-
joining property which the
undersigned purchased at
the Sheriff's sale.

20

Gentlemen:

In order to settle any question of title, I agree that you can tear down the stable which is situated on the property which you purchased at the sheriff's sale and which encroaches on the property which I purchased in the extent of six feet and six one hundredths and that you can rebuild with the brick thereof, a wall on the line of said property as shown by survey, and I hereby agree with you that the wall between my property and your property as it now exists, is a party wall.

30

Very truly yours,

V/L

J. W. VLIET.

40

Exhibit D. 1.

EXHIBIT D. 1.

November 7, 1925.

Silver & Silver,
9 Clinton Street,
Newark, N. J.

10 Gentlemen:

RE: Agreement of sale Harry S. Katzin and others to Harry Kruvant.

The Fidelity Union Title & Mortgage Guarantee Co., in a search on the title of the property at Plane & Academy Street has found the following incumbrances and questions:

Taxes 1st half 1925 a lien on and after June 1st, 1925.

20 Taxes 2nd half 1925 a lien on and after Dec. 1st, 1925.

Water Rent.

#269 water due from June 18th, 1925, to Sept. 23, 1925—\$2.50.

#271 water due from June 18th, 1925, to Sept. 23, 1925—\$4.50.

#273 water due from June 18th, 1925, to Sept. 23, 1925—\$10.00.

30 #275 water due from June 18th, 1925, to Sept. 23, 1925—\$7.00.

#277 water due from June 18th, 1925, to Sept. 23, 1925—\$2.00.

Due on all lots from Sept. 23, 1925, last reading.

7. Mortgages.

(1) Mortgage given by August Noll, Mary, his wife, Peter William Tiedemann, Emma, his wife, to The German Savings Bank, of Newark, New Jersey, a corporation dated May 28th, 1904

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Exhibit D. 1.

and recorded May 31st, 1904 to secure the sum of \$20,000.00 in one year with interest at the rate of 4½%, payable semi-annually. Recorded in Mortgage Book T 17 pages 491-493.

8. County Judgments.

Two matters being investigated by Clearing Department. 10

9. Trenton Judgments.

Seven matters being investigated by Clearing Department.

10. No interrogatories received as yet. This report is subject to same when received.

11. Rights, if any, of adjoining owner on the south, by reason of encroachment of roof capstones on the southerly line of premises in question. 20

12. Rights, if any, of adjoining owner on the southwest by reason of encroachment of wall of building upon premises in question.

13. Rights, if any, of adjoining owner on the southwest, whose building is supported by building on premises in question.

Silver & Silver,

Nov. 5, 1925. 30

continued —2—

14. Rights of adjoining owners on the west and south by reason of encroachment of buildings and chimneys on premises in question on premises to the West and South.

15. Rights of adjoining owner, if any, in board walk on roof of building on premises in question and in bridge from building on premises in question to premises adjoining the Northwest. 40

Exhibit D. 1.

16. Rights of adjoining owners on the west in westerly wall of building on premises in question for support of wall and roof.
17. Outstanding rights, if any, of the public because of mislocation and encroachment of buildings, areas, covered cellarways, bay windows, show windows, railing, stoop and steps, trim and cornice along Plane and Academy Streets.
18. Subject to certain padlock proceedings now against premises #273 Plane Street, Newark, N. J. (as per agreement).
19. Subject to any unrecorded leases.
20. Blue print enclosed for applicant.

Survey:

21. Right, if any, of users of driveway in from Plane Street.

The blue print mentioned is in my possession and can be seen at any time.

There is also a question as to the portion of the Southwest building which was excepted from this sale so that there is no wall to the Southwesterly part of the building to be sold. It will be necessary, of course, for the vendors to continue the westerly wall of the building for an additional 28 feet in order to enclose the southwesterly exposed section.

I should also like to know whether there is any agreement between the present owners and any of the adjoining land owners granting to any of the adjoining land owners any easements pertaining to the drive-way on Plane Street to any of the encroaching walls set forth in the blue print; and also as to the bridge that crosses

Exhibit D. 2.

the Southwesterly portion of the roof of the property to be sold.

Will you also have the interrogatories answered as soon as possible as mentioned in #10 of their report?

Very truly yours,

MSM:TK

MAURICE S. MAURER.

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EXHIBIT D. 2.

Dec. 14, 1925.

Mr. David Silver
31 Clinton St.,
City

Dear Sir:

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I have taken up with Mr. Mayzel, the assignee of the contract for the sale of property on Academy Street concerning the question as to the title of the property and he advises that he is ready, will and able at this time to close title to said property at Academy and Plane Streets, from your clients, Katzinbaum and others, and will accept a warranty deed providing you can clear such title to the satisfaction of the Fidelity Union Title & Mortgage Guarantee Co. so that they will guarantee the title in accordance with the contract of guarantee. I trust that I shall hear from you before December 17th, the date originally set for closing of title.

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Very truly yours,

Maurice S. Maurer.

MSM:TK

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Exhibit D. 3.

EXHIBIT D. 3.

Dec. 24, 1925.

Mr. David Silver
31 Clinton St.,
City

10 Dear Sir:

Our communications concerning the Katzin contract are beginning to take on the appearance of a farce. If, by your recent notice, you intend to make time of the essence of this contract, I think you had better hurry up and clean up the questions of the title as we have been ready, willing, able, and anxious to take the property the early part of December, I would suggest that instead of trying to work up the de-
20 fense, that your client make some effort to straighten out their title.

Very truly yours,

Maurice S. Maurer.

MSM:TKA

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Exhibit D. 4.

EXHIBIT D. 4.

Jan. 20, 1926.

Mr. David Silver,
31 Clinton Street,
Newark, N. J.

My dear Mr. Silver:

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In reply to your notice dated December 22nd, 1925, respecting the premises 277 Plane Street, and 104 Academy Street, Newark, which your clients agreed to sell and convey to my client, Mr. Harry Kruvant, I desire to re-assert what I stated to you at your office on January 15th, 1926, namely: that my client is now ready and willing, and has been always ready and willing to carry out the terms of the agreement dated September 17th, 1925, made by Harry S. Katzin and others with him, for the sale and conveyance of the lands and premises above described, and is willing to take a deed of warranty, in accordance with the terms of said agreement, provided, the numerous encroachments that now exist are removed, as the lands and buildings are not marketable unless the encroachments are removed.

20

If you can prevail upon your clients to remove these encroachments, we are ready and willing to close the title at any time, upon two or three days' notice.

