

The fact alone remains, it is respectfully submitted that the decision of the Supreme Court should be affirmed.

HOWE & DAVIS,
Attorneys for Relator-Respondent.

EDWARD L. DAVIS,
Of Counsel.

I N D E X

	PAGE
Complaint.....	1
Answer.....	6
Reply.....	9
Judgment.....	9
Certification.	10
PLAINTIFF'S TESTIMONY:	
Alfred Yentis—Direct	12
Cross.....	13
Ernest Redfield—Direct	17
Cross.....	17
Motion for Non-suit.....	20
DEFENDANT'S TESTIMONY:	
Thomas T. Townsend—Direct.....	21
Miles Gilman—Direct	26
Charge of the Court.....	28
Exhibit P1, Deed.....	30
Exhibit, Deed	33
Exhibit, Deed	37
Exhibit P2, Deed.....	42
Notice and Grounds of Appeal.....	48

COMPLAINT.

NEW JERSEY SUPREME COURT.
GLOUCESTER COUNTY.

ALFRED YENTIS,	Plaintiff,	Judgment Record.	10
v.		Action at Law.	
THOMAS T. TOWNSEND,	Defendant.	On Postea.	
		Alexander L. Rogers,	Attorney.

Thomas T. Townsend, the defendant in this cause, was summoned to answer unto Alfred Yentis, the plaintiff therein in an action at law upon the following complaint.

(Summons issued June 11, 1926.)

The plaintiff, Alfred Yentis, of the City and County of Philadelphia, and State of Pennsylvania, says that:

1. On August 17, 1925, plaintiff and defendant entered into an agreement, a copy of which is hereto annexed and designated as "Schedule A."

2. In accordance with the terms of said agreement plaintiff paid to the defendant on August 17, 1925, the sum of \$3000.00.

3. By verbal agreement between plaintiff and defendant settlement in accordance with the terms of

the agreement marked "Schedule A" was continued from time to time until May 17, 1926, at the office of Ernest Redfield, No. 132 South Broad Street, Woodbury, New Jersey, at which time and place, plaintiff, being ready and willing to perform his part of said agreement, demanded and described in said agreement, in accordance with the terms thereof.

4. Defendant failed and refused to convey and
10 was unable to convey unto the plaintiff such title to the said premises as was provided by the terms of said agreement, all of which was contrary to the meaning and intent thereof.

5. Plaintiff demanded of defendant, by reason of his refusal and inability to comply with said agreement, the return of the deposit money paid in accordance with the terms of said agreement, to wit: the sum of \$3000.00.

20 6. Defendant refused to pay plaintiff the said sum and judgment will be claimed by the plaintiff against defendant in the aforesaid sum of \$3000.00 together with lawful interest from August 17, 1925.

SECOND COUNT.

1. Plaintiff was obliged to expend and pay and did expend and pay for the purpose of securing title
30 insurance upon the premises before mentioned to the Land Title Guaranty Company of New Jersey, the sum of \$150.00.

2. Demand has been made upon defendant for the repayment of the same which payment has been refused.

3. Judgment will be claimed by the plaintiff against the defendant by reason thereof for the aforesaid sum of \$150.00 together with interest from December 4, 1925.

Judgment will be claimed by plaintiff against the defendant for the sum of \$3000.00 upon the first count, and \$150.00 on the second count, together with lawful interest on the said sums from August 17, 1925, and December 4, 1925, respectively.

ALEXANDER L. ROGERS, 10
Attorney for Plaintiff.

"SCHEDULE A."

THIS AGREEMENT, made the seventeenth day of August A. D., 1925, between THOMAS T. TOWNSEND of the City of Bridgeton, in the county of Cumberland and State of New Jersey, party of the first part, hereinafter called the "Seller," and Alfred Yentis, or his nominee, of the City and County of Philadelphia, Pennsylvania, party of the second part, hereinafter called the "Buyer," 20

WITNESSETH, That the "Seller" agrees to sell and convey and the "Buyer" agrees to buy all that certain lot, tract or parcel of land and premises situate in the Borough of Glassboro, County of Gloucester and State of New Jersey, more particularly described as follows:

One hundred and five acres, more or less, lying on the East side of Delsea Drive, adjoining the property of Harry J. Jennings on the North, and the William Warner property on the South, known as the Benjamin Zane farm, purchased by the Seller from the Arnold Heirs in June, 1924, (subject to 30

the rights of Robert Mead to remove certain cedar timber on or before January 1, 1926.) for the price or sum of Thirty six thousand dollars, net, under and subject to the following terms and conditions:

1. A first payment of Three thousand Dollars, receipt of which is hereby acknowledged by the "Seller."

2. The balance of the purchase price shall be paid in the following manner:

10 Purchase money mortgage of twenty four thousand dollars, payable eight thousand dollars within one year, eight thousand dollars within two years, and the balance of eight thousand dollars within three years, from date of settlement, with interest thereon at the rate of six per cent per annum payable semi-annually with the usual tax and insurance clauses, and nine thousand dollars in cash, at the time of final settlement which shall be made at office of Ernest Redfield, No. 132 South Broad Street,
20 Woodbury, New Jersey, at 10 A. M. on or before November 17, 1925, or the deposit made herewith, at the option of the "Seller" may be applied on account of the purchase price or be forfeited as liquidated damages to the "Seller," and not as a penalty, provided that the necessary title searches can be obtained from any first-class New Jersey title company by that date. Should there be any delay, not the fault of the "Buyer" in the procuring of such searches, the time for the final settlement
30 shall extend until such searches can be obtained.

3. The title to the premises shall be free and clear of all incumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, and the rights of Robert Mead as aforesaid,

and shall be a marketable title, and the "Seller" shall tender a general warranty deed conveying such title at the time of the final settlement, or in the event that such title cannot be as above, then this deposit shall be returned to the "Buyer."

4. All adjustments shall be made as of date of settlement and possession shall be given the "Buyer" at settlement, subject to rights of Robert Mead.

5. The "Buyer" shall pay for searches and all other expenses, excepting the preparation of the deed and the necessary revenue stamps attached thereto, which shall be paid for by the "Seller." 10

6. This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

7. This contract includes all fixtures and appurtenances permanently attached to the building or buildings on the land herein described and also specifically the following items:

IN WITNESS WHEREOF, the parties hereto 20 have set their hands and seals the day and year first above written.

Thomas T. Townsend (L. S.)

Alfred Yentis (L. S.)

Signed, sealed and delivered
in the presence of
Ernest Redfield
Miles Gilman.

STATE OF NEW JERSEY }
COUNTY OF GLOUCESTER }

30

BE IT REMEMBERED, That on this seventeenth day of August, in the year of our Lord one thousand nine hundred and twenty-five, before me, the subscriber, A Master in Chancery of New Jersey, personally appeared Thomas T. Townsend, who

I am satisfied is the grantor mentioned in the above deed or conveyance, and I having first made to him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

Ernest Redfield,
M. C. C. of N. J.

(Filed June 21, 1926.)

10

ANSWER.

The defendant, Thomas T. Townsend, of the City of Bridgeton, County of Cumberland, and State of New Jersey, answering says that:

1. He admits paragraph 1.
2. He admits paragraph 2.
- 20 3. He admits by verbal agreement between plaintiff and defendant settlement in accordance with the terms of the agreement marked "Schedule A" was continued from time to time until May 17, 1926, at the office of Ernest Redfield, No. 132 S. Broad Street, Woodbury, New Jersey, but denies that at that time and place that plaintiff was ready and willing to perform his part of said agreement, and avers and alleges that the defendant at the time and place aforesaid, was willing and ready to perform his part of the agreement and offered to deliver to the plaintiff a conveyance of the title to the premises mentioned and described in said agreement, in accordance with the terms thereof, and that the said plaintiff, neglected, failed and refused to accept said conveyance and make settlement in accordance with the terms of the aforesaid agreement.

30

4. He denies paragraph 4.

5. He admits that plaintiff demanded the return of his deposit money, to wit; the sum of \$3000, but denies that said demand was legally made by reason of defendants refusal or inability to comply with the said agreement.

