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BILL FOR SPECIFIC PERFORMANCE.

Filed March 13, 1928.

In Chancery of New Jersey

Between

"SEA GIRT ESTATES," a corporation,

Complainant,

and

SUSAN M. SUTTON, TILLIE M. NEWMAN, MURVIN OSBORN and E. V. PATTERSON, JR., Inc., a corporation,

Defendants.

10

Bill for Specific Performance.

20

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

The complainant, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and having its principal office in the City of Trenton, in said State, respectfully shows:

30

1. That Susan M. Sutton, Tillie M. Newman and Murvin Osborn are each resident of the County of Monmouth and State of New Jersey and that E. V. Patterson, Jr., Inc., is a corporation organized and existing under the laws of this State and having its office in the Borough of Sea Girt, in the County of Monmouth and State of New Jersey.

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Bill for Specific Performance.

2. That on the 23rd day of September, 1925, the complainant was the owner of certain lots and real property situate in the said Borough of Sea Girt and that on that date it entered into an agreement with the defendants that for a consideration it would on the first day of October
10 A. D., 1927, convey certain lots to the defendants as designed in the agreement, a copy of which said agreement is attached hereto and made a part hereof. A part of the consideration has been paid by defendants.

3. According to the terms and conditions of said agreement the defendants were to pay to the complainant the sum of \$58,000.00 as and for the purchase price of said lots and one payment in the amount of \$10,000.00 was to be made on
20 April 1, 1927.

4. The said payment as designated in the preceding paragraph was not made on April 1, 1927, but on April 12, 1927, the complainant received a written request signed by the above named defendant corporation, through E. V. Patterson, Jr., and by each of the other defendants individually, asking that they be favored with an extension on that said payment and be given until
30 October 1, 1927, to make a payment thereof. The request was granted in writing but with the expressed understanding that it was without any prejudice to any rights of the complainant under the aforesaid agreement.

5. In effecting the execution of the said agreement E. V. Patterson, Jr., an officer of E. V. Patterson, Jr., Inc., the above named defendant corporation, acted as and for the agent of the complainant and for his services he received a
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Bill for Specific Performance.

commission on the total amount of the purchase price designated in the agreement.

6. The said E. V. Patterson, Jr., individually and as an officer of the above named defendant corporation, acted as and for the agent of all the above named defendants and was entirely cognizant of the true intent and meaning of the terms of the said agreement. 10

7. On October 1, 1927, the defendants failed and neglected to make a payment of \$10,000.00 in accordance with the extension above referred to and failed and neglected to make a payment of the final amount due regardless of the fact that they were requested so to do by the complainant.

8. On January 9, 1928, after numerous demands had been made upon the defendants by the complainant to comply with the terms of the agreement, the complainant sent to each of the defendants a statement showing the amount due to the complainant by the defendants under the agreement, the sum of \$40,870.24. 20

9. On March 5, 1928, the complainant was notified in writing by the defendants, through their attorney, that they refused to comply with the terms of the agreement and refused to make any further payments thereunder and they do now still refuse although the complainant was, on October 1, 1927, and is now, ready, willing and able to convey to the defendants title to the lots and parcels of real property designated and described in the said attached agreement. 30

The complainant is without adequate remedy in the courts of law and it therefore prays that the defendants and each of them be decreed 40

Bill for Specific Performance—Agreement.

specifically to perform the said agreement entered into by them with the complainant.

10 That the said defendants be decreed to pay to the complainant the amount due and found to be due under and by virtue of the said agreement and that a writ of subpoena may issue commanding the defendants and each of them to answer this complainant and to abide by such decree as the Court may make in the premises and that your complainant may have such further relief in the premises as the nature of the case may require and that shall be agreeable to equity and good conscience.

JAMES E. MITCHELL,
Solicitor for Complainant.

20

30 THIS AGREEMENT, Made the twenty-third day of September, in the year of our Lord one thousand Nine Hundred and Twenty-five, BETWEEN "SEA GIRT ESTATES," a corporation of the State of New Jersey, having its principal office in the City of Trenton, in the County of Mercer and State of New Jersey, party of the first part, AND SUSAN M. SUTTON TILLIE M. NEWMAN, MURVIN OSBORN and E. V. PATTERSON, JR. INC., of the Borough of Sea Girt, in the County of Monmouth 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 FIFTY-EIGHT THOUSAND (\$58,000.00) Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenant and agreements hereinafter mentioned, made and entered into by the said party

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Bill for Specific Performance—Agreement.

of the second part, doth agree to and with the said party of the second part, that it the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by Deed of Warranty free from all encumbrance except restrictions of record affecting the same, on or before the first day of October, 1927, all those lots, tracts, or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Sea Girt, in the County of Monmouth and State of New Jersey. 10

Being known and designated as lots numbers twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39) and forty (40), in BLOCK NUMBER THIRTY-EIGHT (38); lots numbers nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), BLOCK NUMBER FIFTY-FIVE (55); lots numbers thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), forty-eight (48), forty-nine (49), fifty (50), fifty (50), fifty-one (51), fifty-two (52) and fifty-three (53) in BLOCK NUMBER FIFTY-NINE (59) as shown on a 20 30 40

Bill for Specific Performance—Agreement.

map entitled "Amended Map of Sea Girt, New Jersey," Frank Osborn, Engineer, 1909.

The above described premises are to be conveyed expressly subject to covenants, conditions and restrictions of record affecting the same.

10 And the said Susan M. Sutton, Tillie M. Newman, Murvin Osborn and E. V. Patterson, Jr., Inc., for themselves, their heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, its successors and assigns, that they the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of FIFTY-EIGHT THOUSAND (\$58,000.00) DOLLARS, as and
20 for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

	On execution of this agreement, receipt where-	
	of is hereby acknowledged	\$ 1,000
	October 1, 1925	5,000
	Ajril 1, 1926	5,000
	October 1, 1926	10,000
	April 1, 1927	10,000
	October 1, 1927	27,000
30	Total	58,000

The party of the first part hereby agrees that it will lay sidewalk and curb in front of and abutting said premises wherever same is not already laid.

The party of the first part agrees that it will bring Fourth avenue to grade in blocks on which said premises front or abut.

40 The party of the second part agrees to pay taxes and interest at the rate of six per cent.

Bill for Specific Performance—Agreement.

(6%) per annum on all unpaid balances from the day of the date hereof.

It is hereby understood and agreed that should the party of the second part desire searches or other assurances of title, he may procure same at his own proper cost and expense.

The party of the first part agrees that it will execute and deliver good and sufficient deeds for parts of the above described premises upon payment therefor by the party of the second part at the rate of forty (\$40.00) dollars per front foot, the rate of said payments per front foot to be reduced proportionately as payments are made on account of the purchase price as herein stated.

10

And it is further agreed by the parties to these presents, that the said party of the second part, their heirs and assigns, may enter into and upon the said land and premises on the first day of October, 1927, and from thence take the rents, issues and profits to their use.

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And it is further agreed by the parties hereto that the said Deed of Warranty, except restrictions as aforesaid, shall be delivered and received at the office of Gilbert H. Van Note, Patterson Building, Spring Lake, New Jersey, between the hours of ten in the forenoon and three o'clock in the afternoon on the said first day of October, 1927.

30

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

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Bill for Specific Performance—Agreement.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its president and its corporate seal affixed the day and year first above written.

“SEA GIRT ESTATES,”

10 By GEO. W. MULHERON,
President.

SUSAN M. SUTTON,
TILLIE M. NEWMAN,
MURVIN OSBORN,
E. V. PATTERSON, JR., INC.,
C. A. BOND, JR.,
V.-Pres.

Attest:

20 By A. B. WHELAN,
Secretary.

Witness:

C. A. BOND, JR.
E. V. PATTERSON, JR., for
TILLIE M. NEWMAN and
MURVIN OSBORN.

30 Attest:

E. V. PATTERSON, JR.,
Secretary.

A true copy.

THOMAS BARBER,
Clerk.

ANSWER AND COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between

"SEA GIRL ESTATES," a corporation,

10

Complainant,

and

SUSAN M. SUTTON, TILLIE M. NEWMAN, MURVIN OSBORN and E. V. PATTERSON, JR., Inc., a corporation,

Answer and Counter-claim.

Defendants.

20

The answer and counter-claim of the defendants Susan M. Sutton, Tillie M. Newman, Murvin Osborn and E. V. Patterson, Jr., Inc. These defendants answering the bill of complaint say that:

1. Paragraphs 1, 3, 4, 5, 7 and 8 are admitted.
2. Paragraph 6 is denied.
3. These defendants have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 that on the 23rd day of September, 1925, the complainant was the owner of certain lots situate in the Borough of Sea Girt. The balance of paragraph 2 is admitted. 30
4. Paragraph 9 is denied with the exception that these defendants admit that on or about March 5, 1928, the complainant was notified by the defendants, through their attorney, that they 40

Answer and Counter-claim.

refused to perform the agreement and that they still refuse to perform said agreement.

FIRST DEFENSE.

10 1. Defendants say that the agreement for the sale of the premises refers to a map entitled
"Amended Map of Sea Girt, New Jersey, Frank Osborn, Engineer, 1909" and that part of the premises mentioned in said agreement as shown on said map are mentioned and described as lots 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 in Block 59 on said Map, and that neither on the first day of October, 1927, nor at any time subsequent thereto has the complainant had title to parts of lots shown on said map and designated thereon as lots
20 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41. That the intention of the defendants in contracting for the purchase of the property mentioned and described in the agreement annexed to the bill of complaint was for development purposes, and unless the said defendants could acquire title to all of the property mentioned and described in the contract of sale they did not, and do not, desire to take title to any.

30 2. That these defendants have at all the times since the 9th day of January, 1928 (to which time the time for closing was extended by mutual agreement) been ready, willing and able to take title to the premises mentioned and described in the agreement of sale, and to pay the balance of the purchase price as therein mentioned, but the complainant for the reason aforesaid has not been able to deliver title in accordance with its contract.

Answer and Counter-claim.

COUNTER-CLAIM.

By way of counter-claim against complainant these defendants say:

1. That on the 23rd day of September, 1925, the defendants and the complainant entered into an agreement in writing for the purchase of certain property in the Borough of Sea Girt, designated and described in said agreement. 10

2. According to the terms and conditions of said agreement the defendants were to pay the complainant the sum of \$58,000.00 as and for the purchase price of the property therein described.

3. That the time of the performance of said agreement was extended by mutual agreement of the parties to January 9, 1928. 20

4. That between the 22nd day of September, 1925, and the said 9th day of January, 1928, these defendants have paid to the complainant as and for a part of the purchase price of said premises, taxes, interest and water rent, the sum of \$24,569.63.

5. These defendants have also expended for fees for searching title to the premises in question the sum of \$50.00. 30

6. These defendants have ascertained that the complainant has no title to parts of Lots 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 in Block 59 mentioned and described in their agreement of sale, and for that reason refuse to take title to the premises mentioned and described in said agreement.

Answer and Counter-claim.

These defendants therefore pray:

1. That said complainant may answer this counter-claim and each statement herein made.

10 2. That complainant may be decreed to pay to these defendants the amount paid by them to the complainant on account of the purchase price and for the taxes, interest and water rates, to wit \$24,569.63 with interest thereon, together with the search fees of \$50.00.

HARRY R. COOPER,
Solicitor of Defendants.

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REPLY AND ANSWER TO COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between

“SEA GIRT ESTATES,” a corporation,

Complainant,

and

SUSAN M. SUTTON, TILLIE M.
NEWMAN, MURVIN OSBORN
and E. V. PATTERSON, JR.,
INC., a corporation,

Defendants.

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On Bill, etc.

*Reply and
Answer to
Counter-
claim.*

20

REPLY.

The complainant joins issue with the defendants.

ANSWER TO FIRST DEFENSE.

1. The complainant denies the allegations set forth in the first defense and states that at all times it was ready, willing and able to convey lots 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 as set forth in the agreement attached to the complaint. 30

2. The complainant denies paragraph two of the first defense.

ANSWER TO COUNTER-CLAIM.

1. The complainant admits the allegations of paragraph one.

2. The complainant admits the allegations of paragraph two. 40

Reply and Answer to Counter-claim.

3. The complainant admits the allegations of paragraph three.

4. The complainant has not sufficient knowledge or information to form a belief as to the allegations set forth in paragraph four.

10 5. The complainant has not sufficient knowledge or information to form a belief as to the allegations set forth in paragraph five.

6. The complainant denies the allegations of paragraph six.

JAMES E. MITCHELL,
Solicitor for Complainant.

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TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

SEA GIRT ESTATES, a corporation,
 tion,

Complainant,

and

SUSAN M. SUTTON, TILLIE
 M. NEWMAN, MURVIN OS-
 BORN and E. V. PATTERSON,
 JR., INC., a corporation,

Defendants.

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Transcript of stenographer's notes of proceedings in the above entitled matter before Honorable Maja Leon Berry, Vice Chancellor, at the Chancery Chambers, Long Branch, New Jersey, on Thursday, May 23, 1929, at 10:30 A. M.

Appearances:

William A. Moore, Esq., and Howard K. Shaw, Esq., solicitors for complainant.

Harry R. Cooper, Esq., solicitor for defendants. 30

Mr. Moore: This is a case for the specific performance of a contract relating to real estate located at Sea Girt, New Jersey.

The Court: Is the file here?

Mr. Moore: It is not. I neglected to bring it down.

If the Court please, the issue in this case seems to be a very narrow one. The agreement was drawn for the sale of a certain num- 40

Opening.

ber of lots in Sea Girt, New Jersey, and in the agreement it refers to the lots as shown on a map entitled "Map of Sea Girt, New Jersey, Frank Osborn, Engineer, 1909." So far as the actual land itself is concerned, there is not much difference whether it is incorporated as

10 a contract and filed in the office of the County Clerk at Freehold, or whether it is the map of Frank Osborn, which we will introduce in evidence, from which map the Sea Girt Estates bought their property and which they feel this contract referred to, and which we feel positive Mr. Patterson of the defendants knew that is the map referred to. That seems to be the main question in the case, which map is referred to in that particular statement.

20 The Court: Is there any difference in the maps?

Mr. Moore: Very little. As I said before, the difference in the amount is very little. They seem to be using it as a means to avoid the performance of this contract.

The Court: Is the making of the contract admitted, Mr. Cooper?

30 Mr. Cooper: The making of the contract is admitted. The defense is briefly this: They contracted to sell by reference to a certain map, naming the map, which map shows the lots to be of certain dimensions. We inquired of them when we were unable to find their title, under what deed, what their source of title was, and they referred us to a certain deed. An examination of that deed disclosed the fact that they did not own the property which they covenanted and agreed to convey. In other words, they have about a 50-50 share of the lots that they

Opening.

intended to convey. I have a copy of that map, the original map—

Mr. Shaw: May it please the Court, we have a large map here.

Mr. Cooper: They have a copy of the map by which they agreed to convey, and this map shows what they actually had to convey. Is Mr. McQueen in the court room? I have got the original 1909 map which is clearer. 10

The Court: Let me understand this. Is it agreed by counsel that the only dispute here is as to whether the complainant can convey according to its contract?

Mr. Moore: I think that is the only dispute, except that we filed a counter-claim for the moneys we paid on account of the contract.

Mr. Moore: And the fact that we allege that Mr. E. V. Patterson, one of the defendants, who was the agent at the time of this sale and the drawing of this contract for the complainant, was the agent of the defendants at the time when they purchased. He denies that he was their agent and admits he is our agent. He is one of the vendees in this contract. He is an officer of the E. V. Patterson Company, a corporation. 20

One of the defendants is the E. V. Patterson, Jr., Inc., which is a real estate company operating in Sea Girt, New Jersey. 30

The Court: They were the vendees under this contract.

Mr. Moore: Yes, and Mr. E. V. Patterson, Jr., was the agent for the Sea Girt Estates, the complainant, when they purchased this property under the contract for purchase. I am not sure, I think the deed conveying this property from 40

Opening.

one by the name of Schenck to the Sea Girt Estates was drawn in Mr. Van Note's office. The description was gone over thoroughly with Mr. Van Note, Mr. Whalen and Mr. Mulhern, the Sea Girt Estates and Mr. Patterson, the agent for these particular lots, which they say they cannot now convey because these lots were deeded to the borough in 1918 and have been off the tax map since that time. This agreement has been thoroughly gone over. Mr. E. V. Patterson, whom we allege was the agent for the vendees, was in the office a month before, and in the sale of these lands to the Sea Girt Estates, this map was used, and hung on the wall in Mr. Patterson's office, we don't know for how long a time.

20 The Court: When you refer to this map, you are referring to the framed map.

Mr. Moore: The framed map, and your Honor will notice it says, "Frank Osborn, 1909."

The Court: The making of the contract which forms the basis of this suit and which is dated September 23, 1925, is admitted. The contract describes the property to be conveyed by lot and block numbers as shown on a map entitled, "Amended map of Sea Girt, New Jersey, Frank Osborn, Engineer, 1909." The defense to this suit for specific performance is that the complainants cannot convey according to the contract, the reason for that assertion being that the property is described according to the amended map of Sea Girt just mentioned, whereas the complainants do not own the property as described according to that map, there being a later map dated July, 1927, which shows or is alleged to show the true condition, the true dimensions of the property owned by the complainant at this time and

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Opening.

at the time the contract was entered into. Now is that correct?

All Counsel: It is.

The Court: Now can you agree as to what the difference is between the two maps?

Mr. Moore: I can show you on the maps, your Honor, very easily. These two lots (indicating) are 31 and 32. They were deeded to the borough, this line down here. Lots 32 and 33 in block 59 were deeded to the Borough of Sea Girt about 1918, and this line drawn through block 59, the black pencil line, represents the land taken by the borough for the improvement of the Crescent Parkway. That, your Honor, took away 32 and 33 and parts of 39, 38, 37, 36, 35 and 34. Lots 32 and 33 then were swung around to face the parkway and are these two lots here now.

The Court: As shown on this later map of July, 1927?

Mr. Moore: Not exactly, your Honor, because you see, you have an offset here according to this map there is no offset, it is straight. These lots lose this frontage here and you have an offset—

The Court: I do not understand what you mean.

Mr. Moore: In other words, this line on this framed map goes straight. It is back, I imagine, about 25 feet on that map. In other words, if this map is the same as that, this line here would be about here (indicating). In other words, allowing, taking some off these lots to make up for what these lots lost in front, according to that map, there—

Mr. Cooper: About 50 feet was taken off all the way down to the angle of lot 41.

Opening.

The Court: The controversy, as I understand it, and you correct me if I am wrong, respects only that portion of the property described in the contract which is comprised in block 59.

10 Mr. Cooper: That is correct. And it affects the two corner lots facing on the plaza at that point.

The Court: How many lots are there in all in the contract, do you know, off-hand?

Mr. Cooper: There are quite a good many, I have not counted them up.

20 Mr. Moore: There are 18 lots in block 38; 19 lots in block 55; 22 lots in block 59. Now the deficiency in the land which the complainant can convey, or between the land which the complainant can convey and that which the defendants claim it agreed to convey, is due to the widening of Crescent Parkway by this conveyance to the borough.

Mr. Cooper: Yes.

The Court: And that was made when—that conveyance?

Mr. Cooper: I think in 1918. I have a witness here. I do not recall the exact date, but I have a witness to show that.

30 Mr. Moore: I think we can agree on that. It was about 1918.

The Court: Now we have this matter narrowed down so that the issue is not very broad.

Mr. Cooper: No, very narrow, the issue there whether the—

40 The Court: There are two propositions here. One is whether the Court, assuming that there is a deficiency, whether the Court ought to compel the conveyance, or rather, the acceptance of a conveyance of the lands, with an allowance for what

Opening.

the complainants cannot convey, and second, whether the defendants purchased with the idea that they were to get these lots—

Mr. Cooper: You see, we bought for development purposes, the idea was to buy all these lots for development purposes, and on these two lots they had an idea of starting a bank, I believe— 10

The Court: They can start it on the other two lots, can't they?

Mr. Cooper: They might, but they were the prime lots in the whole—

The Court: Is there any serious contention that the defendants bought with reference to this new map?

Mr. Moore: This new map you have before you now was made in 1927. This contract was signed in 1925. This new map will play a part in the case later. 20

The Court: Suppose I put it this way: Is there any serious contention that the defendants bought with the understanding that that portion of the lots named in the contract was to be cut off by a widening of Crescent Parkway?

Mr. Cooper: Yes, we claim that they bought with reference to the contract as drawn by reference to the 1909 map. 30

Mr. Moore: Mr. Patterson was the agent, he is one of the vendees. There is no dispute as to his part.

The Court: I am not asking that. I am asking the complainants whether there is any serious contention that the defendants did buy or agree to buy that portion of the property which is shown by that black line cutting off these lots.

Mr. Moore: Yes, sir, that is a very serious contention on our part. 40

Opening.

The Court: All right, let's see what numbers they are.

Mr. Moore: Starting with here (indicating) your Honor, No. 41. 32 to 41.

10 The Court: Lots 32—I am referring now to the lots in block 59, lot 32, is that affected?

Both Counsel: Yes.

The Court: How?

Mr. Moore: That is that lot.

The Court: Lots 32 and 33 are taken—

20 Mr. Moore: Your Honor, we contend that 32 and 33 referred to there is this 32 and 33 which was on the map in Mr. Patterson's office when he sold to our company. The 32 and 33 which they contend is on the map in Freehold, and is this 32 and 33 which was sold in 1918.

The Court: I understand that. What I am trying to find out is whether you contend that they agree to buy excluding this piece.

Mr. Moore: Yes, sir, that is our contention, that they bought this as it says here.

The Court: Lots 32 and 33 are eliminated by that cut-off, aren't they?

30 Mr. Moore: Yes, sir.

The Court: Lots 34, 35, 36, 37, 38, 39 and 40, the front part of these lots is all taken off, extending from a point back to more than one-half of the lot or about one-half of the lot 34. Now the complainant's contention is that lots 32 and 33, as referred to in this contract, are the new lots 32 and 33, the new numbered lots 32 and 33, which were formerly 34 and 35. Is that correct?

40 Mr. Shaw: Which were formerly the easterly 50 feet of 29, 30 and 31.

Charles H. Roberts, for Complainant, direct.

The Court: So that the only question on which we need to take testimony is with respect to what you did actually refer to.

Mr. Moore: Yes, sir.

The Court: I don't know whether we can clarify the record any more or not, but lots 32 and 33, new numbers, are a portion of the easterly portion of lots 29, 30 and 31 as shown on the 1909 map, and the other numbers remain the same, only that they are shortened by reason of this cut-off? 10

Mr. Shaw: That is true.

The Court: You may proceed with your proof respecting this map.

CHARLES H. ROBERTS, a witness called in behalf of the complainant, being first duly sworn according to law, on his oath testified as follows: 20

Direct examination by Mr. Moore.

Q Mr. Roberts, you are now one of the assessors of the Borough of Sea Girt? A I am one of the assessors of the Borough of Sea Girt.

Q Do you hold any other official position? A Superintendent of Public Works. 30

Q Are you familiar with the location at the corner of Parkway Boulevard and the Plaza in Sea Girt? A Yes, sir.

Q Do you recall when lots 32 and 33 in block 59 were conveyed to the borough? A Why, all I can recall in the fall of 1917 the Sea Girt Company made a proposition to the municipality that if they would give 50 feet on either side of the Parkway as marked out on the map of 1909, if they would give that, would the borough widen 40

Charles H. Roberts, for Complainant, direct.

out the entrance to the Parkway, and they decided they would, and work was begun in the spring of 1919, and the Parkway was widened out 50 feet to the north and 50 feet to the south, and then the land was deepened, I don't know how many feet.

10 Q Were you tax assessor at that time? A I was.

Q Have you taxed these two lots since 1918?

Mr. Cooper: That is objected to as not binding on the defendants.

The Court: I don't see how it makes any difference.

20 Mr. Moore: I just wanted to get the exact date in the record that in 1918 these lots were deeded—

The Court: Is the deed on record?

Mr. Cooper: No, the deed was never put on record. They charge us with constructive notice.

Q When you say the work was done in 1918, what do you refer to? A The widening of the Crescent Parkway—

30 Q You include in that curbs and gutters? A Yes.

Q Concrete curbs and gutters? A Yes, we dug out the old concrete curb and gutter and widened the street and put in new.

Gilbert H. Van Note, for Complainant, direct.

GILBERT H. VAN NOTE, a witness called in behalf of the complainant, being first duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Moore.

10

Q Mr. Van Note, you are a practicing attorney of Spring Lake, New Jersey? A Yes, sir.

Q Did you prepare the agreement between the Sea Girt Estates, Susan Sutton, Tilly M. Newman, Mervin Osborn and E. V. Patterson, Jr., a corporation? A I may have, I could tell if I saw the agreement.

Q Here it is? A (after examining same) Yes, sir, that was prepared in my office. I don't believe that I prepared it.

20

Y Do you recall who gave you the description? A Yes.

Q Who gave you the description? A Mr. Bond.

Q Who is Mr. Bond? A He lives in Sea Girt. I believe he is associated with Mr. Patterson.

The Court: Charles A. Bond, Jr.?

Witness: Yes, sir.

30

The Court: Vice-President of the E. V. Patterson, Jr., Inc.?

Witness: I believe he is, yes, sir.

Q I show you a deed dated August 15, 1925, made by William C. Schenck to the Sea Girt Estates, did you draw that deed in your office? A That deed was prepared in my office, yes, sir.

Q Did you pass title at the time title was passed? A When Mr. Schenck sold his holdings

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Gilbert H. Van Note, for Complainant, direct.

in Sea Girt to the Sea Girt Estates, I represented Mr. Schenck.

Q Who was present in your office at that time? A When the closing took place?

10 Q Yes. A Well, there was Mr. Schenck, Mr. Whalen, Mr. Mulhern, they composed the Sea Girt Estates. I believe Mr. Patterson was there, and a young man who was with me at the time named Streeter was there.

Q You say you believe Mr. E. V. Patterson, Jr., was there, he was there, was he? A I think he was, yes.

20 Q Before title was passed you carefully checked up each lot in this description? A What we did was this: Mr. Schenck took title to that property, and some other properties in Sea Girt, I think in 1924, and I represented Mr. Schenck. After he started to sell the lots we kept a list of each lot sold by Mr. Schenck, and each lot that was conveyed, whenever a purchase money mortgage was prepared, we checked that with the deed that Mr. Schenck received, and checked off from that deed the lots that were to be conveyed, and used that as a basis for preparing the deed to the Sea Girt Estates.

30 Q You had a map in your office at that time, did you not? A Oh, yes.

Q And that map showed the lots as they are shown there—I don't mean with the markings on? A I cannot say that. I had a printed copy of the Amended Map of Sea Girt, New Jersey, 1909. I did not check that map against this one, but I had a printed copy.

40 Q In checking over these lots do you recall checking off two lots? A No, I do not. I recall checking up what Mr. Schenck received from the Sea Girt Holding Company and checking off

Gilbert H. Van Note, for Complainant, direct.

from that the lots that he had conveyed, and what remained were conveyed to the Sea Girt Estates in the same manner that Mr. Schenck received them, and in the same language.

Q Do you recall what you did when you came to check up this section?

10

The Court: What do you mean by this section?

Mr. Moore: I am going to recite it now from the deed. (Reading.) "Being all said block No. 59 except the portion taken for the enlargement of the park opposite the railway station." I believe that was kept.

The Witness: From the deed Mr. Schenck received when he bought the Sea Girt property.

20

Q How did you show that, the section taken out on your map you had? A It did not show on the map I had, to my recollection.

Q Did the map you had show 31 and 32 as they had been on that map? A I do not recall. I am quite sure the map I had was a printed copy of the Sea Girt New Jersey, Frank Osborn, Engineer, 1909. That is the title of it. I don't think there were any markings on it. I do not recall.

30

Q I didn't say the map you had had any markings on it. This is a copy of the Frank Osborn map, without any markings on. Was this similar to that, without markings? A Yes, I believe it was, except that the part west of the railroad was not shown, marked as this map is marked.

Q Now, the Frank Osborn map shows lots 32 and 33. Did you explain to anyone there that

40

Gilbert H. Van Note, for Complainant, direct.

they were not included in that deed from Mr. Schenk? A No, I did not.

Q What else did you eliminate? A The lots we eliminated were the lots Mr. Schenk had sold while he held the property. Those lots were deducted from the parcel which Mr. Schenk
10 received when he purchased from the Sea Girt Holding Company. Everything else was conveyed to the Sea Girt Estates exactly the same way as it was conveyed to Mr. Schenk.

Q Let me repeat the question I asked just before. How did you show the purchasers what was excluded, it being all of said block number 59, except that portion taken for the enlargement of the park opposite the railway station?

20 Mr. Cooper: May I interpose an objection at this time? There is no testimony, may it please the Court, that any purchasers were in this office except Mr. Patterson. As to all the other purchasers, I object to the question.

The Court: The objection is overruled, because so long as one of the purchasers was present there it is binding at least on him. Whether it is binding on the others—

30 Mr. Cooper: I am not objecting as to him; it is the other purchasers.

The Court: I cannot admit it, you know, as to one and exclude it as to the other without letting the man answer the question.

Q (Question repeated.) A You are referring to the Sea Girt Estates as the purchasers?

40 Q Yes. A I don't recall what was said to them now. I know that Mr. Mulhern, Mr. Whalen

Gilbert H. Van Note, for Complainant, direct.

and Mr. Patterson and everybody concerned had a description of these lots and that was checked up by them, partly in my office and partly elsewhere. I don't know, I cannot tell you what was said about it.

The Court: Is there any question but that all parties knew, that is, all the parties that were there, knew that this strip had been taken off for the widening of Crescent Parkway? 10

The Witness: I don't recall your Honor that that point came out directly.

Q Why did you put it in the deed? A Just as I said before, Mr. William G. Schenck received in 1923 or 1924, purchased I believe about three-quarters of the Borough of Sea Girt, vacant lots, in a deed similar to the one which the Sea Girt Estates received, and he made conveyances from time to time of various lots, and we kept a record, Mr. Schenck and I, a separate record of the lots that he had sold, then when we made this sale to the Sea Girt Estates, we used the same description as contained in the deed to Mr. Schenck, with the exception that we left out the lots he had sold. 20 30

The Court: This portion of the description was in Mr. Schenck's deed also?

The Witness: Yes.

The Court: And you simply took it from that?

The Witness: Yes.

Q Mr. Van Note, at this conference you had in your office that day you checked up lot for lot 40

Gilbert H. Van Note, for Complainant, cross.

on the map you had in your office? A I don't recall we checked it from the map, I don't believe we did. I believe my check was from the deed, and we omitted the lots we sold. We sold lots of them. There was, I think, a map there marked off, I think each block Mr. Schenck owned
10 was marked off in red pencil, and each lot that we had sold was crossed off the map, and I think what we used was the deed to Mr. Schenck from the Sea Girt Holding Company, just marking off from the map, or omitting the lots which had been conveyed by Mr. Schenck previously.

Q Are you certain or are you doubtful about whether or not you checked each lot according to the map in your office? A I believe we did.

Q You believe you did? A But I would not say positively. That has been three or four
20 years ago.

Q You would not say that you did not check them up, each lot separately? A I would not say that I did not, no, sir.

Cross examination by Mr. Cooper.

Q Mr. Van Note, did either you or the Sea Girt Estates have any search made from which you could determine how much land the Sea Girt
30 Estates owned, what they could convey? A No, sir.

Aloysius Whalen, for Complainant, direct.

ALOYSIUS WHALEN, a witness called in behalf of the complainant, being first duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Moore.

10

Q Mr. Whalen, are you an officer of the Sea Girt Estates? A Yes, sir.

Q What office do you hold? A Secretary and Treasurer.

Q I call your attention to a map entitled "Amended Map of Sea Girt, Frank Osborn, Engineer, 1909." Did you ever see that map before? A Yes, sir.

Q Where was it when you saw it the first time? A Mr. Patterson's office. 20

Q Mr. E. V. Patterson, Jr.? A E. V. Patterson.

Q Was that prior to the time you purchased this land from Mr. Schenck? A Yes, sir.

Q And at the time you purchased this land from Mr. Schenck was the appearance of that map practically the same as it is now?

Mr. Cooper: Objected to as not binding on these defendants. 30

The Court: Objection overruled.

A Yes, sir, with the exception of maybe a lot marked here and there "sold," or some property that had been sold since we got it in our office.

Q Is the marking on this map around the portion of Crescent Parkway that was widened by the Borough of Sea Girt in the exact condition, or the same as when you saw it the first time? 40

Aloysius Whalen, for Complainant, direct.

Mr. Cooper: There is one other objection. I object because it is an attempt to vary a written instrument by parole testimony.

10 The Court: Objection overruled. It is not any such attempt at all. From the admissions on the record it appears very clearly that there is a question as to what map was referred to, and that is what we are trying to find out. Now you may answer.

Q (Question repeated.) A Yes, with the exception of where it says "sold" and that part there (indicating).

20 The Court: That is not what he asked you. He asked you if this black mark down here, showing the portion of these various lots that were conveyed to the borough for the widening of Crescent Parkway was on there when you saw it in Patterson's office?

The Witness: Yes, sir.

Q Who acted as your agent when you purchased this land from Mr. Schenck? A Mr. Patterson.

30 Q In whose office was title passed? A In Mr. Van Note's office.

Q Who was present at that time? A Mr. Mulhern, Mr. Patterson, Mr. Van Note and myself, oh, when title was passed—

Q Yes. A Mr. Mitchell and Mr. Schenck, when title was passed.

Q Were you in Mr. Van Note's office checking up these lots? A Yes, sir.

40 Q With the deed? A Yes, sir.

Aloysius Whalen, for Complainant, direct.

Q What deed was that? A I don't know whether it was that deed or not, but we were in there checking up as to the agreement which we were to buy. We bought this ground, we agreed to buy it at a certain time—no, we had an option on it for thirty days, I think it was, but before the thirty days was up we went over the map and the ground and checked off from the deeds the property that was supposed to be conveyed to us at the time of the conveyance. 10

Q Who checked that up? A Mr. Patterson, Mr. Mulhern and Mr. Van Note were there.

Q Now what was said with reference to the property taken by the Borough of Sea Girt for the widening of Crescent Parkway, which property is located in block 59? 20

Mr. Cooper: Objected to.

The Court: Objection overruled.

A When we came to the part in the deed where it says the rear 50 feet of lots numbers so and so, and so and so, when we came to that, Mr. Patterson explained that the parkway had been widened and that the rear 50 feet was taken off those lots so that they could be made—marked 32 and 33. They made 32 and 33 by the elimination of the ones taken for the widening of the parkway. 30

Q Who prepared your agreement of sale to the defendants in this case? A Who prepared it?

Q Yes? A Mr. Patterson was our agent at the time, and Mr. Patterson must have—

Mr. Cooper: I object. 40

Aloysius Whalen, for Complainant, direct.

The Court: You have answered the question, Mr. Patterson prepared it.

Mr. Cooper: I started to object to what he attempted to answer and did not finish.

10 Q Did you deal with any other person besides Mr. Patterson in selling the property to the defendants in this case? A When this property was sold?

The Court: Answer the question, yes or no.

Q (Question repeated.) A No, sir.

20 Mr. Cooper: We admit Patterson was your agent. That is admitted on the record.

Q I show you a letter written on the E. V. Patterson, Jr., letterhead, addressed to the Sea Girt Estates, Price Park Building, Trenton, New Jersey, October 9, 1925, and ask you if you ever received that letter? A Yes, sir.

Mr. Moore: I ask that this letter be marked.

30 The Court: Signed by Mr. Patterson?

Mr. Moore: Signed by Mr. Bond. It is typewritten E. V. Patterson, Jr., Inc., I wanted to establish that it was a fact that he forwarded the agreement to us.

(Marked Exhibit C. 1.)

Mr. Moore: I also want to offer in evidence at this time the warranty deed from Mr. Schenck to us.

40 (Marked Exhibit C. 2.)

Aloysius Whalen, for Complainant, direct.

Q In that letter which I just showed you—

Mr. Cooper: I have not seen that letter yet.

Q This letter says: "We enclose signed agreements for the sale of the Parkway. Kindly execute them in the name of Sea Girt Estates and return four copies to us." Were those agreements referring to this sale to the present defendants in this suit? A Yes, sir. 10

Q So that you received the agreements from Mr. Patterson's office? A Yes, sir.

Q I show you a letter on the letterhead of E. V. Patterson, Jr., Inc., to Sea Girt Estates, addressed to the Sea Girt Estates, dated December 22, 1927, and signed E. V. Patterson, Jr., did you receive that letter? A Yes, sir. 20

Q The last sentence in which letter says: "I am sending under separate cover the new maps that have just been completed for the borough." Is that the map you received in that letter? A One of them, yes, sir.

Mr. Moore: I offer this map and this letter, your Honor, in evidence.

(Map marked Exhibit C. 3.) 30

(Letter marked Exhibit C. 4.)

Adjourned for lunch.

Aloysius Whalen, for Complainant, direct.

AFTER RECESS.

MR. WHALEN resumes the stand for further

Direct examination by Mr. Moore.

10 Q You said "one of them." Were the other maps similar to that one? In other words, it was several copies of the same map? A Yes, sir.

Q I show you a letter written on E. V. Patterson, Jr., Inc., paper, dated April 12, 1927, addressed to the Sea Girt Estates, and ask you if you received that letter? A Yes, sir.

20 Q And in this letter it stated that the "undersigned members of the Parkway Syndicate wish to be favored with an extension until October 1st to meet the payment of \$10,000 and interest due April 1st under our contract dated September 23, 1925." And that is signed "E. V. Patterson, Jr., Inc., Mervin Osborn, Tillie M. Newman and Susan Sutton." Did they call themselves the Parkway Syndicate? A That is what I understood them.

30 Q I show you a letter dated January 14, addressed to the Sea Girt Estates Company, signed by E. V. Patterson, Jr., for E. V. Patterson, Jr., Inc., did you receive that letter? A Yes, sir.

Mr. Moore: I offer that letter, and this previous letter in evidence.

(April 12th letter marked Exhibit C. 5.)

(January 14th letter marked Exhibit C. 6.)

40 Q When was the first you heard of the Parkway Syndicate? A Mr. Patterson called me and told me he was getting a syndicate together for to buy some property off us.

Aloysius Whalen, for Complainant, direct.

Q Was that after the sale of this property to you, this property in question? A After the sale to us?

Q Yes. A Yes, sir.

Q Did you know anybody else in this syndicate at that time besides Mr. Patterson? A I knew Mr. Osborn. I never met Miss Sutton until the last winter, last winter, a year, and I never met Mrs. Newman until today. 10

Q You did not know Miss Sutton then, at the time this contract was signed? A No, or Mrs. Newman either.