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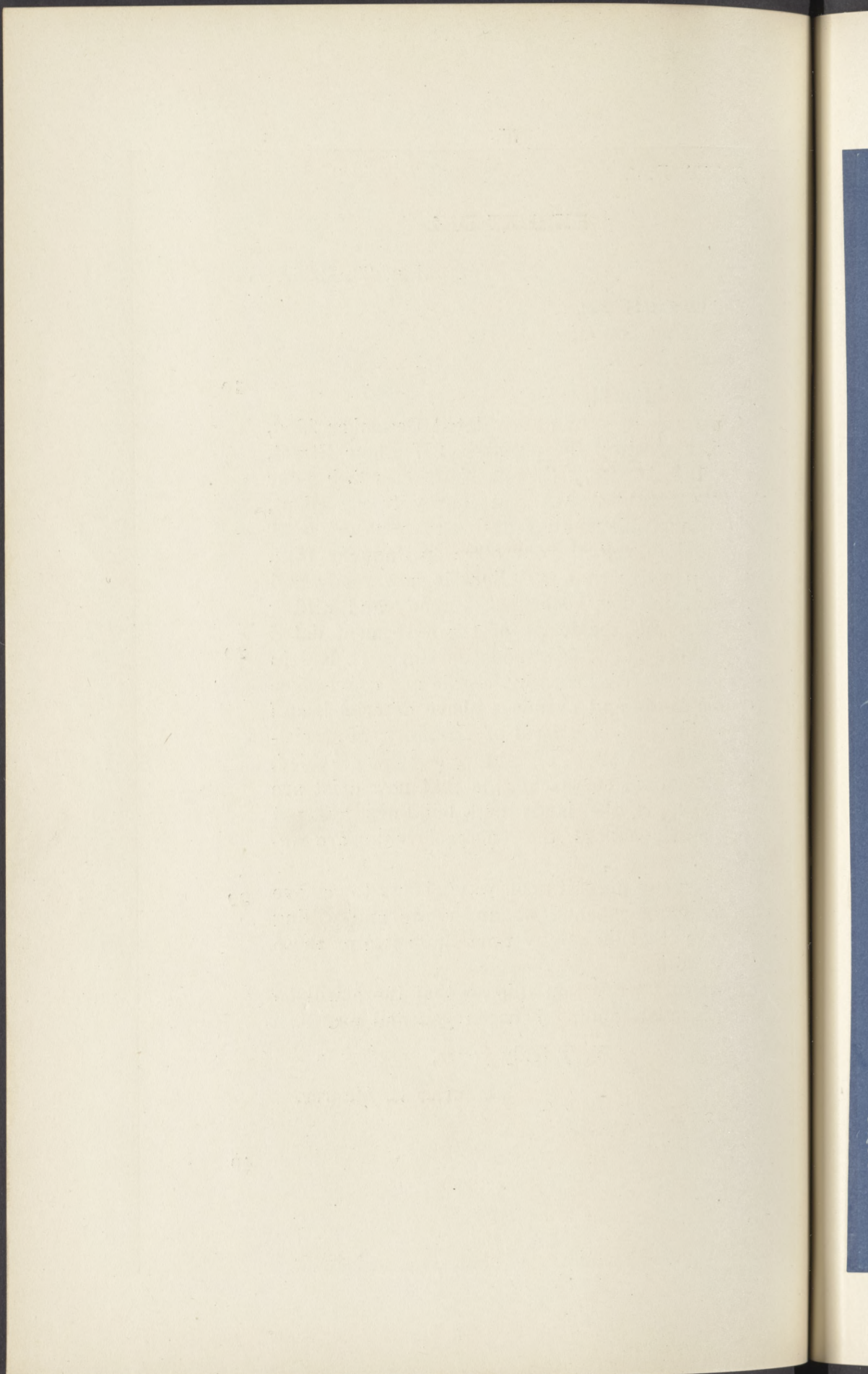
I merely write you this so that there will be no misunderstanding between you and me.

Very truly yours,

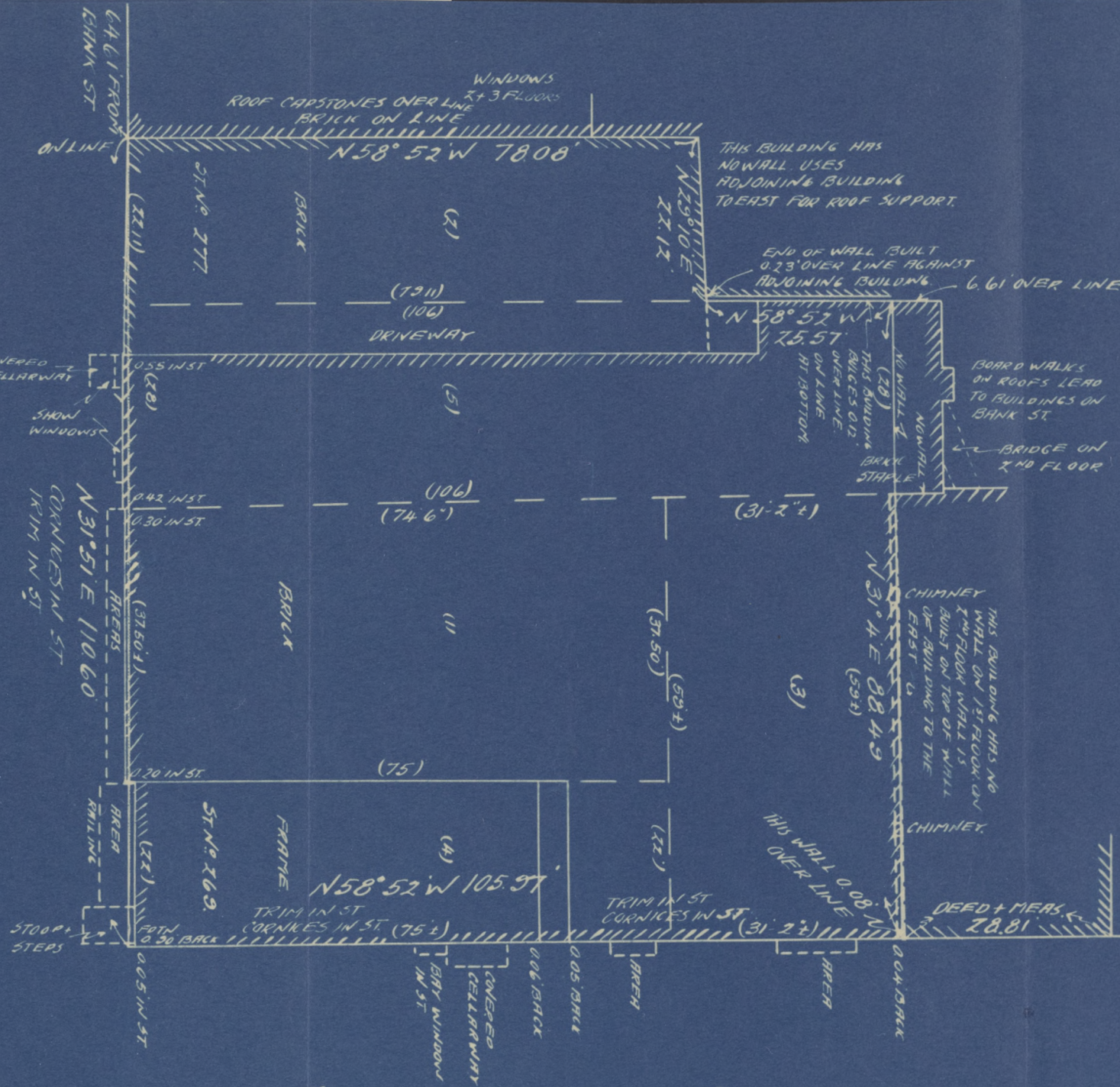
Maurice S. Maurer.

MSM:TK
Registered.

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PLANE STREET



ACADEMY STREET

CAUTION: THIS SURVEY SHOULD BE CHECKED AFTER BUILDINGS ARE REMOVED FOR CONSTRUCTION PURPOSES

LEHLBACH BROTHERS
 CIVIL ENGINEERS AND SURVEYORS
 BONNELL BUILDING 198 MARKET STREET
 NEWARK, N. J.

This survey was made upon a requisition of Fidelity Union Life and Mortgage Co. No. 63912 and follows the instructions therein contained.
 DATED OCTOBER 17TH 1925.
 Lehbach Brothers
 1203 H

Opinion of Vice-Chancellor.