6. He admits that he has not repaid the plaintiff the said sum of \$3000, and denies that he is in any way liable to plaintiff for that sum with interest from August 17, 1925, or any other sum. 10

SECOND COUNT.

1. He has no information or knowledge sufficient to form a belief as to the allegations contained in paragraph 1.

2. He denies paragraph 2. 20

3. He denies that he is indebted to plaintiff in the sum of \$150, together with interest from December 4, 1925, as alleged in paragraph 3, or any other sum. He denies that he is in any way indebted to plaintiff.

DEFENSE.

30

By agreement referred to in the complaint defendant agreed to convey to plaintiff or his nominee the following described tract of land, to wit:

"One hundred five acres more or less, lying on the East side of Delsea Drive, adjoining the

property of Harry J. Jennings on the North and the William Warner property on the South known as the Benjamin Zane farm, purchased by the seller from the Arnold heirs in June, 1924."

Defendant at the time fixed for final settlement, to wit: May 17, 1926, produced a duly executed deed for the conveyance to plaintiff of the land described
10 in the agreement, but plaintiff refused to accept same alleging that certain lands contained in the bounds of Delsea Drive, should be included in the description to be contained in the deed. As a matter of fact the lands lying within the bounds of the highway were appropriated by the State Highway Commission, together with a strip of land eight feet wide of the entire front of the farm for the use of highway purposes, prior to the time of the date of the agreement marked "Schedule A;" all of which
20 facts were known by, communicated to, and agreed to by the plaintiff prior to the making of the agreement aforesaid, and defendant agreed to convey to plaintiff only the lands lying "On the east side of the Delsea Drive."

By reason of all of these circumstances plaintiff is not entitled to recover anything from the defendant in this suit.

Avis & Avis,
Attorneys for Defendant.

30 (Filed July 7, 1926.)

REPLY.

The plaintiff denies the allegations set forth in the answer.

ALEXANDER L. ROGERS,
Attorney for Plaintiff.

(Filed September 10, 1926.)

10

JUDGMENT.

This cause was tried before Judge Frank B. Jess, with a jury, at the Gloucester Circuit on October 15th, 1926. The jury, by direction of the Court rendered a general verdict against the defendant and in favor of the plaintiff for three thousand three hundred and sixty (\$3360.00) dollars.

Whereupon it is adjudged that the plaintiff, Alfred Yentis, do recover of the said defendant, Thomas T. Townsend, the sum of three
\$3360.00 thousand three hundred and sixty dol-
46.18 lars damages, together with his costs,
which have been taxed at the sum of
\$3406.18 forty-six dollars and eighteen cents,
making in the whole the sum of three
thousand four hundred and six dollars and eighteen cents.

20

Judgment entered October 25, 1926.

WM. S. GUMMERE,
C. J.

30

I, EDWARD J. KELLEHER, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said court at Trenton, this sixteenth day of April, A. D. nineteen hundred and twenty-seven.

10

(Seal)

EDWARD J. KELLEHER,

Clerk.

20

30

TESTIMONY.

(Mr. Rogers opens the case for the plaintiff to the jury.)

(Mr. Avis opens the case for the defendant to the jury.)

10

THE CASE FOR THE PLAINTIFF.

Mr. Rogers: I offer in evidence, with the consent of counsel, the agreement of sale, execution of which is admitted.

Mr. Avis: It is the same as this carbon. I don't suppose there is any question about that. It is the same thing.

20

(Agreement marked Exhibit P1.)

Mr. Rogers: I also offer in evidence, with the consent of counsel on the other side, the deed for this farm conveying it to Townsend.

Mr. Avis: I have no objection. You need not prove it at all, if you have got the record of it. It is recited in the deed here.

30

Mr. Rogers: I also offer in evidence the record of the conveyance from Townsend to the State of New Jersey, for this strip of land to which reference has been made.

Mr. Avis: May I ask a question? Is the deed to Mr. Townsend recorded in Book 340, page 46?

Mr. Rogers: It is.

Mr. Avis: Will you give me the book and page of record of the sale to the State?

Mr. Rogers: Book 362, page 312.

The Court: What is the date of that last deed, Mr. Rogers, to the state?

10

Mr. Rogers: Townsend to the State, the deed is dated March 9, 1926, recorded on March 27, 1926. I might say, in addition, that the deed to Townsend is dated June 9, 1924, and is recorded.

ALFRED YENTIS, SWORN.

20 By Mr. Rogers:

Q. Mr. Yentis, you are the plaintiff in this case?

A. I am.

Q. After entering into the agreement which has been offered in evidence in this case, did you take steps to have the title examined?

A. I did.

Q. And for that purpose, did you incur any indebtedness?

30

A. I did.

Q. To what extent?

A. \$150 to the Land Title and Guaranty Company of New Jersey.

Q. Has that been paid as yet?

A. No, not yet.

Q. Did you carry out this agreement and take title to this property?

A. No.

Q. Why not?

A. Because I did not get the land which I bought. In other words, on the deed that was offered to me, there was a certain amount of land which was sold off prior to the time I entered into the agreement of sale with Mr. Townsend.

Q. Did you take any steps for recovering the money which you paid?

A. I did. I asked for my money back.

10

Q. Did you get it back?

A. No. Through my agents, rather, I did. I was away at the time.

Cross-examination.

By Mr. Avis:

Q. Mr. Yentis, you were present when this contract was made?

20

A. I was.

Q. And you signed it?

A. I did.

Q. And after that, did you ever have any conversation with Mr. Townsend except over the telephone?

A. None whatever.

Mr. Rogers: I object to this as not being proper cross-examination.

30

(Objection overruled.)

(Exception noted for plaintiff.)

Q. Who, then, as your agent, decided and notified Mr. Townsend that you were not getting what you had agreed to get?

Mr. Rogers: I object to this upon the ground it isn't proper cross-examination.

(Objection overruled.)

A. My brother, which was acting as my agent.

Q. Your brother, Herbert Yentis?

A. That's right.

Q. He was acting as your agent in this whole
10 transaction from the time you signed the agreement?

A. No, after I signed the agreement.

Q. I say from the time you signed the agreement.

A. That's right.

Q. Do you know whether your brother, Mr. Herbert Yentis, was authorized to ask for an extension of the time of settlement on this contract?

A. At the time?

Q. Or did he do that of his own volition?

A. Well, now, let me get that question straight,

20 Mr. Avis.

Q. Settlement according to the contract—maybe I can state it in a different way—was to be made on November 17, 1925?

A. Yes.

Q. Now, was any application made by you or your brother in your behalf for a four months extension?

A. Well, I don't know if it was made for four months extension. I know the title wasn't out and we had to have extension to get the title certificate

30 through.

Q. In other words, you hadn't procured any settlement certificate from the Title Company?

A. No, didn't have it ready at that time.

Q. Did you authorize anyone to approach Mr. Townsend and ask for different terms of payment of less money in cash and a larger mortgage?

Mr. Rogers: I object, on the ground it is nothing that has been brought about in my examination in chief.

The Court: I overrule the objection. Cross-examination may be general of one of the parties.

Mr. Avis: Will you repeat the question?

(Question repeated.)

10

A. Did not authorize anybody on that account.

Q. Well, then, if your brother Herbert made such a proposition, he made it as your agent, he had unlimited authority, did he?

A. That's right.

Mr. Rogers: We rest.

Mr. Avis: The burden is entirely upon the plaintiff to prove his entire case and there is no proof
20 of any character, excepting the introduction of the agreement itself, which shows the 105 acres more or less lying on the east side of Delsea Drive. There is no testimony that shows that a deed was tendered to them of any kind, although they admit it in their pleadings. There is no testimony to show what was contained in that deed or to show that that deed was not in accordance entirely with the contract. If your Honor wants any authority on the burden of proof, I have a few here which seem to—
30

The Court: I think there is no question about that, as to where the burden of proof rests. Mr. Rogers, where is there any proof of the allegation that the defendant did not comply with the terms of the contract?

(After further argument.)

The Court: I think, Mr. Rogers, there ought to be some evidence of the deed tendered and refused. The allegation of the defense is that the deed was tendered conveying the lands covered by the agreement.