Q In other words, when Mr. Patterson told you he was getting together a syndicate, you did not know what people that syndicate was to include? A Not at the time when he told me he was getting one together, no. 20

Q Did you ever talk to any of the members of this syndicate after the contract was signed? A After the contract was signed—I may have talked to Mr. Patterson. I do not remember talking to Mr. Osborn and I never spoke to either of the other two members of it until, as I told you, when I met them.

Q You said you met Miss Sutton a year ago last winter? A Yes. 30

Q Did you speak to her then? A Yes.

Q In reference to this contract? A Yes, sir.

Q What did she say concerning the agreement?

Mr. Cooper: Objected to, unless it is in the nature of an admission of some kind.

The Court: I suppose that is the object of the question, I don't know. I will admit it. 40

Aloysius Whalen, for Complainant, direct.

A After we received a letter from Mr. Cooper stating that we could not give title to the ground, I went up to see Miss Sutton and asked Miss Sutton if she ever knew that we received a letter from Mr. Patterson in reference to taking title to the ground they wanted to pass title, if they could, to pay everything else up and to take title to it.

10 Q Is that the letter of January 14th which has just been introduced in evidence? A If I saw the letter I could tell you.

Q The letter marked Exhibit C. 6? A Yes.

Q That is the letter you referred to? A Yes, sir; that is the letter, saying they were going to take title, and I asked her if she knew anything about it and she said she did not know anything about it—their going to take title, then I said, Miss Sutton, was there ever any doubt in your mind as to the lots you bought of the Sea Girt Estates, that they did not all face on the parkway, and she told me, yes, they all faced on the parkway, and I said, “You know, none of them didn’t face on the plaza,” and she said, “No, they did not face on the plaza, they all faced on the parkway.”

20 Q You did not speak to the other two concerning it, Mrs. Newman or Mr. Osborn? A I never spoke to Mrs. Newman, no, because I just met her today.

30 Q After this land was purchased by these defendants in this cause, did you ever authorize Mr. Patterson to collect any money from them for you? A No, sir.

Q But all the correspondence you received from the defendants was addressed to you by Mr. Patterson, other than the ones you received—

40 A No, Miss Sutton, I believe, sent me her check,

Aloysius Whalen, for Complainant, cross.

and I think Mr. Patterson collected the others and sent them.

Q Now, referring to this map once more, Mr. Whalen, you notice 32, 33 and 34 written in those lots in pencil, was that done in your office? A No, sir.

Q Were those numbers on there when you saw the map in Mr. Patterson's office? A The first time I saw the map. 10

Q You don't know who put them there? A No, sir.

The Court: With whom did you have all your negotiations with respect to the terms of this agreement?

The Witness: Mr. Patterson.

The Court: Did you ever consult any of the other members of the syndicate? 20

The Witness: None.

Cross examination by Mr. Cooper.

Q What real estate agents in Sea Girt do you do business through, Mr. Whalen? A What?

Q With what real estate agents in Sea Girt did your company do business through? A At what time? 30

Q At any time within a few months prior to the time when this contract was entered into and up to the time that these people refused to take title? A We did business with E. V. Patterson, Jr., Inc., from the time we bought it up until a certain period. They had an exclusive on it practically, not an exclusive, but we done all our business with them.

Q In other words, E. V. Patterson, Jr., were your selling agents in the Borough of Sea Girt 40

Aloysius Whalen, for Complainant, cross.

when this contract was entered into, weren't they? A They were doing all our work down there.

Q Who was your attorney in the real estate transactions that you had affecting property in Sea Girt? A Affecting it in what way?

10 Q The purchase and sale of it? A You mean when we bought it and sold it?

Q When you bought and sold it? A Mr. Mitchell of Trenton represented us when we bought it, and Mr. Van Note represented us when we sold it.

Q Mr. Van Note represented your company, did he not, in the drawing of this contract? A Mr. Patterson took care of it. Mr. Patterson went to Mr. Van Note.

20 Q Mr. Patterson, acting as your agent, went to Mr. Van Note for the purpose of drawing this contract? A I would say yes.

Q Your answer to that is yes. When you had this conversation with Miss Sutton did she say anything else to you about the purchase of this property beside what you told the Court? A I do not remember anything else.

Q You do not remember anything else? A No, sir.

30 Q When did you see this map in Mr. Patterson's office marked as indicated? A When did I see it?

Q Yes. A The first time I saw it in his office was before we bought the ground.

Q How long before? A I would say a month.

Q About a month. Do you know who put that marking on the map? A I do not.

Q And where was the map at the time? A Hanging on the wall.

40 Q Front office of rear office? A Did not have any rear office then.

Aloysius Whalen, for Complainant, cross.

Q On the front office wall? A Yes, sir.

Q Marked in all respects as it now appears?

A As to this here block, yes, with the exception of where it says "sold" and the tract number.

Q Was this black line on it at that time? A Yes, sir.

Q You are sure of that, are you? A Yes, 10
sir.

Q Can you fix the exact time you saw it there? A No,—so far as the exact time, when we bought it, you can look at the date of this contract there when we bought this ground, about a month before.

Q Who did you purchase this property from, from Mr. Schenck? A Mr. Schenck.

Q Did you have a search made of the title before you took title from Mr. Schenck? A We 20
did not, we did not think it was necessary because Mr. Schenck had held it.

Q You did not know what you were getting?

A Mr. Patterson told us what were getting.

Mr. Cooper: I move to strike that out as not responsive.

The Court: It may stand.

Q You did not have a search when you purchased this property from Mr. Schenck? A No, 30
sir.

WITNESS EXCUSED.

George W. Mulhern, for Complainant, direct.

GEORGE W. MULHERN, a witness called in behalf of the complainant, being first duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Moore.

10

Q Mr. Mulhern, are you a member of the Sea Girt Estates? A Yes.

Q What is your position or office in that corporation? A President.

20

Q You were president of that corporation at the time you purchased this property in question from Mr. Schenck? A Yes. I might qualify that, I have forgotten whether I organized the company after we bought it or not, immediately after. I think we purchased that in our joint names and then incorporated.

Q The deed is to the Sea Girt Estates, a corporation of the State of New Jersey? A All right, then I was president of it at that time.

Q Were you present in Mr. Van Note's office at the time you were checking up these lots from the agreement to purchase this property? A Yes.

30

Q Who was present? A Mr. Van Note, Mr. Patterson, Mr. Schenck Mr. Whalen and myself, and Mr. Mitchell.

Q Now, when you checked these various lots, what was done or said when you were about to check the lots which have since been deeded away, or deeded away prior to that time to the Borough of Sea Girt? A It was explained to us—

40

Mr. Cooper: That is objected to. There is an assumption there the lots were deeded to the Borough of Sea Girt, and it is not so. It might make this difference if they had been

George W. Mulhern, for Complainant, direct.

deeded, we might be bound by constructive notice.

Mr. Moore: I will reframe the question.

Q Say the land then occupied by the Borough of Sea Girt? A It was explained to us that the two lots in question, instead of fronting on the Plaza were fronting on the Parkway, and on the small map we had, as I remember, they traced those two lots and showed us the identical location of those lots. 10

Q Mr. Patterson was there when you did that?

A Yes.

Q Did you ever see the map before? A Yes.

Q Where had you seen it? A In E. V. Patterson's office.

Q When did you see it for the first time? A I don't know, I have been in and out of Patterson's office for about five months before we bought this ground. It must have been around the period just before we bought, I would say. 20

Q Do you recall whether or not the markings on that map are the same today as they were at that time? A Practically, yes.

Q Well, with reference to the plot being near the Plaza just between those two traced lines?

A You mean on the Parkway? 30

Q On the Parkway? A Yes, they were practically the same as they were.

Q Were the numbers 32, 33 and 34 there, those penciled numbers? A Yes, 32, 33 and 34, they have been on there ever since I can remember, I don't know when—

Q You don't know who put them there? A No.

Q They were there when you saw the map, or noticed the map for the first time? A I would not say that. I know they have been put on 40

George W. Mulhern, for Complainant, cross.

either some time prior or after we bought the ground, I don't know—

Q Were they there when you got possession of the map? A Yes, when we took the map to Trenton they were on there.

10 Q Who gave you that map? A Mr. Patterson.

Q Where was it when he gave it to you? A It was hanging on the wall.

Q Did you as president authorize Mr. Patterson to collect any money for you from the vendees or the purchasers after they purchased this property? A Not to my knowledge I did not.

20 Q Do you know the members personally of this syndicate, the defendants in this action? A I know Mr. Patterson. Of course, I knew Mr. Orborn. I have just met Mrs. Newman, and I think I have met Miss Sutton once before.

Q Mr. Osborn holds an official position in Sea Girt, does he not? A I believe so, yes.

Q And Mrs. Newman's husband is a councilman down there, is he not? A Yes.

Q Miss Sutton is the only one of the defendants who does not live in Sea Girt, is that right? A Yes.

30 *Cross examination by Mr. Cooper.*

Q What official position does Mr. Osborn hold in Sea Girt? A I am not sure, I could not tell you.

Q How long has Mr. Newman been councilman in Sea Girt? A Several years, I should imagine two years at least to my knowledge.

40 Q Has he been councilman more than two years, to your knowledge? A I could not say as to that.

George W. Mulhern, for Complainant, cross.

Q He was not councilman in Sea Girt when this agreement was made? A No.

Q Neither did Mr. Osborn hold any official position in Sea Girt when this agreement was made? A Not at that time.

Q Not at that time. That is your signature, Mr. Mulhern? (Showing witness document) A Yes. 10

Q Where and when did you sign that? A I am sorry but I could not tell you. I have signed so many contracts and agreements.

Q Don't you know when this was signed? A No, I don't.

Q Don't you know where it was signed? A No.

Q Do you know who was present when it was signed? A I should imagine— 20

Q Not what you imagine, what do you know? A I don't know.

Q Can you tell me when you saw the map in Mr. Patterson's office? A I cannot.

Q You cannot fix the time when that was? A No.

Q Was this agreement in your opinion signed before or after that time? A What agreement.

Q This agreement? A May I see it. 30

The Court: This agreement which is the subject of this suit.

Witness: Yes, sir. I am quite sure that map was in the office when I signed that.

Q So that when you had signed this agreement you had already seen that map? A Yes.

Q You knew that those lots were excepted, did you not? A I don't know what you mean by exceptions. 40

George W. Mulhern, for Complainant, re-direct.

Q You knew at the time that this agreement was signed that certain portions of the lots mentioned in this agreement were not to be included in the sale? A No, I don't agree to that.

10 Q You say you saw this map in Mr. Patterson's office prior to the time when you signed this agreement? A Yes.

Q It was marked as there indicated now? A Yes.

Q After you saw that map marked as thereon indicated you executed this agreement? A I signed the agreement, yes.

Re-direct examination by Mr. Moore.

20 Q What map were you referring to as a part of the Sea Girt Estates? A The only map I know of of the Sea Girt Estates of the property we bought is this map here, Amended Map of Sea Girt.

The Court: That is this framed map in Patterson's office?

Witness: Yes, sir, that is the only map I know of.

30 Q That map was not framed in Patterson's office? A Not at that time.

Q You put the frame on the map? A Yes.

Q That is the map hanging on the wall? A Yes.

Q That is the map to which you refer as "Amended Map of Sea Girt, New Jersey, Frank Osborn, Engineer, 1909?" A Yes.

40 Q Now in designating in this agreement certain lots in block number 59, what lots were meant by 32, 33 and 34?

Murvin Osborn, for Defendants, direct.

Mr. Cooper: That is objected to, may it please the Court. I think the contract and map speaks for itself. I don't think the witness can say what lots are meant in the contract. The contract refers to a map and the map has been identified and is in evidence, as I understand it. 10

The Court: This particular one is not in evidence.

Mr. Cooper: The little one was marked in evidence.

Mr. Moore: I will introduce it in evidence at this time.

The Court: All right, the framed map.

(Map marked Exhibit C. 7.)

The Court: I think, Mr. Moore, the question you have asked now has already been sufficiently answered. 20

Mr. Moore: I think so, your Honor. I will withdraw it.

We rest.

MURVIN OSBORN, one of the defendants, being called as a witness in behalf of the defendants, being first duly sworn according to law, on his oath testified as follows: 30

Direct examination by Mr. Cooper.

Mr. Cooper: I offer in evidence a letter from the Sea Girt Estates addressed to Harry R. Cooper, dated February 16, 1926.

(Marked Exhibit D. 1.) 40

Murvin Osborn, for Defendants, direct.

I offer in evidence amended map of 1909,
made by Frank Osborn, Surveyor.
(Marked Exhibit D. 2.)

Q Mr. Osborn, you are one of the parties who
signed this contract of sale? A Yes, sir.

10 Q When you signed the contract did you have
any knowledge as to what you were buying under
the contract except as stated in the contract and
by reference to a map? A I did not, no, sir.

Q Have you made any payments on account of
the property that you contracted to buy? A
Have I made any payments?

Q Yes. A Yes, sir.

Q Can you tell me what those payments aggre-
gate? A Approximately \$6,100 altogether.

20 Q I show you four checks dated September
24, 1925, October 6, 1925, October 6, 1926 and
April 1, 1926, and ask if those are payments
which you made on this contract? A They
are.

Mr. Cooper: I offer the checks in evi-
dence.

(Marked Exhibit D. 3.)

30 Q About July, 1927, was another map of Sea
Girt made, do you know? A Yes, there was a
map made, ordered made by the borough of Sea
Girt.

Q And in relation to the making of that map,
when was the first time that you knew that you
were not getting the lots which you contracted
to buy under this contract?

The Court: That is not a fair question.

40 Mr. Cooper: I will withdraw it.

Murvin Osborn, for Defendants, direct.

Q Tell the Court when you first obtained any information with reference to the lots other than what you had when you signed the agreement of sale? A The only information, the only recollection that I have was after that new map was made, and I think it was drawn to my attention in the fall of 1928, I think it was during a conversation, that the thing was—it was stated that there was a difference in the maps at that particular time. 10

Q Was your attention drawn to that fact in the fall of 1928? A That was when I first discovered that there was a difference in the maps.

Q After you discovered that, what did you do? A Why, I talked it over with Mrs. Newman, who is a party to the syndicate who purchased the parkway, and eventually hired you as an attorney to make a search. 20

Q Did you come to me to investigate the title? A We did, yes.

Q What did I report back to you in regard to it? A Why, that those lots in question that have been shortened and the lots that have been taken altogether according to the amended map, you claimed that the Sea Girt Estates had not any title to them. 30

Q And did I give you that information? A You did, sir.

Q And acting on that information did you refuse to take title? A Absolutely.

Q Is that the only reason you refused to do that, that you could not get what you bargained for? A Yes.

Q What was your purpose, Mr. Osborn, in buying this property, may I ask? A The entire tract in question? 40

Murvin Osborn, for Defendants, cross.

Q Yes. A Why, it was for development purposes.

Q And would it serve your purpose, the purpose for which you intended it, if you could not get the lots as laid down on the map? A They were, in fact, the most valuable lots of the tract.

10 Q And it was in reference to those particular lots that you made the contract? A They were a part of the consideration the value.

Q Would you have been willing to still go through with the contract if you could get the property indicated in the contract by reference to the lots? A Yes, sir, I would today.

Cross examination by Mr. Moore.

20 Q When did you first become interested in this land, Mr. Osborn? A 1925, I just forget the date exactly.

Q Through whom did you become interested? A Mr. E. V. Patterson, Jr.

30 Q In what way did he interest you in this? A Well, he told me that they were forming a syndicate to buy the parkway and asked me if I would be interested. I asked him who the parties to the syndicate would be, and he said he had not—he could not tell just at that time—he had not consulted all the others whom he had in mind, and I told him I thought I would at the price he stated.

Q Did he tell you at that time the price that it would cost? A Yes.

Q Then in September, 1925, you signed an agreement to purchase this property, didn't you?

A I did, sir.

40 Q You saw at that time it was not as represented on the map? A What, may I ask, what was not as represented?

Murvin Osborn, for Defendants, cross.

Q I think it was the first question, you were asked something concerning a map—

The Court: He said the only information he had at the time he signed the contract was what was contained in the contract, namely the numbers of the lots and the reference to the map. 10

Q What was the map you referred to at that time? A When Mr. Patterson saw me I asked him, of course, where the property was, how it was located, etc., and he had a small map by Frank Osborn, 1909, on his desk in front of him, and he took his pencil and drew down the three blocks. I don't remember just the numbers, off-hand, but anyway from Third avenue, with the exceptions of 100 feet through to the plaza, and said that all the south side of Crescent Parkway, with the exception of 100 feet west of Third avenue, and that is what I bought, the property from that map. 20

Q You got that information from Mr. Patterson? A I did, sir.

Q He had that small map on his desk at the time? A In front of him, yes, sir.

Q Did you ever see that big map? A I would say, yes, that I have seen it. 30

Q Where did you see that? A In Mr. Patterson's office.

Q When? A Well, it might have been three years ago, might have been longer, might have been since then. I don't know just when I saw it.

Q Was it about the time you signed your agreement? A I would not say it was there at the time I signed the agreement, no, because that 40

Murvin Osborn, for Defendants, cross.

is 1925. I don't remember just exactly when I first saw it. The map I seen was in Mr. Patterson's office.

Q And that map reads "Amended Map of Sea Girt, Frank Osborn, 1909?" A Frank Osborn, Engineer, 1909, yes.

10 Q You know that? A Yes.

Q Now, to whom were you to pay this money in this syndicate? A Why, Mr. Patterson represented the Sea Girt Estates at the time that I signed the contract, and all moneys that I paid I paid through Mr. Patterson as their representative.

Q How did you make them out, to the Sea Girt Estates? A The first payment of \$250 was made to Mr. Patterson as a one-fourth interest of the syndicate, and the rest of them I think were made direct to the Sea Girt Estates.

20 Q In other words, you were called upon to pay a one-fourth payment on this syndicate as the first payment? A Yes, it was one-fourth of the down payment I think, until the contract was drawn, as a binder.

Q In other words, your first payment was \$1,000 at the time of signing the contract? A No, not my own first payment.

30 Q Not yours, I mean the syndicate? A If I remember correctly, yes.

Q And that \$250 represented your one-fourth? A Yes.

Q You paid it to Mr. Patterson? A Yes, sir.

Q Did he collect one-fourth from each of the others? A I could not say about that.

Q Was he treasurer of the syndicate? A We had no treasurer.

Q Have any officials? A No, sir.

40 Q Did he represent the syndicate at all? A Not in my opinion, no sir.

Murvin Osborn, for Defendants, cross.

The Court: Who acted for the syndicate?

The Witness: Why we acted as individuals, sir.

The Court: Did you all act individually with the company? I mean, who formed the medium of contact between the syndicate and the Sea Girt Estates corporation? 10

The Witness: Mr. Patterson represented the Estates.

Examination by the Court.

Q Well? A And the syndicate, in fact, he is one of the syndicate proper.

Q Well, he was a member of the syndicate, was he not, his company? A Yes, he is a member of the syndicate, yes, sir. 20

Q Now who took care of the interests of the syndicate as between the syndicate and the Estates? A Well, I could not say about that.

Q Did you? A No, I did not.

Q Did Mr. Newman? A I could not say.

Q Or Mrs. Newman then or Miss Sutton? A I could not say, because—

Q It is sure you did not, Mrs. Newman did not, and that Miss Sutton did not, now who else was there to take care of the syndicate's interest? A Well, Mr. Patterson would take care of their interest. 30

Q Did he? A I think he did, yes.

Cross examination by Mr. Moore (continued).

Q I show you a letter marked Exhibit C. 6, did you authorize Mr. Patterson to write that letter? A I think I did, yes. 40

Murvin Osborn, for Defendants, cross.

The Court: Which letter is that?

Mr. Cooper: January 14h, Sea Girt Estates by Patterson.

Q How long have you resided in Sea Girt, Mr. Osborn? A About seven years.

10 Q You are employed by the Borough of Sea Girt, are you not? A At the present time, yes.

Q How long have you been employed by the Borough of Sea Girt? A At this time, about three weeks.

Q Well, how long have you been employed by the Borough of Sea Girt, on and off? A Well, I have been Superintendent of Streets for, this is the third time, during the summer months.

20 Q For three years past you have been Superintendent of Streets? A Well, I don't think I was last year, but two years previous, and this will make the third time, if I remember correctly.

Q And prior to that you did a lot of work on the streets for the Borough of Sea Girt, did you not? A Oh, yes.

Q In 1925 you worked on the streets for the Borough of Sea Girt, did you not? A I just cannot remember, but I think I did.

30 Q You are well acquainted with Sea Girt, are you not? A At the present time, yes.

Q And you were in 1925? A Well, not as well as I am at the present time.

The Court: You had been there three years then. How much had you worked on the public streets of the borough in that time, the first three years?

40 The Witness: I think 1925, your Honor, was the first time that I did any work for the borough.

Murvin Osborn, for Defendants, cross.

The Court: What was that?

The Witness: Superintendent of Streets.

The Court: During the summer months?

The Witness: Yes.

Q Now it was not until the fall of 1928, as you say, that your attention was called to this matter? A That is my recollection; yes, sir. 10

Q Are you positive of that? A Well, I know it was 1928, I don't know just what time or what month, it was in the fall of the year, I know, and I know it was after the new map was printed some time. I happened to be present at the Council when the Council authorized the engineer to draw that new map.

Q Do you know who was engaged to draw that new map? A Sincerbeaux & Moore. 20

Q You had knowledge then that you had from that map that you were not getting what you were supposed to get, is that right? A I didn't know that we were not going to get it, even after the map showed it.

Q After you saw this map of Sincerbeaux & Moore what led you to come to the conclusion that there was something wrong with that tract? A Because the lots did not check up the same on Crescent Parkway and the Plaza as they did on the map of Frank Osborn of 1909. 30

Q And you are sure it was the map of Sincerbeaux & Moore you looked at, this is the map you are referring to, is it not? A I know Mr. Moore was authorized—

Q Will you point out on that map the difference between that map and Mr. Osborn's map of 1909? A This is not the map I am referring to. 40

Murvin Osborn, for Defendants, cross.

Q This is the map of Sincerbeaux & Moore, is it not? A The one of 1927 I am referring to. This shows the same as the contract calls for.

Q Is that the one you saw? A This is the one.

10 Q What called your attention to the fact that you were not getting the same number of lots as they agreed to give you in their contract? A By comparing the two maps.

Q What map did you compare it with? A The small map of Frank Osborn which I had in my office in Sea Girt.

20 Q What did you notice was the difference? A The space—what attracted my attention was the space in the tract here. This tract is much wider on this map than it was on the Frank Osborn map, and by checking it up we discovered that this had been widened and in widening it they had taken the lots which we contracted to buy, portions of these two lots on the corner and portions of these lots were taken in by that roadway.

30 Q You did not know that this place had been widened here before you saw that map? A Yes, I have a recollection of its being widened when I was employed by the railroad company, I saw men working there widening it out, but I did not know what property they took when they widened it.

Q During the year 1925, when you were Superintendent of Streets did you ever see a city tax map? A No, sir.

Q Never had occasion to look at that? A No, sir.

40 Q Who was the first one that called your attention to it? A Well, I have already said that I could not remember just how it came about, I know I got one of the new maps, but whether

Murvin Osborn, for Defendants, cross.

it happened in the borough hall or on the street or in Mr. Patterson's office, I am unable to say truthfully.

Examination by the Court.

Q You say the first time you learned about this discrepancy was sometime in 1928, you think the fall? A I think it was the fall of 1928—not 1928, 1927, if I made that statement— 10

Q You said 1928. That is what I wanted to find out, whether you were not mistaken? A I was mistaken, your Honor, in saying 1928. It was the fall of 1927, just after the new map was made.

Q You had already refused to perform under this contract in 1928? A 1928. 20

Q Why didn't you take any part in the settlement, or rather the negotiations for this contract between the syndicate and the estates—Sea Girt Estates? A The only part that I took was that I agreed to take— 20

Q I am not asking you that, I am asking why you did not take any part in the negotiations and in the closing of this contract between the Syndicate and the Sea Girt Estates? A I think there was a part. I agreed with Mr. Patterson to go into the syndicate and to pay my portion— 30

Q Of course you did, and you paid your money? A Certainly.

Q I am asking you why you did not take any part in the preparation of the contract or the negotiations with the officers of the Sea Girt Estates or anything of that kind. You have already said you did not. Now I want to know why you did not? A I don't know just what you are referring to. There wasn't any negotia- 40

Murvin Osborn, for Defendants, cross.

tions that I know of with reference to the contract other than—

Q When did you first see the contract that was drawn? A Mr. Patterson showed it to me.

Q And that is when you signed it? A I did, sir.

10 Q You signed it the first time you saw it? A Yes.

Q Did you know what was in it up until that time? A Yes, I read it over before I signed it.

Q I know, but I mean, if he brought to you a completed contract, did you know what the specific terms of that contract were? A No, I did not know what they were until I saw it.

20 Q Now, why didn't you know before the contract was drawn just exactly what the specific terms were going to be? A I knew what they should have been, but I did not know what they were.

30 Q How did you know it? A I knew that they—that the contract—Patterson had told me what we were getting and what we were to pay and the conditions of the contract, what we had to pay for the property and the payments were all figured out, and he showed us just what we were buying. I knew the conditions of the contract, but I did not know what was in the contract until I read it.

Q Now Patterson's company was one of the four that was to take over this plot of land? A Yes, sir.

Q You have already stated that Patterson did not represent you? A He did not, he represented the Sea Girt Estates.

40 Q That is your theory of this transaction, it does not make any difference what Patterson knew, it was not binding on you? A Absolutely.

Murvin Osborn, for Defendants, cross.

Q Now if Patterson did not represent you, who did he represent? A He represented the Sea Girt Estates.

Q Nobody else? A Nobody else.

Q I want to know who represented this syndicate? A We represented each other, so far as I know, your Honor, in the signing of this contract. 10

Q Now, you know that you never had any negotiations, you have already said so, with the officers of the Estates Corporation? A Only with Mr. Patterson, who was the representative. That is all I know.

Q But you knew he was one of the purchasers of this tract of land, didn't you? A At the time that he asked me to go into the syndicate I did not know that Mr. Patterson was going to be one of the syndicate. 20

Q You afterwards found that out, didn't you? A He told me the three other parties he was trying to interest in the purchase, and I told him I would be willing to go in with them in purchasing the property.

Q You finally found before the contract was closed that Patterson's company was going to be one of the syndicate? A Yes, sir.

Q Now, isn't it a fact that the reason you personally did not take some interest in the preparation of this contract, and the reason that the other members of the syndicate did not, was because Patterson was taking care of the whole thing for you? A Well, we could see that he was in a way taking care of part of it, his interests, of course, but— 30

Q Well, he was taking care of the whole thing, wasn't he, so far as your interests were concerned? A Yes. 40

Murvin Osborn, for Defendants, cross.

Q And so far as Mrs. Newman and Miss Sutton were concerned? A Everything but paying the money.

Q I understand that is true, but he did everything else except that you paid the money, and whatever he said went, I suppose, with the syndicate? A Not altogether, no.

Q Well, what didn't go? A There was a proposition to settle this thing—

Q I am not talking about that, I mean up to the time the contract was— A Before the contract was signed?

Q Yes, up to the time the contract was signed? A Very little said. I don't know of anything that came up.

Q Well, who actually arranged the terms of this contract, did you or did any of the other members of the syndicate arrange them with the Estates Corporation? A I participated in arrangements for the payments, etc., what time would be allowed to pay for the property, how much was to be paid at each time.

Q You mean you discussed that with Patterson? A Yes, sir.

Q Did you discuss it with any of the officers of the corporation? A I did not.

Q Isn't it a fact that you left all that negotiation to Patterson? A Well, I could not do that because I had to raise the money to make these payments.

Q I am not referring to that— A The negotiations for the contract, Mr. Patterson naturally represented the estates, and we agreed to the terms of the contract, and the contract was signed by me and the other members of the syndicate, I don't know where they signed it, I signed it in Mr. Patterson's office.

*Murvin Osborn, for Defendants, re-direct—
re-cross.*

Re-direct examination by Mr. Cooper.

Q What business were E. V. Patterson & Company in at the time? A Real estate business.

Q Real estate business, they had an office there in Sea Girt where it was convenient to make payments, etc.? Yes, sir. 10

Q Do you know whether or not before this contract was actually signed, anything was said to you by Mr. Patterson as to who were to purchase this property? A He mentioned three other people who he was trying to interest.

Q And was E. V. Patterson & Sons one of these people at that time? A No.

Q And they came in as an after thought, didn't they? A Eventually they were one of the purchasers. 20

Q But when you first went into the proposition the firm of E. V. Patterson & Son had not been mentioned as one of the vendees? A No.

Q And that was a later development? A Yes.

Re-cross examination by Mr. Moore.

Q Mr. E. V. Patterson, Jr., formed the syndicate? A He formed the syndicate. He told me he wanted to form a syndicate to buy the parcel. 30

Q Who are in E. V. Patterson, Jr., Inc.? A E. V. Patterson, Jr., Gilbert, if I remember right, he is vice-president or president, I don't know just which—

Q Practically a one-man corporation, isn't it? A There are two or three in it, I think, I don't know.

Q Now you are positive that you learned that these lots were not the lots to be conveyed to you 40

Murvin Osborn, for Defendants, re-cross.

in the fall of 1927, you are sure of that? A I am quite sure.

10 Q Tell me, then, after learning that why you authorized, as you just testified to, the writing of this letter by Mr. Patterson for the Parkway Sundicate: "Kindly have deed for property contracted for made out in the same names as called for and let us know when and where it will be convenient to close title. We will need about two weeks to have the title searched, so kindly allow for that. We would prefer to close title somewhere down this way if it is convenient to you."?

A In having the title searched we discovered for a fact that the Sea Girt Estates did not own the property. We had no knowledge, I had no knowledge, that they could not deliver the property.
20

The Court: How did you discover that, through making a search?

Witness: From my attorney, Mr. Cooper, he told me that the search showed that they did not have title to all the property.

30 The Court: I may be mistaken, but I had understood Mr. Cooper to assert here several times today that so far as the record showed, the title was in the Sea Girt Estates because there was no deed on record indicating any conveyance to the borough. Isn't that what you said, Mr. Cooper?

Mr. Cooper: No, I think your Honor may have misapprehended the situation because of the Borough of Sea Girt and the Sea Girt Estates. The situation is as follows: That the Sea Girt Estates never obtained title to this property—these particular lots, nor did
40

Murvin Osborn, for Defendants, re-cross.

the Borough of Sea Girt ever obtain title to those portions of the lots—

The Court: I understand that, and the Sea Girt Estates acquired title according to the exact description in the Schenck deed, except the lots that Schenck had conveyed.

Mr. Cooper: Schenck excepted from that deed part of these particular lots that the contract calls for.

The Court: That was excepted in the Schenck deeds.

Mr. Cooper: The contract between the Sea Girt Estates and these people does not except those lots. Their contract refers to the map of 1909, which has the lots spread out in full—very full descriptions. Now the deed they had from Schenck, from which they assert they obtained their title, excepts those lots. That is all right. We claim we did not get what we contracted for.

The Court: Is that deed in evidence?

Mr. Cooper: Yes, the deed is in evidence. I have a certified copy of it.

Mr. Moore: It is the original.

Have you the original, Mr. Cooper, of this letter dated January 12th, addressed to Mr. Mervin Osborn?

Mr. Cooper: I don't think so, unless Mr. Osborn has it. You did not ask us to produce that.

Q Mr. Osborn, I show you a copy of this letter addressed to you, dated January 12, 1926, did you receive that letter? A Yes.

Q Now, wasn't it as a result of this letter that you received that that letter of January

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Murvin Osborn, for Defendants, re-cross.

14th, Exhibit D. 4, was sent? A The result of getting that letter—I could not say exactly about that. There is two months' difference in the time—

Q Two days? A That is October, isn't it.

Q That is January 12th? A Dated January
10 12th, I think it was, yes.

Q You say at that time you knew of the defect in this title? A No, I did not know of the defect in the title. I knew there was a difference in the maps. I did not know, I thought that possibly they could give title to it. I did not know who owned the property.

The Court: This letter, Exhibit C. 6, is the one you said you authorized Mr. Patterson to write?

20 Witness: That is right.

The Court: You have also said at least half a dozen times that you knew from the search which was made by Mr. Cooper in the fall of 1927 that there was some discrepancy here and that the company did not have title to all the property which you claim they agreed to convey to you.

Witness: The search was not made at that time, your Honor. I said the maps.

30 The Court: Then you said it both ways, you said you learned because of the search and then you said that you learned because of the new map made by the borough.

Witness: That was my first knowledge of it, that there was any difference at all, and after Mr. Cooper made the search, which I think was in January, I could not say what date, I learned that the Sea Girt Estates did not have title to the property.

40

Susan M. Sutton, for Defendants, direct.

By Mr. Cooper.

Q \$50 was paid for that search, was it not?

A That is right.

SUSAN M. SUTTON, one of the defendants, 10
called as a witness in behalf of the defendants,
being first duly sworn according to law, on her
oath says:

Direct examination by Mr. Cooper.

Q Miss Sutton, you are one of the defendants
in this suit and one of the parties who signed
this contract of sale? A Yes.

Q Mr. Whalen testified on the stand this 20
morning that he had a conversation with you in
which you stated that you knew that two of these
lots did not face upon the parkway—

Mr. Moore: No, he did not say that.

Q Upon the Plaza, did you have such a con-
versation as that with Mr. Whalen? A I do not
recall that.

Q Do you recall saying substantially that, 30
that you know that these two lots did not face on
the Plaza? A Unless I did after he explained
to me, I do not recall it at all.

Q Well, at the time the contract was signed
by you, did you know that the lots did not face on
the Plaza? A No, I did not not.

Q And did you have any information as to
what you were getting when you signed the con-
tract, other than the information contained in the
contract? A That was all. 40

Susan M. Sutton, for Defendants, direct.

Q Did you make payments on account of your part of the purchase price? A Yes, I made several payments.

Q And you did not live in Sea Girt, did you? A I lived in Sea Girt two years, but not now, I do not live in Sea Girt now.

10 Q When did you last live there? A Three years ago, I lived there for two consecutive winters.

Q I show you a check for \$1,658.48, dated June 1, 1926, made to the Sea Girt Estates, and one dated September 24, 1925, for \$250, made to E. V. Patterson, Jr., one dated October 10, 1925, for \$550, made to E. V. Patterson, Jr. and one September 30, 1926, for \$2,822.83, made to the Sea Girt Estates, and ask you if they are the pay-
20 ments which you made as your portion of the contract price? A Yes, that is the first one, \$250.

Q Yes. A Those are all mine.

Q You actually made those payments on account of the purchase price? A Yes, I did.

Q When did you first learn, Miss Sutton, that you were not getting the lots as designated in the contract which you signed?

30 Mr. Moore: I object on the ground that she has not shown she ever saw the map.

The Court: I will admit the question.

Mr. Cooper: I will withdraw the question.

Q When you signed the contract did you have any map or anything before you indicating what lots— A I do not remember buying from the map.

40 Q You do not remember buying from the map? A I knew the property, I knew the tract,

Susan M. Sutton, for Defendants, cross.

where it began and where it ended, and I do not recall looking at the map at all.

Q When you signed the agreement you read it over, did you not? A Yes.

Q And you knew that you were supposed to get the lots set forth in the agreement, now when did you first discover that title to those lots was defective in the Sea Girt Estates? A Well, I think it was in 1927, in the fall. I am quite sure it was in 1927. 10

Q How did you discover that? A Through Mr. Patterson's office.

Q What information did you get on it? A That there was a new map a new map had been made of the Sea Girt Estates and that we were not getting the amount of land that we had bought, that our contract called for. 20

Q And acting on that information, a search was made, was it not, an investigation was made as to the title of the Sea Girt Estates?

Mr. Moore: I object to Mr. Cooper leading this witness.

Mr. Cooper: I will withdraw it.

Q As a result of what was done, did you refuse to take title? As the result of the information given to you as to the state of the title, did you refuse to take it? A I agreed with the rest, the other three, that we would not take title. 30

Q Would you have taken title and gone through with the arrangement if you could have obtained what you bargained for? A I would.

Cross examination by Mr. Moore.

Q Miss Sutton, when you signed this contract, did you read it over? A Yes. 40

Susan M. Sutton, for Defendants, cross.

Q There were a certain number of lots in that contract, were there not? A Yes.

Q Did you know where they were, each lot?

A Well, I did not, a part of it by lots, I knew the different blocks.

Q You knew the blocks they were in? A Yes.

10 Q You had walked around them? A Yes, often.

Q You knew the exact land you purchased? A Yes.

Q Now you did not hear anything else about this tract until the fall of 1927? A No.

Q At that time you learned something from Mr. Patterson's office, who sent for you and conveyed the information to you? A I was passing through and I stopped to see them. I was there often, stopped in. I had other real estate in
20 Sea Girt and I often stopped there to see if there was anything doing, it was then I learned about the new map.

Q From whom? A Mr. Patterson's office. I don't know whether it was he or Mr. Bond, they probably were both there.

Q Who is Mr. Bond? A He is one of the firm of E. V. Patterson, Inc.

Q And he informed you then that you were not getting all the land— A That we had purchased.
30

Q What else did he say about it? A I do not recall anything more.

Q Did he explain in what way you were not getting it? A There was a shortage in the size of the lots.

Q Nothing was said which way those lots faced? A I don't recall—I don't know.

Q You don't know to this day where those lots faced at that time, do you—I will withdraw
40 the question.

Susan M. Sutton, for Defendants, cross.

Q At the time you signed this contract you did not know which way the lots faced did you, other than that they faced on the parkway? A I think they were all on the south side of the parkway.

Q Facing the parkway? A Yes.

Q So that the only information you received after that was that the lots were not as large or some of them were not as large as you thought they were to be? A Yes.

10

Q Who first approached you in reference to forming this syndicate? A In Mr. Patterson's office.

Q Who was it? A Mr. Patterson, I think.

Q That is E. V. Patterson, Jr.? A Yes.

Q What conversation took place in reference to forming this syndicate? A Mr. Patterson told me that three others had intended to go in on this deal and that they wanted one more, and asked me if I would like to go in on it. I did not give him an answer right away, I think, but I told him in a few days that I would go in it.

20

Q And then did you have anything to do with the syndicate after that other than to pay your money? A That is all.

Q Did Mr. Patterson transact all the business, then so far as you were concerned, for the syndicate? A Yes.

30

Q I show you a letter marked Exhibit C. 6, did you know anything about this letter before it was written, by the way, it is dated January 14th? A I knew it was to be written.

Q And you authorized Mr. Patterson to write it? A As one of the four.

Q Representing the four of you? A Yes, representing—

40

Susan M. Sutton, for Defendants, cross.