OPINION OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">HARRY S. KATZIN, <i>et al.</i>, Complainants,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">HARRY KRUVANT, Defendant.</p>	}	<p><i>On Bill, etc.</i></p> <p><i>Opinion.</i></p>
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Benjamin M. Weinberg, Esq., for complainants.

Jacob L. Newman, Esq., for defendant.

20 CHURCH, *V.-C.*

This is a suit for specific performance. The contract under discussion gives the following description of the land to be conveyed: "Being the premises located on the southwest corner of Plane and Academy Streets, Newark, New Jersey, and better described in the survey made by Lehlbach Bros., dated Oct. 23, 1920, and known as No. 46371 as described on said survey, and conveyance is to include the entire tract with the

30 exception of that part of the tract which is set out on the said survey which is marked '6.61 over line' which is in the rear of the tract to be conveyed, and it being only the left side of the rear, that part being formerly owned by one Vliet." The contract is dated September 17, 1925. At the time fixed for closing proper tender of deed was made but the defendant refused to take title. He had another survey made by Lehlbach Bros. which disclosed the same situa-

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Opinion of Vice-Chancellor.

tion as set forth in the survey of 1920. Defendant's refusal is based upon alleged objections which appear upon the face of the survey of 1920 as well as on that of 1925. Defendant offered to show at the hearing that he had never seen the survey of 1920. I said then and still think that as he signed the contract referring to the survey, and there is no allegation of fraud he was presumed to have notice of it. He had an opportunity to inspect it, and if he did not do so it was his own fault. He is a real estate operator of large experience and knew he was entering into a contract involving about \$145,000. If he did not choose to make an investigation he cannot blame the complainant.

10

We therefore come to the question: What does the reference in the contract to the survey mean? Defendant insists that it relates only to the size of the tract. Complainants contend that the reference binds the defendants to take the title in all respects exactly as shown on the survey. In order to ascertain the size of the plot it is absolutely necessary to look at the survey. The words "Being the premises located on the southwest corner of Plane and Academy Sts." in the contract standing alone mean little. There is no indication as to frontage, depth, shape or character of buildings if any. Thus one must look to the survey for size. One so looking, especially an experienced real estate operator like the defendant, who has participated in a great number of similar transactions, could not help seeing the alleged encroachment. They are plainly marked on the survey. They are distinctly apparent even to one unversed in such matters. In the clause of the contract quoted above there are three specific references to the survey.

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Opinion of Vice-Chancellor.

Counsel for complainant has been kind enough to explain to the Court the words "better" and "describe." Thus the Court learns—perhaps for the first time—the following: "Webster defines the word 'describe' as follows: 'To delineate or mark the form or figure, &c.; to draw a plan; to represent by lines or other marks on paper or other material; as to describe the surface of the earth by a map or chart.' 18 *Corpus Juris* defines the word 'describe' as follows: 'To set forth; to represent; to delineate; to express; to depict; to portray.' Funk and Wagnall's Standard Dictionary says: 'Describe, to give the characteristics of, as in words or by signs so that another may form a mental image or idea. Syn. Delineate—I to draw in outline; represent by sketch or diagram. II to represent pictorially, &c.; to give a mental picture of, to depict, describe, draw figure, paint picture, portray, represent, sketch, &c.' Webster says of the word 'better' the primary sense is 'more' or 'advanced further.' The words 'better described,' therefore, mean more fully delineated, more fully pictured or painted."

The opinion of at least one of these distinguished lexicographers has been affirmed by the Court of Errors and Appeals. In the case of *Boynton Real Estate Co. v. Woodbridge*, 109 Atl. 514, Mr. Justice Black, speaking for the Court, says, "to 'describe means to narrate, express, explain.'—Webster's Dictionary." This was a case in which the Court considered an ordinance which provided that a notice should "briefly describe the purposed improvement." In the opinion of the Supreme Court in that case, Mr. Justice Bergen says, "I am of the opinion that the character of the work should

Opinion of Vice-Chancellor.

appear either by some plan or specification to which a person interested may refer, or sufficiently described in the ordinance.”

I believe, therefore, that defendant’s definition that is that the reference to the survey is for size only is entirely too narrow. He is a man of large real estate experience, signed the contract freely without any fraudulent misrepresentations, and if he had wished could have studied the survey before signing. I am of the opinion that the contract means that the defendant shall take the property in exact accordance with the survey referred to in the contract, alleged encroachments included. 10

Defendant’s counsel announced at the hearing that no abatement in price would be asked for any alleged encroachment, and no proof was offered that the matters and things indicated in the survey are actually unlawful. Therefore, it is unnecessary to discuss that question. 20

I will advise a decree directing specific performance.

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*Final Decree.***FINAL DECREE.**

IN CHANCERY OF NEW JERSEY.

Between

10	HARRY S. KATZIN, BESSIE V. KATZIN, HERMAN Z. BAUM, FRED A BAUM, MORITZ L. COHEN, SARAH COHEN, SAMUEL KATZIN and IDA KATZIN, <div style="text-align: right;"><i>Complainants,</i></div>	<i>On Bill, etc.</i> <i>Final</i> <i>Decree.</i>
	<div style="text-align: center;"><i>and</i></div> HARRY KRUVANT, <div style="text-align: right;"><i>Defendant.</i></div>	
20		

This cause coming on to be heard upon bill, answer, replication and proofs, in the presence of Benjamin M. Weinberg, Esquire, solicitor for and of counsel with the complainants, and in the presence of Maurice S. Maurer, Esquire, solicitor for, and Jacob L. Newman, Esquire, of counsel with the defendant, and the pleadings and proofs having been read, and the arguments of counsel heard and considered, and the Chancellor being of the opinion that the complainants are entitled to the relief prayed for in the bill of complaint herein, and it satisfactorily appearing to the Court, that by virtue of an agreement in writing, duly made and executed between Harry S. Katzin and Bessie V. Katzin, his wife, Herman Z. Baum and Freda Baum, his wife, Moritz L. Cohen and Sarah Cohen, his wife, and Samuel Katzin and Ida Katzin, his wife, the complainants, and Harry Krivant, the defendant, bearing date the

Final Decree.

17th day of October, 1925, the said defendant, Harry Kruvant agreed to purchase from the said complainants, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, certain premises situate, lying and being in the City of Newark, County of Essex and State of New Jersey, and more particularly described as follows: 10

BEGINNING at the corner formed by the intersection of the Southerly side of Academy street with the Westerly side of Plane street and running thence (1) along the Westerly side of Plane street South thirty-one degrees (31) fifty-one minutes (51) West one hundred ten feet and sixty hundredths of a foot (110.60) to a point, which point is distant sixty-four feet and sixty-one hundredths of a foot (64.61) from the Northerly side of Bank street; thence (2) North fifty-eight degrees (58) fifty-two minutes (52) West seventy-eight feet and eight hundredths of a foot (78.08) to a point; thence (3) North twenty-nine degrees (29) ten minutes (10) East twenty-two feet and twelve hundredths of a foot (22.12) to a point; thence (4) North fifty-eight (58) degrees fifty-two (52) minutes West twenty-five feet and fifty-seven hundredths of a foot (25.57) to a point; thence (5) North thirty-one degrees (31) four (4) minutes East eighty-eight feet and forty-nine hundredths of a foot (88.49) to a point in the Southerly side of Academy street aforesaid; thence (6) along the Southerly side of Academy street South fifty-eight (58) degrees fifty-two minutes (52) East one hundred five feet and ninety-seven hundredths of a foot (105.97) to the point or place of BEGINNING. 20 30 40

Final Decree.