Mr. Rogers: I will call upon the defendant for
10 the production of the deed.

The Court: I will permit the case to be re-opened, for the purpose of putting that deed in evidence, if you wish to do it.

Mr. Rogers: I offer this deed in evidence, dated November 12, 1925, from Thomas T. Townsend and Susie F. Townsend to blank, executed by the Townsends and acknowledgment taken in the State
20 of Florida and Prothonotary's certificate attached.

(Said deed marked Exhibit P2.)

Mr. Avis : I still move for a non-suit, if your Honor please, on the ground there is no testimony showing the tender of that deed, there is no testimony showing that deed did not cover everything in the contract.

30 Mr. Rogers: I think you admitted what it was tendered for.

Mr. Avis: No, I didn't.

Mr. Rogers: I will call Mr. Redfield.

ERNEST REDFIELD, SWORN.

By Mr. Rogers:

Q. Mr. Redfield, you are a practising attorney of this state?

A. I am.

Q. Were you present at the settlement or did you endeavor to have settlement between Mr. Townsend
10 and a representative of Mr. Yentis, on May 17th of this year?

A. I don't remember the date. I was present.

Q. At that time, was a deed tendered to the representatives of Mr. Yentis in settlement of the agreement marked P1?

A. It was.

Q. Is that the deed? (Indicating.)

A. Yes, sir.

Q. Following the tender of that deed, was that
20 tender accepted?

A. It was not.

Q. Upon what ground?

A. On the ground that the deed did not convey the quantity of land described in the agreement of sale.

Q. And for that reason, no settlement was made?

A. Yes.

Cross-examination.

30

By Mr. Avis:

Q. Mr. Redfield, you were at that time representing Mr. Yentis?

A. No, I was not.

Q. You prepared the contract, the original contract in this matter?

A. I did.

Q. Then it was not under your advice that Mr. Yentis refused to accept the deed?

A. Mr. Yentis had his Philadelphia attorney present.

Q. Now, this deed which was tendered at that time, marked P2, can you tell me who prepared it, 10 under whose supervision it was prepared?

A. That was prepared in my office.

Q. And at the time that was prepared, were you representing Mr. Yentis in the settlement of this contract, in the preparation of the deed at that time?

A. Well, I was really representing the broker who made the sale, I understand.

Q. You were representing te broker who made the sale or who made the purchase?

A. The purchase.

20 Q. The purchase, wasn't it, really? Now, you drew the deed, it was under your supervision?

A. Yes.

Q. And you excepted from this description of the farm the tract of land which had been sold to the state, didn't you?

A. Yes.

Q. Where did you get your information about that?

A. Mr. Townsend came to my office some time 30 after the agreement was signed and said that he was going to Florida and he asked me to prepare the deed and left with me his old deed and some other papers. As I remember, it was in the evening. The next morning, I examined the papers and among them I found an agreement between Mr. Townsend and the state of New Jersey, for the part that the

state was to get for the widening of the highway, so that when I drew this deed I excepted out the part that he agreed to sell to the state.

Q. And at that time, you considered that deed in accordance with the terms of the agreement, didn't you?

A. Well, I am not prepared to answer that question.

Mr. Rogers: I object. In the first place, that isn't 10 relevant and in the second place, even if he had, it wouldn't be binding upon the plaintiff.

(Objection sustained.)

Q. Before May of 1926, was this deed ever submitted to Mr. Yentis, either Mr. Alfred Yentis or Mr. Herbert Yentis? Do you recollect about that?

A. They knew that I had the deed.

Q. But they had not gone over the description, to 20 your recollection?

A. I don't remember about that.

Q. Prior to the time that Mr. Herbert Yentis came to your office, on May 17th, I think, of this year, with his Philadelphia attorney, had you ever heard the question raised that the title wouldn't be taken because of the conveyance to the State? Had that question ever been brought up before that time?

A. I had told Mr. Alfred Yentis that this exception was there.

Q. Had he before that date, or anybody representing him, ever told you that the agreement wouldn't go through and settlement wouldn't be made because of that?

A. I don't know about that.

Q. You have no recollection that he ever did?

A. No.

Mr. Rogers: We rest.

Mr. Avis: I still move for a non-suit, if your Honor please, on the grounds, first, that there has been no identification of the lands, as to just where it comes from, and there has been no proof but what this deed contains all of the land lying on the east side of the Delsea Drive as described in the agreement.

10

(After argument.)

The Court: There is no question but that the deed tendered to the plaintiff didn't convey in its entirety the premises covered by the deed of the Arnold heirs?

Mr. Avis: There is no question about that.

20 The Court: Looking at the agreement itself and the description of the property contained in the agreement, I think that I am bound to hold, on this motion, that the words of the description, "lying on the east side of Delsea Drive," are controlled by the subsequent clause in the agreement which describes the property as the property known as the Benjamin Zane farm purchased by the seller from the Arnold heirs in June, 1924; so that I feel I am obliged to deny the motion for non-suit.

30

(Exception noted for defendant.)

THE CASE FOR THE DEFENDANT.

THOMAS T. TOWNSEND, SWORN.

By Mr. Avis:

Q. Where do you live, Mr. Townsend?

A. I live in Woodbury at the present time.

Q. And how long have you been here?

10

A. About four weeks.

Q. And where did you live before that?

A. Bridgeton.

Q. Bridgeton, Cumberland County?

A. Spend the summer in Ocean City; yes, sir.

Q. And you are the defendant in this case, aren't you?

A. Yes, sir.

Q. Did you own this property on the 17th of August, 1925?

20

A. Yes, sir.

Q. You had bought it in 1924?

A. Yes.

Q. When did you first know Mr. Yentis?

A. The first I know Mr. Yentis was when he came down to Bridgeton, to see me about buying this farm.

Q. And was that the same day the contract was signed?

A. Yes, sir; the same night. It was night.

30

Q. Where did you meet him then and who was with him and who was with you, if anybody?

A. Well, he had with him Mr. Gilman, Sol Cotler, and Ike Cotler, Herbert Yentis and Alfred Yentis himself were together.

Q. Where did you first see them?

A. The first I seen them was in the restaurant where they went to get their supper—it was supper time—that's where I met them.

Q. Did you have any conversation with Mr. Yentis or did any of the other parties present with Mr. Yentis in the restaurant?

A. No, sir.

Q. Did you know anything about what they were there for when you were in the restaurant?

10 A. No.

Q. What happened after the meal was over?

A. After they got done eating, we walked across the street, then they spoke about wanting to buy this farm.

Q. Who spoke about it?

A. Mr. Yentis.

Q. Mr. Alfred Yentis?

A. Yes.

20 Q. Well now, tell us, as near as you can recollect how long you stayed there, what your conversation was, what was said, just your recollection about this contract.

A. There were five of them. They were all talking. Mr. Gilman had brought them down and said they wanted to buy this farm. Itold them the farm was for sale and Mr. Gilman spoke about \$25,000. I says, "Gents, it's no use talking, because I haven't put any price on this farm up to the present time, but," I says, "if you want to buy this farm, why, 30 I will sell it for \$40,000.," and they talked and talked and I told them that the ground that was in course of construction by the state now—

Mr. Rogers: One moment. I assume he is going to testify to certain things said to my client. Now, this contract has been reduced to writing and I ob-

ject to any testimony that will in any way contradict or vary the terms of this contract or the description of the land to be conveyed.

(After argument.)

The Court: Gentlemen, as I view it, this case, as it is now presented, does not raise any exceptions to the general rule which makes parol testimony inadmissible to alter or vary the terms of a written 10 contract. I cannot see that the description in this contract is in any sense vague or ambiguous. If the attorney or the person who drew the contract had contended himself with describing the premises as 105 acres more or less lying on the east side of Delsea Drive and so forth, there might then be some difficulty in determining just what property was to be included within the terms of the agreement, but when he goes further and identifies the property as that known as the Benjamin Zane farm, and further 20 than that identifies it as being the farm purchased by the seller from the Arnold heirs in June, 1924, it seems to me that there can be no question as to the description of the property that was intended to be covered by that contract and that description and that the only ambiguity that would arise would be in case parol testimony were now introduced to show what the understanding of the parties was as to the property to be conveyed. For that reason, I sustain the objection. 30

Mr. Avis: Your Honor then holds that the offer made by the defendant to convey is not in accordance with the contract that was made?