Q Mr. Patterson represented this Parkway Syndicate in closing the contract with the Sea Girt Estates, didn't he? A So far as I know.

Q He was the agent for the Syndicate, the Parkway Syndicate? A Yes.

10 Mr. Cooper: That is objected to.

The Court: This is cross examination.

A He was the agent for the Sea Girt Estates, and I bought it through him.

Q You bought as a member of the syndicate, didn't you, Miss Sutton? A Yes.

Q You did not make any of the arrangements with the Sea Girt Estates, did you, for the purchase of the property? A No.

20 Q You did not discuss any of the terms of the contract? A No, I did not.

Q You left all that to Mr. Patterson? A Yes.

Q He was representing the Parkway Syndicate so far as their interest was concerned?

A So far as I know.

Q Do you know of any other agent who acted for the Parkway Syndicate at the time? A I do not know.

30 Q Any business done for the Parkway Syndicate in reference to the contract was done by Mr. Patterson? A It was done through that office.

Q Now the conversation which Mr. Whalen testified to, do you recall, did Mr. Whalen speak to you? A It might have been the time when he and Mr. Reese called on me at my home, that might have been the time.

40 Q That is the time they spoke to you? A Yes.

*Susan M. Sutton, for Defendants, re-direct—
re-cross.*

Q Do you recall that conversation now? A I know it was in reference to this land. I don't recall the conversation in detail.

Q You will not say now that you did not say at that time that you were of the impression, as you have just testified, that all the lots faced on the Parkway? A I suppose that they did, yes. 10

Q You said that to them, that you were under the impression all the lots faced on the Parkway? A I don't know whether I did or not.

Q You won't say now that you did not say it? A No, because Mr. Whalen and Mr. Reese were both there. If they say I said it, I probably did, but I do not recall it.

Q That was your impression, wasn't it? A Yes, I thought all the lots faced on the Parkway. 20

Re-direct examination by Mr. Cooper.

Q Miss Sutton, Mr. Patterson was in the real estate business at Sea Girt, was he not? A Yes.

Q And you knew, did you not, that he was agent of the Sea Girt Estates? A Yes.

Q And he so represented himself to you, did he not, when he came to you, in regard to this? A Yes. 30

The Court: You also knew he was one of the syndicate who was purchasing the lots, didn't you?

The Witness: He told me that he and two others, and they wanted one more.

Re-cross examination by Mr. Moore.

Q Why did you write your first check to Mr. Patterson? A Because that is the way it was 40

Lloyd Newman, for Defendants, direct.

to go through his office. He represented his office. He represented the Sea Girt Estates. Afterwards, I think, my bills came from the Trenton office.

Q They were direct and were paid direct? A To Trenton, yes.

10 Q Who made the call for that first money, the \$250 from each of you? A I think we paid that in the office.

Q Who made the call for it, who sent you out notice that it was due? A I don't know, probably came from Mr. Patterson's office, it would not come from Trenton.

Q Did not come from Trenton? A I don't think so.

20

LLOYD NEWMAN, a witness called in behalf of the defendants, being first duly sworn according to law, on his oath says:

Direct examination by Mr. Cooper.

30 Q You are the husband of Tillie M. Newman, who was one of the purchasers named in this agreement? A I am.

Q And were the details of this arrangement made by her or were they made by you? A I would say the details were arranged by myself, we talked it over generally.

Q And what information did you have in regard to this matter before the contract was executed?

40 Mr. Moore: I object to that question unless he made the particular arrangements.

Lloyd Newman, for Defendants, direct.

The Court: I suppose that will come out. It will save time by letting it go in. If it is not connected up properly I shan't consider it.

Q Did you represent your wife in this transaction? A Partially. 10

Q What part did you— A Quite a lot of the detail work was left to me. She was interested, but she said, well—

Q Well, was she spoken to first, do you know, or were you spoken to first? A I was.

Q What was said to you and by whom was it said in regard to the purchase of this property? A Mr. Patterson asked me if I would be interested in going in with some others to purchase the lots on the parkway, the tract on the parkway. 20

Q Did he say to you at that time how many were going in and who they were? A No.

Q What else was said to you and what did you say to him in regard to it? A I said I did not know that I would be particularly interested, that I was rather tied up, that possibly my wife would, to call and see her.

Q As a result of him seeing her and seeing you was anything further done between you and Mr. Patterson? A Mr. Patterson came to my house one evening and talked it over with my wife and myself. 30

Q Were you present during the conversation? A I was.

Q What was said by Mr. Patterson to either you or Mrs. Newman and what did either of you say to him? A At that time he said that he was trying to get a few together to buy that piece, four or more to buy the tract, and he thought that he could get it on terms that we 40

Lloyd Newman, for Defendants, direct.

could handle it without crowding ourselves. In other words, that we would not have to put up all the money at one time, and if he could, would we go in, and we agreed that we would probably go in.

10 Q Now when he came to you did he say who he represented? A Why yes, the Sea Girt Estates.

Q As a result of your talk, your wife finally agreed to go into the proposition? A Finally boiled down to that, that was the way that we went in.

Q And the contract was signed by her? A The contract was signed by her.

20 Q Now how were the payments made, some by you and some by her, or were all the checks signed by you? A No, some by me and some by her.

Q I show you a check dated September 21, 1925, for \$250? A That was my check.

Q That was your check, and a payment on account of this purchase price? A The first payment.

The Court: To whose order?

The Witness: E. V. Patterson, Jr.

30

Q I show you a check dated April 1, 1926, payable to the order of Sea Girt Estates for \$1,658.48, is that your signature on that check? A Yes, sir.

Q And that is a payment on account of the purchase price? A Yes, sir.

Q You are familiar with your wife's signature? A I am.

40 Q I show you a check date dOctober 1, 1926, made to the Sea Girt Estates, for \$1,435.74, is

Lloyd Newman, for Defendants, direct.

that your wife's signature? A My wife's signature, yes.

Q Do you know what that covered? A Evidently covered a payment on the parkway.

Q On account of the purchase price of this tract? A On account of the purchase price.

Q I show you a check made to the order of E. V. Patterson, dated October 1, 1925, for \$250, is that your wife's signature? A Yes, sir. 10

Q Was that on account of this same purchase price? A It is.

Q I show you a check dated November 1, 1926, made to the order of the Sea Girt Estates for \$607.50, signed by Tillie M. Newman, is that Mrs. Newman's signature? A It is.

Q Is that on account of this purchase price? A Yes, sir. 20

Q I show you a note dated December 1, 1926, signed by Tillie M. Newman, made to the order of Sea Girt Estates, for \$800, which seems to be a renewal of a \$900 note, is that your wife's signature? A It is.

Q Was that on account of this purchase price? A It is.

Mr. Cooper: I offer this in evidence.

(Marked Exhibit D. 6.) 30

Q When did you first discover, Mr. Newman, that there was a discrepancy between the amount of land called for in the contract and the amount of land that the Set Girt Estates could convey?

A Some time in 1927.

Q How did you discover it? A That is a question I would not want to answer accurately, as to how I discovered it. It was called to my attention some time after the new map had been 40

Lloyd Newman, for Defendants, direct.

prepared for the borough which showed a difference between the original map that we had all been familiar with and at that time someone mentioned the fact, I would not want to saw who it was, that that was not according to what we had been thinking.

10 Q You had been familiar with the old map?

A Yes.

Q You say that it was not until the preparation of the new map sometime in 1927 or thereabouts that this matter was called to your attention? A It was not, no.

20 Q And as the result of that being called to your attention, what did you do? A Well, there was quite a lot of wonderment as to what to do, whether we were losing something or whether there was a mistake in the borough taking over the ground there and widening it.

Q You had a conference did you, with Miss Sutton and Mr. Patterson and Mr. Osborn as the result of this? A Not with Miss Sutton. I don't remember ever having a conference when Miss Sutton was present, with Mr. Osborn and Mr. Patterson.

Q Mr. Patterson and Mr. Osborn? A Yes.

30 Q As the result of that, what was done? A Well, as I have it in my mind for a while we laid still and did nothing.

Q Yes, and then after that what did you do, did you have the title investigated by anyone or not? A That was not until at some later date.

40 Q Well, how much later, if you know? A I think that before we had the title investigated, my recollection, I would say that we were served with a paper of some kind telling us that it was necessary to take title. I would not be absolutely positive about that, but that is my recollection.

Lloyd Newman, for Defendants, cross.

Q Then did you have the title examined? A We authorized you to examine the title.

Q What was reported back to you? A That the Sea Girt Estates did not have title to the ground, as enumerated, the lots as enumerated in the agreement.

Q If they had had title to the land enumerated in the agreement, so far as you were concerned, would you have been willing for your wife to have consummated the transaction? A I would. 10

Cross examination by Mr. Moore.

Q Were you present when your wife signed the contract? A I was.

Q Did you look at any map at that time? A I think we had a map there at the time. I remember having a map at the house at that time and going over it, but whether that was the time we first went into the deal or whether it was the time when the agreement came and Mr. Patterson, I would not want to testify. At that time Mr. Patterson at the house had a map and we went over it very closely and talked over business and prices. 20

Q You don't know then whether yourself or your wife saw the map at the time she signed the agreement? A On the day of signing the agreement, I would not so testify, no. 30

Q Were you ever in Mr. Patterson's office before the signing of the agreement? A Oh, yes.

Q Did you ever see that map in Mr. Patterson's office? A It is quite likely that I did, but I do not remember that particular map. I think there was two or three maps there. It is quite likely that I did see that map. 40

Lloyd Newman, for Defendants, cross.

Q Mr. Newman, I show you a copy of a letter dated January 12, 1926, addressed to you, did you see the original of that letter at your home?
A Yes, I think I have the original of that in my file.

10 Q That is the notice you refer to when you say the Sea Girt Estates sent you notice to take title? A I think that is the one. Somewhere about that time we had some official notice.

Q And then it was after that that you ordered the search to be made? A I am quite sure it was after that.

20 Q Did you have anything to do with authorizing Mr. Patterson to send that letter of January 14th? A I talked with Mr. Patterson and Mr. Osborn. We talked this over in his office after receiving that letter. I said, why, we have to bring it to a head and the best way to bring it to a head is to have a search made.

Q Did Mr. Patterson say anything about this property having been taken out before this agreement was signed at that time to you? A No.

Q Did you authorize him to write this letter?
A Something to that effect, yes.

30 Q Did you have your wife's consent to authorize the writing of that letter at that time? A No, never asked for her consent.

Q Mr. Osborn was in the office? A I am quite sure that he was.

The Court: Is there any question about his authority to act for his wife?

Mr. Cooper: No, we do not question it.

The Court: I thought that was your contention.

40 Q Mr. Newman, at the time that this agreement was signed, you did not know just how those

Lloyd Newman, for Defendants, cross.

lots were located, did you, on the map? A Not at the time of the signing of the agreement, I could not say that we took the agreement and checked it up lot for lot as against the map. No, I would not say that we did that.

Q You knew the lots that were on Crescent Parkway? A I knew a certain number of them, in fact, all but one fifty foot lot, was on the Parkway. 10

Q You knew at the time of signing the agreement that all the lots except one fifty foot lot, were on the Parkway? A On the Parkway.

Q How did you know that fifty foot lot was not on the Parkway? A We talked over the fact of the fifty foot lot being a business lot on the Plaza. All the other properties, in so far as other deeds are concerned, are restricted or supposed to be restricted as against business. 20

Q Talked that over with Miss Sutton? A No, never had any conference with Miss Sutton in reference to it.

Q You don't know whether that conversation took place before or after the signing of the agreement, do you? A What conversation do you refer to?

Q To the lots on the Plaza or on the Parkway. A With Mr. Patterson. It took place at my house that night we first talked it over with my wife, which was prior to any agreement, at the first inception of the sale of it, that was the first time. 30

Q Then the details, you spoke of your taking care of your wife's details in this transaction? A Yes.

Q With the Parkway Syndicate? A Well, acting, there is a difference probably as to how you regard the syndicate. We were each acting as individuals. 40

Lloyd Newman, for Defendants, cross.

Q But you used the name the Parkway Syndicate, did you not? A No.

Q You never used that name? A No, not to my knowledge.

10 Q I ask you to refresh your memory by that letter of January 14th again? A Well, probably that is the way Mr. Patterson signed it, as representing us. At first Mr. Patterson was the one who made the sale, having an office and a handy place for us to meet, there is where we naturally met and talked it over, but in the legal sense of the word, as for being a syndicate, we were not—more of a partnership.

The Court: You mean you were not incorporated?

20 Witness: No, we were more a partnership.

The Court: Just an association, you can call it anything you want to, of course.

Q Mr. Patterson represented you? A Mr. Patterson having a girl in the office, probably did all the communicating with him, and we probably got him to write that letter about the Parkway business.

30 Q You authorized him to write that letter of January 14th, didn't you? A Something to that effect, yes.

Q For the Parkway Syndicate? A Yes.

Q That is how Mr. Patterson signed it? A As representing us.

Q And he did represent you, didn't he? A In that particular instance, yes. We authorized Mr. Patterson, or probably simply requested him to write a letter to that effect.

40

Charles A. Bond, for Defendants, direct.

Q Did you ever talk with the officers of the Sea Girt Estates? A Many times.

Q I mean concerning this—before you signed the contract? A No, not before we signed the contract.

Q Who conveyed the idea to them that you were purchasing this property? A I don't get your question. 10

Q Who do you think told the Sea Girt Estates that you were purchasing this property, your syndicate? A Mr. Patterson.

Q And who arranged the terms of the agreement? A Mr. Patterson arranged them.

Q You had nothing to do with them? A No.

Q And your wife had nothing to do with them? A No, they were submitted to us by Mr. Patterson. 20

CHARLES A. BOND, a witness called in behalf of the defendants, being first duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Cooper.

Q Did you bring your minute book? A Yes, sir. 30

Q Mr. Bond, you are Borough Clerk of the Borough of Sea Girt? A Yes, sir.

Q Have you produced the part of the borough minutes referring to this, contained in volume I? A Yes, sir.

Q Will you turn to page 6 of those minutes, and does that refer to some proceedings taken by the Borough of Sea Girt in reference to the Parkway? A Yes, sir, it does. 40

Charles A. Bond, for Defendants, direct.

Q May I see it please. This is the original minute book, and it is correct, so far as you know. This book is in your custody and is supposed to be the minutes of the Borough of Sea Girt? A Yes, sir.

10 The Court: I do not understand there to be any dispute of the fact that this has been widened.

Mr. Cooper: The only dispute is as to how it was done. There was some reference to its being done by deed, whereas in fact there is no deed on record. If it is admitted it was done by resolution of the borough—

Mr. Shaw: Sure, that was Mr. Robert's testimony.

20 The Court: The fact is that the Sea Girt Estates never had title to this particular property, so of course, they could not sell it.

Q Mr. Bond, you are also vice president of E. V. Patterson, Jr. A Incorporated, yes, sir.

Q Were these checks made by you, rather, drawn by you? A Some of them were signed by me, three of them, I guess, were not.

30 Q They were all signed, you knew what they covered? A Yes, sir.

Q Those checks covered payments, did they not, on account of the purchase price under this contract? A Yes.

40 Q Four, dated September 23, 1925, made to the Sea Girt Estates in the amount of \$1,000; October 6, 1925, to Sea Girt Estates for \$1,250; April 1, 1926, to the Sea Girt Estates for \$1,250; and April 1, 1926, to Sea Girt Estates for \$408.49? A Yes, sir.

Charles A. Bond, for Defendants, cross.

Mr. Cooper: I offer them in evidence.
(Marked Exhibit D. 7.)

Cross examination by Mr. Moore.

Q How long have you been Borough Clerk?

A Since 1925, I believe, since January 1, 1925. 10

Q Even at the time this contract was signed you were Borough Clerk? A Yes.

Q You had knowledge then that the borough had taken this land? A No, sir, I had not. That was taken in 1918, before I moved to Sea Girt. I was a summer resident there, however.

Q These minutes were in your possession all the time? A In my possession, but I never read them through.

Q Is this your signature here to the purchase agreement? A Yes, sir. 20

Q Whose signature did you witness on that? A Miss Sutton's.

Q Where did you witness that signature? A I am not sure. I had several deals with her. It might have been at her house, might have been at our office, and it might have been at her office.

Q Are you the one who conveyed the information to Mr. Van Note to draw this agreement? A Yes, sir. 30

Q Is that the information you conveyed to Mr. Van Note? A I presume it is, yes.

Q Where did you get it from? A We had a price list of the Sea Girt Estates in our office, and the lots were all those in Block 59 with the exception of those facing on Washington Boulevard and the block east of that. In that and the block east of that, there is a total of 1,450 feet I believe in the agreement—

Charles A. Bond, for Defendants, cross.

Q From where did you get the various numbers of these lots and their location to bring to Mr. Van Note? A I took a list and copied from their price list.

Q From their price list? A Yes, filed price list that is in the office.

10 Q Did you know whether or not they had sold any of these lots before you took that information over to Mr. Van Note? A Why yes, as the lots were sold they were crossed off.

Q Was that map in your office at the time (C. 7)? A I don't know whether that was in the office at the time the contract was made or not. I would not be willing to testify as to that.

Q What makes you think it is not the same map? A Well, we had several maps there.
20 This one was probably there at one time or another. There were four or five maps around there that were hanging on the walls.

Q You had only one Amended Map of Sea Girt, New Jersey, by Frank Osborn, hanging on the wall, did you not? A No, sir, we did not.

Q You did not? A We had a smaller map, and well, I would not say.

Q You had a smaller map? A Yes.

Q But you had only one of that size hanging
30 on the wall? A Yes, I believe you are right.

Q You are sure there was one smaller map hanging on the wall? A Yes.

Q Will you swear that is not the one? A No, but I would not swear that it is.

Q You won't swear that it is not? A No.

Q Why? A Because it might have been.

Q Are there any marks there you identify?
A Yes, I believe the marking off there was done
40 in our office, but I don't know whether it was before or subsequent to the time in question.

Charles A. Bond, for Defendants, cross.

Q Have you another map hanging on the wall just like that? A No, we have an enlargement of that new map, but we have had maps of the very same thing. In fact, we had a supply of them in the office, Frank Osborn, engineer, maps, which we passed out to anybody inquiring for lots in Sea Girt.

10

Q Point out on there the marks which you made in your office? A I can say that probably all the marks were made in our office at some time.

Q You are sure that all the marks on that map were made in your office at some time, therefore it must be the same map, isn't that right? A Well, there might have been some changed or added since the map was taken from our office.

20

Q Can you point to that map and show me any mark made on that map since it was taken from your office? A No, I could not say I could in a hasty examination.

Q Take your time and look at it. A Probably this "sold" was marked there by somebody else, I don't recall. There has been so many maps and so much going on since then.

Q You are an officer of the Patterson Real Estate Company? A E. V. Patterson, Jr., Inc.

30

Q When Mr. Schenck sold this property to the Sea Girt Estate, weren't you? A Yes.

Q You took care of that transaction for them? A Yes, our office handled the transaction.

Q Did you do any checking up for them? A No, sir, I think that was by Mr. Van Note. Mr. Van Note drew the papers.

Q Did Mr. Patterson do any checking up with them? A Possibly—not that I know of.

40

Charles A. Bond, for Defendants, cross.

Q You don't know whether he did or not? A I was not present at the time.

Q Do you recall a contract made by your company for the Sea Girt Estates which Mr. Van Note drew for you and one Robert Brown? A Yes, sir; I remember something about it.

10 Q Did you take the information over to Mr. Van Note to draw the description for that agreement? A I don't know whether I took it over or whether I telephoned it.

Q You did one or the other, didn't you? A Possibly did, yes.

Q This contract is dated the 24th of December? A The same year?

Q 1925, and you either telephoned or you took that information over? A Yes.

20 Q Where did you get the information to give to Mr. Van Note to draw up this agreement? A The only information I have ever given Mr. Van Note on contracts was the lot numbers, the block numbers and the terms of the contract, such as the amount to be paid and when and the amount of the payments to be made, which we first took up with the officers of the Sea Girt Estates.

30 Q Where did you get this information from, "Being all of block No. 60 (that is the block right opposite 59) and known and designated on a certain map entitled Amended Map of Sea Girt, New Jersey, Frank Osborn, Engineer, 1909, and duly filed in the office of the clerk of the County of Monmouth at Freehold, New Jersey, except the portion taken for the enlargement of the park opposite the railway station, said block being bounded on the north by Boston Boulevard, and on the east by Fifth avenue"? A I never supplied that information, I simply said, "All of
40 Block 60."

Charles A. Bond, for Defendants, cross.

Q Where did he get it from? A I presume he got it from the Sea Girt Estates.

Q Why did he get this information from you if he had a deed to copy the description from?

A I am quite certain he had a map of Sea Girt Estates on his wall, a small map of Frank Osborn, Engineer. In fact, we had, I imagine, 5,000 of those maps printed and scattered around to various people who were interested. We still have got a supply on hand if anyone calls for them.

10

Mr. Moore: I want to offer this Brown contract in evidence at this time.

(Marked Exhibit C. 8.)

Mr. Cooper: That is objected to.

The Court: The only purpose that is offered is to indicate knowledge on the part of this witness in December, 1925, of the widening of the Crescent Parkway. I don't think it is of any material importance, Mr. Moore, but I will let you put it in if you want to.

20

Mr. Moore: Simply for the purpose of contradicting the witness.

The Court: He says the information he gave Van Note was the lot and block numbers, and in this particular instance the block number.

30

The Witness: That is all we ever gave.

Q Now when you gave him the information for this agreement which is in dispute at the present time, you took him over the various lot numbers, did you? A I told him the particular property—what numbers I do not recall at the present time.

40

Charles A. Bond, for Defendants, cross.

Q You did not say "All of block 59" or block so and so, at that time? A No, that would not have been possible.

Q It would have for block 59, wouldn't it? A No.

10 Q Wouldn't it have been possible for the other block in the middle there? A No, it would not have been possible for either, because the only portion of the block covered in the tract was that portion on the north side of the block.

Q. You haven't a notion as to where Mr. Van Note got this information? A That would by interpretation, that would be my guess on the subject, I don't know.

20 Q What information did you give Mr. Van Note at the time of that contract? A Well, if I took it over to him at all I just said, gave him the names of the parties interested and told him they were buying the whole block and the price and the terms. That would be all I ever gave on a subject of that kind. It was up to him to make it legal, etc. That was what he was paid for.

The Court: Did you execute the contract after it was written?

30 Witness: Which contract, sir?

The Court: That one (referring to Exhibit C. 8).

Witness: No, that was the Brown contract. I might have witnessed the signature, I don't know.

Q It was executed by your office, wasn't it?
A What do you mean?

40 Q You were the agents in this deal? A We were the agents for Sea Girt Estates.

Charles A. Bond, for Defendants, cross.

Q You executed this in your office? A I don't recall whether it was executed in the office or Mr. Brown's office in Asbury Park.

The Court: Mr. Patterson's name is on it.

Mr. Moore: Mr. Patterson signed it as a witness. 10

Witness: He might have taken it down there though, we had to do quite a lot of chasing to get the signatures, sometimes.

Q Mr. Bond, at the time of the signing of this agreement did you or did you not know where lots 32, 33 and 34 were located? A I knew that there was—that the corner lot faced the Plaza, but I did not know that the rest of the lots were affected as to depth. 20

But you knew the two lots at the corner were not there? A I knew there was no lot facing the railroad station, yes.

Q Where did you think 32 and 33 were? A I understood that they were taken off back of the other lot.

Q You understood it to be just this here (indicating)?

Mr. Cooper: This is not cross examination. 30

The Court: What is the reason it is not?

Mr. Cooper: Mr. Bond was only asked as to the payments made.

The Court: He is an officer of one of the parties to the contract.

Mr. Cooper: There was nothing brought out on direct examination that would make this proper cross. I want to express an objection. 40

Charles A. Bond, for Defendants, cross.

The Court: You may proceed.

You mean lots 31 and 30?

Mr. Moore: 29, 30 and 31. You understood it was taken off back of these lots. You just testified you gave Mr. Van Note the lot numbers?

10

Witness: Possibly did, yes.

Q Where did you get them from? A As I told you before, off the price list which Sea Girt Estates had given us, containing the prices of their lots. That was typed in their office, I believe, in Trenton and sent to us.

Q Did you try to locate lots 32 and 33 on that map after you got that price list? A No, I did not.

20

Q Who made these numbers here? A I could not say, perhaps they were made in the office, I don't know.

Q You would not say they were not? A No, and I would not say they were.

The Court: You do not recognize the figures?

Witness: You are asking me a pretty hard question—no, I don't.

30

Q Mr. Bond, when you understood that those lots were not on the corner at the time of the signing of this agreement, did you mention that fact to any of the members of the Parkway Syndicate? A Not to my knowledge, no. I did not talk so much on this thing. I was a young member and kept quiet and went along with the rest of them.

Q Mr. Patterson knew, the same as you knew, that those lots were not there?

40

Charles A. Bond, for Defendants, cross.

Mr. Cooper: That is objected to. How can this man testify to what Mr. Patterson knew?

The Court: Where did you get your information from respecting those lots?

Witness: I do not recall now whether I had seen a sketch or something, I could not tell you, I just— 10

Examination by the Court.

Q How long had you been in Mr. Patterson's office at that time? A I believe since 1924, but there was never to my knowledge a map showing the exact status of the case. I might have seen it on the borough tax map, I don't know.

Q You don't know whether you got the information from Mr. Patterson or somebody on the outside? A No, sir, I don't. 20

Q Did you ever discuss what the syndicate was buying with Mr. Patterson? A Well, we understood we were buying all the Sea Girt Estates owned from Third avenue west on the side of the street.

Q You knew they did not own those two lots that had been cut off? A I knew that there had been a change there, but I did not know the exact dimensions of the change. 30

Q Did you know whether or not Mr. Patterson knew the same thing? A No, I could not say what he knows.

Cross examination by Mr. Moore (continued).

Q You were a member of the corporation, E. V. Patterson, Jr., Inc., at that time? A I believe we were incorporated at that time, yes. I do not recall the exact date of incorporation. 40

Charles A. Bond, for Defendants, cross.

Q What was your office? A My proper office—Vice-president.

Q Did you ever discuss this situation with Miss Sutton, Mr. Newman, Mrs. Newman or Mr. Osborn? A Not until—I don't know just when it was, but I remember Mr. Newman, Mr. Osborn and Mr. Patterson being in the office and we talked over, I imagine it was around the time the new map was made.

Q Did you talk to them about it during the time the syndicate was being formed? A No, sir.

Q Talk to any of the syndicate? A No, sir.

Q During that discussion in the fall of 1927, after the new map was made, you had a conversation, you say, with Mr. Patterson and Mr. Newman? A Yes, we had—we talked it over as to the size of the lots, etc.

Q And about these missing two lots? A Yes.

Q Did you tell Mr. Newman or Mr. Osborn at that time that you knew back in 1925 that these lots were not there? A I do not recall whether I did that, sir.

Q Just what did you discuss? A We discussed the size of the remaining lots, the two being shortened by taking so much off the front and the two to be moved back in the rear.

Q Your discussion was not as to the two missing lots in front but it was as to the shortage of the other lots on the Parkway? A That is my impression.

Q There was no necessity of discussing the two lots on the Plaza, was there? A Not so far as I was concerned.

*Charles A. Bond, for Defendants, re-direct—
re-cross.*

Re-direct examination by Mr. Cooper.

Q At the time this contract was made your company was the selling agent in Sea Girt, was it not, of the Sea Girt Estates? A Yes.

Q To whom did you take contracts to be drawn between other people and the Sea Girt Estates? A They were all taken to Mr. Van Note's office. 10

Q What were your instructions from the Sea Girt Estates in regard to that? A That all contracts should be drawn by Mr. Van Note.

Q And those were the instructions given to you by the Sea Girt Estates? A Yes.

Re-cross examination by Mr. Moore. 20

Q You testified you gave Mr. Van Note the information to draw this agreement, didn't you? A Yes.

Q And you gave him this information which reads in block 59 as shown on a map entitled Amended Map, Sea Girt, New Jersey, Frank Osborn, Engineer, 1909. Is that the map you meant, right there (indicating)? A Not that particular map, no. There are several hundred copies of that map out. 30

Q You did not mean the map that showed 32 and 33 facing the Plaza, did you? A To tell you the truth, I did not think anything about it. I simply gave him the numbers on the map. He had a map in his office.

Q He had to take the information from you? A He took information as to the numbers of the lots from me.

Q And you knew at the time you gave him the information that 32 and 31 were not in ex- 40

Charles A. Bond, for Defendants, re-cross.

istence as a part of Crescent Parkway? A I know 31 and 32 were there. They are there.

Q Yes, but as they stand on that map? A Not precisely.

10 The Court: What he means is, he knew they were there, but they were not the original 32 and 33. They were made up of the rear of other lots.

Witness: Yes, that is what I meant.

Mr. Moore: That is how he knew 32 and 33 existed?

The Court: That is what he said.

Q Then you did not refer to the original map, of Mr. Osborn—

20 The Court: Mr. Moore, we are wasting a lot of time. It is perfectly plain what he did, what he understood. It is after four o'clock. If you want to finish this case you have got to speed up a lot.

Mr. Cooper: We rest.

The Court: I will advise a decree for the complainant. I will make it just as short as you have.

30 Mr. Cooper: How about an allowance for payments?

The Court: When the decree is performed, or when the contract is performed, you will get an allowance for whatever you have paid, that is all.

Mr. Moore: If the Court please, will the decree carry costs?

The Court: The decree will carry costs.

Exhibit C. 1.

EXHIBIT C. 1.

E. V. PATTERSON, JR.,
Real Estate—Insurance
Sea Girt, New Jersey

October 9th, 1925.

10

“SEA GIRT ESTATES”
Broad Street Bank Building
Trenton, New Jersey

Dear Lou and George:

We enclose the signed agreements for the sale of the Parkway. Kindly execute them in the name of the “Sea Girt Estates” and return four copies to us.

As Ed. told you over the telephone Miss Sutton will give us a check in a day or so.

20

Best regards to all.

Yours very truly,

E. V. Patterson, Jr., Inc.
C. A. Bond, Jr.

30

40

*Exhibit C. 2.***EXHIBIT C. 2.**

William G. Schanck et) THIS INDENTURE
 ux et als) Made the twelfth day
 To) of August in the year
 Sea Girt Estates) of our Lord One
 10) Thousand Nine Hun-

dred Twenty Five BETWEEN WILLIAM G. SCHANCK and ELIZABETH H. SCHANCK his wife; HELEN L. SCHOCK and FREDERICK F. SCHOCK her husband of the Borough of Spring Lake, in the County of Monmouth and State of New Jersey, and ANNA B. TROUT AND HARRY W. TROUT her husband of the City of Syracuse in the County of Onondaga and State of New York parties of the
 20 First Part;

AND SEA GIRT ESTATES a corporation of the State of New Jersey having its principal office in the City of Trenton, in the County of Mercer and State of New Jersey of the Second Part;

WITNESSETH, That the said party of the first part, for and in consideration of One (\$1.00) Dollar and other good and valuable considerations, lawful money of the United States of
 30 America, to them 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 therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed and by these presents, do
 40 give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to its successors and assigns,

Exhibit C. 2.

forever, ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Sea Girt in the County of Monmouth and State of New Jersey.

Being known as parts of Sea Girt as shown on an "Amended Map of Sea Girt New Jersey" 10
Frank Osborn, Engineer 1909 filed in the office of the Clerk of Monmouth County New Jersey February 7, 1911, as follows:

Lots numbers one (1), two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) eleven (11), twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty- 20
seven (27) twenty-eight (28) twenty-nine (29) and thirty (30) in Block Number Nine:

Lots numbers one (1) two (2) three (3) four (4) five (5) six (6) fifteen (15) sixteen (16) seventeen (17) eighteen (18) forty-one (41) forty-two (42) forty-three (43) and forty-four (44) in Block Number Twelve (12);

Lots Numbers twenty-five (25) twenty-six (26) twenty-seven (27) and twenty-eight (28) in Block 30
Twenty-seven (27);

ALL OF BLOCK NUMBER THIRTY-ONE (31) The said block being bounded on the north by Washington Boulevard, on the east by Second Avenue on the south by Trenton Boulevard and on the west by Third Avenue;

Lots nine (9) ten (10) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty- 40
five (25) twenty-six (26) twenty-seven (27) twenty-eight (28) twenty-nine (29) thirty (30)

Exhibit C. 2.

thirty-one (31) thirty-two (32) thirty-three (33) thirty-four (34) thirty-five (35) thirty-six (36) thirty-seven (37) thirty-eight (38) thirty-nine (39) forty (40) forty-one (41) and forty-two (42) in Block Thirty-two (32);

10 Lots numbers one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) twenty-four (24) twenty-nine (29) thirty (30) thirty-one (31) thirty-two (32) thirty-three (33) thirty-four (34) thirty-five (35) thirty-six (36) thirty-seven (37) thirty-eight (38) thirty-nine (39) forty (40) forty-one (41) forty-two (42) 20 and forty-three (43) in Block Number Thirty-three (33);

Lots numbers one (1) two (2) three (3) four (4) five (5) six (6) seven (7) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) and twenty-one (21) in Block number Thirty-four (34);

30 ALL OF BLOCK THIRTY-FIVE (35) The said block being a triangular parcel of land bounded on the north by Stockton Boulevard, on the east by Third Avenue on the southwest by Sea Girt Avenue;

Lots numbers three (3) four (4) five (5) six (6) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-seven (27) twenty-eight (28) twenty-nine (29) thirty (30) thirty-one (31) thirty-two (32) thirty-three (33) thirty- 40

Exhibit C. 2.

four (34) thirty-five (35) thirty-six (36) thirty-seven (37) thirty-eight (38) thirty nine (39) forty (40) forty-one (41) forty-two (42) forty-three (43) and forty-four (44) in Block Number Thirty-six (36);

Lots numbers one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-six (26) twenty-seven (27) twenty-eight (28) thirty-two (32) thirty-three (33) thirty-four (34) thirty-nine (39) forty (40) forty-one (41) forty-two (42) in Block Thirty-Seven (37) 10

Lots numbers three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-seven (27) twenty-eight (28) thirty-one (31) thirty-two (32) thirty-five (35) thirty-six (36) thirty-seven (37) thirty-eight (38) thirty-nine (39) forty (40) forty-one (41) forty-two (42) forty-three (43) and forty-four (44) in Block Number Forty (40); 20 30

Lots Numbers three (3) four (4) eleven (11) twelve (12) fifteen (15) sixteen (16) nineteen (19) twenty (20) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-nine (29) thirty (30) thirty-seven (37) thirty-eight (38) thirty-nine (39) forty (40) forty-one (41) and forty-two (42) in Block Number Forty-One (41);

Exhibit C. 2.

Lots numbers seven (7) eight (8) nine (9) ten (10) eleven (11) and twelve (12) in Block Forty-Two (42);

Lots numbers thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) and eighteen (18) in Block Number Forty-seven (47);

10 Lots numbers six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-seven (27) twenty-eight (28) twenty-nine (29) thirty (30) thirty-one (31) and thirty-two (32) in Block number Forty-nine (49);

20 Lots Numbers nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-seven (27) and twenty-eight (28) in Block Number Fifty (50);

30 Lots numbers one (1) two (2) five (5) six (6) seven (7) eight (8) thirteen (13) fourteen (14) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-five (25) and twenty-six (26) in Block Number Fifty-Two (52);

Lots numbers one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-five (25) twenty-six (26) twenty-nine (29) thirty (30) thirty-three (33) and thirty-four (34) in Block Number Fifty-Three (53);

40 Lots Numbers one (1) two (2) five (5) six (6) seven (7) eight (8) nine (9) ten (10) thirteen

Exhibit C. 2.

(13) fourteen (14) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) and twenty-four (24) in BLOCK NUMBER FIFTY-ONE (51);

Lots numbers nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-seven (27) twenty-eight (28) twenty-nine (29) thirty (30) thirty-one (31) thirty-two (32) thirty-three (33) thirty-four (34) thirty-five (35) thirty-six (36) in BLOCK NUMBER FIFTY-FOUR (54);

Lots Numbers four (4) five (5) six (6) ten (10) eleven (11) twelve (12) nineteen (19) twenty (20) twenty-one (21) twenty-two (22) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-seven (27) twenty-eight (28) twenty-nine (29) thirty (30) thirty-one (31) thirty-two (32) thirty-three (33) thirty-four (34) thirty-five (35) and thirty-six (36) in BLOCK NUMBER FIFTY-FIVE (55);

Lots numbers one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) in BLOCK NUMBER FIFTY-SIX (56);

ALL OF BLOCK NUMBER FIFTY-SEVEN (57) the said block being a triangular parcel of land bounded on the north by Trenton Boulevard, on the east by Fourth Avenue, on the southwest by Sea Girt Avenue on the west by Fifth Avenue;

Lots numbers five (5) six (6) seven (7) eight (8) nine (9) ten (10) thirty-eight (38) thirty-nine (39) and forty (40). Lot thirty-eight (38)

Exhibit C. 2.

being nineteen (19) feet wide on the amended map of Block fifty-eight (58) of Sea Girt, New Jersey, made by Sincerbeaux and Moore August 13, 1923, a copy of which is duly filed in the aforesaid Clerk's office.

10 Lots one (1) two (2) three (3) four (4) five (5) six (6) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) nineteen (19) twenty (20) twenty-one (21); the easterly fifty (50) feet of lots numbers twenty-nine (29) thirty (30) and thirty-one (31); Lots numbers thirty-four (34) thirty-five (35) thirty-six (36) thirty-seven (37) thirty-eight (38) thirty-nine (39) forty (40) forty-one (41) forty-two (42) forty-three (43) forty-four (44) forty-five (45) forty-
20 six (46) forty-seven (47) forty-eight (48) forty-nine (49) fifty (50) fifty-one (51) fifty-two (52) and fifty-three (53) in BLOCK FIFTY-NINE (59); Being ALL OF SAID BLOCK NUMBER FIFTY-NINE (59) except the portion taken for the enlargement of the Park opposite the Railway station, and lots numbers seven (7) eight (8) nine (9) twenty-two (22) twenty-three (23) twenty-four (24) twenty-five (25) twenty-six (26) twenty-seven (27) twenty-eight (28) and all that
30 part of lots numbers twenty-nine (29) thirty (30) and thirty-one (31) lying West of a line drawn parallel to and fifty (50) feet from the easterly line of said lots.

ALL OF BLOCK NUMBER SIXTY (60) except the portion taken for the enlargement of the Park *opposite* the Railway station; the said block being bounded on the north by Boston Boulevard, on the east by Fifth Avenue, on the south by Crescent Parkway and on the west by the Plaza.

40 Lots Numbers six (6) seven (7) eight (8) nine

Exhibit C. 2.