Being the same premises referred to in said agreement mentioned, in the language following, to wit:

10 “Being the premises located on the Southwest corner of Plane and Academy streets, Newark, N. J.; and better described in a survey made by Lehlbach Bros. dated October 23rd, 1920, and known as No. 46371 as described on the said survey, said conveyance is to include the entire tract with the exception of that part of the tract which is set out on the said survey which is marked ‘6.61 over line’ which is in rear of tract to be conveyed and it being on the left side of the rear, that part being formerly owned by one Vliet.”

20 And it further appearing, as a conclusion of the court, that the deed of conveyance is to be made subject to such facts as are described in said survey, and is to be made subject to existing present tenancies and also subject to the leases that now cover the premises, which leases are held by Michael H. Demitry and Pete Callas, which lease is dated April 29, 1924, for the shed and stable at 277 Plane street, and the lease held by Harry Katz, dated March 1st, 1925, for the store and part of cellar at 275 Plane street, and

30 also the premises known as 104 Academy street including the cellar thereof and also subject to whatever rights Messrs. Friedman and Schwartz may have in and to a lease dated May 9th, 1923, for the store on the ground floor and one apartment above the ground floor known as 373 Plane street, also subject to whatever rights one Angelo Manos may have in and to a lease dated September 1st, 1924; and also subject to certain padlock proceedings now pending against

40 premises 273 Plane street, Newark, N. J., in

Final Decree.

which the United States of America is complainant, and Herman Schwartz, Harry S. Katzin, Morris L. Cohen, Samuel Katzin and Herman Z. Baum, are defendants, which proceedings are now pending in the United States District Court, for the District of New Jersey.

And it further appearing that in said agreement mentioned, the said complainants, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, agreed to convey said mentioned land and premises by Deed of Warranty on the 17th day of December, 1925, to the said Harry Kruvant, and the said Harry Kruvant agreed to pay to the complainants therefor, the sum of One Hundred and Fifty-five Thousand (\$155,000.00) Dollars, by the payment of Five Thousand (\$5,000.00) Dollars, which was paid as required by the terms of said agreement, and by the payment of the remainder of the purchase price upon the delivery of the deed, by the payment of Forty-five Thousand (\$45,000.00) Dollars in cash and the execution of a purchase money mortgage in the sum of Eighty-five Thousand (\$85,000.00) Dollars, and the balance of Twenty Thousand (\$20,000.00) Dollars, by taking the premises subject to a first mortgage in said sum of money, held by the United States Savings Bank of Newark, New Jersey.

And it further appearing that the complainants herein have always been and still are ready and willing in all things, to comply with the terms of said agreement and have prayed the order or decree of this court, directing the defendant to comply with and fulfill the same and all things on his part, and this court being of the opinion that the complainants are entitled to the

Final Decree.

specific performance of said agreement on the part of the defendant, Harry Kruvant, as in the said bill, the said complainants have prayed,

It is on this 8th day of June, Nineteen Hundred and Twenty-six, ORDERED, ADJUDGED AND DECREED, that the said agreement be in
10 all things specifically performed by said defendant, and that the said defendant, on the 28th day of June, 1926, at the hour of ten o'clock in the forenoon, at the office of Benjamin M. Weinberg, 738 Broad street, Newark, New Jersey, pay to the complainants, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, the sum of Forty-five Thousand (\$45,000.00) Dollars, lawful money of the United States, with interest thereon from the 17th day
20 of December, 1925, together with the taxed costs of this suit as hereinbefore allowed, and at the same time, make, execute and acknowledge in due form of law and deliver to the said complainants, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, his bond in the penal sum of One Hundred and Seventy Thousand (\$170,000.00) Dollars, conditioned
30 upon the payment of Eighty-five Thousand (\$85,000.00) Dollars, in three years from the 17th day of December, 1925, with interest at the rate of six per cent. per annum, and at the same time, make, execute and acknowledge in due form of law and deliver to the said mentioned complainants, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, a purchase money mortgage on said land and premises
40 in the sum of Eighty-five Thousand (\$85,000.00)

Final Decree.

Dollars, payable in three years from the said 17th day of December, 1925, with interest at the rate of six per cent. per annum, upon the delivery at the same time and place by said complainants, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, to the said defendant, Harry Kruvant, of a Warranty Deed, duly executed and acknowledged by the said complainants, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, conveying to the said Harry Kruvant, the land and premises mentioned, subject to a mortgage thereon in the sum of Twenty Thousand (\$20,000.00) Dollars, held by the United States Savings Bank of the City of Newark, New Jersey, which mortgage bears interest at the rate of six per cent. per annum, payable semi-annually, and subject also to the tenancies hereinabove mentioned, and to such facts as are shown on the survey made by Lehlbach Bros., dated October 23rd, 1920, and being known as No. 46371, as well as to the padlock proceedings hereinabove mentioned.

And it is further ORDERED, ADJUDGED AND DECREED, that the complainants do account to the defendant for all rents, issues and profits of said mentioned premises, from the 17th day of December, 1925, until the payment of the purchase price to the said complainants by the said defendant, as herein provided.

And it is further ORDERED, ADJUDGED AND DECREED, that if, at the time and place hereinabove mentioned, the said defendant fails or neglects to pay the said sum of Forty-five Thousand (\$45,000.00) Dollars, with interest as

Final Decree.

10 hereinbefore mentioned, together with the said
 taxed costs hereinbefore mentioned, and to
 deliver the bond and mortgage hereinbefore
 described, duly executed and acknowledged, upon
 the tender of said deed hereinabove mentioned
 and described, the aforesaid sums of Forty-five
 Thousand (\$45,000.00) Dollars and Eighty-five
 20 (\$85,000.00) Dollars, being a total of One Hun-
 dred and Thirty Thousand (\$130,000.00) Dollars,
 together with interest thereon at the rate of six
 per cent. per annum from the 17th day of Decem-
 ber, 1925, and the taxed costs of this suit as
 hereinbefore mentioned, shall be and become and
 are hereby impressed as a lien upon the said
 lands and premises in favor of the said com-
 plainants, to the end that said lands and prem-
 20 ises may be sold, pursuant to law, and under the
 direction of this court, to satisfy such lien, and
 that in case a deficiency should arise upon such
 sale, the said defendant may be ordered by this
 court to pay such deficiency.

It is further ORDERED, that said defendant
 pay to the said complainants, the costs of this
 suit to be taxed, including a counsel fee of One
 Thousand Dollars, which is hereby allowed to
 said complainants.

30 Respectfully advised:

ALONZO CHURCH,
 V.-C.

Amended Notice of Appeal.

AMENDED NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between

HARRY S. KATZIN, *et al.*,
Complainants,

and

HARRY KRUVANT,
Defendant.

On Bill, etc.

10

*Amended
Notice of
Appeal.*

To Benjamin M. Weinberg, Esq., solicitor for complainants, 738 Broad street, Newark, N. J.

SIR:

The defendant, Harry Kruvant, hereby appeals from the whole and every part of the final decree made in this Court, by the Chancellor, on the advice of Vice-Chancellor Alonzo Church, in the above-entitled cause, to the Court of Errors and Appeals, in the last resort of all causes.

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Dated, June 28, 1926.

MAURICE S. MAURER,
Solicitor for Defendant.

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I conceive that there is good cause for the within appeal.

JACOB L. NEWMAN,
A Counsellor-at-Law of New Jersey.