The Court: Yes.

Mr. Avis: Do you hold that as matter of law and that there is no jury question?

The Court: As the matter stands now, Senator, I hold that the deed which has been offered in evidence as the deed which was tendered by the defendant to the plaintiff did not convey in its entirety the exact premises covered by the contract between the parties.

10 Mr. Avis: Well, if that is so, I don't see any use of our producing any more testimony, because our testimony, from a defense standpoint, is entirely with relation to the understanding of the parties as to the land to be conveyed. However, we will let the questions be asked. I understand this question is overruled?

The Court: Yes.

20 (Exception noted for defendant.)

Q. At the time or prior to the time this contract was executed, was anything said by you to Mr. Yentis with relation to the State Highway that was being constructed over a certain portion of the land which you had purchased from the Arnold heirs?

Mr. Rogers: I object to that, on the same ground.

30 (Objection sustained.)

(Exception noted for defendant.)

Q. What did you say to Mr. Yentis, if anything, with relation to the State Highway being then con-

structed in front of this property and the taking of the land by the State Highway Commission, for the widening of the property?

Mr. Rogers: Same objection.

(Objection sustained.)

(Exception noted for defendant.)

10 Q. Did you have a conversation with Mr. Yentis with relation to the State Highway matter?

Mr. Rogers: I object to the testimony, on the same ground.

The Court: I will overrule the objection. The question is, did he have a conversation? The answer is yes or no.

Q. Yes or no.

A. Yes, sir.

Q. Was this on the same evening that the contract marked P1 was executed?

A. Yes, sir.

Q. What did you tell Mr. Yentis about the portion of the farm to be required to be used for the State Highway purposes?

Mr. Rogers: I object to that, on the same ground. 30

(Objection sustained.)

(Exception noted for defendant.)

MILES GILMAN, SWORN.

By Mr. Avis:

Q. Where do you live, Mr. Gilman?

A. Glassboro, New Jersey.

Q. And what is your business?

A. Real estate broker.

Q. You know Mr. Yentis and Mr. Townsend?

A. Yes, sir.

10 Q. Do you know anything about the making of this contract upon which suit is now being brought, on the 17th of August, 1925?

A. Yes, sir.

Q. Were you present when it was executed?

A. Yes, sir.

Q. Were you present when negotiations were taken up for the purchase and sale of this property between Mr. Yentis and Mr. Townsend?

A. Yes, sir.

20 Q. Where was that?

A. On the sidewalk in Bridgeton, New Jersey.

Q. Who was present?

A. Mr. Yentis, Mr. Townsend, Mr. Isaac Cotler, Mr. Sol Cotler and myself.

Q. Was anything said at that time by Mr. Yentis as to the encumbrances on the property or any parts that had been sold off or any rights that anybody else had in it?

A. Yes, sir.

30 Q. What was said by Mr. Townsend to Mr. Yentis, in your presence, with relation to the lands to be used for State Highway purposes?

Mr. Rogers: I object to this upon the ground it is incompetent.

(Objection sustained.)

(Exception noted for defendant.)

Mr. Avis: I understand that all testimony on that line, showing any notice of the fact to Mr. Yentis or any testimony which would tend to construe or explain the description of the land in this agreement is not competent?

The Court: Yes.

Mr. Avis: Your Honor will allow me an exception and I won't introduce any other testimony? 10

The Court: Yes.

(Exception noted for defendant.)

Mr. Avis: Now, the deed is in evidence?

Mr. Rogers: Yes.

Mr. Avis: I just want to be sure everything is in. We rest. 20

Mr. Rogers: May it please the Court, I ask for a direction of a verdict in favor of the plaintiff, on the grounds already argued, in the amount of \$3,390.

Mr. Avis: Of course, if your Honor please, formally I object to the direction of the verdict, although, I assume, from your Honor's suggestion in the rejection of testimony, that the motion will be granted. It does seem to me that there is still a jury question, regardless of the fact whether parol testimony can alter or vary the terms of a 30 written instrument, there is still a question for the jury whether, under the terms of this agreement, the offer was made, under all the evidence, substantially in accord with it and they ought to decide whether the defendant has performed or not, rather than the Court.

CHARGE OF THE COURT.

Jess, J.: Ladies and gentlemen of the jury, this is a suit brought by Alfred Yentis, as plaintiff, against Thomas T. Townsend, defendant, and in this action the plaintiff, Mr. Yentis, seeks to recover from the defendant, Townsend, the sum of \$3,000 which, without question, he paid to the defendant on account of the purchase price of a farm owned by Mr. Townsend in this county. That payment was made under the terms of an agreement for the purchase of that farm, made and entered into between the parties.

Now, it appears from the evidence that a deed was tendered to the plaintiff, by the defendant. That deed, in the description of the property which it covered, contained an exception of certain land and it is that exception which is the basis of this dispute.

The Court's view of this case is, from the evidence as it stands, that the defendant, Townsend, under his agreement with the plaintiff, was obliged to convey a certain tract of land which, in the agreement, was described as follows: 105 acres more or less lying on the east side of Delsea Drive, adjoining the property of Harry J. Jennings on the north, and the William Warner property on the south, known as the Benjamin Zane farm, purchased by the seller from the Arnold heirs in June, 1924, subject to the rights of Robert Mead to remove certain timber on or before January 1, 1926, for the price or sum of \$36,000.

As I have said, my view of that obligation assumed by the defendant under this contract was to convey

to the plaintiff the farm of 105 acres more or less lying on the east side of Delsea Drive and the farm which was purchased by the seller, the defendant in this case, from the Arnold heirs in June, 1924. Now, it has been established by the evidence that such a deed or a deed conveying the property to the plaintiff as called for in that description was not tendered, and under those circumstances the plaintiff was not bound to proceed with his agreement and would be entitled to recover the money that he paid on account of the purchase price and also, under the law, the amount expended for getting title searches. so that I feel, under the evidence and under the law, I am obliged to direct the jury to find a verdict in favor of the plaintiff for the sum of \$3,000, plus \$150, that is \$3,150, to which the jury should add interest. The computation of interest is a matter for the jury. Counsel has said that the interest amounts to \$240.

Mr. Avis: I haven't any objection to taking the computation of Mr. Rogers as to that.

The Court: Senator Avis says then, to save the jury that task, he will accept that as being correct, so far as the computation is concerned, so that the total sum for which the jury should return a verdict for the plaintiff is \$3,360. The clerk will take your verdict under the instructions of the Court.

Mr. Avis: May I take an exception at this time? I object, of course, to the direction of the verdict and ask that an exception be allowed.

(Exception noted for defendant.)

EXHIBIT P1.

THIS AGREEMENT, made the seventeenth day of August A. D., 1925; between THOMAS T. TOWNSEND of the City of Bridgeton, in the county of Cumberland and State of New Jersey, party of the first part, hereinafter called the "Seller," and Alfred Yentis, or his nominee, of the City and County of Philadelphia, Pennsylvania, party of the second part, hereinafter called the "Buyer."

WITNESSETH, That the "Seller" agrees to sell and convey and the "Buyer" agrees to buy all that certain lot, tract or parcel of land and premises situate in the Borough of Glassboro, County of Gloucester and State of New Jersey, more particularly described as follows:

One hundred and five acres, more or less, lying on the East side of Delsea Drive, adjoining the property of Harry J. Jennings on the North, and the William Warner property on the South, known as the Benjamin Zane farm, purchased by the Seller from the Arnold Heirs in June, 1924, (subject to the rights of Robert Mead to remove certain cedar timber on or before January 1, 1926.) for the price or sum of Thirty six thousand Dollars, net, under and subject to the following terms and conditions:

1. A first payment of Three thousand Dollars, receipt of which is hereby acknowledged by the "Seller."

2. The balance of the purchase price shall be paid in the following manner:

Purchase money mortgage of twenty four thousand dollars, payable eight thousand dollars within one year, eight thousand dollars within two years,

and the balance of eight thousand dollars within three years, from date of settlement, with interest thereon at the rate of six per cent per annum payable semi-annually with the usual tax and insurance clauses, and nine thousand dollars in cash, at the time of final settlement which shall be made at office of Ernest Redfield, No. 132 South Broad Street, Woodbury, New Jersey, at 10 A. M. on or before November 17, 1925 or the deposit made herewith, at the option of the "Seller" may be applied on account of the purchase price or to be forfeited as liquidated damages to the "Seller," and not as a penalty, provided that the necessary title searches can be obtained from any first-class New Jersey title company by that date. Should there be any delay, not the fault of the "Buyer" in the procuring of such searches, the time for the final settlement shall extend until such searches can be obtained.