(9) ten (10) eleven (11) twelve (12) thirteen
 (13) fourteen (14) fifteen (15) sixteen (16)
 seventeen (17) eighteen (18) nineteen (19) twenty
 (20) thirty-six (36) thirty-seven (37) thirty-eight
 (38) thirty-nine (39) forty (40) forty-one (41)
 forty-two (42) forty-three (43) forty-four (44)
 forty-five (45) forty-six (46) forty-seven (47) 10
 forty-eight (48) forty-nine (49) fifty (50) fifty-
 one (51) fifty-two (52) fifty-three (53) fifty-four
 (54) fifty-five (55) fifty-six (56) and fifty-seven
 (57) in BLOCK NUMBER SIXTY-ONE (61);

ALL OF BLOCK NUMBER SIXTY-TWO
 (62); the said block being bounded on the north
 by Baltimore Boulevard, on the east by Fifth
 Avenue on the south by Philadelphia Boulevard
 and on the west by lands of the New York and
 Long Branch Railroad. 20

ALL OF BLOCK NUMBER SIXTY-THREE
 (63), the said block being bounded on the north
 by New York Boulevard, on the east by Fifth
 Avenue on the south by Baltimore Boulevard
 and on the west by lands of the New York and
 Long Branch Railroad.

ALL OF BLOCK NUMBER SIXTY-FOUR
 (64) the said block being bounded on the north
 by Brooklyn Boulevard on the east by Fifth
 Avenue on the south by New York Boulevard and 30
 on the west by lands of the New York and Long
 Branch Railroad.

Lots number five (5) six (6) seven (7) eight
 (8) nine (9) ten (10) eleven (11) twelve (12)
 thirteen (13) fourteen (14) fifteen (15) sixteen
 (16) twenty-one (21) twenty-two (22) twenty-
 three (23) twenty-four (24) and all those parts
 of lots numbers seventeen (17) and twenty (20)
 in BLOCK NUMBER SIXTY-FIVE (65) lying
 east of a line drawn parallel to and fifty (50) 40

Exhibit C. 2.

feet easterly from the easterly line of the right of way of the New York and Long Branch Railroad.

10 All that part of BLOCK NUMBER SIXTY-SEVEN (67) lying east of a line drawn one hundred fifty (150) feet westerly from and parallel with the westerly line of Fifth Avenue excepting the plot fifty by one hundred fifty (50 x 150) feet heretofore conveyed by Sea Girt Company to Elise M. and Josephine Muhleman; the plot fifty by one hundred fifty (50 x 150) feet heretofore conveyed by Sea Girt Company to Belle M. Carpendale and the plot seventy-five by one hundred fifty (75 x 150) feet heretofore conveyed by Sea Girt Company to Annie R. Wells.

20 Lots numbers nineteen (19) twenty (20) thirty-eight (38) and thirty-nine (39) in BLOCK NUMBER SIXTY-ONE (61); lots numbers nineteen (19) twenty (20) thirty-two (32) and thirty-three (33) in BLOCK NUMBER SIXTY-TWO (62); lots number nineteen (19) twenty (20) twenty-six (26) and twenty-seven (27) in BLOCK NUMBER SIXTY-THREE (63) lot nineteen (19) the easterly twenty-five (25) feet of lot number twenty (20) and the easterly fifty (50) feet of lot number twenty-one (21) in BLOCK NUMBER
30 SIXTY-FOUR are hereby conveyed subject to any existing rights in the proposed new street crossing said lots.

40 ALL of said lots are hereby conveyed subject to any existing ordinances of the Borough of Sea Girt affecting them and also subject to any and all restrictions that may be binding on them and in any block front from which lots have been sold either by the Sea Girt Company the Sea Girt Holding Company or the parties of the first part thereto, the balance of the lots in

Exhibit C. 2.

said block front are hereby conveyed subject to the same restrictions as were imposed by the Sea Girt Company the Sea Girt Holding Company or the parties of the first part hereto, on the lots in said block front so sold by said parties or either or any of them.

Lots twenty-three (23) and twenty-nine (29) in BLOCK NUMBER FIFTY-NINE (59) are also conveyed subject to a right of way for a six-inch sewer main and a one and one-half (1½) inch water main along or near the westerly line of said lot twenty-three (23) and across lot twenty-nine (29) from Washington Boulevard to the southerly line of lot number thirty (30); the said sewer and water mains to be for the use of lots numbers twenty-six (26) twenty-seven (27) twenty-eight (28) twenty-nine (29) thirty (30) and thirty-one (31) in said BLOCK FIFTY-NINE (59).

The said premises are subject to the right granted to the Atlantic Coast Electric Light Company, dated June 1, 1912, to construct and maintain electric light system in Sea Girt.

The within described premises are conveyed expressly subject to the lien and encumbrance of a certain mortgage given by the Sea Girt Holding Company to Sea Girt Company, dated October 2, 1922, to secure the sum of One Hundred and eighteen thousand (\$118,000.00) dollars and recorded in the Monmouth County Clerk's Office in book 638 of Mortgages, at pages 457 &c., and which mortgage was duly assigned to Charles L. Noble on April 1, 1924, by assignment duly recorded in Book 89 of Assignments of Mortgages, for Monmouth County, at pages 427 &c. and the party of the second part hereto, hereby agrees to assume and pay the balance remaining due

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Exhibit C. 2.

upon said mortgage, together with interest as therein expressed.

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:

10 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;

20 TO HAVE AND HOLD, all and singular the above described land and premises, with the appurtenances unto the said party of the second part its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever; and the said parties of the first part do for their heirs, executors and administrators covenant and grant to and with the said party of the second part, its successors and assigns that they, 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
30 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 premises, can or may be changed, charged, altered or defeated in any way whatsoever, except as aforesaid;

40 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.

Exhibit C. 2.

AND ALSO that they, the said parties of the first part will WARRANT, secure and forever defend the said land and premises unto the said Sea Girt Estates or its successors 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 aforesaid. 10

IN WITNESS WHEREOF the said party of the first part ha hereunto set hand and seal the day and year first above written.

ELIZABETH H. SCHANCK	(L. s.)	
WILLIAM G. SCHANCK	(L. s.)	
HELEN L. SCHOCK	(L. s.)	
FREDERICK F. SCHOCK	(L. s.)	
ANNA S. TROUT	(L. s.)	20
HARRY W. TROUT	(L. s.)	

Signed, Sealed and Delivered
in the presence of

GILBERT H. VAN NOTE.

\$232.00 I. R. U. S. stamps cancelled

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH. } ss. 30

BE IT REMEMBERED, That on this twelfth day of August 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 William G. Schanck and Elizabeth H. Schanck his wife, Helen L. Schock and Frederick F. Schock her husband and Anna B. Trout who I am satisfied are the grantors in the within Deed of Conveyance named, and 40

Exhibit C. 2.

I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed;

10

GILBERT H. VAN NOTE
Attorney at Law of New Jersey.

STATE OF NEW YORK }
COUNTY OF ONONDAGA } ss.

20

BE IT REMEMBERED, That on this 14th day of August in the year of our Lord One Thousand Nine Hundred Twenty-five before me, the subscriber, a Notary Public of the State of New York personally appeared Harry W. Trout who I am satisfied is one of the Grantors in the within Indenture named, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

EDWARD L. MOORE
Notary Public Onondaga Co. N. Y.

30

40

Exhibit C. 2.

STATE OF NEW YORK }
COUNTY OF ONONDAGA } ss.

I, SMITH T. FOWLER, Clerk of the County of Onondaga and the Supreme and County Courts therein the same being Courts of Record, do hereby certify, that Edward L. Moore whose name is subscribed to the Certificate of the proof or acknowledgement of the annexed instrument and thereon written was at the time of taking such proof or acknowledgement a Notary Public, in and for the County of Onondaga dwelling in the said County commissioned and sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to the said certificate of proof or acknowledgement is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County the 14 day of August 1925.

SMITH T. FOWLER (L. s.)

Received and recorded Aug. 17th A. D. 1925
at 11 A. M.

JOSEPH McDERMOTT, Clerk.

10
20
30

40

*Exhibit C. 4.***EXHIBIT C. 4.**

E. V. PATTERSON, JR., INC.

SEA GIRT, N. J.

"Where the Cedars Meet the Sea"

Dec. 22, 1927.

10

Sea Girt Estates,
Trenton, N. J.

Gentlemen:

I just called Boone on the telephone and he says he will not be able to come to Trenton until after Xmas. He will let me know just when in a day or two and I will let you hear from me as soon as I find out.

20 I am sending under separate cover the new maps that have just been completed for the Borough.

Yours truly,

E. V. PATTERSON, INC.

E. V. Patterson, Jr.

30

40

Exhibit C. 5.

EXHIBIT C. 5.

E. V. PATTERSON, JR., INC.
SEA GIRT, N. J.

“Where the Cedars Meet the Sea”

April 12th, 1927.

10

“Sea Girt Estates”
Broad Street Bank Bldg.,
Trenton, N. J.

Gentlemen:

W the undersigned, members of the Parkway
Syndicate, wish to be favored with an extension
until October 1st, to meet the payment of \$10,-
000.00 and interest due April 1st, under our Con-
tract dated September 23rd, 1925.

Yours very truly,

20

E. V. PATTERSON, JR., INC.

E. V. Patterson, Jr.

Marvin Osborne

Tillie M. Newman

Susan M. Sutton.

EVP/H:

30

40

*Exhibit C. 6.***EXHIBIT C. 6.**

E. V. PATTERSON, JR., INC.
SEA GIRT, N. J.

“Where the Cedars Meet the Sea”

January 14th, 1928.

10

Sea Girt Estates,
Broad Street Bank Bldg.
Trenton, New Jersey.

Gentlemen:

I am answering for the Parkway Syndicate your letter enclosing statement as to the amount due under the contract for the Parkway, Sea Girt.

20

Kindly have the deed for property contracted for made up in the same names as called for and let us know when and where it will be convenient to close title. We will need about two weeks to have the title searched so kindly allow for that.

We would prefer to close title somewhere down this way if it is convenient to you.

Yours very truly,

E. V. PATTERSON, JR., INC.

30

By E. V. Patterson, Jr.
for Parkway Syndicate.

40

Exhibit D. 1.

EXHIBIT D. 1.

“SEA GIRT ESTATES”

SEA GIRT, N. J.

“Where the Cedars Meet the Sea”

Trenton, N. J.,
February 16, 1926.

10

Harry R. Cooper, Esq.,
Belmar, N. J.

Dear Sir:

We have your letter of February 11th in reference to property at Sea Girt, title to which you are now searching. “Sea Girt Estates” acquired title to its property in block 59 by deed dated August 15, 1925 and recorded in the Monmouth County Clerk’s Office in Book 1310 of Deeds, Pages 461, etc. 20

In order to expedite your search we would refer you to Mr. E. V. Patterson, Jr., at Sea Girt, N. J., who was instrumental in effecting the sale of this property and who is the president of E. V. Patterson, Jr., Inc., one of the vendees. He is thoroughly familiar with our title and will undoubtedly be able to assist you.

Yours truly,

“SEA GIRT ESTATES 30

W. B. Whelan
Treasurer.

ABW’T

40

Exhibit D. 4.

EXHIBIT D. 4.

Trenton, N. J.
Jan. 12, 1928

10 Mr. Murvin Osborn,
Sea Girt,
New Jersey.

Dear Sir:

We are enclosing herewith a statement of the amount due us for lots located on Crescent Parkway, Sea Girt, New Jersey, in accordance with agreement of sale dated September 23, 1925, to which you are a party.

20 To date we have not received the payment which was extended to October 1st, 1927 or the final installment payment which also was due on that date. We feel we have been very lenient in this matter and at this time kindly ask that settlement be made as per the enclosed statement.

Yours truly,

“SEA GIRT ESTATES”

Treasurer

ABW'TAC

30

40

DECREE.

IN CHANCERY OF NEW JERSEY

Between
SEA GIRT ESTATES, a corporation,
tion,*Complainant,**and*SUSAN M. SUTTON, TILLIE M.
NEWMAN, MURVIN OSBORN
and E. V. PATTERSON, JR.,
INC., a corporation,*Defendants.*

10

*On Bill, etc.**Decree.*

20

This cause coming on to be heard upon bill, answer, replication and proofs in the presence of William A. Moore, Esquire, appearing for James E. Mitchell, Esquire, of counsel with the complainant, and of Harry R. Cooper, Esquire, of counsel with the defendants, and the pleadings, proofs and arguments of counsel having been heard and considered and it satisfactorily appearing to the Court that by virtue of an agreement, in writing, duly made and executed between "Sea Girt Estates", a corporation of the State of New Jersey, the complainant, and Susan M. Sutton, Tillie M. Newman, Murvin Osborn and E. V. Patterson, Jr. Inc., a corporation of the State of New Jersey, parties defendant, the said defendants agreed to purchase of the said complainant certain lots of land in said bill mentioned and hereinafter described as follows:

30

ALL those lots, tracts, or parcels of land and premises, hereinafter particularly de-

40

Decree.

scribed, situate, lying and being in the Borough of Sea Girt, in the County of Monmouth and State of New Jersey.

Being known and designated as lots numbers
 10 Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27),
 Twenty-eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33),
 Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-eight (38),
 Thirty-nine (39), and Forty (40) in BLOCK NUMBER THIRTY-EIGHT (38); lots numbers
 Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four
 20 (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29),
 Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-four (34), Thirty-five
 (35), Thirty-six (36) in BLOCK NUMBER FIFTY-FIVE (55); lots numbers Thirty-two
 (32), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37),
 Thirty-eight (38), Thirty-nine (39), Forty (40), Forty-one (41), Forty-two (42), Forty-three (43),
 Forty-four (44), Forty-five (45), Forty-six (46), Forty-seven (47), Forty-eight (48), Forty-nine
 30 (49), Fifty (50), Fifty-one (51), Fifty-two (52), and Fifty-three (53) in BLOCK NUMBER
 FIFTY-NINE (59) as shown on a map entitled "Amended Map of Sea Girt, New Jersey",
 Frank Osborne, Engineer, 1909.

The above described premises are to be conveyed expressly subject to covenants, conditions and restrictions of record affecting the same.

And it further appearing satisfactorily to the
 40 Court that the "Amended Map of Sea Girt, New Jersey", Frank Osborn, Engineer 1909, as set

Decree.

forth in the above description referred to and was the designation of the map and plan of lots received in evidence at the trial of this cause and marked Exhibit "C. 7";

And it further appearing that the defendants in said agreement agreed to pay to the complainant as a purchase price for the above described lots of real property the sum of \$58,000.00, payment to be made in the following amounts and on the following dates: 10

On execution of the agreement....	\$ 1,000.00	
October 1st, 1925.....	5,000.00	
April 1, 1926.....	5,000.00	
October 1, 1926.....	10,000.00	
April 1, 1927.....	10,000.00	
October 1, 1927.....	27,000.00	
	<hr/>	20
	\$58,000.00	

And it further appearing that as an additional consideration the defendants agreed to pay all taxes, governmental and municipal, which might be levied upon the above described lots of real property and upon completion of the payment of the purchase price the complainant agreed to execute and deliver to the defendants a good and sufficient deed for the said premises and also possession thereof and that the defendants paid to the complainant on account of the purchase price of the said premises the sum of \$21,000.00 but neglected and refused to pay to the said complainant the balance of the purchase price, to wit: \$37,000.00 and neglected and refused to pay the taxes as agreed upon and neglected and refused to pay interest on unpaid balance of the purchase price at the rate of six per cent. per annum, as was stipulated in the said agreement; 30

40

Decree.

And it further appearing to the Court that the complainant has always been and still is ready and willing in all things to comply with the stipulations of the said articles of agreement on its part and has prayed the order or decree of this Court directing the defendants to comply with
 10 and fulfill the same in all things on their part;

And the Chancellor being of the opinion that the complainant is entitled to the specific performance of the said articles of agreement on the part of the defendants, as in its said bill it has prayed, IT IS, THEREFORE, on this thirteenth day of June, A. D. 1929,

ORDERED, ADJUDGED and DECREED that the said articles of agreement be in all things specifically performed by the defendants respectively, and that the defendants do, within thirty days from the date of this decree, pay to the complainant the sum of Forty-five thousand, three hundred thirty dollars, \$45,330.00, which said sum is found to be due from the defendants respectively to the complainant;
 20

And it is further ORDERED, ADJUDGED and DECREED that the costs of the complainant be paid by the defendants;

And it is further ORDERED, ADJUDGED and DECREED that a fee in the sum of fifteen hundred dollars be paid by the defendants to counsel for the complainant and the complainant is to serve a copy of this decree upon each of the defendants or their solicitor within thirty days from the date hereof.
 30

E. R. WALKER,

Respectfully advised,

MAJA LEON BERRY,

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY

Between

“SEA GIRT ESTATES,” a corporation,

and

SUSAN M. SUTTON, TILLIE M. NEWMAN, MURVIN OSBORN and E. V. PATTERSON, JR.,
INC., a corporation,
Defendants.

10

On Bill, &c.

Notice of Appeal.

The defendants, Susan M. Sutton, Tillie M. Newman, Murvin Osborn and E. V. Patterson, Jr. Inc., a corporation, hereby appeal from the final decree made in the above entitled cause on June thirteenth, 1929, by the Chancellor, on the advice of Vice-Chancellor Berry, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes. 20

Dated, August 14, 1929. 30

HARRY R. COOPER,
Solicitor for and of Counsel with
Defendants.

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

HARRY R. COOPER
Of Counsel with Defendants.

40

ACKNOWLEDGMENT OF SERVICE.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between

“SEA GIRT ESTATES,” a corporation,

Complainant-Appellee,

and

SUSAN M. SUTTON, TILLIE M.

NEWMAN, MURVIN OSBORN

and E. V. PATTERSON, JR.,

INC., a corporation,

20

Defendants-Appellants.

*On Appeal
from
Chancery.*

*Acknowledg-
ment of
Service.*

Service of a copy of the notice of appeal in the above cause is hereby acknowledged as of within time, the same having been duly sent to us by mail and received.

JAMES E. MITCHELL,
Solicitor of Complainant-Appellee.

30

40

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

SEA GIRT ESTATES, a corpora-
tion,

Complainant-Appellee,

and

SUSAN M. SUTTON, TILLIE M.

NEWMAN, MURVIN OSBORN,

and E. V. PATTERSON, JR.,

INC., a corporation,

Defendants-Appellants.

10

*On Appeal
from
Chancery.*

20

To the Honorable Court of Errors and Appeals
in the Last Resort in All Causes:

The petition of Susan M. Sutton, Tillie M. Newman, Murvin Osborn and E. V. Patterson, Jr. Inc., a corporation, appellants in the above stated cause, respectfully show that petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the thirteenth day of June, 1929, in which cause Sea Girt Estates, a corporation, was the complainant, and the said Susan M. Sutton, Tillie M. Newman, Murvin Osborn and E. V. Patterson, Jr. Inc., a corporation, were the defendants, in these respects, to wit:

30

1. That the said decree adjudges that a certain agreement made between the said Sea Girt Estates, a corporation, dated the twenty-third

40

Petition of Appeal.

day of September, 1925, whereby the said Sea Girt Estates agreed to convey to the said Susan M. Sutton, Tillie M. Newman, Murvin Osborn and E. V. Patterson, Jr. Inc., a corporation, certain property being situate in the Borough of Sea Girt, in the County of Monmouth and State
10 of New Jersey, and known and designated as Lots Nos. 23 to 40 inclusive in Block #38, lots Nos. 19 to 36 inclusive in Block No. 55, and lots Nos. 32 to 53 inclusive in Block 59, as shown on map entitled "Amended Map of Sea Girt, New Jersey," Frank Osborne, Engineer, 1909, in all things be specifically performed by the said defendants, Susan M. Sutton, Tillie M. Newman, Murvin Osborne and E. V. Patterson, Jr. Inc., a corporation, and that the said defendants pay
20 the costs of the said action above referred to.

2. The petitioners appeal from the Decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous for the following reasons:

1. That the complainant admittedly did not have title to part of what it contracted to convey and that the defendants were not required to take less than what they bargained for.

30 2. That the Court erred in admitting parol testimony to vary the terms of the written contract.

3. That E. V. Patterson could not be considered the agent of the other defendants and any knowledge he may have had was not imputable to them.

4. That the knowledge of E. V. Patterson as an individual was not imputable to E. V. Patterson Co.

Petition of Appeal.

5. That there was no legal competent proof in charging E. V. Patterson Co. with knowledge possessed by E. V. Patterson as an individual.

6. That the decree provided for the payment of forty-five thousand three hundred and thirty (\$45,330.00) dollars to the complainant without making any provision upon what terms and conditions the said payment should be made. 10

7. That the said complainant was not entitled to the payment of the said sum of forty-five thousand three hundred thirty (\$45,330.00) dollars under the terms and conditions provided for under the decree, and the direction of the Court to pay the same under the conditions were in contravention of the rights of the defendants-appellants. 20

8. That the said decree was erroneous in that it failed to describe the legal basis upon which said defendants-appellants were required to make payment to said complainant of the sum of forty-five thousand three hundred and thirty (\$45,330.00) dollars.

9. The failure to provide for a legal tender of a deed in conformity with the terms of the contract in the provisions of the decree did not justify the provision therein contained with regard to the obligation imposed upon the defendants-appellants. 30

Petitioner therefore prays that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that your

Petition of Appeal.

petitioners may have such other relief as this Court shall deem proper.

HARRY R. COOPER,
Solicitor of Appellants.

10 JAMES F. MINTURN,
Of Counsel with Appellants.

Service of a copy of the within petition of appeal is hereby acknowledged this 27th day of August, A. D. 1929.

JAMES E. MITCHELL,
Solicitor of Complainant-Appellee.

20

30

40

Answer to Petition of Appeal.

that the same may be affirmed with costs to be taxed in favor of this appellee.

JAMES E. MITCHELL,
Solicitor for and of Counsel
with "Sea Girt Estates."

10

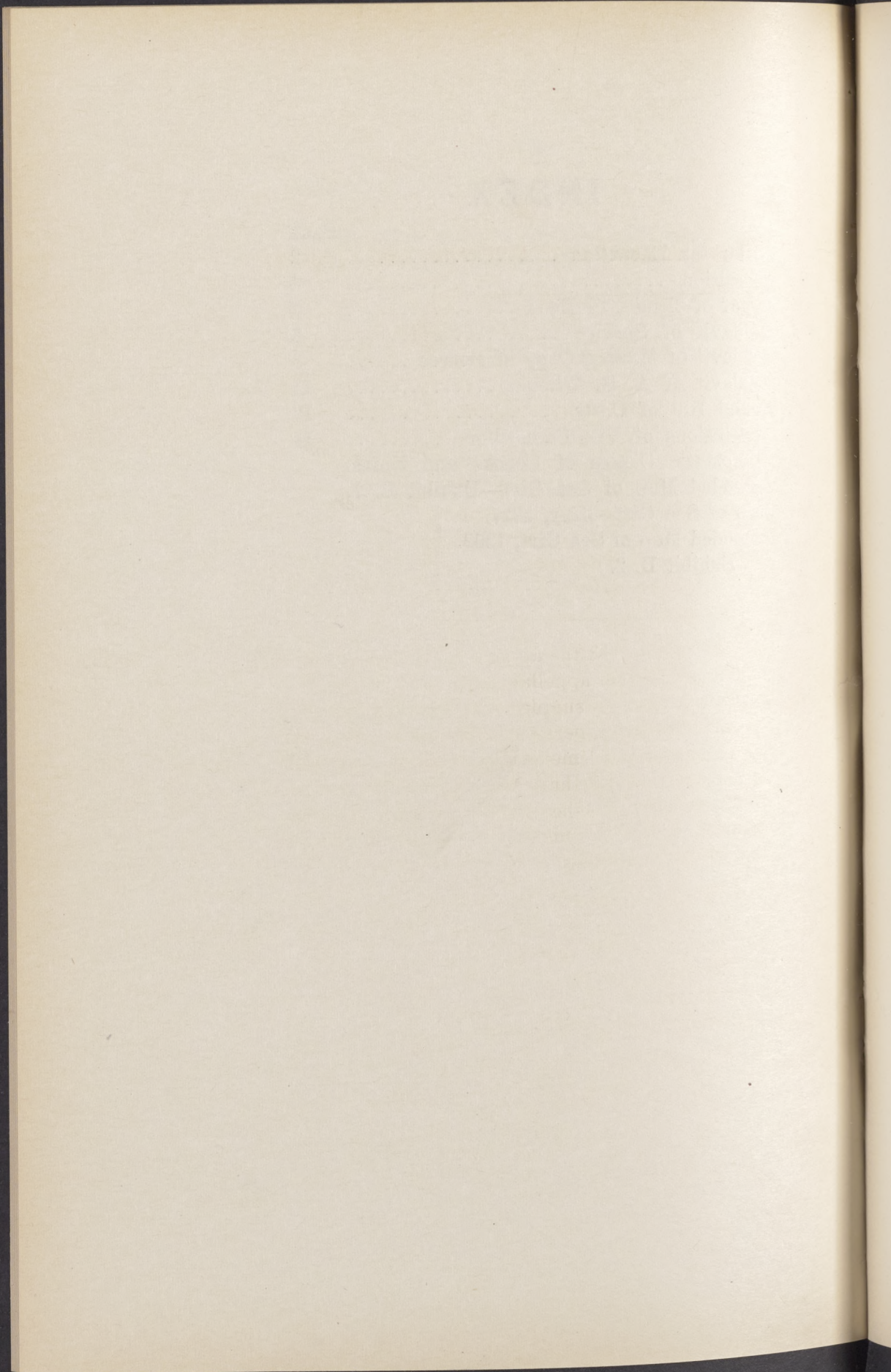
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New Jersey Court of Errors and Appeals

Between

SEA GIRT ESTATES, a corporation,

Complainant-Appellee,

and

SUSAN M. SUTTON, TILLIE M. NEWMAN, MURVIN OSBORN and E. V. PATTERSON, JR.,
INC., a corporation,

Defendants-Appellants.

On Bill, &c.

10

*On Appeal
from
Chancery.*

The solicitor for the appellee has requested the solicitor for the appellants to include the following papers in a supplemental state of the case, as being proper papers on this appeal. They are printed in a supplemental state of the case with the understanding that the solicitor for the appellants shall have the right to object to their inclusion in the argument as not being proper papers to be included in the state of the case:

Order for execution;

Execution;

Proof of tender of deed;

Affidavits of service;

Affidavit;

Taxed bill of costs.

20

30

40

ORDER FOR EXECUTION.

IN CHANCERY OF NEW JERSEY.

Between

10 "SEA GIRT ESTATES," a corporation,

*Complainant,**and*SUSAN M. SUTTON, TILLIE M.
NEWMAN, MURVIN OSBORN
and E. V. PATTERSON, JR.,
INC., a corporation,*Defendants.*

*On Bill, etc.**Order for
Execution.*

20

This matter being presented to the Chancellor by James E. Mitchell, Esquire, of counsel for the complainant and it appearing that a decree was entered in this court on June 13, 1929, wherein the defendants were decreed respectively to pay to the complainant the sum of \$45,330.00, together with costs of suit and to further pay to counsel for the complainant the sum of \$1,500.00 within thirty days from the date of said decree;

30

And it further appearing by proof that a copy of the decree aforesaid had been served upon Harry R. Cooper, Esquire, of counsel for the defendants in compliance with the decree;

And it further appearing by proof that a copy of the taxed bills of costs had been served upon Harry R. Cooper, Esquire, of counsel for the defendants;

40

And it further appearing that the said thirty days expired on July 13, 1929, and proof being

Order for Execution.

established that the payments as aforesaid have not been made by any of the defendants;

Now THEREFORE, it is on this 1st day of August A. D., 1929, ORDERED, ADJUDGED and DECREED that an execution forthwith issue out of this court to the Sheriff of Monmouth County to make the debt of \$45,300.00, with interest thereon from the 13th day of June A. D., 1929, with costs of suit and also the counsel fee of \$1,500.00 directed by the decree of the Court of June 13, 1929. 10

Respectfully advised,

WM. J. BACKES,
A. M.

20

30

40

EXECUTION.

The State of New Jersey to the
Sheriff of Monmouth County, GREET-

(SEAL) ING:

10 WHEREAS, in and by a certain de-
 cree made in our Court of Chancery,
 on the 13th day of June A. D., 1929, in a certain
 cause therein depending, wherein "Sea Girt
 Estates," a corporation is the complainant, and
 Susan M. Sutton, Tillie M. Newman, Murvin Os-
 born and E. V. Patterson, Jr., Inc., a corporation,
 are defendants: It was ordered, adjudged and
 decreed that the complainant is entitled to re-
 ceive the sum of \$45,330.00, together with lawful
 interest thereon from the 13th day of June, 1929,
20 until the same be paid and satisfied, and it is en-
 titled to receive of the said defendants its costs
 of this suit to be taxed and the sum of \$1,500.00
 counsel fee to the complainant's solicitor; and by
 the said decree it was further ordered, adjudged
 and decreed that unless the said defendants
 should, within thirty days after the 13th day of
 June A. D., 1929, pay to the said complainant, or
 to its solicitor, the said sum of \$45,330.00,
 together with interest and costs and counsel fee
30 as aforesaid, and WHEREAS, a decree has been en-
 tered herein, dated August 1, 1929, directing that
 execution issue against the defendants; and
 WHEREAS, the costs of the said complainant in
 this suit have been duly taxed at \$63.14 and we
 being satisfied that the said defendants have not
 complied with the terms of the said decree;

 THEREFORE, we hereby command you, that of
 the goods and chattels of the said defendants in
 your county, you cause to be made the said debt,
40 interest and costs, together with the costs of this

Execution.

writ; and if sufficient goods and chattels of the said defendants in your county you cannot find, whereof to make the said debt, interest and costs and counsel fee, together with the costs of this writ, then we further command you, that of the lands, tenements, hereditaments and real estate, whereof the said defendants were seized 10
 on the 13th day of June A. D., 1929, or at any time afterwards, in whosoever hands the same may be, you cause to be made the whole or the residue, as the case may required, of the said sum of \$45,330.00, with the interest, costs and counsel fee as aforesaid, and the costs of this writ; and that you have those moneys before our Chancellor, in our said Court of Chancery, at Trenton, on the sixth day of November next, to 20
 render to the said complainant, and also the surplus money, if any there be, to abide the further order of our said court and you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this writ, together with this writ.

WITNESS, EDWIN ROBERT WALKER, our Chancellor at Trenton, this 6th day of August A. D., 1929.

FRED. GARRETSON, 30
 Clerk.

JAMES E. MITCHELL,
 Solicitor.

PROOF OF TENDER OF DEED.

Filed October 1, 1929.

IN CHANCERY OF NEW JERSEY.

10 *Between*

"SEA GIRT ESTATES," a corporation,

*Complainant,**and*SUSAN M. SUTTON, TILLIE M.
NEWMAN, MURVIN OSBORN
and E. V. PATTERSON, JR.,
INC., a corporation,

20

*Defendants.**On Bill, etc.**Proof of
Tender of
Deed.*STATE OF NEW JERSEY, }
COUNTY OF MERCER. } ss.

HARRY RIES, being duly sworn according to law, on his oath deposes and says:

30 I am an employee of "Sea Girt Estates," the complainant in the above-entitled matter. I was personally present when a deed to the premises concerned in this action, properly executed and acknowledged, was tendered by Mr. George W. Mulheron, president of "Sea Girt Estates," to E. V. Patterson, Jr., president of E. V. Patterson, Jr., Inc., at its office in Sea Girt, New Jersey. It was 11:30 o'clock in the morning of July 13, 1929, which was the thirtieth day from the execution of the decree entered in this matter. Mr. Patterson refused to accept the deed and stated that his principals had given him no

40 money in payment of the balance of the purchase

Proof of Tender of Deed.

price of the property or in payment of the amount specified to be due in said decree.

HARRY J. RIES.

Subscribed and sworn to before me,
this 1st day of October A. D.,
1929. 10

M. B. HULEY,
Notary Public of N. J.

20

30

40

AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

Between

"SEA GIRT ESTATES," a corporation,

Complainant,

and

SUSAN M. SUTTON, TILLIE M. NEWMAN, MURVIN OSBORN and E. V. PATTERSON, JR., INC., a corporation,

Defendants.

10

On Bill, etc.

Affidavit of Service.

20

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

JAMES E. MITCHELL, being duly sworn according to law, on his oath deposes and says:

A certain decree was entered in this court on June 13, 1929, wherein and as a part thereof it was directed that a copy of said decree be served upon each of the defendants or their solicitor within thirty days from the date thereof. In compliance with that provision I did on June 17, 1929, mail to Harry R. Cooper, Esquire, solicitor of record for defendants, at his office in Belmar, New Jersey, a copy of said decree, the letter of transmittal reading as follows:

30

"I believe that you have heretofore received a copy of the decree entered in the above matter but, in compliance with the provisions, a copy should be served upon the

40

Affidavit of Service.

solicitor for the defendants within thirty days from the date of entry.

I would request that you acknowledge receipt of the enclosure."

10 I received from the said solicitor for the defendants, under date of June 18, 1929, an acknowledgment of the receipt of the said copy of decree, a copy of which letter is as follows:

"I have yours of the 17th instant enclosing copy of decree in *Sea Girt Estates v. Sutton.*"

JAMES E. MITCHELL.

Subscribed and sworn to before me,
this 16th day of July A. D., 1929.

20 M. B. HULEY,
Notary Public of N. J.

30

40

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

Between

"SEA GIRL ESTATES," a corporation,

*Complainant,**and*

SUSAN M. SUTTON, TILLIE M. NEWMAN, MURVIN OSBORN and E. V. PATTERSON, JR., Inc., a corporation,

Defendants.

10

*On Bill, etc.**Affidavit.*

20

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

A. B. WHELAN, being duly sworn according to law, on his oath deposes and says:

I am the treasurer of "Sea Girt Estates," a corporation of the State of New Jersey, the complainant in the above entitled cause. A decree was entered in this court on June 13, 1929, directing the defendants to pay to the complainant the sum of \$45,330.00, together with interest thereon, costs of suit and counsel fee in the sum of \$1,500.00, said payment to be made within thirty days of the date of said decree. That thirty day period has now expired and to my knowledge no payments, as directed by the decree, have been made by any of the defendants to the complainant.

30

A. B. WHELAN.

40

Taxed Bill of Costs.

Subscribed and sworn to before me
this 24th day of July A. D., 1929.

M. B. HULEY,
Notary Public of N. J.

10

TAXED BILL OF COSTS.

IN CHANCERY OF NEW JERSEY.

Between

"SEA GIRT ESTATES," a cor-
poration,

Complainant,

20

and

SUSAN M. SUTTON, *et als.*,

Defendants.

Complainant's Costs.

	S. & C.	Ch.	Clk.	Als.
Retaining fee for sol.	2.00			
Drawing and eng.				
30 bill, 16 fol.	4.80			
Drawg. schedule ..	4.00			
Filing bill and enter'g action16	
Drawing, eng. and sealing subp'a.40	.30	.08	
Filing do., and sheriff's fees12	10.38
Drawing, eng. and fil'g reply &c.	1.50		.06	
40 Copy of bill	7.20		7.20	

Taxed Bill of Costs.

Motion for order ref.	1.50	.50		
Drawing, eng. and fil'g order, 4 fol. and copy	1.20		.46	
Drawg. servg. and fil'g notice40		.06	
Motion for decree...	.80		.16	10
Argument upon final hearing, &c.	4.00		.25	
Chancellor on decree		1.75		
Drawing, eng. and filing decree, 18 fol.	5.40		.06	
Enrolling p r o c e e d - ings, 80 fol.			5.60	
Servg. copy of de- cree and costs80
Drawing and en- grossing costs ...			1.20	20
Taxing and filing costs and copy.....			.80	
	<u>33.20</u>	<u>2.55</u>	<u>16.21</u>	<u>11.18</u>

Taxed at Sixty-three dollars and fourteen cents.
July 26, 1929.

FRED GARRETSON,
Clerk.

30

2.55
16.21
11.18

\$63.14

1. The first part of the report
 2. The second part of the report
 3. The third part of the report
 4. The fourth part of the report
 5. The fifth part of the report
 6. The sixth part of the report
 7. The seventh part of the report
 8. The eighth part of the report
 9. The ninth part of the report
 10. The tenth part of the report

11. The eleventh part of the report
 12. The twelfth part of the report
 13. The thirteenth part of the report
 14. The fourteenth part of the report
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21. The twenty-first part of the report
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 27. The twenty-seventh part of the report
 28. The twenty-eighth part of the report
 29. The twenty-ninth part of the report
 30. The thirtieth part of the report

31. The thirty-first part of the report
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 37. The thirty-seventh part of the report
 38. The thirty-eighth part of the report
 39. The thirty-ninth part of the report
 40. The fortieth part of the report

41. The forty-first part of the report
 42. The forty-second part of the report
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 44. The forty-fourth part of the report
 45. The forty-fifth part of the report
 46. The forty-sixth part of the report
 47. The forty-seventh part of the report
 48. The forty-eighth part of the report
 49. The forty-ninth part of the report
 50. The fiftieth part of the report

51. The fifty-first part of the report
 52. The fifty-second part of the report
 53. The fifty-third part of the report
 54. The fifty-fourth part of the report
 55. The fifty-fifth part of the report
 56. The fifty-sixth part of the report
 57. The fifty-seventh part of the report
 58. The fifty-eighth part of the report
 59. The fifty-ninth part of the report
 60. The sixtieth part of the report

Conclusions of Vice-Chancellor.

In Chancery of New Jersey

<i>Between</i> SEA GIRT ESTATES, a corpora- tion, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> SUSAN M. SUTTON, <i>et als.</i> , <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>On Bill.</i> <i>On Final</i> <i>Hearing.</i> <i>Conclusions.</i> <i>Not for</i> <i>Print.</i> 67/493	10
--	---	---	----

William A. Moore and Howard K. Shaw, Esqs.,
for complainant.

Harry R. Cooper, Esq. for defendants.

BERRY, V.-C. 20

This bill is by the vendor against the vendees and seeks the specific performance of a contract for the sale of lands located at Sea Girt, New Jersey. The cause was heard by me on May 23, 1929, and at the conclusion of the hearing I announced that I would advise a decree for the complainants. An appeal having been taken from that decree these conclusions are written for the purpose of that appeal. 30

The contract was dated September 23, 1925, and provided for certain instalment payments on account of the purchase price before settlement. The lands the subject of the contract consisted of a large number of lots described by lot number and block number and comprising several blocks of land and were referred to as shown on "Map of Sea Girt, New Jersey, Frank Osborne, 1909." The making of the agreement and the refusal of the defendants to perform are admitted. The defense is that the complainant cannot convey 40

Conclusions of Vice-Chancellor.