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Petition of Appeal.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

10

HARRY S. KATZIN, BESSIE V.
KATZIN, HERMAN Z. BAUM,
FREDA BAUM, MORITZ L.
COHEN, SARAH COHEN,
SAMUEL KATZIN and IDA
KATZIN,
Complainants-Respondents,

*On Appeal,
etc.*

Petition.

and

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HARRY KRUVANT,
Defendant-Appellant.

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

The petition of Harry Kruvant in the above-stated cause, respectfully shows:

1. That your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 8th day of June, 1926, wherein the said Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin were complainants, and the said Harry Kruvant was defendant, in this respect, to wit: That the said decree adjudges that the agreement of sale of the premises described in the exhibit annexed to the bill of complaint be specifically performed,
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- 40

Petition of Appeal.

and that the said defendant-appellant, Harry Kruvant, pay to the complainants-respondents, Harry S. Katzin, Bessie V. Katzin, Herman Z. Baum, Freda Baum, Moritz L. Cohen, Sarah Cohen, Samuel Katzin and Ida Katzin, the sum of forty-five thousand dollars (\$45,000.00), with interest thereon, from the 17th day of December, 1925, together with the taxed costs in the Court of Chancery, and that the defendant-appellant make, execute and acknowledge, in due form of law, and deliver to the said complainants-respondents, his bond in the penal sum of one hundred and seventy thousand dollars (\$170,000.00), conditioned for the payment of eighty-five thousand dollars (\$85,000.00), in three years from the 17th day of December, 1925, with interest at the rate of six per cent. per annum, and at the same time, to make, execute and acknowledge, in due form of law, and deliver to the said mentioned complainants-respondents a purchase money mortgage on said lands and premises, in the sum of eighty-five thousand dollars (\$85,000.00), payable in three years from the said 17th day of December, 1925, with interest at the rate of six per cent. per annum, upon the delivery at the same time and place by the said complainants-respondents to the said defendant-appellant, of a warranty deed duly executed and acknowledged by the said complainants-respondents, conveying to the said defendant-appellant, Harry Kruvant, the lands and premises mentioned, subject to a mortgage thereon in the sum of twenty thousand dollars (\$20,000.00), held by the United States Savings Bank of the City of Newark, New Jersey, and subject also to the tenancies in said decree mentioned, and to such facts as are shown

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Petition of Appeal.

on the survey made by Lehlbach Bros., dated
October 23, 1920, and being known as #46371,
as well as to padlock proceedings in said decree
mentioned, and also that the complainants-re-
spondents account to the defendant-appellant,
10 Harry Kruvant, for all rents, issues and profits
of said mentioned premises, from the 17th day
of December, nineteen hundred and twenty-five,
until the payment of the purchase price to the
complainants-respondents, by the defendant-ap-
pellant, and that if said defendant-appellant,
Harry Kruvant, fails or neglects to pay said
sum of forty-five thousand dollars (\$45,000.00),
with interest, as hereinbefore mentioned, to-
gether with said taxed costs hereinbefore men-
tioned, and to deliver the bond and mortgage
20 hereinbefore described, duly executed and
acknowledged, upon the tender of said deed
hereinabove mentioned, and described, the afore-
said sums of \$45,000.00 and \$85,000.00, being a
total of \$130,000.00, together with interest at
the rate of six per cent. per annum, from the
17th day of December, 1925, and the taxed
costs of this suit as hereinbefore mentioned,
shall be and become a lien upon the said lands
and premises, in favor of the said complainants-
30 respondents, Harry S. Katzin, Bessie V. Katzin,
Herman Z. Baum, Freda Baum, Moritz L.
Cohen, Sarah Cohen, Samuel Katzin and Ida
Katzin, to the end that said lands and premises
might be sold, pursuant to law and under the
direction of this Court, to satisfy such lien, and
that in case a deficiency should arise upon such
sale, the said defendant-appellant, Harry Kru-
vant, might be ordered by this Court to pay
such deficiency; and that the said defendant-
40 appellant, Harry Kruvant, pay to the said com-

Petition of Appeal.

plainants-respondents the costs of this suit to be taxed, including a counsel fee of one thousand dollars (\$1,000.00).

Your petitioner, therefore, prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 10

Dated, June 22, 1926.

MAURICE S. MAURER,
Solicitor for Defendant-Appellant.

JACOB L. NEWMAN,
Of Counsel.

Due and legal service of a copy of the within petition is acknowledged this 24th day of June, 1926. 20

BENJAMIN M. WEINBERG,
Solicitor of Complainants-Respondents.

30

40

Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

10

HARRY S. KATZIN, BESSIE V.
KATZIN, HERMAN Z. BAUM,
FREDA BAUM, MORITZ L.
COHEN, SARAH COHEN,
SAMUEL KATZIN and IDA
KATZIN,
Complainants-Respondents,

and

20

HARRY KRUVANT,
Defendant-Appellant.

*On Appeal
from Court
of Chancery.*

*Answer to
Petition of
Appeal.*

Answer of the above-named respondents to the
petition of appeal of the above-named appel-
lant:

30 These respondents, not acknowledging all or
any of the matters which in said petition of ap-
peal are contained, to be true, for answer there-
to, nevertheless, say and admit that a decree
was, on June 8, 1926, made and entered in the
Court of Chancery in the cause for that purpose
mentioned in said petition and therein stated;
but as to its substance and form thereof, these
respondents pray to refer thereto when the
same shall be produced. And these respondents
are advised and believe that the said decree is
in all its parts agreeable to equity, and they
pray that the same may be in all things affirmed,
with costs to be adjudged to these respondents.

40

BENJAMIN M. WEINBERG,
Solicitor for and of Counsel with Respondents.

New Jersey Court of Errors and Appeals

Between

HARRY S. KATZIN, *et al.*,
Complainants-Respondents,

and

HARRY KRUVANT,
Defendant-Appellant.

On Bill, etc.

*On Appeal
from Final
Decree in
Chancery.*

BRIEF ON BEHALF OF DEFENDANT- APPELLANT.

Statement.

This is an appeal from the final decree respectfully advised by Alonzo Church, Vice-Chancellor, entered in the Court of Chancery on the eighth day of June, 1926. The action in the court below was by the vendors for the specific performance of a contract for the sale of real estate against the vendee of certain land in the City of Newark located on the southwesterly corner of Plane and Academy streets. The agreement of sale is dated September 17, 1925, and the consideration stated in said agreement was \$155,000.

Facts.

The agreement of sale above referred to provided for a deed of warranty, free and clear of all encumbrances, to be delivered to the vendee on or before the seventeenth day of December, 1925, and described the premises to be conveyed as follows:

“Being the premises located on the southwest corner of Plane and Academy streets,

Newark, New Jersey; and better described in a survey made by Lehlbach Bros., dated October 23, 1920, and known as No. 46371, as described on the said survey, said conveyance is to include the entire tract with the exception of that part of the tract which is set out on the said survey which is marked '6.61 over line,' which is in the rear of the tract to be conveyed, and it being on the left side of the rear, that part being formerly owned by one Vliet."

The only encumbrances mentioned in the agreement are certain leases, padlock proceedings then pending against the store known as No. 273 Plane street, and a mortgage held by the United States Savings Bank, in the sum of Twenty Thousand Dollars (\$20,000).

The survey mentioned in the description was not attached to this agreement, and is merely referred to as "better described in a survey made by Lehlbach Bros.;" and uncontradicted testimony produced on the trial on behalf of the defendant-appellant showed that no survey was ever offered or shown to him at any time before, at, or after the execution of the agreement (S. C., 24) for the sale of the property, and the defendant-appellant had no knowledge of any defects appearing on said survey until a considerable time after the execution of the agreement when same was brought to his attention by the Fidelity-Union Title & Mortgage Guaranty Company who were making the search, and who had a survey made by Lehlbach Bros. dated the seventeenth day of October, 1925.