3. The title to the premises shall be free and clear of all incumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, and the rights of Robert Mead as aforesaid, and shall be a marketable title, and the "Seller" shall tender a general warranty deed conveying such title at the time of the final settlement, or in the event that such title cannot be as above, then this deposit shall be returned to the "Buyer."

4. All adjustments shall be made as of date of settlement and possession shall be given the "Buyer" at settlement, subject to rights of Robert Mead.

5. The "Buyer" shall pay for searches and all other expenses, excepting the preparation of the deed and the necessary revenue stamps attached thereto, which shall be paid for by the "Seller."

6. This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

7. This contract includes all fixtures and appurtenances permanently attached to the building or buildings on the land herein described and also specifically the following items:

10 IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Thomas T. Townsend (L. S.)

Alfred Yentis (L. S.)

Signed, sealed and delivered

in the presence of

Ernest Redfield

Miles Gilman

20 STATE OF NEW JERSEY }
COUNTY OF GLOUCESTER }

BE IT REMEMBERED, That on this seventeenth day of August, in the year of our Lord one thousand nine hundred and twenty-five, before me, the subscriber, A Master in Chancery of New Jersey, personally appeared Thomas T. Townsend, who I satisfied is the grantor mentioned in the above deed or conveyance, and I having first made to him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

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Ernest Redfield,

M. C. C. of N. J.

EXHIBIT.

AUGUSTUS H. SICKLER ET UX ET ALS

TO

THOMAS T. TOWNSEND

\$9.00 REVENUE STAMPS

THIS INDENTURE, Made the ninth day of June in the year of our Lord one thousand nine hundred and twenty-four, Between Augustus H. Sickler and Florence T. Sickler, his wife, of Ocean City, county of Cape May and state of New Jersey, Margaret Arnold, (single) of the city and county of Philadelphia and State of Pennsylvania, George W. Arnold and Gertrude Arnold, his wife, of the Borough of Glassboro, county of Gloucester and State of New Jersey, Harry J. Arnold and Nellie Arnold, his wife, of Bristol, County of Bucks and State of Pennsylvania, parties of the first part, and Thomas T. Townsend of Bridgeton in the county of Cumberland and State of New Jersey party of the second part: Witnesseth, that the said party of the first part for and in consideration of the sum of One Dollar and other good and valuable considerations lawful money of the United States of America well and truly paid by the said party of the second part to the said party of the first part at and before the ensealing and delivering of these presents the receipt whereof is hereby acknowledged have granted, bargained, sold aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part his heirs and assigns, ALL that certain tract or parcel of land and premises situate in the Borough of Glassboro county of Gloucester and State of New Jersey more particularly

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- described and designated as follows: Beginning in the center of the public road leading from Glassboro to Clayton corner to lands now or late of Wilmer Stratton thence (1) north sixty-nine degrees east four thousand nine hundred sixty-nine and sixteen one hundredths feet; thence (2) north thirty two and one quarter degrees east eleven chains and ten links; thence (3) north thirty five and three quarter degrees west three chains and ninety-five links; 10 thence (4) south fifty three degrees west twenty four chains to a fallen down pine a corner to Jessups; thence (5) north twenty-six degrees west thirteen chains and fifty links; thence (6) south sixty one degrees west four thousand one hundred thirty seven and eighty-seven hundredths feet to the center of the road leading from Clayton to Glassboro; thence (7) by the same south eleven degrees and forty-nine minutes east, nine hundred thirty-one and twenty three one hundredths feet to the place of 20 beginning. Being part of the same lands and premises that Augustus H. Sickler by deed dated Nov. 10, 1887 and recorded in the Gloucester county Clerk's office at Woodbury in Book 146 of Deeds page 23 granted and conveyed unto Hannah Zane and the said Hannah Zane being so thereof seized departed this life after having made and executed her last will in writing, dated December 18, 1885 probated February 23, 1887 and recorded in the Gloucester county Surrogate's office in Book J of 30 Wills, page 413 in and by which the said Hannah Zane devised all of her property to her two children Mary Kaseberg and Augustus H. Sickler. And the said Mary Kaseberg has heretofore departed this life intestate leaving as her next of kin and only heirs at law the said Harry J. Arnold, Margaret Arnold, George Arnold to whom her interest in the

aforesaid property descended. Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof and of every part and parcel thereof: And also all the estate, right, title, interest, property, possession, claim and demand whatsoever both 10 in law and equity of the said party of the first part, of, in and to the said premises with the appurtenances: TO HAVE AND TO HOLD the said premises with all and singular the appurtenances unto the said party of the second part his heirs and assigns to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever. And the said parties of the first part for themselves their heirs, executors and administrators do by these presents covenant grant and agree 20 to and with the said party of the second part his heirs and assigns that they the said parties of the first part, their heirs all and singular and hereditaments and premises herein above described and granted or mentioned and intended to be so, with the appurtenances unto the said party of the second part his heirs and assigns against them the said parties of the first part their heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, Shall and Will Warrant and forever defend 30 in WITNESS WHEREOF the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

AUGUSTUS H. SICKLER (SEAL)
FLORENCE T. SICKLER (SEAL)

MARGARET ARNOLD (SEAL)
 GEORGE W. ARNOLD (SEAL)
 GERTRUDE ARNOLD (SEAL)
 HARRY J. ARNOLD (SEAL)
 NELLIE ARNOLD (SEAL)

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF
 R. HOWARD THORN

as to AUGUSTUS & FLORENCE T. SICKLER
 10 JOHN BOYD AVIS as to M. A. "G. W. A."
 "G. A." "H. J. A." & "N. A."

STATE OF NEW JERSEY }
 CAPE MAY COUNTY } ss.

BE IT REMEMBERED that on this ninth day
 of June in the year of our Lord one thousand nine
 hundred and twenty four before me a Notary Public
 in and for the State and county aforesaid, personally
 appeared Augustus H. Sickler and Florence T. Sick-
 20 ler his wife who I am satisfied are the grantors
 mentioned in the above deed or conveyance and I
 having first made known to them the contents there-
 of they acknowledged that they signed, sealed and
 delivered the same as their voluntary act and deed.
 All of which is hereby certified.

R. HOWARD THORN (SEAL)
 NOTARY PUBLIC
 COM. EXPIRES NOV. 11, 1926.

30 STATE OF NEW JERSEY }
 GLOUCESTER COUNTY } ss.

BE IT REMEMBERED that on this 24th day of
 June in the year of our Lord one thousand nine hun-
 dred and twenty four before me a Master in Chan-
 cery of New Jersey personally appeared Margaret
 Arnold (single) George W. Arnold and Gertrude

Arnold his wife, Harry J. Arnold and Nellie Ar-
 nold his wife who I am satisfied are the grantors
 mentioned in the above deed or conveyance and I
 having made known to them the contents thereof
 they acknowledged that they signed sealed and de-
 livered the same as their voluntary act and deed.

JOHN BOYD AVIS
 M. C. C. of N. J.

RECORDED SEPT. 29 1924 at 3.15 P. M.

OLIVER J. WEST CLERK (FHS) 10

STATE OF NEW JERSEY }
 GLOUCESTER COUNTY } ss.

I, OLIVER J. WEST, Clerk of said County and
 of the various Courts of Record thereof, do hereby
 certify that the foregoing is a true and correct copy
 of the above Deed as the same is of record in my
 office in Book 340 of Deeds, page 46 &c.