10 what it agreed to convey as it does not have title to some of the lots mentioned in the agreement, particularly lots Nos. 32 and 33, Block 59 on the map referred to. Defendants claim that they bought the lots according to the map mentioned in the agreement *as filed in the office of the Clerk of Monmouth County*. As a matter of fact, the complainant ever owned the lots as shown on that map. These lots, originally, faced on what was known as the Plaza, but several years before the date of the contract the Borough took a part of the land owned by the complainant's predecessor in title for the purpose of widening the Plaza and Crescent Parkway and lots 32 and 33 were then re-arranged by the then owner so that they fronted on Crescent Parkway instead of the Plaza. Defendants claim they did not know this and insist that as complainants cannot convey that portion of the lands which was taken by the Borough, that is, lots 32 and 33, Block 59, as originally laid out, the defendants are not obliged to perform. They claim not to have discovered this deficiency in the lands the subject of the contract for some months after the contract was executed, although before the date fixed for settlement. The deficiency, if there is one, is not such as might not be compensated for by an abatement in the purchase price, as it constitutes a very small portion, relatively, of the whole tract the subject of the sale, and an allowance on the settlement for such deficiency might very well be made, if necessary. It appears that after the widening of the Parkway and the Plaza the Sea Girt map was amended accordingly, particularly the Frank Osborne map of 1909 mentioned in the contract, and the original map which hung on the wall of the office of the defendant E. V. Patterson, Jr., Inc., in Sea Girt, was corrected by

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Conclusions of Vice-Chancellor.

the drawing of pencil lines thereon to show the property which was taken by the Borough and the new location of lots 32 and 33. This was the map from which the complainants bought and it was this particular map which was referred to in the contract which is the subject of this suit.

The description of the property as contained in the contract here involved was given to Mr. Van Note, the lawyer who prepared the contract, by Mr. Bond, the vice president of the defendant corporation. The map referred to in the contract, corrected to show the changes made necessary by the Borough's appropriation of some of the lots to public use, or an exact corrected copy thereof was in Bond's (corporation) office when he gave Mr. Van Note the description for the contract and the conclusion that it was this corrected map to which he referred in making up the description is inescapable. There is, therefore, in this case, no question of variation of the terms of a written instrument or of reformation of the contract, as might be argued, but rather what map was meant by the reference in the written agreement. Was it the map as originally prepared, a copy of which was filed in the County Clerk's office, or was it the corrected copy in the possession of the defendant, E. V. Patterson, Jr., Inc.? I am convinced that it was the latter and that the lots named in the contract were those shown on that map. Both Patterson and Bond knew of the alteration in the original layout of the property and of its notation on this map. That all of the defendants knew all about the change in the layout of these lots, and knew exactly what they were buying when the contract was made, I have no doubt. It appears from the evidence that E. V. Patterson, Jr., who is the president and the

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Conclusions of Vice-Chancellor.

main factor in the defendant corporation, was instrumental in selling these lands to the complainant and afterwards acted as selling agent for the lots. At the time of that sale he explained to the complainants the alteration in the map. He finally formed the syndicate the members of which are the defendants in this cause. There can be no question, therefore, but that he (Patterson) knew all about the change in the layout; in fact, when he sent the contract here involved to the complainants to be executed he also sent to them by mail a number of copies of a new map which is known as the "Amended Map of Sea Girt, by Frank Osborne." This new map shows the new layout of the lots as indicated by the pencil corrections on the original map which hung on the wall in Patterson's office. The other defendants claim, however, that his knowledge of this change is not imputable to them because he was the agent of the complainants. It is true that he had previously sold lots for the complainant but it is clear that in this transaction he was not the complainant's agent, but he, or his company, was one of the purchasers from the complainant and represented the other defendants in the negotiations which resulted in the contract. He could not be both purchaser and agent for the seller. I think the evidence very clearly shows that in all this transaction he represented and acted for the other defendants and that the defendants were chargeable with whatever knowledge he had. There was an attempt to deny that he represented and acted for the other members of the syndicate, but every member who testified finally admitted his agency, and this was apparent. Aside, however, from this fact and the knowledge which he had, I think I am justified in finding by the evidence that the other

Conclusions of Vice-Chancellor.

members of the syndicate knew of the change in the plan of the lots and that they did not buy from the map as it was originally prepared, but that they bought from the map as corrected by the pencil markings referred to; and that each and every one of the syndicate knew what property they were buying. Miss Sutton, one of the defendants, frankly admitted that she knew exactly what she was buying and did not buy from the map at all. The testimony of the other defendants in support of their defense was rendered of little value by cross examination and it is quite significant that E. V. Patterson, Jr., the controlling factor in the defendant corporation, did not testify at all and no explanation was offered as to why he did not. 10

There is still another reason why the complainants are entitled to a decree. All the defendants who testified said that they discovered the deficiency in the land some time prior to January 14, 1929. It would appear that that discovery was made some time during the early fall of 1928. Notwithstanding this fact, no attempt at rescission was made and on January 14, 1929, Mr. Patterson, on behalf of the syndicate, wrote to the complainant fixing a time for settlement under the contract. The attitude and actions of the defendants subsequent to the discovery of the alleged deficiency in land might well be taken to be an affirmation of the contract and a waiver of their right to rescind. But the fact is, however, that there was no disagreement or misunderstanding between the parties as to the exact land which was the subject of the contract when it was executed, nor as to the map referred to therein, and it was only months later that the defendants came to the conclusion that the map 20
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Conclusions of Vice-Chancellor.

referred to in the agreement was not the one from which they purchased. They, or some of them, at least, had evidently then become disappointed with their bargain, and sought to evade their responsibility under the contract by a futile attempt to show that the complainant had contracted to sell something it did not own.

For these reasons I advised the decree from which this appeal has been taken.

Decided May 23, 1929.

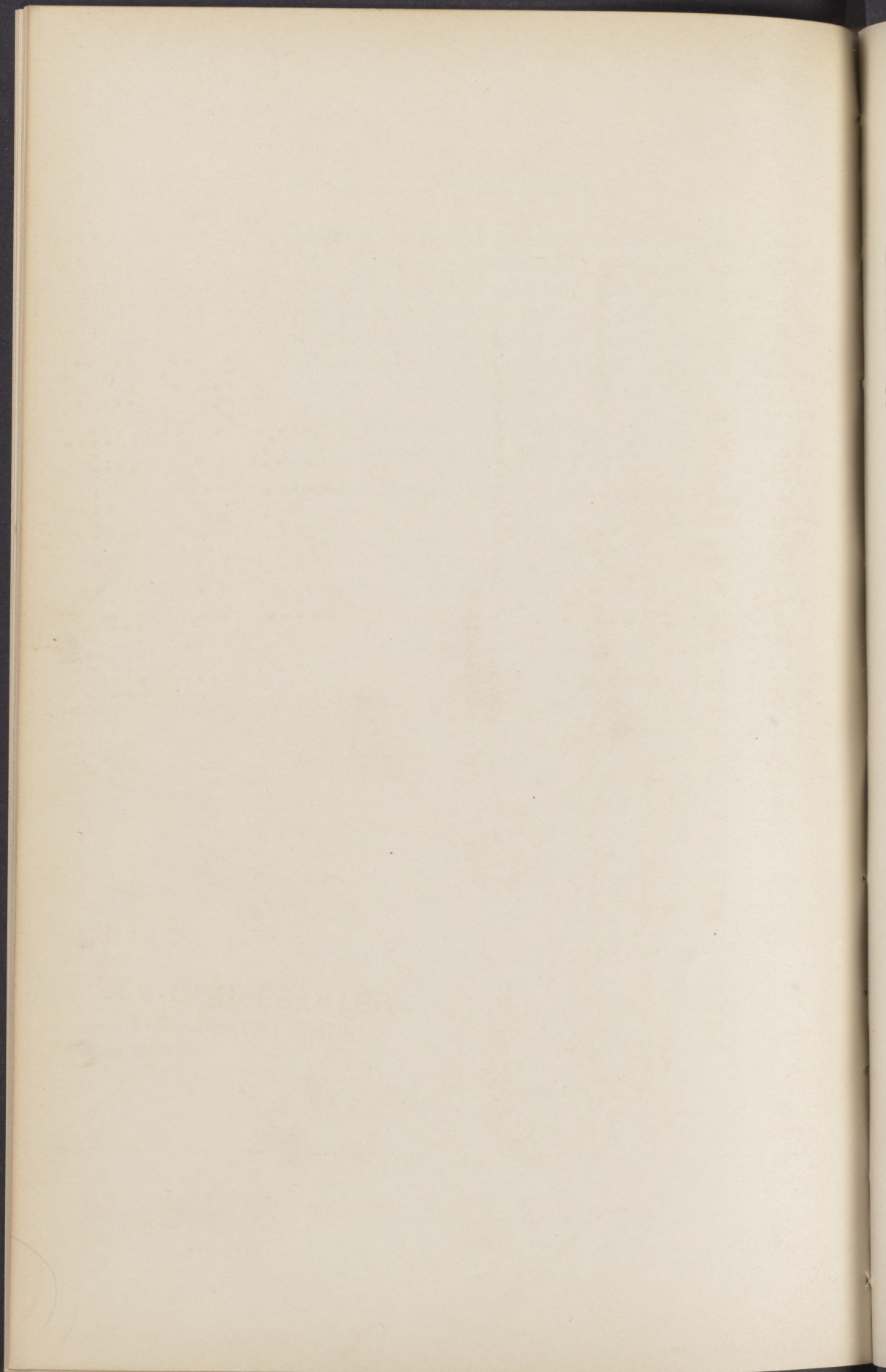
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Statement of Mr. Chaney

...the ...
...which they purchased ...
...and evidently they ...



No. 1

SPRING LAKE, N.J.

1925

THE FIRST NATIONAL BANK

55 2443

OF SPRING LAKE

PAY TO THE ORDER OF

Sea Girt Estates

Twelve hundred fifty and 500/100

DOLLARS

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE SYSTEM

\$1250.⁰⁰



Murwin Osborn
Special Account.

PAUL SILVERMASTER

FOR DEPOSIT ONLY
SEA GIRT ESTATES
THE FIRST NATIONAL BANK
OF PHILADELPHIA
PRIORITY ENDORSEMENTS GUARANTEED
OCT 7 1925
55-77
PRIORITY ENDORSEMENTS GUARANTEED

PAY ANY BANK, BANKER, OR TRUST CO. OR ORDER
PRIOR ENDORSEMENTS GUARANTEED
OCT 8 1925
FEDERAL RESERVE BANK OF NEW YORK
1-120

23
B

PAID
55 2443

1870

1871

1872

1873

1874

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1877

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1881

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1897

1898

1899

1900

No. 622

SPRING LAKE, N.J. Sep. 24, 1925

THE FIRST NATIONAL BANK

OF SPRING LAKE

55 2443

PAY TO THE ORDER OF

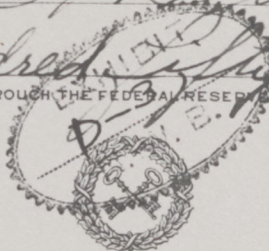
F. V. Catterson & Sons

Two hundred and fifty

DOLLARS

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE SYSTEM

\$250.00



Murron Osburn

PAUL SICWERS & CO. N.Y.

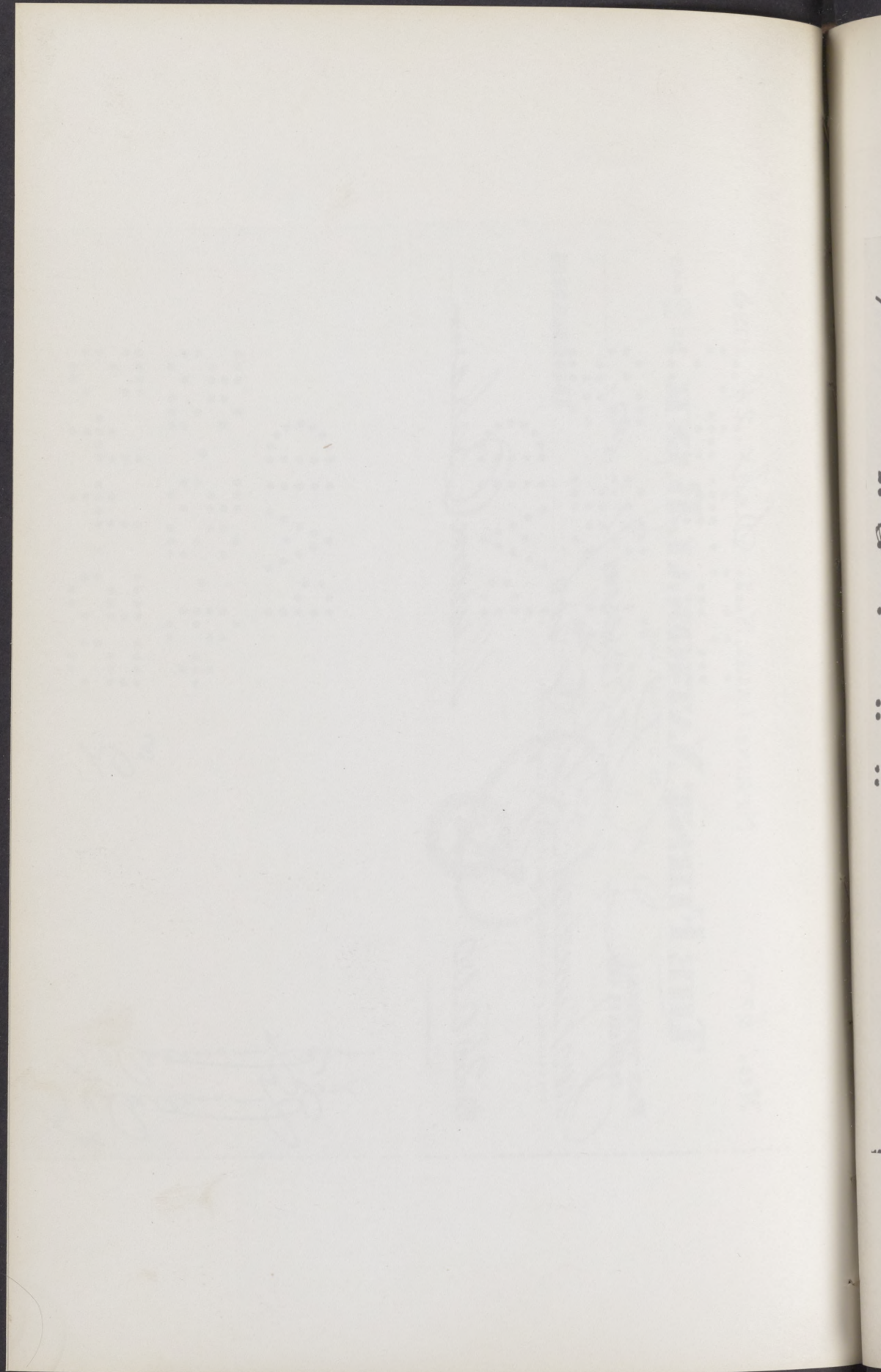
*F. V. Catterson & Sons
F. V. Catterson & Sons*

103

PAID

250

55 443



No. _____

SPRING LAKE, N.J.

Oct 6

1926

THE FIRST NATIONAL BANK

55 2443

OF SPRING LAKE

PAY TO THE ORDER OF

Sea Girl Estates

Twenty nine hundred thirty five ⁷⁴/₁₀₀

DOLLARS

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE SYSTEM

\$ *2935, ⁷⁴/₁₀₀*



Marvin Osborn

PAUL SIKWERS BENTLEY, N.Y.

FOR DEPOSIT ONLY
SEA GIRL ESTATES

103
55-77

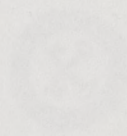
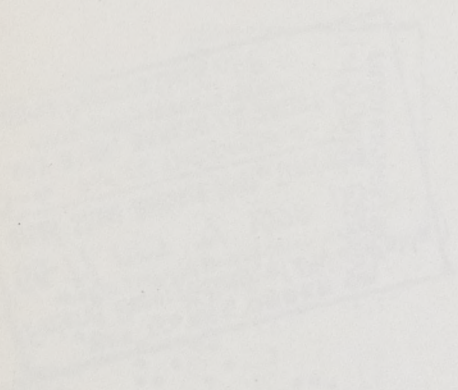
PAID
Federal Reserve Bank of Philadelphia
55-77 OCT 7 1926
Broad Street National Bank, Treasurers
3-4
PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST COMPANY
PRIOR ENDORSEMENTS GUARANTEED
Federal Reserve Bank of Philadelphia

55-443

April 1926

SPRING LAKE, N.J.

24.80 dm. N 26.00
1658.48
1928



RECEIVED
MAY 1926

2480 do. n 26.00
\$ 1658.⁴⁸
1683.28

SPRING LAKE, N.J.

April 1st 1926

55-443

Three months after date I promise to pay to the order of Sea Girl Estates

Sixteen hundred fifty eight and ⁴⁸/₁₀₀ Dollars

at the **THE FIRST NATIONAL BANK OF SPRING LAKE, N.J.**

Value received, *Wsch. Entree*

Due

3955

7/1

Murwin Osborn

MIL, POWERS & HEAY, NY.

2476

SEA GIRL ESTATES

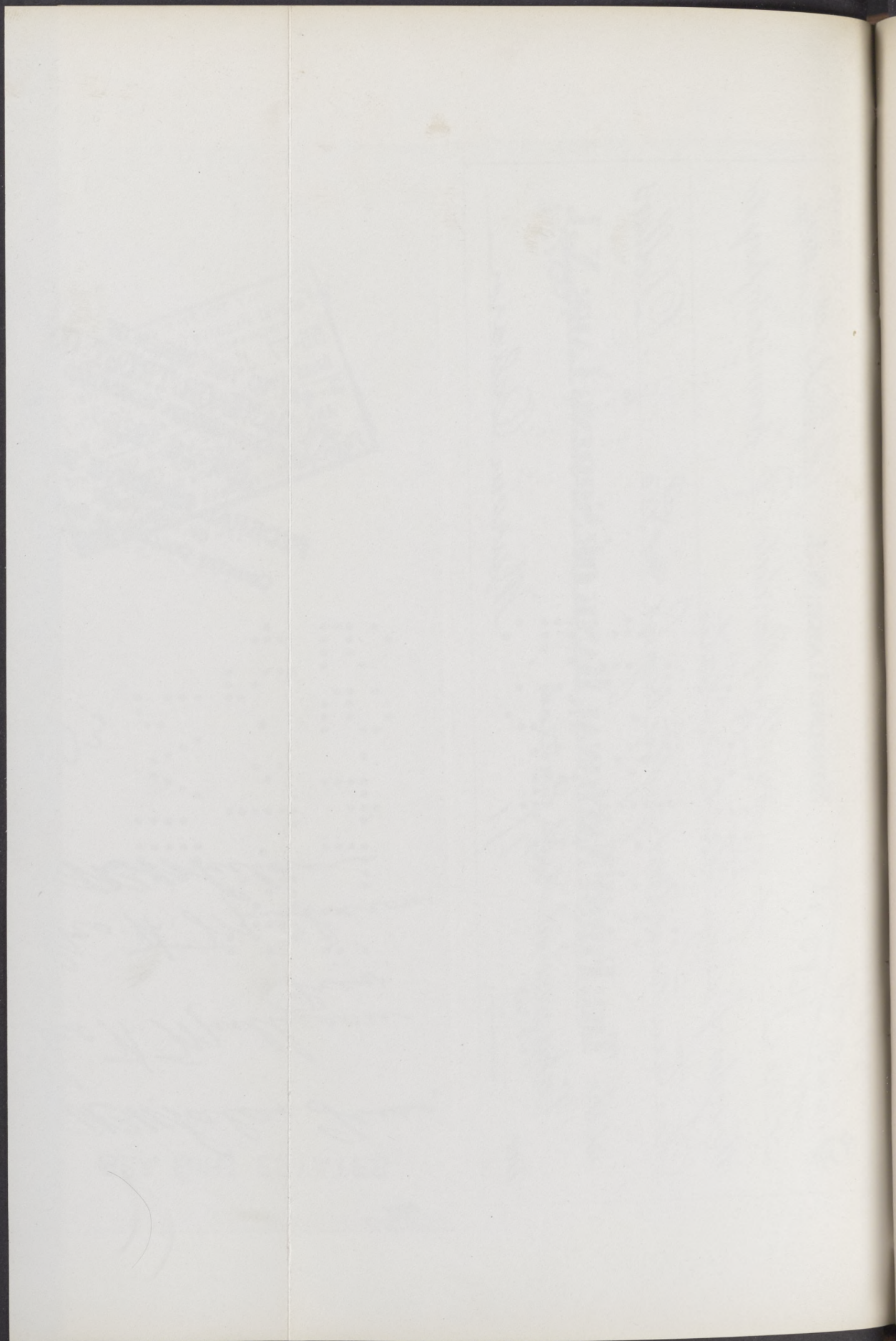
Abraham Green

Geo. H. Mulharon
Green

Geo. H. Mulharon
Mulharon

103

FEDERAL RESERVE BANK
COUNTRY COLL. OF N. J.
PAY TO THE
Federal Reserve Bank
PRIOR ENDO. S.S.
55-77 JUL 10 1926
3--PAY TO THE ORDER OF
ANY BANK OR TRUST CO.
FOR DEPOSIT OR CASH
PAYEE'S ACCOUNTS GUARANTEED
FEDERAL RESERVE BANK
OF NEW YORK
100 WALL ST. N. Y. C.
1914



SUSAN M. SUTTON

No. 1120

ASBURY PARK, N.J.

June 1

1926

55-245

THE MERCHANTS NATIONAL BANK OF ASBURY PARK

BIT

D-5

N. W. D.

PAY TO THE ORDER OF

Sea Girl Estates

\$1658. ⁴⁸/₁₀₀

Sixteen hundred fifty-eight and ⁴⁸/₁₀₀ DOLLARS

48

100

DOLLARS



Susan M. Sutton

Wm. Hamm Co - New York

FOR DEPOSIT ONLY
SEA GIRL ESTATES

H. E. PARRY, Cashier.

Asbury Park, N. J.

(55-242)

ASBURY BROADWAY OCEAN GROVE BANK

ANY BANK OR TRUST COMPANY
Pay to the order of
Payee's Bank or Order
Payee's Name Guaranteed
3 4926

KEY CHIEF COLLECTED
AND BOUND FOR

NOTICE IN WARD

SUSAN M. SUTTON

NO. 2008

ASBURY PARK, N.J.

Sept. 24 1925

ASBURY PARK TRUST COMPANY 55-244

PAY TO THE ORDER OF

E. V. Patterson Jr.

\$ 250.⁰⁰/₁₀₀

Two hundred fifty

⁰⁰

₁₀₀

DOLLARS

COLLECTIBLE AT PAR IN NEW YORK CITY

SAFE DEPOSIT BOXES

Susan M. Sutton

W. F. FEELY & CO. N.Y.

*E. V. Patterson Jr.
for Deposit
E. V. Patterson Jr. Sec.
E. V. Patterson Jr. Pres.*

PAY ANY BANK, BANKER,
TRUST COMPANY, OR ORDER

55-243 SEP 28 1925 55-243

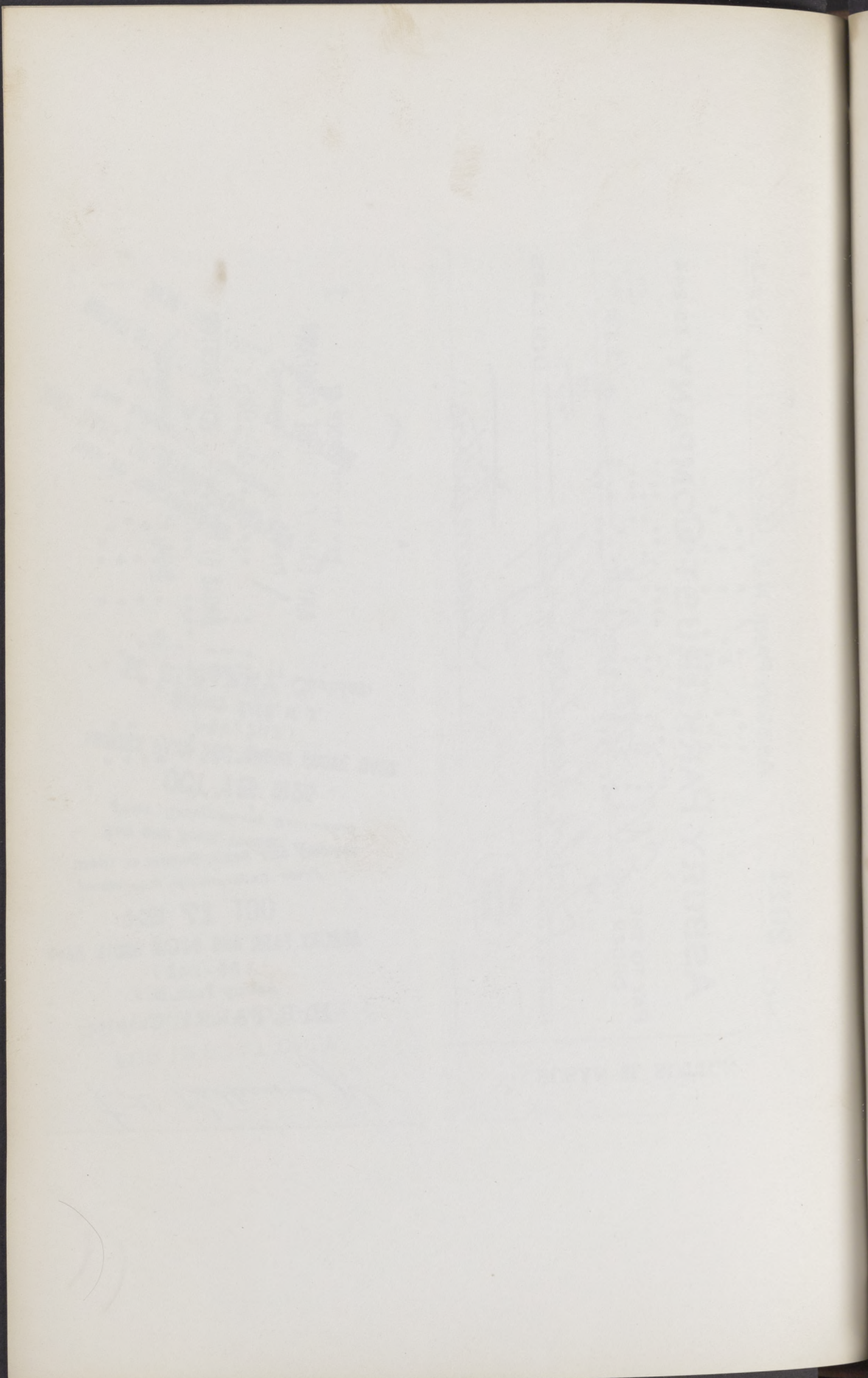
SEACOAST TRUST COMPANY

ASBURY PARK, N. J.

W. A. BERRY, SECRETARY & TREASURER

PAY TO THE ORDER OF
Any Bank, Banker or Trust Co.
(Call Prior Endorsements Guaranteed)

NATIONAL BANK
Spring Lake, N. J. 55-448
J. P. SCHOLICK, Cashier



NO. 2163

ASBURY PARK, N.J.

Sept 30, 1926

SUSAN M. SUTTON

ASBURY PARK TRUST COMPANY 55-244

PAY TO THE ORDER OF

Sea Girt Estates

\$ 2822.⁸³₁₀₀

Two thousand eight hundred twenty two ⁰⁰/₁₀₀ DOLLARS

COLLECTIBLE AT PAR IN NEW YORK CITY

SAFE DEPOSIT BOXES

Susan M. Sutton

H. R. PELEY & CO. N.Y.

FOR DEPOSIT ONLY
SEA GIRT ESTATES

D-5

40

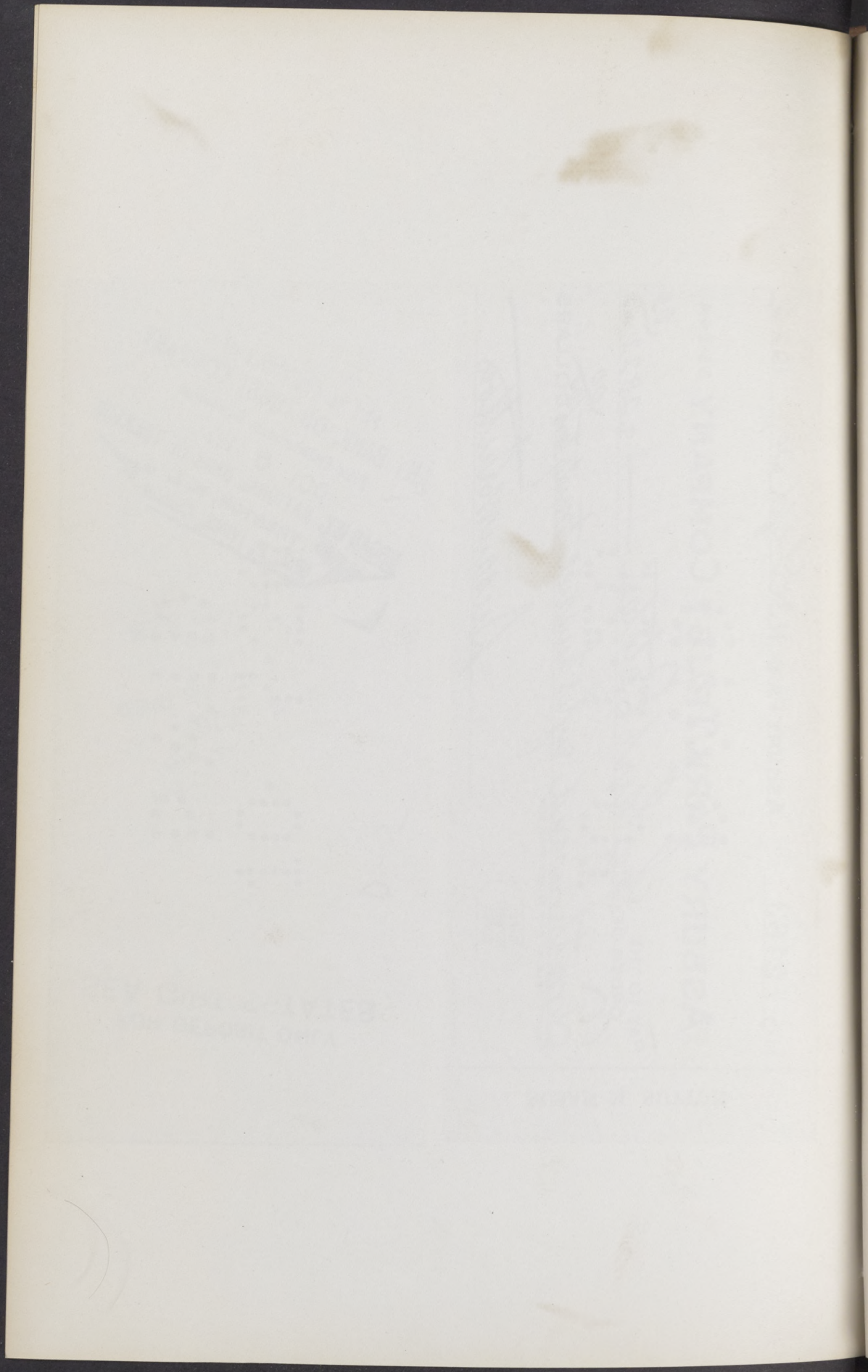
Pay any Bank, Branch or Agent
Prior Endorsements Guaranteed

OCT 2 1926
ASBURY PARK TRUST COMPANY

(SEA GIRT TRUST COMPANY)

BANK OF AMERICA

BROAD ST. NATIONAL BANK OF TRENTON
Wm. P. Ivins, Cashier
TRENTON, N. J.
ANY BANK, OR TRUST COMPANY
Prior Endorsements Guaranteed
PAY TO THE ORDER OF
OCT 6 1926



"SEA GIRT ESTATES"

TRENTON, N. J. Oct. 5 1926.

Received from Miss Susan M. Sutton

Twenty Eight Hundred Twenty-two ⁸³/₁₀₀ Dollars

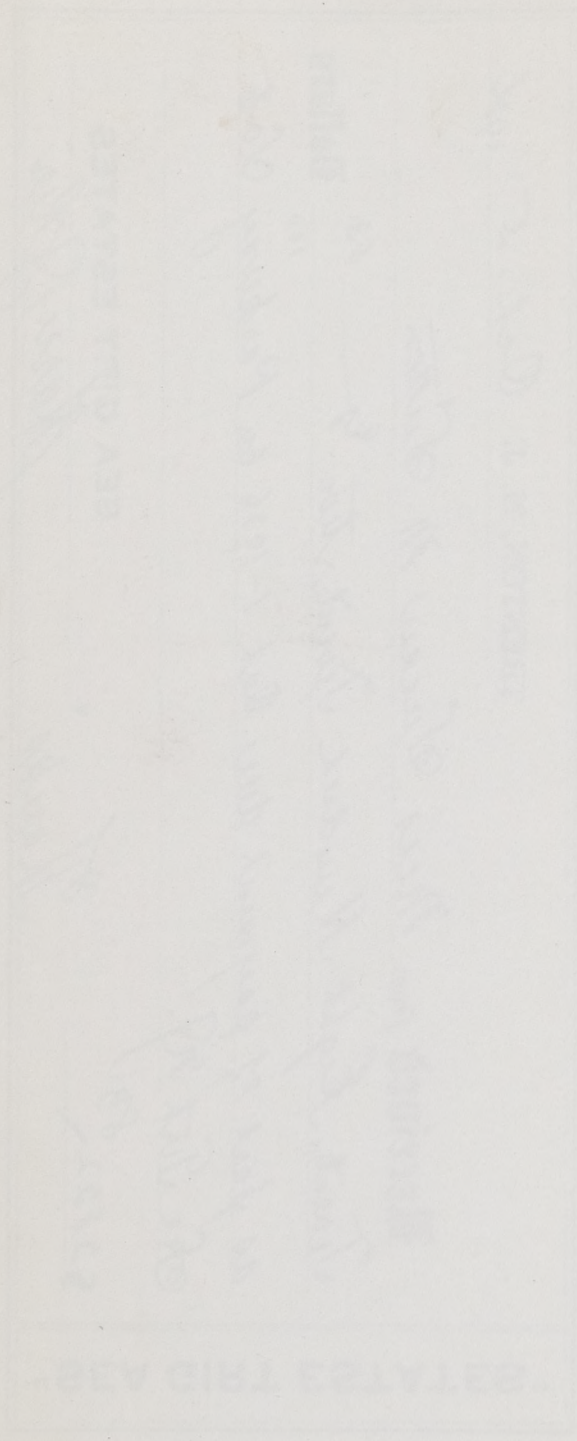
as part of payment due Oct. 1-1926 on Parkway Lot
Sea Girt N.J.

\$2852 ⁸³/₁₀₀

Thanks

SEA GIRT ESTATES

Narris J. Rice



Miss Susan M. Sutton,

September 21, 1926

11,413.86

YOUR 4th PAYMENT OF \$ ~~11,413.86~~ ON LOTS
 NO. 23-40 19-36 32-53, IN BLOCK NO. 38-55 59 SEA GIRT,
 N. J., IS PAYABLE AT THE OFFICE OF "SEA GIRT ESTATES," BROAD
 ST. BANK BLDG., TRENTON, N. J., ON October 1, 1926

THE ABOVE AMOUNT IS MADE UP ACCORDING TO CONTRACT,
AS FOLLOWS:

PRINCIPAL	10000.00
INTEREST	1413.86
TAXES - -	
TOTAL \$	11413.86

VERY TRULY YOURS,

"SEA GIRT ESTATES"

BY Harry Jones

(See other side)

2853.47
 30.64
 2822.83

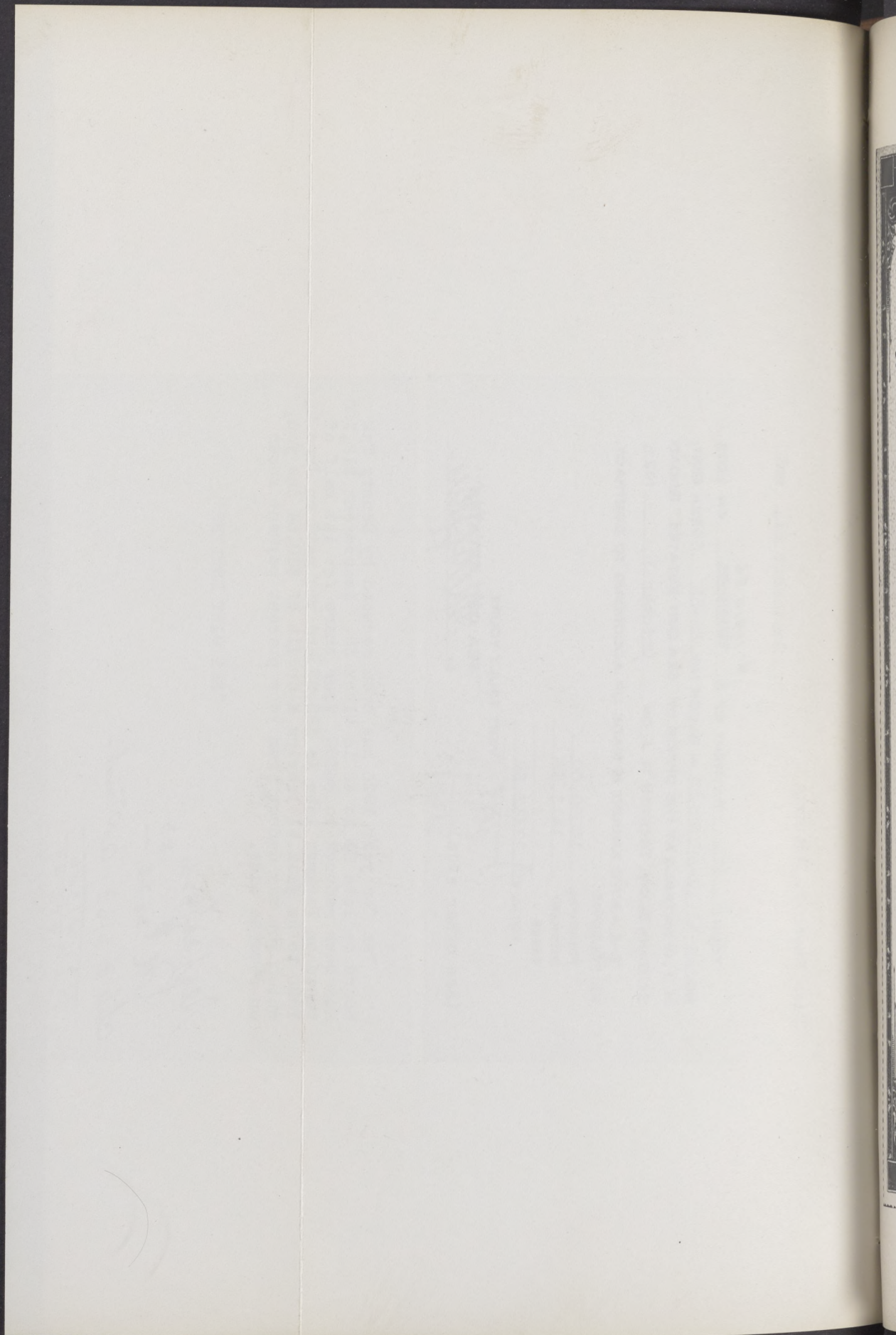
Tax for year 1926 has been reduced by County Tax Board on lots 23 to 40 in Block 38. Assessment \$12,700 has been reduced to \$6350. Your share for 1st half of taxes on Parkway lots is \$82.27 and you paid on June 2, 1926 to us \$112.91 leaving a credit of \$30.64 due you, which you may deduct from your present payment shown on reverse side.