The survey mentioned in the agreement, and another survey made by the same surveyors subsequent to the making of the agreement, and dated October 17, 1925, showed the following

defects in the property (both surveys it is admitted, are practically identical).

1. Second floor wall and chimney of building adjoining on west built on top of first floor wall of building of the premises in question over a length of 88.49 ft. giving adjoining land owner right of support.

2. First floor wall of premises in question on west .08 or 1 in. over on adjoining land over a length of 88.49 feet.

3. Southwest part of building of premises in question for 28 ft. is open and has no wall; the roof of premises in question being supported by the wall of the adjoining landowner and there being no division wall of any character between the premises and adjoining lands for 28 ft.

4. Most westerly part of south wall of premises in question built .23 or approximately 3 ins. over line against adjoining building to the extent of about 20 ft.

5. Wall running north to south in southwesterly corner of premises in question support roof of adjoining building which has no wall, this giving adjoining landowner right to roof support to the extent of approximately 22 ft.

6. Right of way over southwest portion of roof by adjoining landowner over bridge and boardwalk on roof.

7. Innumerable encroachments along Plane and Academy streets of buildings, areas, covered cellarways, baywindows, show windows, steps, etc. (S. C., 17-18-19).

They are all material defects.

The complainants-respondents suppressed the defects set forth in the survey, and gave no notice to the defendant-appellant at any time of such defects and are attempting to force upon the buyer a property with the aforementioned defects by an absurd construction of the words in the description "better described in a sur-

vey." The sellers did not make any mention of the defects in the contract, but in the deed which was offered on January 15, 1926, and which is marked an exhibit in this matter, the sellers added the clause, "This conveyance is made expressly subject to such facts as are disclosed in said survey heretofore mentioned." This was not one of the conditions of the agreement of September 17, 1925, and is a forcible illustration that they desired the defendant-appellant to accept something that was not in accord with the agreement.

The letters dated December 7, 1925; December 14, 1925; December 24, 1925; and January 20, 1926, marked Exhibits D. 1, D. 2, D. 3, and D. 4 respectively (S. C., 50, 51, 52, 53, 54, 55), show clearly that it was never the contemplation of the parties that this sale was to be subject to any defects appearing on the survey and also that the defendant-appellant was diligent in endeavoring to have the matter amicably settled.

An examination of the surveys (S. C., 40-56) and of the defects enumerated hereinbefore will show clearly that they are very material defects, in that the adjoining landowners have such rights acquired over a long period of years that the title is not marketable, should the seller desire to convey, and the buildings cannot be removed because of the rights of support acquired by the adjoining landowners which rights extend for considerable lengths on the west and south, giving additional roof support to adjoining buildings.

LAW.

POINT I.

A provision in the agreement of sale "as described on the said survey" does not compel the defendant-appellant to accept a deed of the property subject to the encroachments enumerated in this brief.

The words "Better described in a survey made by Lehlbach Bros., dated October 23, 1920," following the language "being the premises located on the southwest corner of Plane and Market streets, Newark, New Jersey," can have but one reasonable interpretation, namely, viz: the parties not being assured of the exact dimensions of the land limited the amount thereof by the amount that should appear from a survey, and this construction is borne out by the subsequent language of the same clause, wherein it is stated, "said conveyance is to include the entire tract, with the exception of that part of the tract which is set out on the said survey, which is marked 6.61 over the line which is in the rear of the tract to be conveyed, and being on the left side of the rear, that part being formerly owned by one Vliet."

No mention is made in the clause of any subsequent clause concerning the buildings erected on said lands. The premises were agreed to be conveyed by deed of warranty, *free of all encumbrances, except as hereinafter mentioned*, and the only encumbrances thereafter mentioned were the leases, and mortgages, but no mention is made of the rights of the adjoining landowners to roof support or the right of way over the southwest portion of the roof by the adjoining landowners or of the fact that there is no wall in the premises, and that the adjoining

owner has built his wall on top of the wall of the premises in question, and the various other encroachments and burdens which appear in the survey. It would naturally be assumed if there were such encumbrances or encroachments or burdens upon the land or building, that they would be mentioned in said agreement.

It would be just as absurd to hold that in the event that the parties contemplated a sale of certain lands and buildings, and used the language "better described in a survey" and it would appear that the party had been shown a parcel of land with a building erected thereon, to say that the defendant would be compelled to perform, although it subsequently appeared there was no building upon the land; and the converse of the proposition is equally true that the defendant-appellant ought not to be compelled to perform if the building is burdened with easements, encroachments and encumbrances which effect the marketability of the title.

The cases of *Mente & Co. v. Heller*, 99 N. J. L. 475, 123 Atl. 755, and *Proprietors Realty Co. v. Wholtmann*, 95 N. J. L. 303, 112 Atl. 410, hold that "in construing a written contract, the words employed will be given their ordinary and popularly accepted meaning in the absence of anything to show that they were used in a different sense."

To the words "better described," by the farthest stretch of the imagination, one cannot conceive of any other interpretation except the popular and accepted meaning thereof, which was the particular and specific purpose thereof, namely, to describe by metes and bounds only the land contemplated to be conveyed without any references therein as to the buildings or their condition or location.

There is very little legal authority as to the explanation of "as described in survey." The word "described," however, has been construed and defined in *Boynton Real Estate Co. against Woodbridge* (Court of Errors and Appeals decision, reported in 94 N. J. L. 226). The proceeding in that case was by certiorari against the Township of Woodbridge to review the action of the government body of the said township in adopting an ordinance providing for the grading and curbing of one of its streets. Under the provisions of the Municipal Corporations Act, public notice had to be given to all persons whose lands were to be affected by improvements, and such notice was to state, among other things, a brief description of the proposed improvements, or, in the words of the statute, "shall briefly describe the proposed improvements." The notice which was sent to the persons affected by the improvements was as follows:

"Notice is hereby given that an ordinance has been introduced for the improvement of the road from West Pond to Kinsey Corner by grading and paving the same in the manner described in the said ordinance as amended. Said ordinance as amended further provides for the financing such improvements and for assessments of one-half of the cost thereof on the property benefitted."

Justice Bergen, who delivered the opinion of the Supreme Court, which is reported in toto with the Court of Errors and Appeals decision, said:

"The notice given did not briefly describe the proposed improvements within the meaning of the statute. Third, if the ordinance be read as part of the notice, *which I think cannot be done*, still, it is insufficient, for it does not describe any proposed grading." (Italics ours.)

It follows, therefore, that a proper construction of the word "describe" means a detailed narration of what is intended to be conveyed by the reference. This construction was adopted by Justice Bergen * * *

"I am of the opinion that the character of the work should appear either by some plan or specification to which a person interested may refer, or sufficiently described in the notice. Notice that a certain street should be graded or paved is not a brief description of a local improvement."

In the instant case, therefore, it cannot be held that the phrase "as described in survey" could mean that the property was to be conveyed subject to all encroachments and easements as might be shown on said survey. If this were intended by the agreement of sale, the most plausible and easiest way to set forth such intentions would be to state that the conveyance was to be *subject* to such facts as examination of the said survey would disclose. But an examination of the agreement of sale discloses the fact that the size or the approximate size in metes and bounds was not set forth and the only method of conveying the property in definite terms by metes and bounds was to refer to the survey, which would state the size of the property clearly and definitely.