IN TESTIMONY WHEREOF, I have hereunto
 set my hand and affixed the seal of said County and 20
 Courts at Woodbury, N. J., in said County, this
 eighth day of April A. D., 1927.

OLIVER J. WEST

Clerk

HELEN M. BATTEN
 Special Deputy Clerk

(Seal)

EXHIBIT.

THOMAS T. TOWNSEND ET UX
 TO

THE STATE OF NEW JERSEY
 NO REVENUE STAMPS

THIS INDENTURE, Made the 9th day of March
 in the year of Our Lord One Thousand Nine Hun-
 dred and Twenty-six BETWEEN Thomas T. Town-

send and Susie F. Townsend, his wife, of the City of Bridgeton, in the County of Cumberland and State of New Jersey, of the first part, AND THE STATE OF NEW JERSEY of the second part.

10 WITNESSETH that the said party of the first part, in consideration of the sum of one dollar, lawful money of the United States of America, to them in hand paid at or before the ensealing and delivery of these presents by the said party of the second part, the receipt whereof is hereby acknowledged, and other valuable consideration, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party party of the second part and unto its successors and assigns forever.

20 All that certain lot, tract or parcel of land and premises, situate, lying and being in the Borough of Glassboro in the County of Gloucester, and State of New Jersey, and more particularly described as follows:

BEGINNING at the point of intersection of the division line of lands of the grantor herein on the south and lands now or formerly of Harry J. Jennings on the north, with the center line of State Highway Route No. 20, Section 1 at Station 69 plus 26.69, and running thence (1) along said division line, North, sixty-seven degrees, thirty-five minutes and thirty-six seconds East, thirty-three feet and 30 sixty-six one-hundredths of a foot (33.66) to a point in the easterly line of said State Highway; thence (2) along said easterly line, parallel to and distant thirty-three (33) feet from the center line of said State Highway, South, eleven degrees, two minutes and twenty-four seconds East, nine hundred and twenty-five feet and seventy-six one-hundredths of

a foot (925.76) to a point in the division line of lands of the grantor herein on the north and lands now or formerly of Chris Warner on the South; thence (3) along said division line, South seventy-six degrees, twenty-two minutes and thirty-six seconds West, thirty-three feet and three one-hundredths of a foot (33.03) to a point in the center line of said State Highway; thence (4) along said center line, North, eleven degrees, two minutes and twenty-four seconds West, nine hundred and twenty-two feet and sixty- 10 two hundredths of a foot (922.62) to the point or place of Beginning: CONTAINING one hundred and seventy-five one-thousandths parts of an acre (0.175) be the same more or less.

It being the intention of the grantor to convey to the State of New Jersey all that portion of his lands lying between the center line of State Highway Route No. 20, Section 1 and the easterly line of said State Highway, said easterly line being parallel to and distant thirty-three (33) feet from said center 20 line, from the line of lands now or formerly of Chris Warner on the south to the line of lands now or formerly of Harry J. Jennings on the north.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as 30 well in law as in equity, of the said party of the first part of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the

second part, its successors and assigns forever, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever.

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

Thomas T. Townsend (Seal)

Susie F. Townsend (Seal)

10 Signed, sealed and delivered
in the presence of
Gertrude S. Friedman
Milton Corn

STATE OF FLORIDA }
COUNTY OF DADE } ss.

Be it remembered that on this 9th day of March A. D. Nineteen Hundred and twenty-six before me, the subscriber, Notary Public for the State of Florida at large personally appeared Thomas T. Townsend and Susie F. Townsend, his wife, who I am satisfied are the grantors mentioned in and who executed the within indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed; and the said Susie F. Townsend, being by me privately examined, separate and apart from her said husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely and without any fear, threats or compulsion of her said husband.

Gertrude S. Friedman (Seal)
Notary Public for the State
of Florida at Large
My Commission Expires Jan.
17, 1930.

STATE OF FLORIDA }
COUNTY OF DADE } ss.

I, GEO. F. HOLLY, Clerk of the Circuit Court of the 11th Judicial Circuit of Florida, in and for said County, the same being a Court of Record, having a Seal, do hereby certify that Gertrude S. Friedman by whom the foregoing acknowledgment was taken, and whose name is subscribed hereto, was, at the time of taking the same, a NOTARY PUBLIC, residing in said county, duly commissioned and sworn, and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing (to be recorded herein) and to administer oaths or affirmations in said County; and that I am well acquainted with his handwriting, and verily believe that the signature of the foregoing certificate is his genuine signature. I further certify that the laws of Florida do not require an impression of the seal to be on file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal, which is the Seal of said Court, at Miami, Florida, this 11 day of March, A. D. 1926.

Geo. F. Holly
Clerk Circuit Court.
By L. S. Woodard
Deputy Clerk.

(COURT SEAL)

Recorded Mar. 27, 1926 at 9.30 A. M.

Oliver J. West Clerk (TC)

STATE OF NEW JERSEY }
GLOUCESTER COUNTY } ss.

I, OLIVER J. WEST, Clerk of said County and of the various Courts of Record thereof, do hereby

certify that the foregoing is a true and correct copy of the above Deed as the same is of record in my office in Book 362 of Deeds, page 12 &c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County and Courts at Woodbury, N. J., in said County, this sixth day of April, A. D., 1927.

OLIVER J. WEST

Clerk

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R. EDWARD KLAISZ

Deputy Clerk

(Seal)

EXHIBIT P2.

THIS INDENTURE, MADE THE Twelfth day of November in the year of our Lord one thousand nine hundred and twenty-five. BETWEEN Thomas T. Townsend and Susie F. Townsend, of the City of Bridgeton, in the County of Cumberland and State of New Jersey, parties of the first part, and

of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the en-
sealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bar-
gained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bar-
gain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, heirs and as-

signs, ALL that certain tract or parcel of land and premises, situate in the Borough of Glassboro, County of Gloucester and State of New Jersey, more particularly described and designated as follows:

BEGINNING in the center of the public road, leading from Glassboro to Clayton, corner to lands now or late of Wilmer Stratton; thence (1) North sixty-nine degrees East, four thousand nine hundred sixty-nine and sixteen one-hundredths feet; thence (2) North thirty-two and one-quarter degrees East, eleven chains and ten links; then (3) North thirty-five and three-quarter degrees West, three chains and ninety-five links; thence (4) South fifty-three degrees West, twenty-four chains to a fallen down pine, a corner to Jessup's; thence (5) North twenty-six degrees West, thirteen chains and fifty links; thence (6) South sixty-one degrees West, four thousand one hundred thirty-seven and eighty-seven hundredths feet to the center of the road leading from Clayton to Glassboro; thence (7) by the same, South eleven degrees and forty-nine minutes East, nine hundred thirty-one and twenty-three one-hundredths feet to the place of Beginning.

EXCEPTING therefrom and thereout, all that certain lot, tract or piece of land, viz:

BEGINNING at a point formed by the intersection of the dividing line between lands of grantor herein on the South and lands now or formerly of Harry Jennings on the North, with the existing center line of State Highway Route #20, Section #1, at Station 69 plus 26.69, as shown on plan entitled "New Jersey State Highway Department, Route 20, Section 1, property to be acquired from Thomas T. Townsend, Borough of Glassboro, Gloucester County, Scale 1"=50', March, 1925," and running thence (1) along said dividing line, North

sixty-seven degrees, thirty-five minutes, thirty-six seconds East, thirty-three and sixty-six hundredths feet to a point in the proposed Easterly right-of-way line of said State Highway; thence (2) along said right-of-way line, South eleven degrees, two minutes, twenty-four seconds East, nine hundred twenty-five and seventy-six hundredths feet to a point in the dividing line between lands of grantor herein on the North and lands now or formerly of Chris. Warner on the South; thence (3) along said dividing line, South seventy-six degrees, twenty-two minutes, thirty-six seconds West, thirty-three and three one-hundredths feet to a point in the existing center line of said State Highway; thence (4) along said center line, North eleven degrees, two minutes, twenty-four seconds West, nine hundred twenty and sixty-two one-hundredths feet to the point and place of Beginning.

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20 Containing one hundred seventy-five one-thousandths of an acre, be the same more or less, exclusive of existing roadway.