"SEA GIRT ESTATES"

Sept 20/1926
 Pd \$2822.83

Chk # 2163 - a P Trust -

1/4	11413.86
	2853.47
Retate on	30.64
Taxes	2822.83



CREDIT TO

L. E. NEWMAN
CARPENTER AND BUILDER

No 962

Sea Girt, N. J.

Sept 21 1925

PAY TO THE
ORDER OF

E. V. Patterson Jr.

\$ 250.00

Two hundred-fifty

DOLLARS

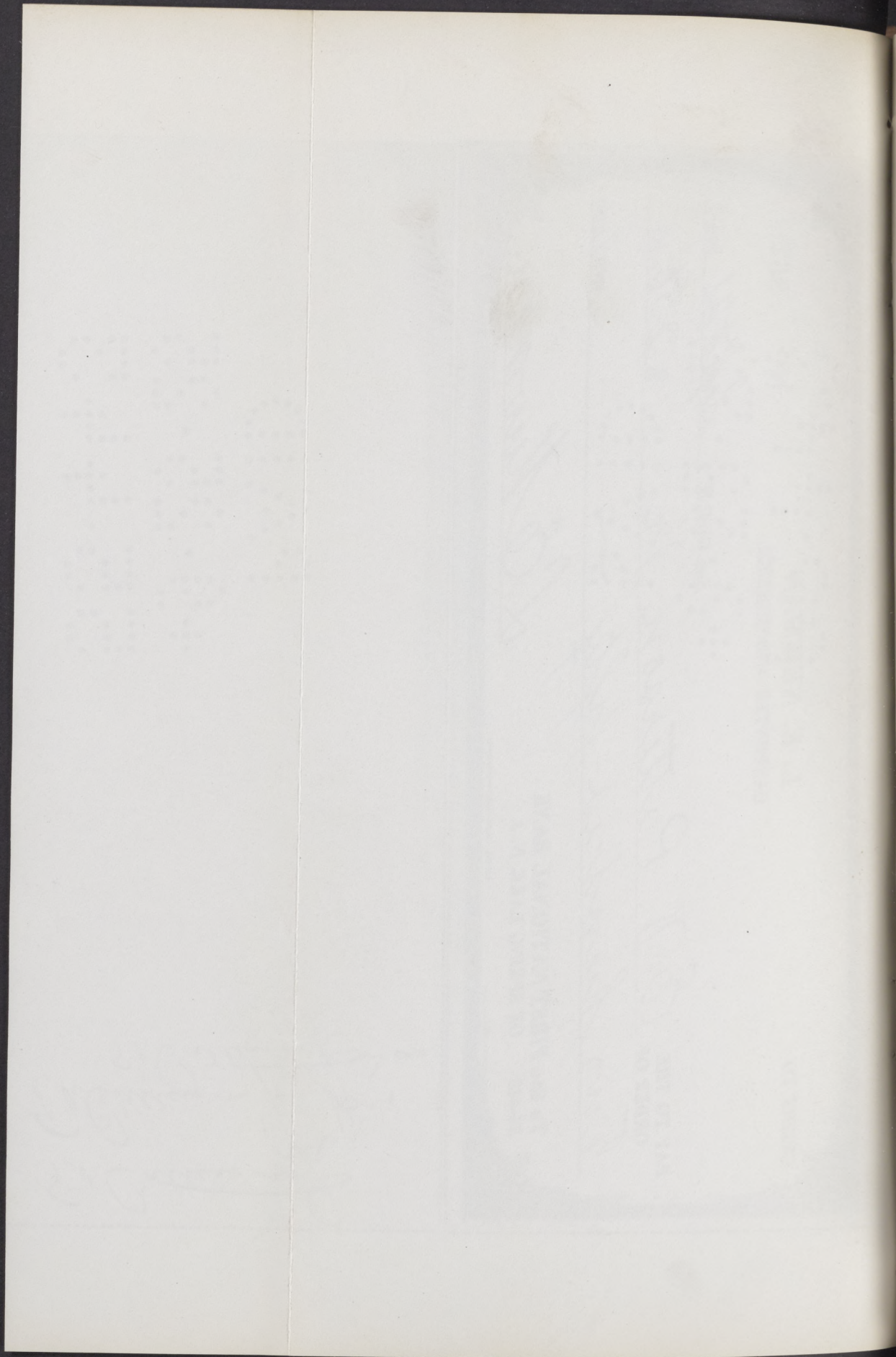
To the FIRST NATIONAL BANK
55-443 OF SPRING LAKE, N. J.

L. E. Newman

600485 PAT'D. - 1908 - REGISTERED - U. S.

E. V. Patterson Jr.
E. V. Patterson Jr.
E. V. Patterson Jr.

PAID
250.00
55-443



CREDIT TO

Crescent Parkway

L. E. NEWMAN
CARPENTER AND BUILDER

No 1244

Sea Girl, N. J. *April* 1926

PAY TO THE
ORDER OF

Sea Girl Estates

\$ 1658.48

Sixteen hundred fifty eight & ⁴⁸/₁₀₀ DOLLARS

To the FIRST NATIONAL BANK
55-443 OF SPRING LAKE, N. J.

L. E. Newman

603456 PAT'D. 1906-REPRODUCED-U.S.

FOR DEPOSIT ONLY
SEA GIRL ESTATES

THE MERCHANTS NATIONAL BANK
APR 5 1926
ANY BANK, BANKER OF FIRST CLASS
PAY TO THE ORDER OF
ALL THE TRANSFERRED Securities Guaranteed

THE MERCHANTS NATIONAL BANK
TRENTON, N. J.
APR 3 1926
PAY TO THE ORDER OF
BANK OF BALTIMORE
FIRST NATIONAL BANK

3340

SEA GIRL ESTATES

MBethelan Treas.

Geo. H. Matheson

MBethelan

SEA GIRL ESTATES

MBethelan Treas.

FEDERAL RESERVE BANK
OF NEW YORK
COUNTRY GOLF SECTION DIVISION

D6

DEC 7 1926

PAY TO THE ORDER OF
ANY BANK OR TRUST CO.
PRIOR ENDORSEMENTS GUARANTEED

PAY TO THE ORDER OF
Federal Reserve Bank of Philadelphia
PRIOR ENDORSEMENTS GUARANTEED
55-77 DEC 4 1926 55-77
Federal Reserve Bank, Philadelphia, Pa.
PAY TO THE ORDER OF
BANKER OR TRUST CO.
PRIOR ENDORSEMENTS GUARANTEED
Federal Reserve Bank of Philadelphia

R of 900.
\$ 800.00

SPRING LAKE, N.J.

Dec. 1

55-443

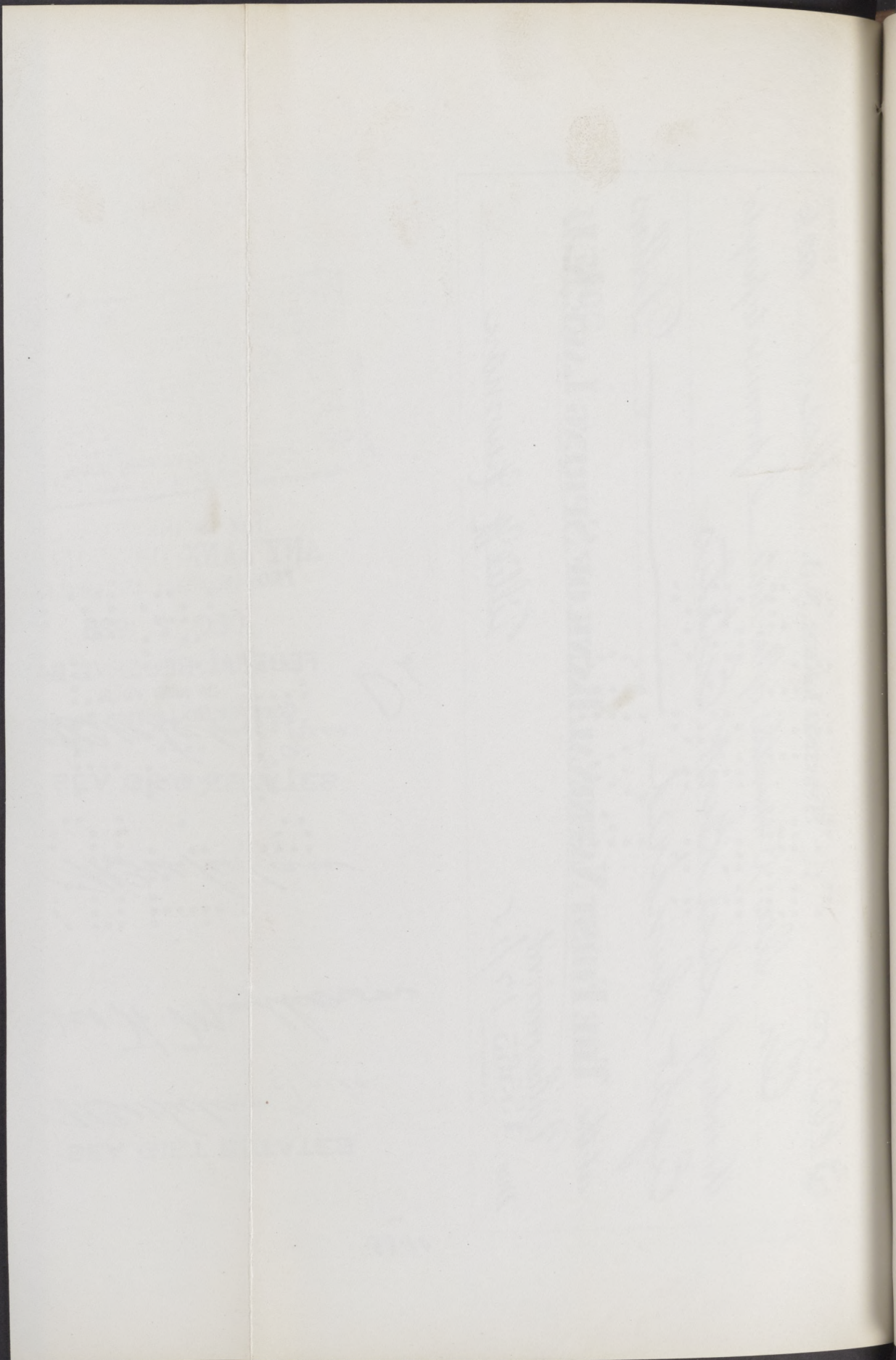
1926

On *Six* months after date I promise to pay to
the order of *Sea Girl Estates*
Eight hundred Dollars

at the THE FIRST NATIONAL BANK OF SPRING LAKE, N.J.

Value received
Due 15565 12/15

Lillie H. Newman



COUNTER CHECK

SPRING LAKE, N. J.

Oct 5 1925

No.

THE FIRST NATIONAL BANK 55-443

PAY TO THE ORDER OF

E. V. Patterson Jr.

\$ 1250.00

Twelve hundred fifty

DOLLARS

Willie M. Newman

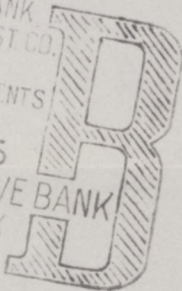
THE FOLLOWING IS PRINTED

Pay to the order of
Sea Girl Estates
E. V. Patterson Jr.

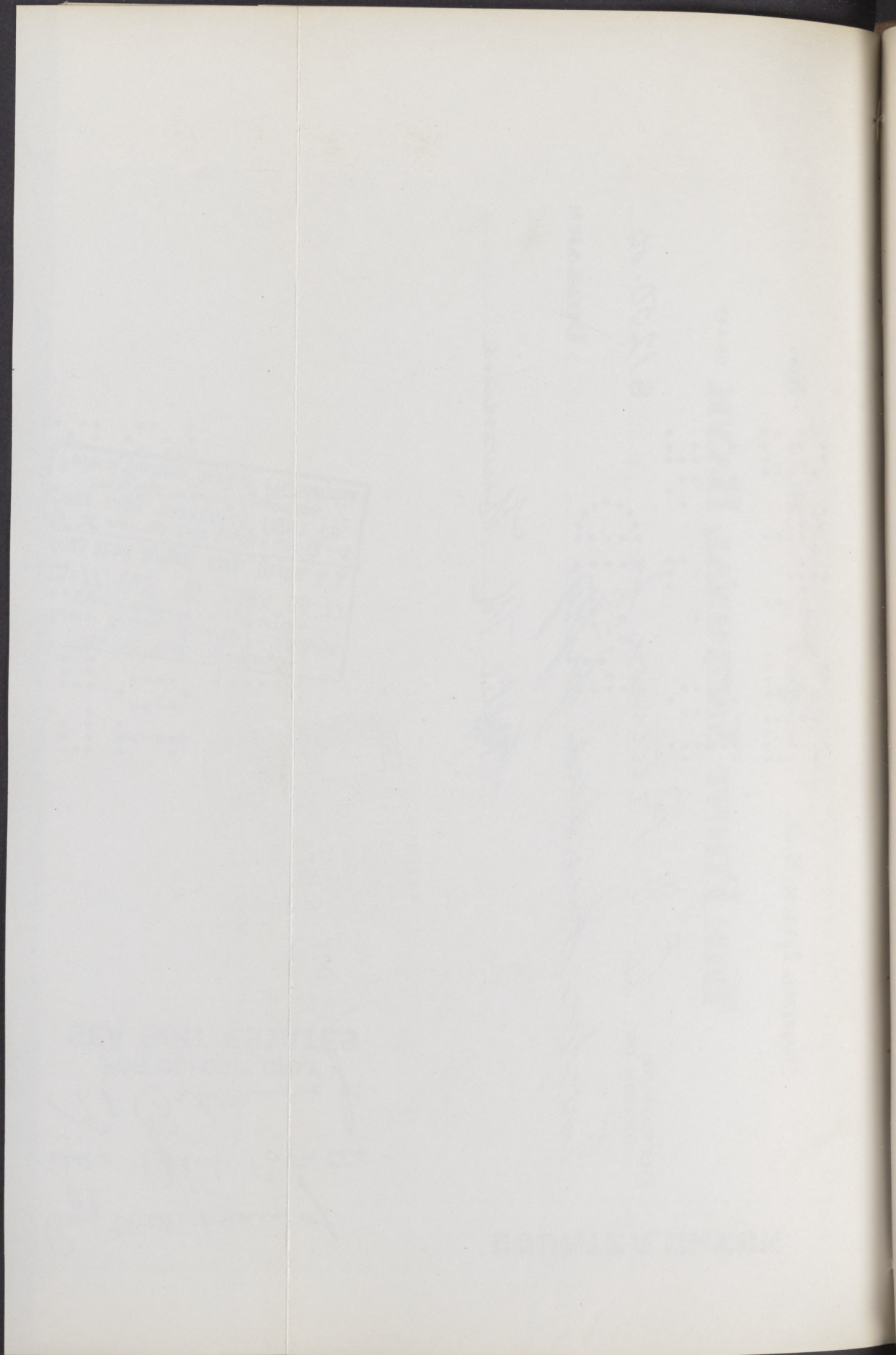
FOR DEPOSIT ONLY

SEA GIRL ESTATES

ANY BANK
BANKER OR TRUST CO.
OR ORDER
PRIOR ENDORSEMENTS
GUARANTEED
OCT 6 1925
FEDERAL RESERVE BANK
OF NEW YORK
1-120



PAY TO THE ORDER OF
Federal Reserve Bank of Philadelphia
PRIOR ENDORSEMENTS GUARANTEED
5-77 OCT 5 1925 55-77
Broad Street National Bank, Trenton, N. J.
3-4 PAY TO THE ORDER OF 3-4
ANY BANK, BANKER OR TRUST CO.
PRIOR ENDORSEMENTS GUARANTEED
Federal Reserve Bank of Philadelphia



No. Spring Lake N.J. Oct 1 1926

First National Bank 55-443

Pay to the order of Sea Girt Estates

Fourteen hundred thirty five & ⁷⁴/₁₀₀ Dollars

COLLECTIBLE AT PAR THROUGH N.Y. CLEARING HOUSE OR FEDERAL RESERVE BANK

\$1435.74

Hillie M Newman

Brown, Lent & Pett 90 William St. N.Y.

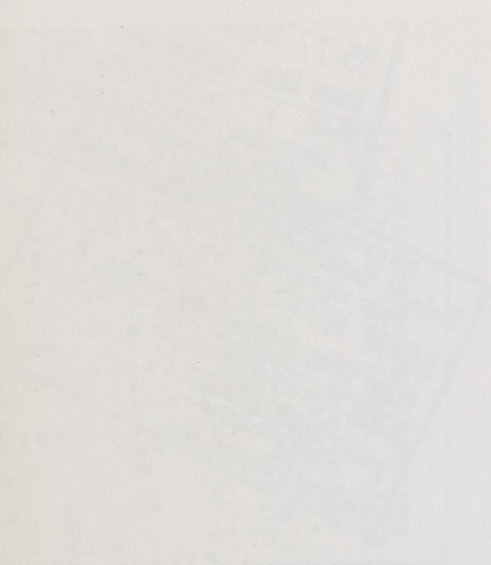
FOR DEPOSIT ONLY
SEA GIRT ESTATES

55-443

PAY TO THE ORDER OF
Federal Reserve Bank of Philadelphia
PRIOR ENDORSEMENTS GUARANTEED
55-443 OCT 7 1926 55-77
Broad Street National Bank, Trenton, N.J.
3-4 PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.
PRIOR ENDORSEMENTS GUARANTEED
Federal Reserve Bank of Philadelphia

THE UNIVERSITY OF CHICAGO
LIBRARY

UNIVERSITY OF CHICAGO
LIBRARY



REVISED 1953
MAY 1953

Real Estate & Insurance

SEA GIRT, N. J. *Sept 23, 1925* No. 26
THE FIRST NATIONAL BANK 55-443
OF SPRING LAKE 2

PAY TO THE ORDER OF

Sea Girt Estates

\$1000.⁰⁰ ✓

One thousand

DOLLARS

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK

Edw. V. Patterson

E. V. PATTERSON, JR., Inc.

C. R. Bond, Jr.

Treas.

Vice - Pres.

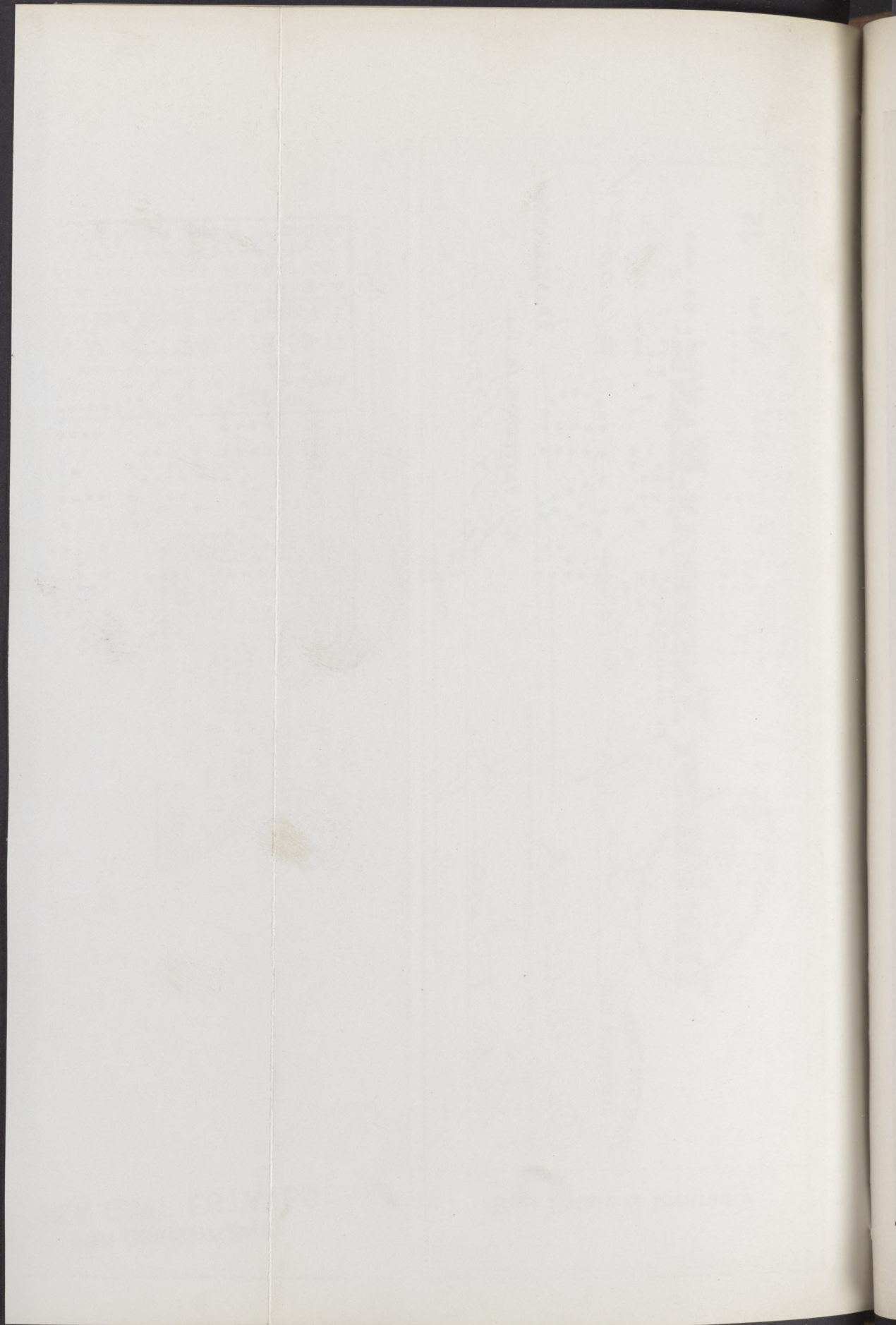
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FOR DEPOSIT ONLY
"SEA GIRT ESTATES"

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Real Estate & Insurance

SEA GIRT, N. J. *Oct 6* 192*3* No. 28

THE FIRST NATIONAL BANK

55-443
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OF SPRING LAKE

PAY TO THE ORDER OF

Sea Girt Estates

\$1250. ✓

Twelve hundred fifty

DOLLARS

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Edw. V. Patterson

E. V. PATTERSON, JR., Inc.

C. H. Bondy
The Pres.

Treas.

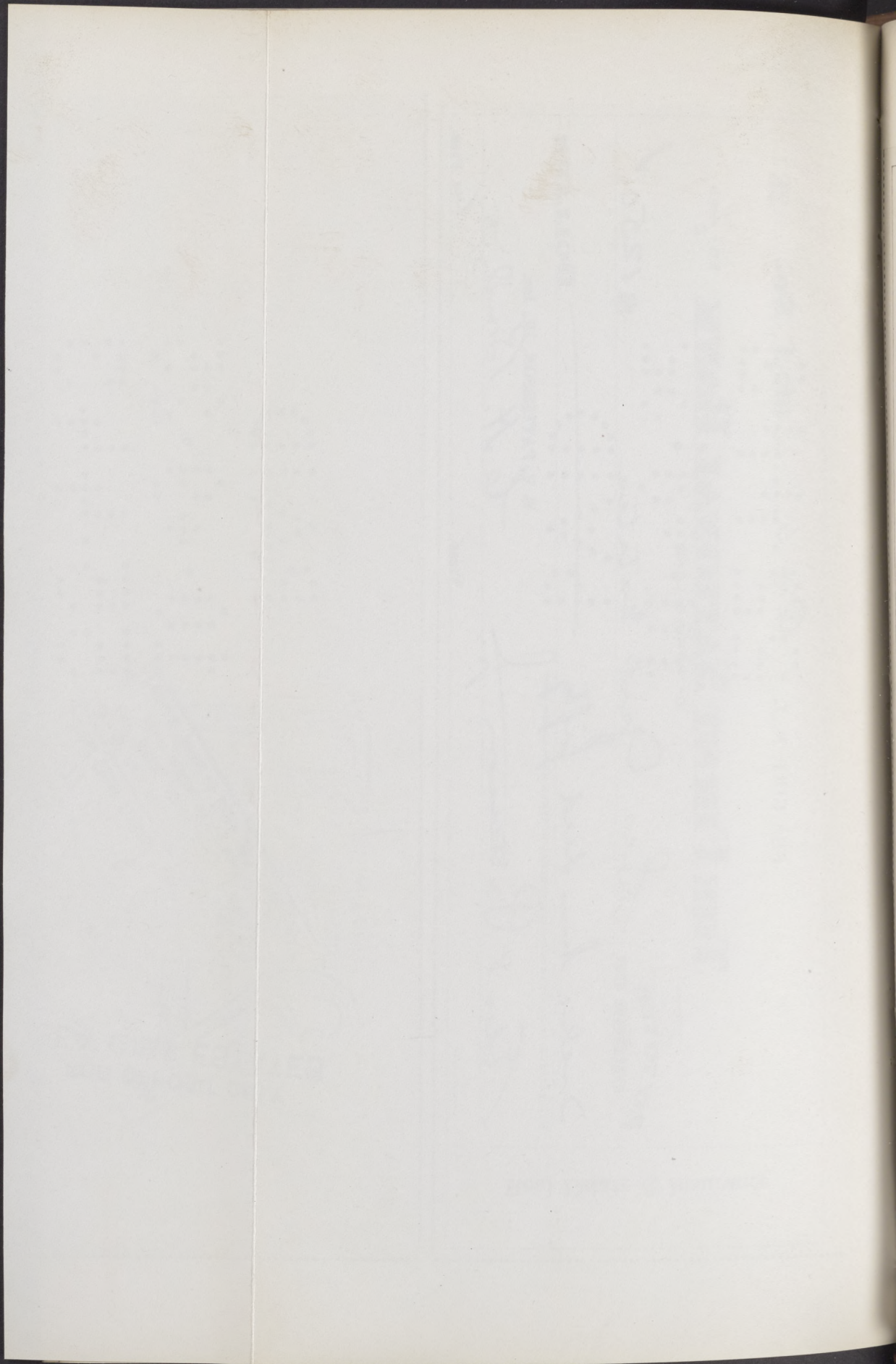
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FOR DEPOSIT ONLY
SEA GIRT ESTATES

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PAY TO THE ORDER OF SEA GIRT ESTATES

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Real Estate & Insurance

SEA GIRT, N. J.

April 1st 1926 No. 95

THE FIRST NATIONAL BANK

55-443
2

OF SPRING LAKE

PAY TO THE
ORDER OF

Sea Girt Estate

\$1250.⁰⁰

Twelve hundred fifty and ⁷⁰/₁₀₀

DOLLARS

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK

E. V. PATTERSON, JR., Inc.

Edw. V. Patterson

C. A. Bond Jr

Treas.

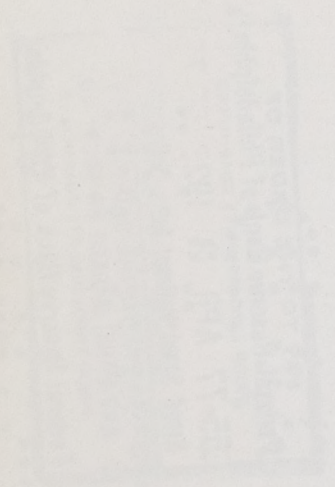
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H. F. FELEV & CO. N.Y.

FOR DEPOSIT ONLY
SEA GIRT ESTATES

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Federal Reserve Bank of Philadelphia



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Real Estate & Insurance

SEA GIRT, N. J.

April 1st 1926

No. 96

THE FIRST NATIONAL BANK

OF SPRING LAKE

55-443

PAY TO THE ORDER OF

"Sea Girt Estates"

\$408.⁴⁹/₁₀₀

\$408.⁴⁹/₁₀₀

Four hundred eight and ⁴⁹/₁₀₀

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK

DOLLARS

E. V. PATTERSON, JR., Inc.

E. V. Patterson

C. A. Bond Jr.

Treas.

Pres.

FOR DEPOSIT ONLY
SEA GIRT ESTATES

PAY ANY BANK
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PAY TO THE ORDER OF
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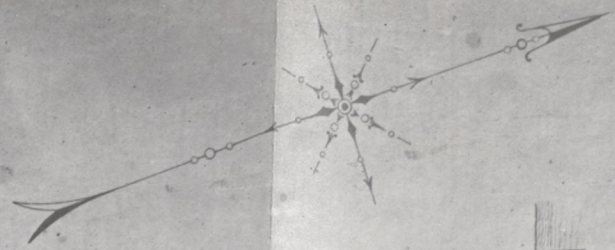
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AMENDED MAP
OF
SEA GIRT

NEW JERSEY

FRANK OGBORN, ENGINEER
1909

SCALE



STATE MILITARY ENCAMPMENT

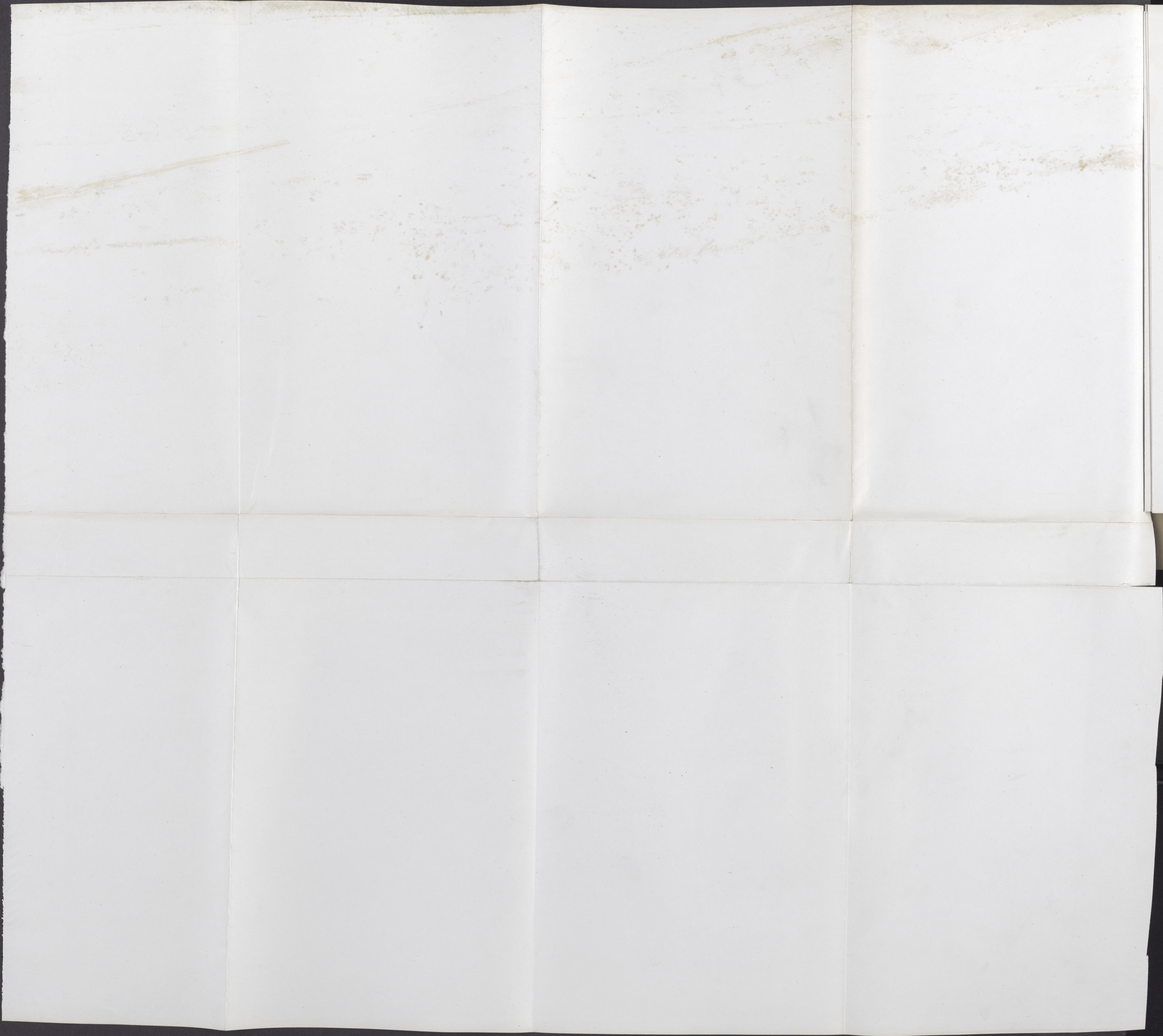
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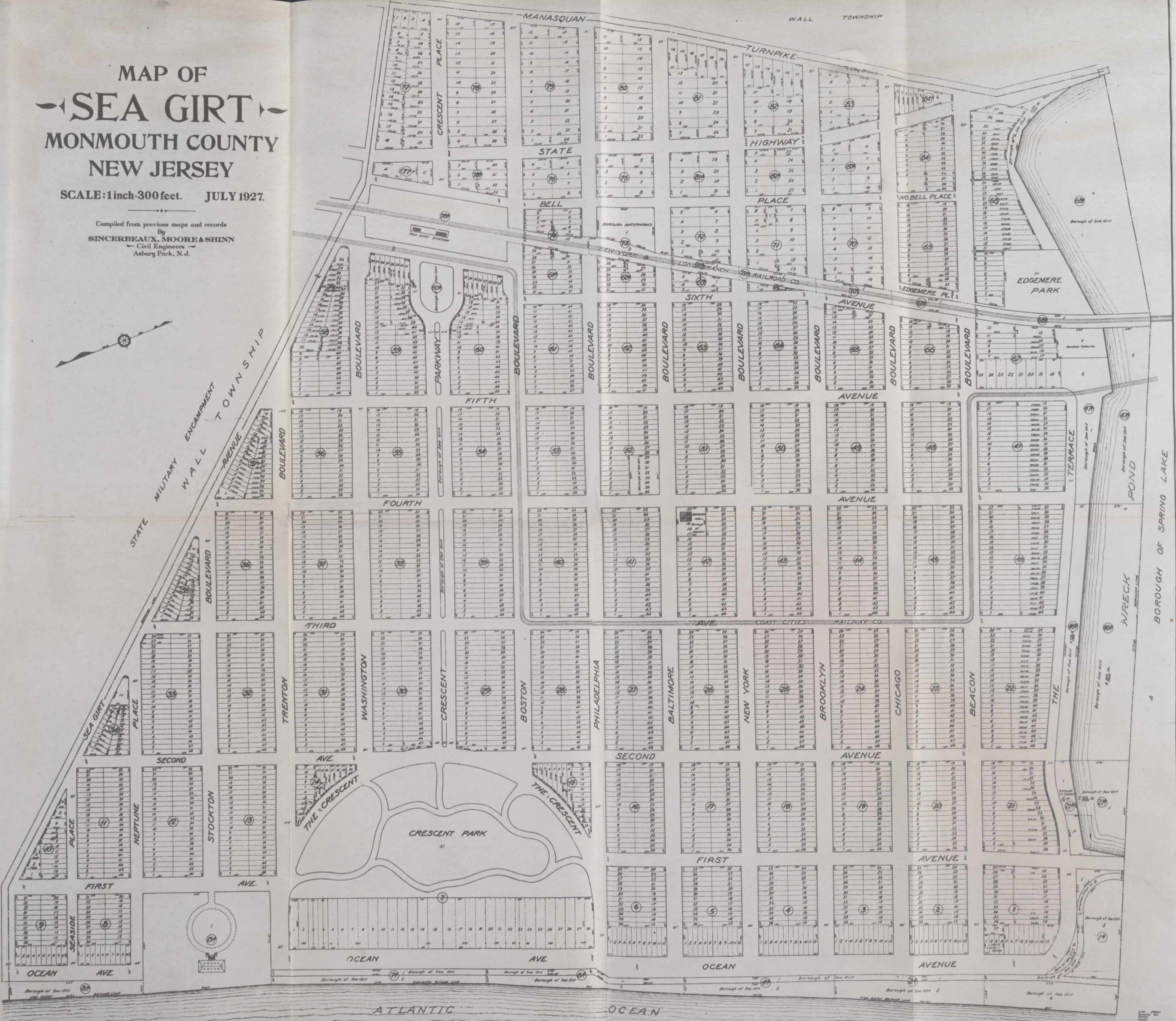
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MAP OF SEA GIRT MONMOUTH COUNTY NEW JERSEY

SCALE: 1 inch = 300 feet. JULY 1927.

Compiled from previous maps and records
By
SINCERBEAUX, MOORE & SHINN
Civil Engineers
Asbury Park, N. J.