Justice Black, delivering the opinion of the Court of Errors and Appeals in the Boynton case, said:

"It may be difficult, it seems impossible, to formulate a definition of the words in the statute 'briefly describe the proposed improvements' that will fit all cases or that would have any practical value. Perhaps, the sufficiency of the notice can only be determined from concrete cases as they may arise * * *

“To ‘describe’ means to narrate, express, explain. Webster’s Dic. At all events, precision in describing the improvements under such a notice may not be necessary, but the substance of what the improvement is, is essential to be stated.”

It follows, therefore, from the opinion of the Court of Errors and Appeals in the Boynton case, that merely the use of the word “describe” as reference to some other paper or document is not sufficient to include everything that such paper or document might disclose, but must, in addition, refer specifically or generally to the precise facts which it is intended are to be conveyed by the reference.

It is submitted, therefore, that in the instant case “as described in survey” cannot include encroachments and easements which might appear on the survey.

POINT II.

The encroachments and encumbrances existing on the property contracted to be sold by the complainants-respondents to the defendant-appellant were of such a material character as to make the title to the said property unmarketable.

The rule applicable in this regard is that where encroachments or encumbrances on the title to real estate are of such a character as to expose the purchaser of said real estate to possible litigation, the Court of Equity regards the title to such real estate as unmarketable and will not force a purchaser to accept a conveyance of the property. This rule was stated in *Meyer v. Madreperla*, 68 N. J. L. 258, where the Court of Errors and Appeals, speaking through Magie,

Chancellor, quoting Pomeroy on Specific Performance, said:

“In suits by a vendor the purchaser cannot be forced to complete the contract unless the title is free from reasonable doubt.

“If, however, there arises a reasonable doubt concerning the title, the Court, without deciding the question, regards its existence as a sufficient reason for not compelling the purchaser to carry out the agreement.

“This practice has, from the earliest times, been pursued in our Court of Chancery. Upon bills for specific performance of such contracts, a bad title would afford a complete defense. An adjudication that the title was bad, upon such a contest, would probably settle the question as between the parties. But the Court has, in its discretion, when there appeared debatable grounds for a doubt that could not be settled without litigation, or which would expose the purchaser to the hazard of litigation, declined to compel him to perform. Chancellor Runyon pointed out this distinction when he declared that there might be a good title at law which a Court of Equity would not force on an unwilling purchaser.” Cases cited.

The *Meyer* case, *supra*, is a very forceful opinion, and it is ample authority for denying relief to the sellers where there is any doubt as to the title.

In the instant case, there can be no doubt; the building to be conveyed has no walls, in some parts there are numerous encroachments, both on the premises in question and on the adjoining property, all of which have been enumerated above.

While in some cases at law, an encroachment has been held to be not a substantial defect, equity, however, under the rule above stated, will not compel a purchaser to take land where

any doubt exists as to the saleability thereof, if the purchaser should desire to sell it. At law, this has been decided in *Sheinman v. Bloch*, 97 N. J. L. 404, 117 Atl. 389 (affid. 98 N. J. L. 571, 119 Atl. 926).

The defendant-appellant contends, therefore, that the encroachment and encumbrances on the premises referred to in the agreement of sale were of such a character as to constitute the title "unmarketable" and thus affected its saleability, and inasmuch as the articles of agreement did not provide that he was to accept the title subject to such encroachments and encumbrances, he should not be compelled to accept a deed of the property.

In this connection it is also important to note that at the time that the tender of the deed was made to the defendant-appellant by the complainants-respondents, it contained the following:

"This conveyance is made expressly subject to such facts as are disclosed in said survey heretofore mentioned." (S. C. 43.)

At no place in the agreement of sale (S. C. 35) was there any provision in which the vendee agreed to accept a deed subject to such facts as the said survey disclosed.

The defendant-appellant contends, therefore, that no proper tender was made by the vendor to the vendee prior to the institution of this suit, and inasmuch as the uncontradicted testimony sets forth that such deed was the only deed ever tendered (S. C. 33), the complainants-respondents are precluded from maintaining their suit for specific performance. Unless the Court holds that "as described on the said survey" means "this conveyance is made expressly subject to such facts as are disclosed in said survey here-

tofore mentioned," then, it is maintained, no proper tender was made, and a proper tender being essential to the maintenance of a suit for the specific performance of a contract for the sale of real estate, the complainants-respondents have utterly failed to comply with such essential requirements, and the final decree entered in the Court below must be set aside.

CONCLUSION.

The agreement of sale providing that the complainants-respondents were to convey to the defendant-appellant the premises in question by deed of warranty, free and clear of all encumbrances, and the reference in the agreement of sale "as described on the said survey" failing to require the defendant-appellant to accept a deed subject to all encroachments and easements that said survey might disclose, and the encroachments and encumbrances on the premises in question being of such a material character as to constitute the title to the same unmarketable, and the complainants-respondents having failed to make a proper tender of a deed prior to the institution of the suit in Chancery below, it is respectfully submitted that the decree entered in the Court of Chancery on the advice of **ALONZO CHURCH**, Vice-Chancellor, be reversed and set aside.

Respectfully submitted,

MAURICE M. MAURER,
Solicitor of Defendant-Appellant.

JACOB L. NEWMAN,
Of Counsel.

October 1926 term.

New Jersey Court of Errors and Appeals

Between

HARRY S. KATZIN, *et al.*,
Complainants-Respondents,

and

HARRY KRUVANT,
Defendant-Appellant.

On Bill, etc.

*On Appeal
from Final
Decree in
Chancery.*

BRIEF ON BEHALF OF COMPLAINANTS-RESPONDENTS.

Preliminary Statement.

Defendant appeals from a final decree of the Court of Chancery, which was entered on June 8, 1926.

Complainants brought their suit against the defendant to compel the specific performance of a contract entered into between the complainants and the defendant, on September 17, 1925. The time fixed for the passing of title in said contract, was December 17, 1925. Complainants tendered defendant a deed, but he refused to accept the same. The decree orders the defendant to take title to the premises in question, and to pay the consideration as agreed in said contract.

Statement of Facts.

The facts in the case present very little, if any, substantial or material dispute. It is admitted that the contract was duly executed by the parties, and that tender of a deed was made by the complainants, which was refused by the defendant. Refusal of the defendant is based

upon the fact that a survey of the premises showed certain alleged encroachments, violations, etc., thereon.

Complainants admit that these defects upon the premises, whatever they amount to, now exist and did exist at the time of the making of the contract. The matter, therefore, presents a question of law, to wit, does the contract in question provide for the taking of the premises with the alleged encroachments, violations, etc., as shown on a certain survey dated October 23, 1920?

Complainants tendered a deed to the defendant, which he refused to accept because it contained the following recitals:

“The above description being in accordance with survey made by Lehlbach Bros., dated October 23, 1920, survey being known as No. 46371.”

“This conveyance is made expressly subject to such facts as are disclosed in said survey heretofore mentioned” (Ex. C. 3).

DISCUSSION OF THE LAW.

Complainants tendered to the defendant, a deed to the premises in accordance with the agreement entered into between them.

The contract in question described the premises to be conveyed in the following language:

“Being the premises located on the southwest corner of Plane and Academy streets, Newark, N. J.; and better described in the survey made by Lehlbach Bros., dated October 23, 1920, and known as No. 46371 as described on said survey, said conveyance is to include the entire tract with the exception of that part of the tract which is set out on the said survey which is marked

'6.61 over line' which is in rear of the tract to be conveyed, and it being on the left side of the rear, that part being formerly owned by one Vliet."