BEING a part of the same premises which were conveyed to the said Thomas T. Townsend by Augustus H. Sickler, et ux, als, by deed dated June 9, 1924, and of record in the Gloucester County Clerk's Office in Book No. 340 of Deeds, page 46.

30 TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof;

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part,

of, in and to the said premises, with the appurtenances:

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

AND the said Thomas T. Townsend, for himself, his heirs, executors and administrators, DOTH by these presents covenant, grant and agree to and with the said party of the second part, heirs and assigns, that he the said Thomas T. Townsend, his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, heirs and assigns, against him the said Thomas T. Townsend, his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, SHALL and WILL WARRANT and forever DEFEND. 10 20

IN WITNESS WHEREOF, the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Thomas T. Townsend
Susie F. Townsend

Signed, sealed and delivered
in the presence of
R. E. Leverette
Mary A. Workman

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STATE OF FLORIDA }
DADE COUNTY } ss.

BE IT REMEMBERED, that on this Twelfth day of November in the year of our Lord one thousand

nine hundred and twenty-five, before me, the Subscriber, personally appeared Thomas T. Townsend and Susie F. Townsend, his wife, who, I am satisfied are the grantors mentioned in the above deed or conveyance and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

10 Geo. J. Baya,
Notary Public
State of Florida at Large.
My commission expires—January seventeenth,
One thousand nine hundred and twenty-nine.
(Seal)

STATE OF FLORIDA }
COUNTY OF DADE } ss.

20 I, Geo. F. Holly, Clerk of the Circuit Court of Dade County (said Court being a court of record) do hereby certify that Geo. J. Baya the officer before whom the acknowledgment of the deed hereunto annexed was made, was at the time of the taking thereof, as such officer, authorized by the laws of the State of Florida to take the acknowledgments and proofs of deeds or conveyances for lands tenements or hereditaments in said State; and that his signature to the annexed certificate is genuine.

30 Witness my hand and seal of said Court this 12th day of November nineteen hundred and 25.

Geo. F. Holly,
Clerk.

By H. H. Johnson,
D. C.

(Seal of the Court)

DEED.

Thomas T. Townsend,
et ux,
to

Dated 192

Received in the office of the County of on the day of A. D. 192 at o'clock in the noon, and recorded in Book of DEEDS

for said County, on pages
ERNEST REDFIELD
Counsellor-at-Law
Woodbury, N. J.

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NOTICE OF APPEAL.
NEW JERSEY SUPREME COURT.
GLOUCESTER COUNTY.

10 ALFRED YENTIS, *Plaintiff,*
v.
THOMAS T. TOWNSEND, *Defendant.* }
Action at Law.
Notice of Appeal.

20 *To Alexander L. Rogers, Attorney of Plaintiff, or
to whom it may concern:*

Sir:

Please take notice that the defendant in the above entitled cause appeals to the Court of Errors and Appeals, in the last resort in all causes in New Jersey, from the whole of the judgment entered in the above stated cause, on the following grounds, to wit:

- 30 1. Because the trial Court erred in refusing to direct a non-suit.
2. Because the trial Court erred as a matter of law in holding that the description of land contained in contract was unambiguous.
3. Because the trial Court erred in refusing to

permit the defendant and his witnesses to testify as to conversations, transactions and agreements occurring immediately prior to the execution of the contract, tending to explain the quantity of land to be conveyed, and the location and area of the land lying on the east side of Delsea Drive.

4. Because the trial Court erred in refusing to permit the introduction of testimony showing the conversation and agreement with relation to the boundaries of the Delsea Drive, abutting the land agreed to be conveyed. 10

5. Because the trial Court erred in construing the terms of the contract, as to boundaries of Delsea Drive, abutting the land agreed to be conveyed.

6. Because the trial Court refused to permit the introduction of testimony to explain the ambiguity of the description of land in contract, relating to location and boundaries of Delsea Drive, and the quantity of land to be taken for State Highway purposes, and incorporated in Delsea Drive. 20

7. Because the trial Court erred in directing a verdict in favor of the plaintiff.

Respectfully yours,
AVIS & AVIS,
Attorneys of Defendant.

Dated April 6, 1927.

[ENDORSED]

Service of within notice of appeal
is hereby acknowledged.

Alexander L. Rogers,
Att'y. of Plaintiff.

Dated April 6, 1927.

113

New Jersey Court of Errors and Appeals

ALFRED YENTIS,
Plaintiff-Respondent,

v.

THOMAS T. TOWNSEND,
Defendant-Appellant.

ACTION AT LAW.

BRIEF OF PLAINTIFF-RESPONDENT.

This suit was brought by the plaintiff against the defendant to recover from the defendant the sum of \$3000.00 paid on account of the purchase price of a farm together with an additional sum of \$150.00, being the cost of examination of the title to the farm.

The plaintiff brought this suit because the defendant was unable to deliver to him a deed for the land described in the agreement of sale.

Upon the trial of the case the Court directed a verdict in favor of the plaintiff in the sum of \$3360.00 and judgment was entered thereon on October 25, 1926.

At the trial the plaintiff introduced in evidence, *inter alia*, the following documents:

The agreement of sale.

The deed which was tendered by defendant to plaintiff.

The deed known as the deed from the "Arnold heirs."

The deed of defendant conveying to the State of New Jersey a part of the premises covered by the deed from the Arnold heirs.

From an examination of these documents it will appear that on June 9th, 1924, the defendant purchased a tract of land in Glassboro, Gloucester County, New Jersey. The deed for this land is known as the deed from the "Arnold heirs." That the defendant on August 17th, 1925, entered into an agreement in writing to sell to the plaintiff all the land that he had purchased from the "Arnold heirs." On March 9th, 1926, the defendant sold to the State of New Jersey a part of the land that he purchased from the Arnold heirs. That defendant tendered to plaintiff at the time of settlement a deed covering the premises described in the deed from the Arnold heirs but excepting therefrom the land which had been previously conveyed by him to the State of New Jersey.

At the end of the plaintiff's case a motion for non-suit was not allowed.

The defendant offered to prove by parol testimony what land was intended to be sold by the agreement of sale. This was not permitted by the Court, on the ground that it was an attempt to alter or vary the terms of the written contract.

Naumberg v. Young, 15 Vroom 331.

The defendant contends that the description of the land agreed to be sold is vague, uncertain and ambiguous and that parol testimony should have

been permitted to be given to prove what land was actually intended to be sold.

The answer to this argument will be found in the description itself:

"That the 'Seller' agrees to sell and convey and the 'Buyer' agrees to buy ALL that certain lot, tract or parcel of land and premises situate in the Borough of Glassboro, County of Gloucester and State of New Jersey, more particularly described as follows:

One hundred and five acres, more or less, lying on the east side of Delsea Drive, adjoining the property of Harry J. Jennings on the north, and the William Warner property on the south, known as the Benjamin Zane farm, purchased by the seller from the Arnold heirs in June, 1924 (subject to the rights of Robert Mead to remove certain cedar timber on or before January 1, 1926) for the price or sum of thirty-six thousand dollars, net, under and subject to the following terms and conditions:"

The defendant argues that the agreement of sale does not provide for the sale of ALL of the lands conveyed by the Arnold heirs. This is incorrect because the agreement does cover ALL of the land conveyed by the Arnold heirs by its very terms.

It is apparent from the description that the defendant was to sell all the land purchased by the sale from the Arnold heirs in 1924 and that he tendered to the plaintiff at the time of settlement a deed excepting out of the land purchased from the Arnold heirs, a strip of land over nine hundred feet (900') long and thirty (30') feet wide, which he had sold to the State of New Jersey.

In view of these facts, the refusal to grant the non-suit and the direction of a verdict in favor of the plaintiff were not erroneous but proper.

ALEXANDER L. ROGERS,
Respondent.
Attorney for Plaintiff-

NEW JERSEY COURT OF ERRORS AND
APPEALS.

ALFRED YENTIS,
Plaintiff-Respondent,

v.

THOMAS T. TOWNSEND,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL FROM SUPREME COURT.

BRIEF FOR DEFENDANT-APPELLANT.