THE UNIVERSITY OF CHICAGO
NEW JERSEY



AMENDED MAP SEA GIRT

NEW JERSEY
FRANK OSBORN

1909
Sincerbeaux & Moore, Civil Engineers -
1926

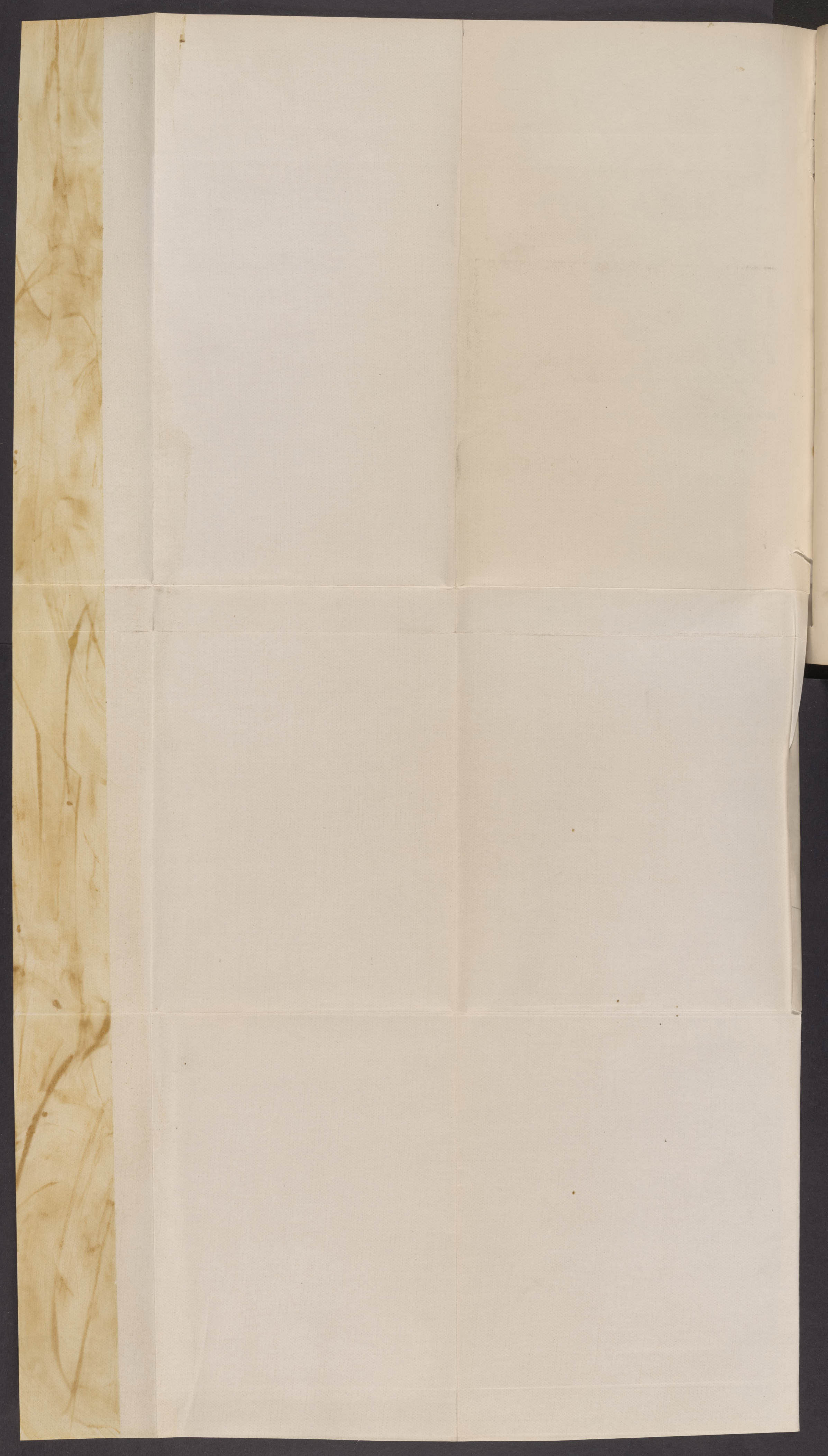
E.V. PATTERSON, JR., INC.
Real Estate and Insurance
SEA GIRT

"Where the Cedars meet the Sea"



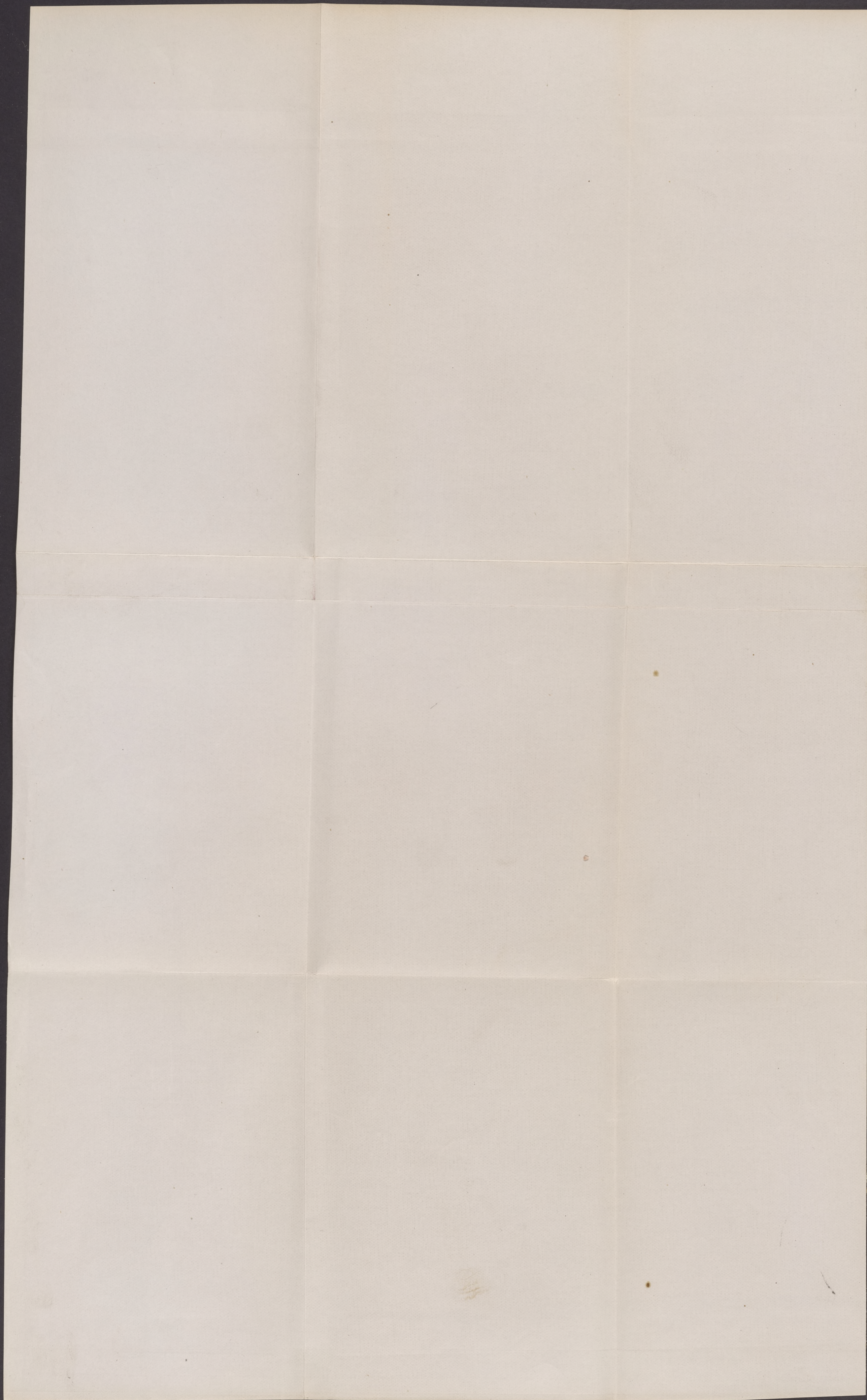
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Sincerbeaux & Moore
 Civil Engineers - Asbury Park, N.J.



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

SEA GIRT ESTATES, a corporation,
tion,

Complainant-Appellee,

and

SUSAN M. SUTTON, TILLIE M.

NEWMAN, MURVIN OSBORN

and E. V. PATTERSON, JR.,

INC., a corporation,

Defendants-Appellants.

On Appeal.

BRIEF FOR APPELLANT.

This is an appeal from a final decree in favor of the complainant and against the defendants, for the specific performance of a contract for the sale and purchase of Lands.

Statement of Facts.

On September 23, 1925, the complainant entered into a contract with the defendants for the sale and purchase of certain properties in the Borough of Sea Girt, Monmouth County, N. J.

Among the lots enumerated and described in the contract were lots 32 to 41 in Block 59 on a Map entitled, "Amended Map of Sea Girt, N. J., Frank Osborn, 1909."

The execution of the contract is admitted and the complainant also admits that it did not have title to Lots 32 and 33 and did not have title to the entire area of lots numbered from 34 to 41 in Block 59 in the above-mentioned Map.

The complainant obtained its title from one Schank. In the deed from Schank to the complainant, the description in reference to these lots in Block 59 was followed by this reservation or exception: "Being all of said Lots in Block 59, except the portion taken for the enlargement of the Park opposite the Railway Station."

There is nothing on record in the Monmouth County Clerk's office, showing how the Borough obtained title to the property mentioned in this reservation, nor was the deed to the Borough produced at the trial, if a deed ever existed. In our opinion, there is no proof to show exactly how much property was taken by the Borough at all, and the part taken has never been accurately described.

Mr. E. V. Patterson, Jr., was the agent for the complainant, and he negotiated the sale of the lots in the contract. In Mr. Patterson's office, was a printed copy of the Map entitled, "Amended Map of Sea Girt, N. J. Frank Osborn, 1909," upon which someone had drawn pencil marks indicating what properties belonged to the complainant, which had been sold or otherwise disposed of. There is no proof who made these individual pencil marks or addenda to this particular map.

Upon this private Map which hung on the wall in Mr. Patterson's office, Lots 32 and 33 were crossed off and a curved line from the point about the center of Lot 34 ran across Lots 34 to 41. An average of 50% of the land from Lots 34 to 41 were thus marked off as belonging to the Borough.

The rear portions of Lots 29, 30 and 31 in Block 59 were marked as making up two lots, fronting the Crescent Parkway on the Map in

Mr. Patterson's office. These new lots were indicated in pencil marks as Lots 32 and 33 in Block 59.

The complainant contends that the reference to the Map in the contract as the "Amended Map in Sea Girt, Frank Osborn, 1909," meant the Map hanging on the wall in Mr. Patterson's office.

The defendants contend that it referred to the Map, the original of which had been filed in due course of business in the Monmouth County Clerk's office.

Payments were made on the contract from time to time.

A new Map was made of Sea Girt and in the latter part of 1928, these defendants discovered that the new Map had changed their lots and they were not obtaining all of the property described in their contract. A search was made for the first time. It was then ascertained that the complainant did not have title to Lots 32 and 33 and to the front portions of Lots 34 to 41 as above mentioned. The defendants then refused to carry out their contract. Notice was served upon them to comply with the terms of the contract and they still declined.

The complainant then brought this action of specific performance.

POINT I.

Mr. Patterson was the agent of the complainant and his acts were not binding upon the defendants at any time.

Mr. Patterson was the agent of the complainant at the time of the making of the sale (Case, p. 17, l. 20).

Mr. Patterson was the agent of the complainant at the drawing of the contract (Case, p. 17, l. 22).

Mr. Patterson denies that he was the defendant's agent (Case, p. 17, l. 24).

Mr. Patterson was complainant's agent when it purchased the property (Case, p. 17, l. 38).

Mr. Patterson was the agent of the complainant after the execution of this contract (Exhibit C. 7).

Mr. Patterson received payments from the defendants as agent of the complainant (Case, p. 52, l. 11, *seq.* and Exhibits of various checks).

Mr. Patterson admits he was complainant's agent (Case, p. 17, l. 24).

Mr. Patterson was not a witness, but his statements concerning his agency were admitted by the solicitor of the complainant as above indicated.

Mr. Patterson furnished the description in the contract.

Mr. Patterson was not a vendee in this case at all, although a corporation by the name of "E. C. Patterson, Jr., Inc.," was a vendee.

Therefore, Mr. Patterson was not a member of a joint enterprise with the other individual defendants, and there is no consistent way of determining his status except by stating that he was the complainant's agent at all times.

The doctrine is familiar, that an agent cannot either directly or indirectly have an interest in the sale the property of his principal which is within the scope of his agency, without the consent of his principal freely given after knowledge

on every matter known to the agent, which might effect the principal.

If employed to sell, the agent may not become the purchaser, or if employed to buy, he may not be the seller.

21 Ruling Case Law, p. 829 and cases therein cited.

There is no evidence in this case that Mr. E. V. Patterson ever disclosed the full situation to the defendants.

The Vice-Chancellor in his opinion among other things, said, "And it is quite significant that E. V. Patterson, Jr. the controlling factor in the defendant corporation, did not testify at all, and no explanation was offered as to why he did not testify."

Since the learned Vice-Chancellor has drawn inferences from the failure of E. V. Patterson, Jr. to testify, we too, are entitled to call this Court's attention to other inferences which may be drawn from his silence. He was the agent of the complainant, and no doubt, they should have had him subpoenaed. It can be inferred, from his silence, that Mr. Patterson was an agent working for his commission, and he was not going to jeopardize the commissions resulting from the sale of these parcels by placing too many obstacles in the minds of those he was inducing to buy. He was going to make the sale as easy and as quickly as possible, and he was actually paid his commission by the complainant, for the sale of these lots. (Supp. State of Case, p. 18, ll. 15-19.)

His undeniable agency is admitted under many circumstances by the complainant and his alleged agency of the defendants certainly justifies many

inferences which would at least cause a doubt about the whole proceedings, preceding the sale and its consummation, which should defeat specific performance, as specific performance should only be granted upon clear cases, as we shall hereinafter set forth.

The complainant seeks to avail itself of a deceptive artifice by striving to show that in preparation of the contract, Charles H. Bond was the Vice-President of the "E. V. Patterson, Jr., Inc." But we must take into account, the testimony of Mr. Bond, which follows on page 93 of the case:

"Q At the time this contract was made your company was the selling agent in Sea Girt was it not of the Sea Girt Estates? A Yes.

Q To whom did you take contracts to be drawn between other people and the Sea Girt Estates? A They were all taken to Mr. Van Note's Office.

Q What were your instructions from the Sea Girt Estates in regard to that? A That all contracts should be drawn by Mr. Van Note.

Q And those were the instructions given to you by the Sea Girt Estates? A Yes."

This makes even "E. V. Patterson, Jr., Inc.," a corporation, an agent of the complainant and Mr. Bond, its Vice-President, in furnishing the data for the contract, to serve not as an agent of any of the defendants, but as an agent of the complainant, and his acts cannot in any wise be imputed to bind the defendants. He was an executive of "E. V. Patterson, Jr., Inc.," the agent of the defendants.

The testimony teems with the activity of Mr. Patterson as the agent of the complainant, and it was developed in the testimony, that "E. V.

Patterson, Jr., Inc.," was a selling agent of the complainant.

The corporation is even mentioned on Exhibit C. 7.

How under all these conditions and circumstances, can the personal knowledge of "E. V. Patterson, Jr.," or any officer of the "E. V. Patterson, Jr., Inc.," be attributable to any of the defendants?

Certainly the status "E. V. Patterson, Jr.," or of the corporation is not clear, and there being a doubt, it is a sufficient and cogent reason to defeat a granting of a decree of specific performance, which should only be done in clear cases.

In *Kelleher v. Bragg*, 96 N. J. E. 25, the Court says: that specific performance is a remedy within the sound discretion of the Court, and should not be granted unless the right thereto is clear and conclusively established and the burden of establishing is on the complainant.

It also states, that real estate agent of the owner must sell at best advantage to the owner, and when the agent is also a purchaser the Court will examine the situation most carefully.

Kelleher v. Bragg, 96 N. J. E. 25.

In specific performance suits, Chancery is debarred from granting relief where there is doubt either concerning the facts of the law and where the evidence creates this doubt, the bill should be dismissed.

Sheehan v. Humphries, 81 N. J. E. 416.

As something must be indicated after the description to show that the property conveyed was conveyed according to Patterson's private map and not by the map duly filed in a public office.

The Vice-Chancellor says:

“Both Patterson and Bond knew of the alteration in the original layout of the property and all its notations on this map.”

The Vice-Chancellor fails to note however, that both Patterson and E. V. Patterson, Jr., Inc., were the selling agents of the complainant.

We are of the opinion that this agency of E. V. Patterson, Jr., Inc., of the complainant is woefully neglected in the consideration of the facts.

In one place the Vice-Chancellor speaks of Patterson and his complex status.

“He could not be both the purchaser and agent for the seller.”

Yet that is the predicament in which the complainant places Mr. Patterson. Mr. Patterson and E. C. Patterson, Jr., Inc., were absolutely the selling agents for the complainant and he and it represented the complainant throughout the whole transaction. The other defendants were therefore, not chargeable with whatever knowledge Mr. Patterson personally had, nor with the knowledge which any officers of the defendant corporation had.

POINT II.

If the complainant's contention is true, then there was a mistake in the contract, and it should have been reformed before it was enforced, as equity will not reform and enforce a contract in one proceeding.

The complainant contends that the words, “Amended Map of Sea Girt, N. J., Frank Osborn, 1909,” in the description in the contract did not refer to the original map under that title

duly filed in the County Clerk's Office of Monmouth County, in which the premises in question are situated.

The language is clear, certain and plain. There is no uncertainty in the words, nor about their meaning, and there is no ambiguity. By all the laws of construction, they could only refer to the filed map.

But let us presume solely for the purpose of argument that the complainant's contention is correct.

In the first place, something must have been omitted in the description of this property, since on its face the description describes lands which the complainant acknowledged it is not able to convey, and to which it also acknowledges it never had title.

There has been an omission on the part of the complainant's attorneys and scribes who drew up this contract, as the contract certainly, in its present form, contracts to convey property which the complainant alleges it never intended to convey. This constitutes an unilateral mistake which demands either reformation or rescission of the contract.

Let us pursue the argument a little bit further. In order to convey a good, indisputable and marketable title, the description in the contract would have to be modified. Some words would have to be added to the description or to the designation of the map, which would clearly indicate to everyone examining the title and the records just exactly what property was conveyed.

A deed drawn according to the description in the contract without adding anything to that description would convey only a disputable title

to the lands in controversy, just as we are disputing now.

Therefore, the contract had to be changed, had to be reformed, if equity is to accomplish its purpose and rectify the mistake claimed by the complainant, but denied by the defendants.

The description had to be changed and a reformation of the instrument was essential, but the decree in this case contains no reformation of the description and directs no change in the map's description.

A reformation of this contract being necessary, the decree must fail.

It is a well-settled principle of equity that you cannot reform an instrument and enforce it in the same proceeding. In *Davimos v. Greene*, 83 N. J. E. 596, the Court in a case similar to this says:

“Complainants also in their bill for such other and further relief by the way of correction and addition thereto or changing said memorandum as aforesaid, as the nature of the case may require.

Such relief cannot be afforded for two reasons.

First, there is no allegation in the bill which justifies any such prayer, and second, applying the law as laid down by Vice-Chancellor Emery in

Wirtz v. Guthry, 81 N. J. E. 271,

and followed by Vice-Chancellor Stevens in *Vogt v. Mullin*, 82 N. J. E. 452.

This Court cannot first reform and then specifically enforce the instrument.”

Davimos v. Greene, 83 N. J. E. 596.

POINT III.

There should have been an "abatement" allowed to the defendants in this case.

There is no ambiguity in this case.

It is admitted that this contract was drawn up by the attorney and the agents of the complainant (Case, p. 25, l. 19).

There was no error on the defendants' part. There was no mistake on their part. They wanted to abide by the contract, without changing its original form.

Where the vendor cannot convey a good title to all the land he has contracted to convey, such vendor must allow for the deficiency in the part he cannot convey. This theory of abatement was adopted very early in our State as an equity procedure.

Miller v. Chetwood, 2 N. J. E. 199.

The defendants were entitled to a deed describing the lands in the words of the agreement without any limitation other than those therein agreed upon.

Walters v. Bew, 52 N. J. E. 787.

The defendants are entitled to compensation for the defect in the title to the lands in dispute.

Mellick v. Cross, 62 N. J. E. 545.

Even in a sheriff's sale, such reduction in price of sale was allowed, where there was a reduction in land sold by the Sheriff.

Van Blarcom v. Hopkins, 63 N. J. E. 466.

It is a well-recognized duty of a Court of Equity to decree Specific Performance by a vendor with an abatement from the purchase price

by reason of deficiency in the quantity of the land contracted for.

Hostetter v. Merrick, 92 N. J. E. 313.

This rule was accepted by Vice-Chancellor Berry in this case, and it should be carried out in this case, for he himself suggested in his opinion that it might be carried out when he says:

“They (the defendants) claim not to have discovered this deficiency in the lands, the subject of the contract, for some months after the contract was executed, although before the date fixed for settlement. The deficiency if there is one, is such as might not be compensated for by an abatement in the purchase price, as it constitutes a very small portion relatively of the whole tract, the subject of the sale. An allowance on the statement for such deficiency might very well be made, if necessary.”

(Supplemental State of Case, p. 15, ll. 24-34.)

There is nothing in the decree that makes any provision for such an abatement as suggested by the Vice-Chancellor who heard the case.

If a Specific Performance in this case should have been granted at all, it should have been granted with an abatement, and the amount of the defendants' abatement should have been determined by referring that subject to a Master.

POINT IV.

Comments of the Vice-Chancellor's Opinion.

The Vice-Chancellor says in one portion of the opinion:

“It appears that after widening of the Parkway and the Plaza, the Sea Girt Map was amended accordingly, particularly the Frank Osborn Map of 1909, mentioned in the Contract and the original Map, which

hung on the wall of the office of the defendant, E. V. Patterson, Jr. Inc. in Sea Girt was corrected by the drawing of pencil lines thereon to show which property was taken by the Borough and the new location of Lots Nos. 32 and 33."

(Supplemental State of Case, p. 15, l. 34, to p. 16, l. 3.)

We are not aware that any original map was hung in Mr. Patterson's office. We thought it was a printed copy of the amended map of Frank Osborn of 1909, corrected, changed and added to by pencil marks, made in many cases by persons unknown or not disclosed.

The Vice-Chancellor in another part says:

"The description of the property as contained in the contract here involved was given to Mr. Van Note, the lawyer who prepared the contract, by Mr. Bond, the Vice-President of the defendant corporation."

This statement is a true finding of fact, but the Vice-Chancellor forgot to add that the defendant corporation was the selling agent of the complainant, which is an undisputed fact, and not contradicted any place and admitted throughout the testimony (Case, p. 93, ll. 7-19).

In another part the Vice-Chancellor says:

"The map referred to in the contract, corrected to show the changes made necessary by the Borough's appropriation of some of the lots for public use or an exact corrected copy thereof was in Bond's (corporation) office when he gave Mr. Van Note the description for the contract and the conclusion that it was this corrected map to which he referred in making up the description is inescapable."

Here the omission of the fact that the defendant corporation was the complainant's selling agent was omitted and Mr. Bond's testimony is

very vague on what map was referred to (see testimony of Bond).

Again the Vice-Chancellor says:

“There is, therefore, in this case no question of variation of the terms of a written instrument or of reformation of the contract, as might be argued, but rather what map was meant by the reference in the written agreement.”

As to the authority for the correction and additions on the map referred to, there was no proof, but was only proof that such marks and corrections were there. When a lot is sold, someone in the defendant corporation's office marked it off with a pencil mark. There was no evidence to show by metes and bounds what the Borough had taken in 1918. There was nothing to show any surveys. The only evidence was a big, broad general statement that properties had been taken by the Borough and that the parkways had been widened by placing curbs along their side.

To convey a good title necessitated an absolute reformation of the contract as to the description.

POINT V.

The actions of the defendants subsequent to their discovery of the true state of facts were tantamount to a rescission of the contract.

The Vice-Chancellor at the close of his opinion gives reason for his decree:

“That all the defendants who testified said that they discovered that deficiency in the land sometime prior to Jan. 14, 1929.

It would appear that discovery was made sometime during the fall of 1928. Notwithstanding this fact, no attempt of rescission was made and on Jan. 14, 1929, Mr. Patterson, on behalf of the syndicate wrote to the

complainant, fixing a time for the settlement under the contract.”

(Supplemental State of Case, p. 18, ll. 24-30.)

This conflicts somewhat with an earlier assertion of the Vice-Chancellor in which he said:

“The making of the agreement and the refusal of the defendants to perform are admitted.”

Besides there is no letter dated January 14, 1929. The Vice-Chancellor has made a mistake in his facts and he no doubt referred to Exhibit C. 6, which was a letter dated January 14, 1928, sometime previous to the discovery of the defect in title.

The ninth paragraph of the Bill of Complaint reads as follows:

“On March 5, 1928, the complainant was notified in writing by the defendant, through their attorney, that they refused to comply with the terms of the agreement and refused to make any further payments thereunder and they do now still refuse although the complainant was, on October 1, 1927, and is now ready, willing and able to convey to the defendants title to the lots and parcels of real property designated and described in the said attached agreement.”

(State of Case, p. 3, l. 28, *et seq.*)

The defendants answered this paragraph as follows:

“Paragraph 9 is denied with the exception that these defendants admit that on or about March 5, 1928, the complainant was notified by the defendants, through their attorney, that they refused to perform the agreement and that they still refuse to perform the agreement.”

(Case, p. 9, l. 37, *et seq.*)

The opinion of the Vice-Chancellor being thus shown to be based upon false premises, his whole conclusion falls and decree should be set aside.

We quote from Black in his monumental work on a "Rescission and Cancellation of Contracts":

"When it is definitely ascertained that the vendor in a contract for the sale of land has no title and cannot procure one or cause one to be made or has been placed either by his own act or by operation of law in a situation where it is impossible for him to convey, it is not necessary for the purchaser to make a tender of the purchase money before taking the steps to rescind the contract since law does not require the performance of idle or useless formality."

Black on "Rescission and Cancellation of Contracts," 1916 Edition, Section 566.

We cannot conceive any evidence in the case which could be construed as waiver of the defect in the title and again we think that the Vice-Chancellor has drawn an erroneous conclusion and the decree should be set aside.

POINT VI.

The Final Decree is defective in form and inequitable in substance.

Omitting the recitals, the final decree reads as follows:

"And it further appearing to the court that the complainant has always been and still is ready and willing in all things to comply with the stipulations of the said articles of agreement on its part and has prayed the order or decree of this court directing the defendants to comply with and fulfill the same in all things on their part;

And the Chancellor being of the opinion that the complainant is entitled to the specific performance of the said articles of agreement

on the part of the defendants, as in its said bill it has prayed. It is, Therefore, on this thirteenth day of June A. D., 1929,

ORDERED, ADJUDGED and DECREED that the said articles of agreement be in all things specifically performed by the defendants respectively, and that the defendants do, within thirty days from the date of this decree, pay to the complainant the sum of forty-five thousand, three hundred thirty dollars, \$45,330.00, which said sum is found to be due from the defendants respectively to the complainant;

And it is further ORDERED, ADJUDGED and DECREED that a fee in the sum of fifteen hundred dollars to be paid by the defendants to counsel for the complainant and the complainant is to serve a copy of this decree upon each of the defendants or their solicitor within thirty days from the date hereof."

Divided into its various parts the decree compels the defendants:

A. To perform the articles of agreement in all things specifically.

B. To pay complainant \$45,330 within thirty days from the date of the decree.

C. To pay complainant's costs.

D. To pay defendant's counsel a fee of \$1,500.00.

The only duty placed upon the complainant was to serve a copy of the final decree within thirty days from the date thereof upon the defendants.

POINT VII.

To perform the articles of agreement specifically the defendants would be compelled to take a debatable title.

To perform the articles of agreement specifically in changing or adding to the description would compel the defendants to take a disputed title and there is nothing in the decree authorizing the complainant to change the description in the agreement, nor to add anything to that description nor to the designation of the map.

It is beyond our imagination to think that every grantee of the defendants who should purchase the lands in dispute would be compelled to examine Patterson's private map in order to ascertain what the designation of lot and block number conveyed.

A private map upon which pencil changes had been made promiscuously without proof or authority. Anyone knows how the pencil marks were made (State of Case, p. 39, l. 3); (p. 43, l. 32, p. 26, l. 30).

The pencil marks were made on a printed copy of an original map of which five thousand copies had been printed and circulated among those desiring copies of it. (Testimony of Mr. Bond, Case, p. 87, l. 1, *et seq.*)

The only difference between these printed copies and Patterson's private map was that one was full of errasible pencil notations made by persons unknown, at times unknown and at places unknown, and the testimony mentioned was given by the Vice-President of the defendant corporation, the selling agent of the complainant.

In a suit of specific performance, the Court should, as far as possible, settle all doubtful

questions of law effecting the title in compelling vendee to take a title which the Court finds free from defects so far as doubtful questions of law are concerned.

Desumer v. Rondel, 76 N. J. E. 394.

The lands described in the agreement are uncertain because evidence was necessary to determine what lands should be conveyed. To convey lands delineated on a map marked in such a promiscuous manner upon a map that is unfiled conveys a most uncertain title. Courts of Equity have refused to decree performance, where in the opinion of the Court, the title was good but debatable.

Cornell v. Andrews, 35 N. J. E. 7;

Van Riper v. Wickershaum, 77 N. J. E. 232.

Moreover the amount of the land taken by Borough has never been accurately determined.

In the deed of the complainant, the reservation reads as follows:

“Except the portion taken for the ‘enlargement of the park opposite the railway station’ ” (Case, p. 102, ll. 21-22-23-24 to 28).

What land was taken however, “enlargement of a park opposite the railway station”?

Was the park enlarged? You cannot answer from the evidence. The testimony about the properties taken by the Borough were properties used for the widening of Crescent Parkway, a roadway running from the railway to the sea and the so-called “Schanck Deed” Exhibit C. 2 does not by its terms except from the description therein contain any property used by the Borough for the widening of the “Crescent Parkway.”

Those lands went by the conveyance to the complainant. Note the language of the solicitor

for the complainant on page 20, line 20 of the State of the Case, when he says, that the deficiency in land was caused by "the widening of Crescent Parkway" by this conveyance to the Borough.

The only witness even vaguely determining the land taken was Mr. Roberts and he spoke only of the "widening of the Parkway" and never mentioned anything about the "enlargement of the park opposite the railroad station."

The decree surely is defective in not imposing upon the complainant, the duty to convey an undisputable title.

Under these conditions, the sound discretion of the Court should have been exercised. The decree of specific performance should not have been allowed, and the party should have been left to their remedy at law.

Levine v. Lafayette Bldg. Corp., 142 Atl. 441.

POINT VIII.

The amount of \$45,330 as payment was not legally arrived at.

There is not a scintilla of evidence suggesting the amount due the complainant.

How was it arrived at?

What items are contained in the aggregate amount found due?

The defendants had no notice of its determination, nor do they know how it was ascertained or determined.

What items of principal, interest and municipal taxes does the aggregate amount contain?

From the case, no one can determine how the amount was arrived at.

It is not mentioned in the Court's opinion nor in the recitals to the decree.

The original procedure should have gone to a Master in Chancery, directing him to find how much was due under the contract, and considering the payments already made.

POINT IX.

Counsel fees and tax costs should not have been allowed.

While the tax costs and counsel fees are in discussion by the Court in a doubtful case of this character, the correction in the description by the complainant and its agents which necessitated this litigation and the evidence which showed the question to be at least debatable, counsel fees and tax costs should not have been allowed to the complainant.

Due to the rapidity with which this case was closed, arguments by counsel seem to have been overlooked (State of Case, p. 94, ll. 20 to 40).

But upon more matured deliberation, we think it only equitable that costs and counsel fees should not be allowed as the defendants were justified in refusing to take the title under the terms of the agreement.

WHEREFORE it is respectfully submitted that the decree of the Court of Chancery should be reversed, for the reasons above urged.

Respectfully submitted,

HARRY R. COOPER,
Solicitor of Defendants-Appellants.

JAMES F. MINTURN,
Of Counsel.



NEW JERSEY
Court of Errors and Appeals

Between

"SEA GIRT ESTATES," a Corporation,

Complainant-Appellee.

and

SUSAN M. SUTTON, TILLIE M.
NEWMAN, MURVIN OSBORN
AND E. V. PATTERSON, JR.,
INC., a Corporation,

Defendants-Appellants.

On Bill, etc.

On Appeal from
Chancery.

BRIEF FOR APPELLEE

Appellee's Statement of Facts

The complainant-appellee does not agree that the testimony as it appears in the State of the Case and in the Supplemental State of the Case supports the statement of facts as they appear in appellants' brief.

On September 23rd, 1925, the complainant-appellee entered into a contract with the defendants-appellants for the sale and purchase of certain properties in the

Borough of Sea Girt, Monmouth County, New Jersey.

Among the lots enumerated and described in the contract were lots 32 to 41, in Block 59, on a map entitled "Amended Map of Sea Girt, N. J., Frank Osborn, 1909."

The execution of the contract is admitted and complainant-appellee did have title to lots 32 to 41, inclusive, in Block 59, as set forth in the map mentioned in the agreement of sale.

The complainant-appellee obtained its title from one Schenck. In the deed from Schenck to the complainant-appellee, the description in reference to these lots in Block 59 was followed by this reservation, or exception: "Being all of said lots in Block 59, except the portion taken for the enlargement of the park opposite the railway station." Mr. E. V. Patterson, Jr., president of E. V. Patterson, Jr., Inc., was the agent for the "Sea Girt Estates," complainant-appellee herein, when it purchased said land from said Schenck.

The amount of land taken by the Borough is very definitely known and outlined. This land was taken in 1918 and improvements which included concrete sidewalks and curbs were made that year outlining the southern boundary of Crescent Parkway which was the northern boundary of the tract contracted to be sold. These monuments had been in existence for a period of eight years when the contract in question was signed by the parties thereto. Since that time a tax map has been made and duly filed accurately describing the property in accordance with said monuments.

Mr. E. V. Patterson, Jr., formed a syndicate of the defendants-appellants for the purpose of purchasing the land set forth in the contract of sale from the "Sea Girt Estates." Mr. E. V. Patterson, Jr., was president of E. V. Patterson, Jr., Inc., one of the vendees, and was agent for said E. V. Patterson, Jr. Inc., and the syndicate when this land was purchased from the "Sea Girt Estates." The syndicate was named the Parkway Syndicate.

On the wall in Mr. Patterson's office hung a large printed copy of a map 3' 6" x 3' 2" in dimension entitled "Amended Map of Sea Girt, N. J.," Frank Osborn, 1909, which map was the one referred to in the agreement of sale from the "Sea Girt Estates" to the defendants herein (Exhibit C-7). Upon this said map were pencil marks indicating what lots were owned by Schenck at the time Schenck sold said properties to the "Sea Girt Estates" sold this property to the defendants herein. These said pencil marks, showing the lots which belonged to the complainant-appellee herein, were made by someone in the employ of E. V. Patterson, Jr. Inc.

The complainant-appellee contends that the reference to the map in the contract as the "Amended Map of Sea Girt, N. J., Frank Osborn, 1909" referred to what is herein known as Exhibit C-7.

Payments were made on the contract from time to time.

The defendants-appellants, with the exception of Miss Sutton, were all residents of Sea Girt, New Jersey, and were all very familiar with the location and boundaries of the property in question. Miss Sutton, who was not a resident of Sea Girt, New Jersey, knew exactly what she and her associates had contracted to buy, which property was the same as complainant-appellee contracted to sell.

POINT ONE

One of the vital factors in the case at issue is the determination of the question for whom E. V. Patterson, Jr., president of E. V. Patterson, Jr. Inc., one of the defendants-appellants, acted as agent in this transaction. This is very widely discussed in the first point of the appellants' brief and numerous references to the record are made to establish the contention of the defendants-appellants that Mr. Patterson was the agent of the complainant-appellee. For this purpose the appellants rely

very strongly on a statement made by counsel for the complainant at the trial of this issue. An erroneous construction has evidently been placed on that statement which appears in the State of Case, page 17, lines 20-30.

Mr. Moore: "And the fact that we allege that Mr. E. V. Patterson, one of the defendants, who was the agent at the time of this sale and the drawing of this contract for the complainant, was the agent of the defendants at the time when they purchased. He denies that he was their agent and admits he is our agent. He is one of the vendees in this contract. He is an officer of the E. V. Patterson Company, a corporation."

If this statement is read there is no basis whatever for arriving at the conclusion that counsel stipulated or admitted that Mr. Patterson was the agent of the complainant. A reference to the State of the Case will indicate that during all of the discussion prior to the taking of testimony counsel for both sides were endeavoring to assist the Court in bringing the issue down to as narrow a discussion as possible, were attempting to tell the Court of what important facts would be testified to by the complainant and the defendants. The statements made by counsel in the opening, on pages 15 to 23, were not testimony by either side, but simply statements to the Court as to what was going to be testified.

On page 17, lines 20-29, State of Case, counsel for complainant did not state that Mr. Patterson was the complainant's agent, but emphatically stated that he was the agent for the defendants and furthermore that he was one of the vendees, conclusively indicating that he was not considered in any way to be the agent of the complainant. And furthermore, it is conclusive, from all the testimony, that E. V. Patterson, Jr. Inc., was one of the vendees and E. V. Patterson, Jr., was the president of that corporation. E. V. Patterson, Jr., acting personally and as president of that corporation, formed a syndicate. Nowhere in the pleadings did the de-

defendants raise the issue that Mr. Patterson was the agent for the complainant.

The point of agency of Mr. Patterson resolves itself into an absolute question of fact—as to whether he was or was not the agent of the defendants. This question of fact has been very definitely determined by the Vice-Chancellor in favor of the complainant and is stated in his conclusions, Supplemental State of Case, page 17, lines 24-34:

“It is true that he (Mr. Patterson) had previously sold lots for the complainant, but it is clear that in this transaction he was not the complainant’s agent, but he, or his company, was one of the purchasers from the complainant and represented the other defendants in the negotiations which resulted in the contract. He could not be both purchaser and agent for the seller. I think the evidence very clearly shows that in all this transaction he represented and acted for the other defendants and that the defendants were chargeable with whatever knowledge he had.”

It is a settled question, often determined by this Court, that the trial judge’s findings of fact will not be distributed.

Wilkinson vs. Plaket, 5 N. J. Misc. 853; 138 At. 517; aff. 140 At. 922.

There is ample testimony to substantiate the determination of the Court on this question of agency. It was not necessary for the Court to determine this fact by implication. It is very definitely admitted by all of the defendants. Mr. Osborn, upon examination by the Court, admitted that Mr. Patterson was the agent and acted for the syndicate, State of Case, page 53, lines 15-40:

“Examination by the Court.

Q. Well? A. And the syndicate, in fact, he (Mr. Patterson) is one of the syndicate proper.

Q. Well, he was a member of the syndicate, was he not, his company? A. Yes, he is a member of the syndicate, yes, sir.

Q. Now who took care of the interests of the syndicate as between the syndicate and the Estates? A. Well, I could not say about that.

Q. Did you? A. No, I did not.

Q. Did Mr. Newman? A. I could not say.

Q. Or Mrs. Newman, then, or Miss Sutton?
A. I could not say, because—

Q. It is sure you did not, Mrs. Newman did not, now who else was there to take care of the syndicate's interest? A. Well, Mr. Patterson would take care of their interest.

Q. Did he? A. I think he did, yes.

Cross examination by Mr. Moore (continued).