The question, therefore, is, what do the various references to the "survey made by Lehlbach Bros., known as No. 46371," mean? Defendant contends that the reference to the survey is only for the purpose of showing the size of the land, and that nothing else shown on the survey is binding upon his client. Such a construction, however, it is respectfully urged, is entirely too narrow.

The contract, after describing the premises as being located on the "southwest corner of Plane and Academy streets," proceeds to details and picture the property sold in the following language:

"Better described in a survey made by Lehlbach Bros., dated October 23, 1920, and known as No. 46371, as described on said survey, said conveyance is to include the entire tract with the exception of that part of the tract, which is set out on said survey, which is marked '6.61 over line' which is in rear of the tract to be conveyed, etc."

There are in said statement, therefore, two references to the land being described in the survey, and a further reference to the survey with respect to the portion which is marked "over the line." What is the meaning of this language?

Definitions of the words "better" and "describe."

That the words "as described" and "better described," are inclusive not only of boundary lines, but of all physical conditions, is shown by the following authorities:

Webster defines the word "describe," as follows:

"To delineate or mark the form or figure, etc.; to draw a plan; to represent by lines or other marks on paper or other material; as to describe the surface of the earth by a map or chart."

18 C. J. 968, defines the word "describe" as follows:

"To set forth; to represent; to delineate; to express; to depict; to portray."

Definition of the word "describe" as given in Funk & Wagnall's Standard Dictionary,

"Describe: To give the characteristics of, as in words or by signs, so that another may form a mental image or idea, etc."

Syn. "Delineate, etc."

"Delineate: 1. To draw in outline, represent by sketch or diagram.

2. To represent pictorially, etc., to give a mental picture of, to depict, describe, draw, figure, paint, picture, portray, represent, sketch, etc."

In the case of *Boynton Real Estate Co. v. Woodbridge Tp.*, 109 Atl. 514, the opinions of the late Justice Bergen in the Supreme Court, and Justice Black in the Court of Errors and Appeals, are set forth. The facts show that the Township of Woodbridge, having determined to grade and pave one of its streets, undertook to carry out that work by virtue of certain statutory provisions. The statute, among other things, provided that notice should be given of the time and place when the ordinance provided for the doing of the work, would be considered, which notice should briefly "describe the proposed improvement." Objections were made to the fact

that the description called for was not specific and Justice Bergen said in that respect:

“I am of the opinion that the character of the work should appear either by some plan or specification to which a person interested may refer, or sufficiently described in the ordinance.”

And Justice Black, in the opinion mentioned, which affirmed the Supreme Court’s finding, said in reference to the meaning of the word “describe,”

“To ‘describe’ means to narrate, express, explain. Webster’s Dictionary.”

We here have the Court of Errors and Appeals adopting the definition given by one of the lexicographers above referred to.

Webster, discussing the use of the word “better,” says:

1. “The primary sense is more; or advanced further; and in America, this is a common popular signification, etc.”
2. “More correctly or fully.”

The words “better described,” therefore, mean more fully delineated; more fully pictured or painted; more fully sketched or diagrammed; more fully portrayed, etc. This is the result of the definitions of the lexicographers above quoted. Applying the same treatment to the definition of the word “describe,” as given in the case of *Boynton v. Woodbridge, supra*, the words, mean, “more fully narrated; more fully expressed; more fully explained.”

The defendant, therefore, cannot treat the language used as referring to that which he now desires, to wit, the size of the plot, and for his purpose, reject all other references, explanations, pictures, sketches, etc., for which the survey stands. The defendant, who is a man of large

experience in real estate matters, having constructed and sold many properties in the City of Newark, knew exactly what he was doing when he signed the contract in question, and looked to the survey for the details of his purchase.

No question of fraud has been raised, so that the defendant is responsible for the contract he signed, whether he saw the survey or not.

It is admitted that all of the alleged physical defects in the property, as shown by defendant's survey, dated October 17, 1925, were pictured, described and shown on the Lehlbach survey, No. 46371, which is dated October 23, 1920 (see p. 19 and p. 28). This is the survey mentioned in the contract between the parties. (On p. 15, it erroneously appears that survey No. 46371 was made October 17, 1925.)

Counsel for defendant, in his brief, refers to certain letters written by the then attorney for the defendant to the then attorney for the complainants, calling his attention to the defects in question as justifying his insistence that the words "better described in a survey," could not refer to the objections raised by the defendant as herein stated. It seems unnecessary to argue that no letters, after the making of the contract, by either one attorney or the other, could possibly change the contract, but it is pointed out that in the letter from Mr. Maurer to the attorney for complainants (Exhibit D. 1, p. 50, etc.), attention is called to all of the matters shown on the survey referred to in the contract, as well as the matter of certain padlock proceedings and unrecorded leases, thus showing that all that attorney Maurer did, was to repeat all of the things set forth in the contract.

Defendant's brief insists that "it would be just as absurd to hold that in the event that the parties contemplated a sale of certain lands and buildings, and used the language 'better described in the survey,' and it would appear that the party had been shown a parcel of land with a building erected thereon, to say that the defendant would be compelled to perform, although it subsequently appeared there was no building upon the land."

It seems that the attempted analogy is rather far-fetched. In that instance, there would have been rank fraud, in that, one parcel was shown and another was sold, and as above pointed out, no fraud in the transaction has been alleged by the defendant. His plain insistment is that although the contract referred to a survey, whereon the alleged defects are all clearly shown, and although substantially everyone of those same defects could not help but be seen by so experienced a dealer as the defendant, he now, for his own purposes, chooses to pass up the contract and lean upon the rather feeble insistment that the clear specific reference to the survey was inserted merely for the purpose of giving the dimensions of the property. If that was all that the survey was expected to do, why would that not have been inserted in the contract? It is doubtful if any experienced attorney could draw a contract which enlightened the purchaser as to just what he was buying, more than did this particular contract.

Defendant, in his brief, sums up his argument against the construction of the contract as given to it by the learned Vice-Chancellor, who heard the case, in the following language:

"Unless the Court holds that 'as described on said survey' means 'this con-

veyance is made subject to such facts as disclosed in said survey heretofore mentioned,' then it is maintained that no proper tender was made."

While these two expressions, as set forth in the brief, do vary as to the use of certain words, is it not straining the English language to the limit in insisting that they are substantially different, one from the other?

Under the common understanding of the words used in the contract, the defendant was clearly apprised of the fact that he was buying the premises subject to "such facts as are disclosed in said survey."

As pointed out by the learned Vice-Chancellor, in his opinion,

"The words 'being the premises located on the southwest corner of Plane and Academy streets' in the contract, standing alone, mean little. There is no indication as to frontage, depth, shape or character of buildings, if any. Thus one must look to the survey for size. One so looking, especially an experienced real estate operator like the defendant, who has participated in a great number of similar transactions, could not help seeing the alleged encroachments. They are plainly marked on the survey. They are distinctly apparent, even to one unversed in such matters. In the clause of the contract quoted above, there are three specific references to the survey" (p. 59).

If the above be true, and of course, complainants so insist, then the question of whether the alleged defects are material or not, is not germane to the issue. The contract between the parties clearly speaks of their intentions and inasmuch as no objections to the premises, other than those depicted on the survey referred to in

contract, have been shown, the defendant should be held to his bargain.

It is, therefore, respectfully submitted, that the decree of the Court of Chancery, as advised by his Honor, Alonzo Church, one of the Vice-Chancellors thereof, should be affirmed with costs.

Respectfully submitted,
BENJAMIN M. WEINBERG,
Solicitor for and of Counsel
with Complainants-Respondents.