Q. I show you a letter marked Exhibit C-6, did you authorize Mr. Patterson to write that letter?
A. I think I did, yes."

Also, Mr. Osborn admits that Mr. Patterson was taking care of everything for the defendants, State of Case page 59, lines 38-40:

"Q. Well, he (Mr. Patterson) was taking care of the whole thing, wasn't he, so far as your interests were concerned? A. Yes."

State of Case, page 60, lines 1-2:

"Q. And so far as Mrs. Newman and Miss Sutton were concerned? A. Everything but paying the money."

State of Case, page 61, lines 30-33:

"Q. Mr. E. V. Patterson, Jr., formed the syndicate? A. He formed the syndicate. He told me he wanted to form a syndicate to buy the parcel."

Miss Sutton, the next witness for the defendants, openly admitted that Mr. Patterson was acting as her agent, State of Case, page 69, lines 30-40:

"Q. Did Mr. Patterson transact all the business, then, so far as you were concerned, for the syndicate? A. Yes.

Q. I show you a letter marked Exhibit C-6, did you know anything about this letter before it was written, by the way, it is dated January 14th? A. I knew it was to be written.

Q. And you authorized Mr. Patterson to write it? A. As one of the four.

Q. Representing the four of you? A. Yes, representing—"

Also State of Case, page 70, lines 1-9:

"Q. Mr. Patterson represented this Parkway Syndicate in closing the contract with the Sea Girt Estates, didn't he? A. So far as I know.

Q. He was the agent for the syndicate, the Parkway Syndicate? A. Yes."

Mrs. Newman, another defendant, was not called as a witness. Her husband, however, Lloyd Newman, was called as a witness and it was admitted by counsel for the defendants that he had full authority to act for his wife, State of Case, page 78, lines 34-36:

"The Court—Is there any question about his authority to act for his wife?

Mr. Cooper—No, we do not question it.

The Court—I thought that was your contention."

It therefore cannot be denied that any knowledge that Mr. Newman had must necessarily be imputable to his wife, one of the defendants. He admitted that Mr. Patterson acted for the syndicate as its agent, State of Case, page 78, lines 26-27:

"Q. Did you authorize him to write this letter?

A. Something to that effect, yes."

State of Case, page 80, lines 30-36, and page 81, lines 13-20.

It is urged by the appellants that any knowledge that Mr. Patterson had was not imputable to E. V. Patterson, Jr. Inc. However, all through the testimony of the defendants it appears that Mr. Patterson was the compelling force of the defendant corporation and this fact was impressed upon the Vice-Chancellor very definitely, Supplemental State of Case, page 18, lines 15-19:

"The testimony of the other defendants in support of their defenses was rendered of little value by cross examination and it is quite significant that E. V. Patterson, Jr., the controlling factor in the

defendant corporation, did not testify at all and no explanation was offered as to why he did not."

It is apparent that the corporation can have no knowledge except through its officers and knowledge on the part of its officers must necessarily become the knowledge of the corporation.

Although Mr. Patterson did not present himself as a witness to either admit or deny his agency on behalf of the defendants, the exhibits speak for him very definitely on this point. Exhibit C-6 and Exhibit C-5. It is noted that the letter, appearing as Exhibit C-6, is written on the stationery of the defendant corporation. It is furthermore noted that Exhibit C-6 is signed "E. V. Patterson, Jr. Inc., By E. V. Patterson, Jr., for Parkway Syndicate." From the testimony above referred to, therefore, the Court could find nothing else but that Mr. Patterson was in all ways the agent of the defendants. Mr. Patterson, therefore, being definitely established as the agent for the defendants, whatever knowledge he had with reference to the property in question is necessarily imputable to all of the defendants and that fact was also found by the Vice-Chancellor and stated in his conclusions. Supplemental State of Case, page 17, lines 30-38:

"I think the evidence very clearly shows that in all this transaction he represented and acted for the other defendants and that the defendants were chargeable with whatever knowledge he had. There was an attempt to deny that he represented and acted for the other members of the syndicate, but every member who testified finally admitted his agency, and this was apparent."

That Mr. Patterson had full and complete knowledge of the entire situation and of the location and dimensions of the land agreed to be conveyed cannot be denied. In spite of the fact that all this testimony produced by the various witnesses, indicating that Patterson was the agent for the defendants, Mr. E. V. Patterson, Jr., who sat in the court room, advising with Mr. Cooper, solic-

itor for the defendants, continually during the trial, did not take the stand in his own behalf.

On page 5 of the appellants' brief they attempt to draw inferences from Mr. Patterson's silence during the trial of this issue and to substantiate the inferences which they have drawn they state that Mr. Patterson was paid a commission by the complainant, citing supplemental state of case, page 18, lines 15-19. A reference to that citation will not substantiate this statement nor is there any testimony in the whole state of the case indicating, or even intimating, that Patterson ever received a commission from the complainant. Furthermore, on page 7 of the appellants' brief, lines 3 and 4, a point is made that the corporation is mentioned in Exhibit C-7. A reference to that exhibit will show no such markings.

The only inference that can be drawn from the silence of Mr. Patterson, in view of the testimony of all witnesses here referred to and the exhibits also referred to, is that Mr. Patterson could make no statement other than that he represented the defendants and that statement in itself was recognized as being fatal to the defendants' cause.

E. V. Patterson, Jr. Inc., was one of the vendees in the contract of sale and also the agent for the other three vendees. It was E. V. Patterson, Jr. Inc., through its vice president, Mr. Bond, which conveyed the information to the attorney and scrivener for the preparation of the contract of sale. State of Case, page 83, lines 29-31:

"Q. Are you (Mr. Bond) the one who conveyed the information to Mr. VanNote to draw this agreement? A. Yes, sir."

If there is any uncertainty in the contract of sale the defendants are estopped from taking advantage of it:

"Purchaser who himself or by his agent prepared memorandum of contract for sale of land, cannot thereafter to defeat specific performance, take advantage of omission from contract or uncertainty arising therefrom."

Franklin vs. Welt, 98 E. 602; 131 At. 585.

POINT TWO

Another point at issue in the trial of this cause was what map was actually referred to by "amended map of Sea Girt, N. J., Frank Osborn, 1909." It was the defendants' contention that this map was a map filed in the County Clerk's office of Monmouth County, New Jersey. The complainant's contention was that the map referred to was a map which hung in the office of E. V. Patterson, Jr., Inc., offered in evidence and marked Exhibit C-7 in this issue. This resolved itself into a question of fact very definitely and was by stipulation submitted to the Vice-Chancellor for his determination, State of Case, page 23, lines 1-8. This point, therefore, undeniably being a question of fact, it was determined by the Vice-Chancellor in favor of the complainant's contention, Supplemental State of Case, page 16, lines 14-20:

"The map referred to in the contract, corrected to show the changes made necessary by the borough's appropriation of some of the lots to public use, or an exact copy thereof was in Bond's (corporation) office when he gave Mr. VanNote the description for the contract and the conclusion that it was this corrected map to which he referred in making up the description is inescapable."

After hearing the testimony of the witnesses, the trial court concluded that the map referred to was the map in Mr. Patterson's office at Sea Girt and presented as evidence and marked Exhibit C-7. The trial court's finding of a question of fact will not be disturbed by this court. (*Supra.*)

It is a very significant fact and one which undoubtedly was considered by the Vice-Chancellor in determining this point that E. V. Patterson, Jr. acted as agent for the complainant corporation at the time of its purchase of this tract of land. State of Case, page 32, lines 27-29:

"Q. Who acted as your (Sea Girt Estates) agent when you purchased this land from Mr. Schenck? A. Mr. Patterson."

A reference to the deed from Mr. Schenck to the "Sea Girt Estates," the complainant, Exhibit C-2, will show that the description therein contains the following words: State of Case, page 97, lines 9-13:

"Being know as parts of Sea Girt as shown on an 'Amended Map of Sea Girt, New Jersey,' Frank Osborn, Engineer 1909, filed in the office of the Clerk of Monmouth County, New Jersey, February 7, 1911."

In this particular deed the words "filed in the office of the Clerk of Monmouth County, N. J.," showed conclusively that the map referred to in that deed was the one on file in the County Clerk's office, but, however, when the agreement for the sale of this land from the "Sea Girt Estates," the complainant, to the defendants was drawn, through the instrumentality of E. V. Patterson, Jr., Inc., the words "filed in the office of the Clerk of Monmouth County, New Jersey" were purposely omitted, after the words "amended map of Sea Girt, N. J., Frank Osborn, Engineer, 1909," showing conclusively that it was not the map on file in the County Clerk's office that was referred to in the Agreement of Sale in this suit. Therefore, if it were not the map on file in the clerk's office of Monmouth County what map was referred to? From the testimony produced at the trial no conclusion could be drawn other than that it was the map marked Exhibit C-7 in this cause.

It is urged by the appellants that there should have been a reformation of this contract and that because of the necessity for a reformation this instrument could not be enforced at the time of trial. This question is disposed of by the Vice-Chancellor. Supplemental State of Case, page 16, lines 22-32:

"There is, therefore, in this case, no question of variation of the terms of a written instrument or of reformation of the contract, as might be argued,

but rather what map was meant by the reference in the written agreement. Was it the map as originally prepared, a copy of which was filed in the County Clerk's office, or was it the corrected copy in the possession of the defendant, E. V. Patterson, Jr., Inc? I am convinced that it was the latter and that the lots named in the contract were those shown on that map."

The language of this agreement is clear, certain and plain. All parties to the agreement were cognizant of the situation, either directly or by imputation through Mr. Patterson. There was no misunderstanding, no ambiguity. The complainant owned the lands that it agreed to convey and, as alleged in the complaint, was ready, able and willing to convey at all times according to the terms of the written instrument. A deed given by the complainants to the defendants containing the description as set forth in the agreement would convey a good, sufficient and indisputable title to the defendants.

POINT THREE

The question of abatement of the purchase price has no place in this case because there is no deficiency in the lands contracted to be sold. Since the Vice-Chancellor resolved in favor of the complainant the question of fact that the map marked Exhibit C-7 was the map actually referred to in the contract of sale there can be no deficiency because the complainant is able to convey all of the land agreed to be conveyed in the contract of sale and indicated on said map marked Exhibit C-7.

The defense of deficiency is insincere. All of the defendants knew, aside from the map, what they were buying. The attempt of the defendants to claim abatement is insincere because the testimony in the State of the Case discloses the fact that all the defendants were familiar with the location and quantity of the land.

Let us assume for the purpose of argument that there is a deficiency. That deficiency, as claimed by the defendants, is very small because by computation it in-

volves the area of approximately one lot out of the entire fifty-nine lots enumerated in the agreement of sale.

"Where there is no proof of fraud but the difference between the actual and represented quantity of land is so great as to clearly warrant the conclusion that a mistake has been made by the parties, and the vendee would not have contracted to pay so large a price had he known the true facts, abatement of the price will be made.

"Vendee purchasing what he supposed was a 450-acre farm, and personal property thereon for a lump sum was not entitled to an abatement of the purchase price because there were only about 430 acres, there being no charge of fraud, especially in the absence of evidence as to the value of the land apart from the personalty."

117 Atl., page 31, *Potter vs. Lumsden*.

The case above quoted was decided by this court. In the case of *Potter vs. Lumsden, supra*, the Court found the deficiency to be four per cent. In the case of *Melick vs. Dayton*, 34 N. J. Equity, 245, a difference of four and one-half per cent in the acreage was held insufficient to entitle a purchaser to an abatement in the purchase price. Conceding, therefore, for the purpose of this argument, that there was a deficiency, under the foregoing cases certainly no abatement should be permitted herein; the deficiency, if any, being less than two per cent.

In addition thereto the defendants admittedly had actual knowledge of what they were purchasing. They individually inspected the land before entering into the agreement of sale. Mr. Osborn had knowledge of what he was buying, State of Case, page 58, lines 23-29:

"Q. How did you know it? A. I knew that they—that the contract—Patterson had told me what we were getting and what we were to pay and the conditions of the contract, what we had to pay for the property and the payments were all figured out, and he showed us just what we were buying."

Mr. Osborn had been a superintendent of streets for the Borough of Sea Girt and was such in the year 1925, the year of the execution of this agreement. State of Case, 54, lines 26-40, and 55, lines 1-9. It seems highly improbable that Mr. Osborn, as the superintendent of streets of the Borough of Sea Girt, would be in ignorance of the fact that Crescent Parkway had been widened.

Miss Sutton had actual knowledge of what she was buying and did not buy from the map. State of Case, page 66, lines 35-40; page 67, lines 1-2:

“Q. When you signed the contract did you have any map or anything before you indicating what lots— A. I do not remember buying from the map.

Q. You do not remember buying from the map?

A. I knew the property, I knew the tract, where it began and where it ended, and I do not recall looking at the map at all.”

State of Case, page 68, lines 3-14:

“Q. Did you know where they were, each lot?

A. Well, I did not, a part of it by lots, I knew the different blocks.

Q. You knew the blocks they were in? A. Yes.

Q. You had walked around them? A. Yes, often.

Q. You knew the exact land you purchased?

A. Yes.”

She furthermore knew that the lots which she was buying faced on the parkway, State of Case, page 69, lines 1-9:

“Q. At the time you signed this contract you did not know which way the lots faced did you, other than that they faced on the parkway? A. I think they were all on the south side of the parkway.

Q. Facing the parkway? A. Yes.”

Mr. Newman, who admittedly acted for his wife, Tillie Newman, one of the defendants, knew what land was involved in the agreement and how the lots were

located, State of Case, page 79, lines 9-15. Mr. Newman was a member of the Sea Girt Borough Council, State of Case, page 44, lines 25-26, also page 44, lines 34-36. He was apparently active in the affairs of the municipality and it was hardly conceivable that he had no knowledge of the Crescent Parkway and that he was not familiar with the location of the land described in the contract of sale.

Mr. Bond, who was the treasurer of E. V. Patterson, Jr., Inc., one of the vendees, was familiar with what they were buying, State of Case, page 91, lines 24-27. It is also significant that in answering this question he uses the word "We." He also knew of the location of the lots in detail, State of Case, page 94, lines 9-18. Mr. Bond had been Borough Clerk for the Borough of Sea Girt and was in that office when this contract was signed. State of the Case, page 83, lines 1-13, State of Case, page 81, lines 32-33. It is hardly conceivable that Mr. Bond would suffer under any delusion as to the true condition of the land in question.

Can there be any question, in view of the evident knowledge of all the defendants, that "they or some of them, at least, had evidently become disappointed with their bargain and sought to evade their responsibility under the contract by a futile attempt to show that the complainant had contracted to sell something it did not own." Supplemental State of Case, page 19, lines 3-10.

POINT FOUR

We submit that the Vice-Chancellor had ample testimony upon which to base his conclusion and his findings of facts.

POINT FIVE

This point is very erroneously urged by the appellants. The error of their argument is probably based upon the fact that they did not consult the original records in the Chancery Clerk's office before preparing their brief. The reference to the record and to the conclusions of the Vice-Chancellor would disclose the fact that the first

quotation under point five in the appellants' brief reads on the record as follows. (Original on file in Clerk's Office.)

"All the defendants who testified said that they discovered the deficiency in land some time prior to January 14th, 1928. It would appear that that discovery was made some time during the early fall of 1927. Notwithstanding this fact, no attempt at rescission was made and on January 14th, 1928, Mr. Patterson, on behalf of the syndicate, wrote to the complainant fixing a time for settlement under the contract."

The argument of the appellants in point five must fall if the correct dates are used. Supplemental State of Case, page 18, lines 30-34:

"The attitude and actions of the defendants subsequent to the discovery of the alleged deficiency in land might well be taken to be an affirmation of the contract and a waiver of their right to rescind."

There had been no rescission or attempt at rescission on the part of the defendants. This conclusion of the Vice-Chancellor is well founded and could hardly have been otherwise.

All of the defendants knew of the alleged discrepancy in the fall of 1927. At that time the borough had made surveys and a new map of the borough had been issued which delineated the lines identically with those that had been pencil marked on the map Exhibit C-7 and the allocation of the lots which had faced on the plaza now faced on Crescent Parkway in accordance with the map Exhibit C-7. A photostatic copy of this borough map is attached to the State of the Case and is designated by the wording "Sincerbeaux, Moore and Shinn, July, 1927," outlining Crescent Parkway as it existed and now exists. Copies of this map, which were in the possession of the defendants in the fall of 1927, were mailed to the complainant by E. V. Patterson, Jr., Inc., under date of December 22d, 1927, with the letter, Exhibit C-4.

Mr. Newman had knowledge thereof "some time in 1927," but did "not want to answer accurately" as to how he discovered it, State of Case, page 75, lines 30-39:

"Q. When did you first discover, Mr. Newman, that there was a discrepancy between the amount of land called for in the contract and the amount of land that the Sea Girt Estates could convey?

A. Some time in 1927.

Q. How did you discover it? A. That is a question I would not want to answer accurately as to how I discovered it."

Mr. Osborn had knowledge of the alleged discrepancy in the fall of 1927 and conferred with Mr. Patterson and Mr. Newman, State of Case, page 76, lines 22-35:

"Q. You had a conference, did you, with Miss Sutton and Mr. Patterson and Mr. Osborn as the result of this? A. Not with Miss Sutton. I don't remember ever having a conference when Miss Sutton was present, with Mr. Osborn and Mr. Patterson.

Q. Mr. Patterson and Mr. Osborn? A. Yes.

Q. As the result of that, what was done?

A. Well, as I have it in my mind for a while we laid still and did nothing.

Q. Yes, and then after that what did you do; did you have the title investigated by anyone or not? A. That was not until at some later date."

As absolute evidence that there was no rescission or attempt to rescind after that knowledge had been acquired, the defendants "laid still and did nothing," State of Case, page 76, lines 30-31. Notwithstanding the admitted knowledge of an alleged discrepancy in the fall of 1927, in a letter dated January 14th, 1928, written by E. V. Patterson, Jr., Inc., and signed "E. V. Patterson, Jr., Inc. By E. V. Patterson, Jr., for Parkway Syndicate," the "Sea Girt Estates," the complainant, was requested to prepare a deed for the property designated in the contract (Exhibit C-6).

And furthermore, after considering the fact that this contract was dated September, 1925, and the defendants made payments on the contract and requested various extensions from time to time, it is significant that they did not discover or take advantage of the alleged discrepancy until after strenuous insistence on the part of the complainant that they pay the balance due upon their contract.

It is almost incredible that over a period of two years substantial sums of money had been paid out by the defendants to the complainant on this contract in blissful ignorance. It was such acts on the part of the defendants which led the Vice-Chancellor to give full credence to the testimony of the complainant. We submit that there has been a positive and open waiver of any rights which the defendants might have had to rescind this agreement.

The defendants should have attempted rescission promptly.

“Delay in the rescission of the contract, payments in pursuance of it, and continued dealing with it and with reference to the fraudulent transaction, after discovery of the fraud, may be shown as evidence of an election to treat a fraudulent contract as valid.”

Dennis vs. Jones, 44 N. J. E. 513; *Robertson et al vs. Criterion Construction Company et al.*, 140 Atl. 574.

In these cases this rule is definitely stated, even though there was an element of fraud in the making of the contract. That element does not exist in this case. It is an open transaction and therefore the rule of promptitude should apply even more strongly in the case at issue than in the cases cited.

POINT SIX

The final decree was not defective in form and inequitable in substance. There was no necessity on the part of the Vice-Chancellor to order the complainant to do any-

thing in consummation of the contract since the pleadings and the testimony show conclusively that the complainant was always ready, willing and able to perform in accordance with the terms of the contract. The prayer of the bill was a request to compel the defendants to perform, not the complainant.

Furthermore, in compliance with our expressions of willingness to perform, subsequent to the making of the decree, complainant, within thirty days, tendered a general warranty deed to the defendants, Supplemental State of Case, pages 6 to 7. In addition thereto the service of a tax bill of costs and a copy of the decree was made on the defendants. Supplemental State of Case, pages 8 to 10. Upon presentation of the deed, payment was refused on behalf of the defendants, Supplemental State of Case, page 11. Therefore, the defendants were not and could not be aggrieved by the form of the decree since what they desired the Vice-Chancellor to order on the part of the complainant was done of the complainant's own volition.

Upon proof, properly presented to the Chancellor, that a tender of a deed had been made by the complainant within thirty days from the date of the decree and a payment by the defendants had been refused, the Chancellor ordered that an execution issue, State of Case, pages 2 to 3, and an execution was issued, Supplemental State of Case, pages 4 to 5. If the decree had been defective in any particular part those defects were remedied by the action on the part of the complainant and the issuance of the execution.

It is rather late, at this date, for defendants to take exception to the form of the decree because under date of June 3d, 1929, a copy of the decree was mailed to the solicitor for the defendants for his approval, or disapproval, or suggestions, and on June 13th, in open court, ten days later, when the Vice-Chancellor asked solicitor of the defendants if the form of this decree was satisfactory, he said: "Yes."

POINT SEVEN

The title is not debatable.

To perform the articles of agreement specifically the defendants would not be compelled to take a debatable title. A deed, given by the complainant, in compliance with the agreement of sale referring to the map marked Exhibit C-7 would convey a good and sufficient title. A survey which had been made by the borough of Sea Girt, referred to hereinbefore as Sincerbeaux, Moore and Shinn, Map of 1927, delineated definitely the lines of Crescent Parkway as it was in existence then and is now. Cases under point seven, cited by the defendants, have no application to the issue in this cause.

POINT EIGHT

There is no evidence whatever that the amount indicated in the decree to be paid by the defendants to the complainant was not legally arrived at and this conclusion is erroneous.

The appellants are not referring to the record when they state, on page 20 of their brief, that the defendants had no notice of its determination nor did they know how it was ascertained or determined. In paragraph eight of the complaint it is alleged that each of the defendants received an itemized statement of the amount due up to January 9th, 1928. The receipt of such a statement is admitted in the defendants' answer.

Since the defendants at this point claim that they had no notice of the determination of the amount due in the Vice-Chancellor's decree or how it was ascertained or determined, we, too, are entitled to call the Court's attention to the fact that it would be a small matter of computation for the defendants to compute the exact amount due from January 9th, 1928, to the date of the decree. Notwithstanding this, a statement, itemized in detail, was forwarded to the defendants' solicitor on

June 3d, 1929, together with a form of the decree, and he certainly had ample knowledge of the exact amount computed and the manner in which it was arrived at. Ten days later, in open court, on June 13th, before the Vice-Chancellor signed the decree, he asked the defendants' solicitor if the amount were correct and the solicitor answered "Yes" and then immediately asked the defendants' solicitor if the form of the decree was satisfactory and the defendants' solicitor answered "Yes."

If there had been any dispute as to the amount, we feel that unquestionably the Vice-Chancellor would have made a reference to a Master in Chancery to determine the true amount. The fact that he did not evidences and agreement between the Court and counsel as to the correctness of the amount thereof.

POINT NINE

Counsel fees and taxed costs were properly allowed by the Vice-Chancellor. This is not a doubtful case nor are the defendants justified in refusing to take title under the terms of the agreement, nor was the question, in the least, properly debatable. The defendants simply used this means to attempt to evade their obligations under the contract. Supplemental State of Case, page 19, line 3-10:

"They, or some of them, at least, had evidently then become disappointed with their bargain, and sought to evade their responsibility under the contract by a futile attempt to show that the complainant had contracted to sell something it did not own."

The complainant, through the derelictions of the defendants, has been embarrassed and was put to the necessity of engaging counsel to prosecute its action. The burden upon the complainant, caused by the derelictions of the defendants, should not be borne by it.

COMMENTS ON APPELLANTS' CITATIONS

Appellants cite *Kelleher vs. Bragg*, 96 N. J. E. 25. Under the cited case Mr. Patterson and his corporation would be denied specific performance in the event they attempted to secure it, but there is nothing in the case which holds that the vendor cannot secure specific performance. The present state of the law in regard to specific performance appears in *Mahaffey et al. vs. Sarshik*, 137 Atl. 887, in which the Court says: "Court of equity is under duty to enforce agreement for purchase of real property, unless some reason exists why contract should not be carried out."

Appellants further cite *Sheehan vs. Humphries*, 81 N. J. E. 416, which has no bearing whatever on this case. An inspection of the case will show that the defendant therein contracted to sell some of his shares of stock in the corporation. He refused to sell all his interest. The Court held that the contract was not susceptible of specific performance, the subject matter being indeterminate.

The case of *Van Riper vs. Wickershaum*, 77 N. J. E. 232, cited on page 19 of appellants' brief, is not applicable here for the reason that that case was decided on the fact that there was an outstanding interest of a third person in the premises which produced a defect in the title.

The case of *Cornell vs. Andrews*, 35 N. J. E. 7, cited also on page 19, was decided on the question that there was a defect in the title because a mortgage was drawn to pass only a life estate and not a fee. The Court said: "The Court cannot satisfactorily or conclusively settle a title in the absence of parties who are not before them in the suit to assert their interest in the land."

In the case at issue there is no claim made that anyone other than the parties to the suit hold any interest in the land contracted to be sold, so that all parties were before the Court, and the Court's decision settled the question entirely.

The appellants cite *Levine vs. Lafayette Building Corporation*, 142 Atl. 441. In this case the appellants missed the real point of the Court's decision. The decision followed *Page vs. Martin*, 46 New Jersey Equity, page 585, in referring to specific performance, that "Relief rested not upon what the Court must do, but rather upon what, in view of all the circumstances, it ought to do. In every case of this character, the Court is chiefly concerned with the equities of the parties before it."

This rule has been followed in *Brisbane vs. Sullivan*, 99 Atl. 197.

It will be readily seen that specific performance, therefore, is a remedy which rests more upon the facts and circumstances of each particular case than upon anything else in the case at issue. The Vice-Chancellor, being chiefly concerned with the equities of the parties before him and having full knowledge from the evidence submitted by the parties to this issue, was in a position to decide exactly what the equities of the parties before him demanded and what to him, considering all phases of the matter, was proper and in keeping with equity and good conscience.

The cases as cited in appellants' brief, page 10, are not applicable to this present case. The case of *Davimos vs. Green*, 83 N. J. E. 596, was decided on the point that the complainants therein asked for further relief by way of correction and changing the memorandum of sale, and there were no allegations in the bill which justified any such prayer. In this present case, the complainant makes no such allegation or prayer in his bill and it was not necessary that he do so. In the case cited the memorandum of sale was defective and admittedly so. In this present case the Vice-Chancellor has held that the contract was not defective in any respect.

In the case of *Vogt vs. Mullen*, 82 N. J. E. 452, also cited by appellants on page 10 of their brief, the Court was asked to insert into an agreement to sell land a provision that the land was subject to a

right of way. The Court rightfully refused to write such matter into the agreement. In the present case no request was made for any additions to or corrections of the agreement in any respect.

The case of *Wirtz vs. Guthry*, 81 N. J. E. 271, also turns on the point of a request to the Court to write new matter into an agreement of sale, and hence is not applicable to the present case.

On page 11 of the appellants' brief the case of *Miller vs. Chetwood*, 2 N. J. E. 199, is cited. In this case, the contract called for nine acres and the tract contained but six acres, there being a deficiency of $33\frac{1}{3}\%$. The Court in the case decided, however, that there was a wilful misrepresentation on the part of the complainant and allowed an abatement because of this and the amount of the deficiency.

In *Mellick vs. Cross*, 62 N. J. E. 545, also cited on page 11, there were springs on the land owned by third parties and an easement for pipe lines from the spring existed; this was the defect in the title for which compensation was allowed. In the present case there is no defect in the title and the complainant owns and can convey all that it contracted to convey.

In *VanBlarcom vs. Hopkins*, 63 N. J. E. 466, the Court stated: "There is nothing to warrant the idea that the defendant would not have purchased, if he had known the true width of the lot," and further says: "But in cases like the present, where the purchaser acquired the precise land for which he contracted and which he saw and inspected, and the only objection is that it is less in quantity than that named, the courts have, naturally enough, little difficulty in giving the vendor his remedy against the vendee."

Certainly from the above cases cited by appellants and those cited by appellee, *supra*, there should be no abatement allowed even if a deficiency be found.

The appellants quote a portion of the decision in *Hostetter vs. Merrick*, 92 N. J. E. 313, but they overlook the important part of this case and the part which

has the greatest bearing upon the issue now being argued. This case states "Where the sale was of a hotel property which was enclosed by fences on the true lines, specific performance will not be granted with an abatement for deficiency because the vendor's description erroneously misdescribes the land; the dimensions of the lot not effecting in the slightest degree the purchase price." Specific performance without abatement was decreed.

This is squarely in point against appellant's contention in the instant case. They claim a deficiency now appears. It is uncontradicted that the portion of the land contracted to be sold, by reason of which the appellants attempted to avoid their obligations, is enclosed by curbs and gutters, permanent monuments, which were placed some eight years prior to the execution of this contract. It is further uncontradicted that the appellants and each of them knew of the location of these monuments before executing the contract and it nowhere appears that any deficiency, now complained of, affected in the slightest degree the purchase price.

The complainant respectfully submits that this appeal should be dismissed with costs.

JAMES E. MITCHELL,
WILLIAM A. MOORE,
*of Counsel with Complainant-
Appellee.*



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

SEA GIRT ESTATES, a corporation,
Complainant-Appellee,

and

SUSAN M. SUTTON, TILLIE M.
NEWMAN, MURVIN OSBORN
and E. V. PATTERSON, JR.,
INC., a corporation,
Defendants-Appellants.

*On Bill for
Specific Per-
formance.*

REPLY BRIEF OF JAMES F. MINTURN, FOR APPELLANTS.

POINT 1.

The amount of land taken by the Borough is not definitely described.

On page 2 of the respondent's brief, there is a statement that the amount of land taken by the Borough is very definitely known and outlined. This is repeated at the end of the brief. We beg to differ with the opposing counsel in their conclusion.

The only testimony on this point is that of Mr. Roberts, a witness for the complainant who testifies on page 23 of the State of the Case as follows:

"Q Do you recall when lots 32 and 33 in Block 59 were conveyed to the borough? A Why, all I can recall in the fall of 1917 the Sea Girt Company made a proposition to the municipality that if they would give 50 feet on either side of the Parkway as marked out on the map of 1909, if they would give that,

would the borough widen out the entrance to the Parkway, and they decided they would, and work was begun in the spring of 1919, and the Parkway was widened out 50 feet to the north and 50 feet to the south, and then the land was deepened, I don't know how many feet."

This testimony was that there was a lot and block of vacant land and that it was bounded on one side by a curb.

There is nothing physically described to show the block and lot delineations, the depth, width or area of the lots and blocks, nor the lot dimensions.

These defendants might look at these "Curbs" every day in the year and still be ignorant of the dimensions of the property they intended to buy. And upon the reading of Mr. Roberts' testimony we again specifically and respectfully call the attention of the Court to the fact, that this witness speaks of the "Widening of Crescent Parkway" and not "the Enlargement of the Park opposite the Railroad Station" as mentioned in the Shenk reservation.

POINT 2.

The parties to the contract did not intend to buy and sell by the "Private Patterson" map.

When the complainant took title from Schenck, the deed described the property purchase in this manner:

"All those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Sea Girt in the County of Monmouth and State of New Jersey.

Being known as parts of Sea Girt as shown on an "Amended Map of Sea Girt New

Jersey" Frank Osborn, Engineer 1909 filed in the Office of the Clerk of Monmouth County New Jersey February 7, 1911, as follows:"

The complainant took therefore, according to a filed map and the map called "C 7" was only a private convenience and a memorandum for ready reference generally used in all real estate offices.

The words "filed in the Office of the Clerk of Monmouth County, New Jersey" are not found in the contracts between the parties. On page 11 of the respondents' brief it is alleged that these words were purposely omitted, but where proof of this allegation can be found in the testimony is not indicated. We do not recall any such evidence and it must be deemed mere argument of counsel. We contend that their omission was accidental.

Our contract was made in September, 1925. In December, 1925, the complainant sold the opposite corner in Block 60 to one Brown. This was Exhibit "C. 8." The description in the contract reads as follows (p. 86, State of the Case):

"Q Do you recall a contract made by your company for the Sea Girt Estates which Mr. Van Note drew for you and one Robert Brown? A Yes, sir; I remember something about it.

Q Did you take the information over to Mr. Van Note to draw the description for that agreement? A I don't know whether I took it over or whether I telephoned it.

Q You did one or the other, didn't you? A Possibly did, yes.

Q This contract is dated the 24th of December? A The same year?

Q 1925, and you either telephoned or you took that information over? A Yes.

Q Where did you get the information to give to Mr. Van Note to draw up this agree-

ment? A The only information I have ever given Mr. Van Note on contracts was the lot numbers, the block numbers and the terms of the contract, such as the amount to be paid and when and the amount of the payments to be made, which we first took up with the officers of the Sea Girt Estates.

Q Where did you get this information from, 'Being all of block No. 60 (that is the block right opposite 59) and known and designated on a certain map entitled Amended Map of Sea Girt, New Jersey, Frank Osborn, Engineer, 1909, and duly filed in the Office of the Clerk of the County of Monmouth at Freehold, New Jersey, except the portion taken for the enlargement of the park opposite the railway station, said block being bounded on the north by Boston Boulevard, and on the east by Fifth avenue'? A I never supplied that information, I simply said, 'All of Block 60.'

Q Where did he get it from? A I presume he got it from the Sea Girt Estates.

Q Why did he get this information from you if he had a deed to copy the description from? A I am quite certain he had a map of Sea Girt Estates on his wall, a small map of Frank Osborn, Engineer. In fact, we had, I imagine, 5,000 of those maps printed and scattered around to various people who were interested. We still have got a supply on hand if anyone calls for them."

The Court's attention is respectfully called to two facts:

a. The words "and filed in the Office of the Clerk of the County of Monmouth County at Freehold, New Jersey" follows the title of the Map.

b. The reservation is also included in the description "except the portion taken for the enlargement of the Park opposite the Railway Station."

If the first quotation was purposely omitted from the contract, why was it included in the Brown Contract a few months afterwards?

The answer is simple.

The quotation was inadvertently omitted in our contract, which was not drawn with solicitous care, because of the ~~defendants'~~ ^{complainant's} agents, Patterson, Bond, Van Note, were careless.

After 1925, another map of Sea Girt was made in 1926 and it was called:

Amended Map
SEA GIRT
New Jersey
Frank Osborn
1909

Sauerbeaux & Moore, Civil Engineers
1926

E. V. Paterson, Jr., Inc.
Real Estate and Insurance
Sea Girt

"Where the Cedars Meet the Sea"

The map is "D. 2" and shows the premises in controversy just as the defendants say it should be, with lots 32 and 33 facing the Plaza and full lots from 34 to 41.

The complainant's description of what was taken by the Borough, could not have been so well known in view of the printing and publication of this map.

The Court's attention is likewise called to the "E. V. Patterson, Inc.," agency and inferred approval of this map.

It surely does support defendants' contention.

There was another map of Sea Girt made in July, 1927, but this map cannot bind the defendants, being made two years after the contract was signed.

To say the very least, the complainants' contention has not been so clearly sustained as to justify a decree of specific performance.

POINT 3.

On Abatement.

We were in a Court of Equity below and claim that if a decree is against us, we are entitled to an abatement.

The method of determining that abatement can be left to a Master.

The basis of abatement need not be on the amount of land conveyed, compared with the amount not conveyed.

Rather we think proper method would be the value of the land not conveyed with the value of the land conveyed.

The land in controversy is the most valuable of the premises described in the contract, and they are very valuable as among them are corner lots facing the railroad station and the parkway.

Potter v. Lunsden, 117 Atl. 31, therefore, does not apply on the point.

It is not how much land is lacking, but how much was it worth. If the twenty acres missing in the Potter case were in Newark, for instance, the decision might have been just the reverse. All the lots in our contract are not of the same value and four per cent. of the land might well be 50 per cent. of its value.

POINT 4.**The Complainant's Burden.**

In law, the burden of proof is lighter than in a case of specific performance.

Wilkinson v. Plaket, 5 N. J. Misc. 853, was a Supreme Court case.

It does not apply here, as the amount of the evidence required in a specific performance suit is greater than an ordinary suit at law, because in specific performance the Court should not decree specific performance unless the evidence is clear. It is not a question of the mere preponderance of evidence.

The complainants rights to a decree cannot be clearly proved.

Kelleher v. Bragg, 96 N. J. E. 25.

POINT 5.**The Complainant's Agent.**

We still contend that E. V. Patterson and E. V. Patterson, Jr., Inc., were the agents of the complainants. E. V. Patterson, Jr., was not a vendee, and that Mr. Bond was never acting for these defendants, but was the secretary of E. V. Patterson, Jr., Inc., the agent of the complainant, and consequently Mr. Bond's acts bound the complainant and not the defendants, as our original brief shows.

POINT 6.**No Evidence of Evasion.**

There is no evidence of the defendant's evading their obligations and Vice-Chancellor Berry's remarks on this point are really *obiter dicta* and should not be treated as finding of fact as there is no evidence of any such fact.

POINT 7.**The Title Is Still Debatable.**

We still contend the title is not marketable and is debatable. In addition to the cases cited, here is a statement found in Vice-Chancellor Fielder's opinion, *Potter v. Lunnesden*, 117 Atl. Rept. 31, on page 32.

"I should consider the principle laid down by this Court that when the validity or marketability of a title depends upon facts outside the public records, a vendee should not be forced to take title unless the necessary proofs are available to him when he may have future need of them."

Unless our contract is performed, to convey a good title by an unquestionable description, we have to add the omissions as set forth in our remarks on Exhibit "C. 8" ~~permit in this reply brief.~~ (contract) referred to under ~~Point 2 of our reply brief.~~

But that is out of order, there being no reformation in the decree.

A conveyance referring to Patterson's Private Map, no matter how designated, brings us within V.-C. Fielder's statement of the law and there should be no decree against us.

POINT 8.

Documents pertaining to the transactions of the parties after the filing of the notice and petition of appeal are not a proper part of the record.

The appellant has printed solely at the request of the respondent a series of documents purporting to show a tender of deed to the appellants.

The alleged tender was made subsequent to the filing of the petition of appeal, and the final decree.

These documents were printed in the supplemental State of the Case with the reservation that the appellant could object to them being considered on this appeal, and we now do object to their being considered a part of the case and that the matter set forth in the said documents should not be considered on this appeal, as they have no bearing on the case at all at this time.

The tender of a deed subsequent to the date of the final decree can in no way cure the defects in the decree. The decree makes no provision to protect the defendants by compelling the complainant to add to or to change the description of the land mentioned in the contract so as to convey an unquestionable title.

We still contend that the evidence in this case proved that the facts were debatable, and that no counsel fee should have been allowed by the Court, and we therefore ask that the decree appealed from be reversed.

Respectfully submitted,

HARRY R. COOPER,
Solicitor of Defendants-Appellants.

JAMES F. MINTURN,
Of Counsel.