This action is brought by the plaintiff to recover from the defendant the amount of a deposit made by plaintiff, as vendee, to defendant, as vendor, on account of the purchase price of a tract of land situate in Borough of Glassboro, Gloucester County, New Jersey, in accordance with the terms of a certain contract of sale, dated August 17, 1925, Exhibit P1, page 30.

Under the terms of this agreement settlement was to be made on or before November 17, 1925, but at

the request of the plaintiff, or his agent, the time of settlement appears to have been indefinitely postponed, until the "title certificate" could be obtained, page 14.

It appears by the evidence that, apparently by common consent, the time of settlement was continued from time to time until May 17, 1926, page 17, at which time the deed which had been executed on November 12, 1925, by the defendant and his wife, was tendered to plaintiff or his representative.

There seems to be but one question involved, or claimed by plaintiff as a justification for his refusal to accept the deed and comply with the agreement, and this is the claim that the land and premises described in the deed, did not conform to the description contained in agreement, and therefore, that he, the plaintiff, was entitled to repudiate and rescind the agreement, and have his deposit returned to him. No question is raised as to time of settlement, or form, or sufficiency of the executed deed.

As we understand it, the plaintiff bases his right to recover in this suit, wholly upon the contention that the description of the lands in the deed did not convey the lands as described in the agreement, "One hundred and five acres, more or less, lying on the east side of Delsea Drive, adjoining the property of Harry J. Jennings on the north, and the William Warner property on the south, known as the Benjamin Zane farm, purchased by the seller from the Arnold heirs in June, 1924."

The description contained in the tendered deed, Exhibit P2, excepted from the lands conveyed to Townsend by the Arnold heirs, a strip of land, thirty-three feet in width from the center of the then existing highway, which strip was after the making of the agreement, and before the time for settlement,

conveyed by the defendant and wife, to the State of New Jersey, Exhibit, page 37.

The grounds assigned for reversal are seven in number, but as we conceive the situation there are three points involved, to wit:

(1) Did the Court err in refusing to grant a non-suit?

(2) Was the description of the land ambiguous, or variable, and if so, was parol evidence competent to show that the parties at the time of the making of the contract agreed upon the boundary of land to be conveyed? (This covers grounds 2 to 6 inclusive.)

(3) Did the Court err in directing a verdict for plaintiff?

FIRST.

There should have been a non-suit.

Our contention is that the words, "lying on the east side of Delsea Drive," excludes the idea that it was the intention of the vendor to convey to the middle of the highway or any portion of the highway, and if this is so, the deed conveying all of the lands of defendant, at that location, excepting the small strip conveyed to the State, for highway purposes, was a compliance with the sale agreement, and that defendant completely fulfilled his duty to convey.

There are decisions in New Jersey and elsewhere which hold that certain expressions in deeds, such as "bounded by," "on," "upon" or "along" such street or highway, is generally held to indicate an intention to convey to the centre thereof. 9 C. J. 199.

Most of the decisions seem to be based on the particular words used or the circumstances of the particular case.

In 9 C. J., page 201, par. #93, the rule is stated as follows:

"While there are decisions which maintain the contrary doctrine, the great weight of authority is to the effect that, where a conveyance calls for a side line of a highway, street, or alley—and the expressions 'by the side of,' 'by the margin of,' 'by the line of,' or like terms are usually considered as calls for side lines—the grantee's title does not extend to the center, but only to the side line, in the absence of any language in the deed, or any circumstances indicating a contrary intention, * * *"

In the case of *Hoboken Land and Improvement Co. v. Kerrigan*, 31 N. J. L. 13-15-16, the Court said:

"It was correctly stated in the case of *Winter v. Peterson*, 4 Zab. 527, that 'the inference or presumption of the law is, that a conveyance of land bounded on a public highway carries with it the fee to the center of the road, as part and parcel of the grant. 3 Kent's Com. 432; *Peck v. Smith*, 1 Com. R. 103; unless by the terms of the description the road is necessarily excluded, or at least something appears to rebut the presumption, *Tyler v. Hammond*, 11 Peck 213, and cases there cited.'"

In the above case the land was described as beginning "at a point on the southwest side of the old road, and does not again refer to the road, but runs certain courses and distances so that if the defendant is strictly confined to them, his land will not touch

the road except at the beginning corner," and the case further holds that the weight of authority is that where it appears that the road was intended to be a boundary, a strong presumption arises that it was the intention to pass the title to the middle of the highway. The Court, however, in deciding the case said:

"Here the boundary is limited to strict courses and distances, without the mention of any monument but the beginning corner; and it is manifest that if the tract is run, as it would seem it should be, according to the courses and distances as they stand, it will not touch the road except at the beginning corner. And even if it can be run, as was insisted for the defendants, the surrounding circumstances show it was intended to be run, so that the last course and distance will correspond with the line of the highway, that alone will not warrant the presumption that it was intended to convey the land to the middle of the highway. The real question presented for decision was, whether the words of the deed could be so interpreted as to warrant the inference that there was any intention to extend the boundary, as described, beyond its prescribed limits. It was not a case requiring words to exclude the highway; such words being necessary only where, independent of such words, a contrary presumption can reasonably be inferred."

We have read the case of *Salter v. Jones*, 39 N. J. L. 469, and later cases of similar character, which hold that "under ordinary conditions, nothing short of express words of exclusion will prevent the street in front of the premises conveyed from passing."

This is undoubtedly true after a conveyance is made, and is based upon custom and general understanding, and prevailing belief, and because the lands used as a public highway are of great value to the contiguous lots, and is of no value separated from them.

The question here, however, is not as to the rights of a grantee under an executed contract, but the construction of words in an executory contract, under which the vendee has rescinded and demanded back his payment on account. The words "lying on the east side of Delsea Drive" in our opinion, cannot be construed to mean that the defendant agreed to convey the lands to the middle of Delsea Drive, and that upon failure, the right to rescind became complete. On this point we respectfully submit that there should have been a non-suit, because defendant tendered to plaintiff a deed for all of the land that defendant had agreed to convey.

SECOND.

If the Court holds that the defendant was not entitled to a non-suit, then we desire to respectfully submit that the description was ambiguous, and of such a nature that it is impossible to say as a matter of law, just where the boundaries were fixed by the written agreement.

The four points of the description are:

- (1) "One hundred and five acres more or less."
- (2) "Lying on the east side of Delsea Drive, &c."
- (3) "Known as the Benjamin Zane farm."
- (4) "Purchased by the seller from the Arnold heirs in June, 1924."

No question arises as to the quantity of land agreed to be conveyed, or the boundaries as given in

the tendered deed, except as to the strip of roadway conveyed to the State of New Jersey, and which was a strip thirty-three feet in width from the center line of the established road.

Parol testimony may be used to explain the contents of a written instrument if it is in any way ambiguous.

The trial Court in this case had some misgivings as to the result, if the description of the premises had ended with the acreage, and the words, "lying on the east side of Delsea Drive," and based his ruling as to receipt of parol testimony and direction of a verdict on the (3) and (4) points of the description.

An examination of the deed, known as the deed from the Arnold heirs, page 33, on page 34, lines 20, &c., show that the lands conveyed by this deed were only a part of the lands granted and conveyed to Hannah Zane, and there was no testimony offered by the plaintiff to show that the lands intended to be conveyed included the whole of the Zane farm.

The agreement also recites that the land to be conveyed under its terms was "purchased by the seller from the Arnold heirs, in June, 1924," but does not assert that it was *all* of the lands conveyed by that deed.

Our contention is that both of the items of the description, upon which the trial Court relied, page 23, are words of identification, and not of the description of the land; and that the entire description necessarily creates a doubt as to the land intended to be conveyed, to such an extent as to justify the introduction of parol evidence to show the agreement of the parties, at the time of making contract.

"Where it is doubtful from the language used what property, or what interest in property or

what easements and appurtenances connected with the property, are included in the description in a deed or other writing, parol evidence is admissible."

22 C. J. 1270.

"Where, in a conveyance of land, a description is given which is ambiguous or variable, it is competent, by parol evidence to show that the parties at the time of the conveyance agreed upon a certain line or some monument, whereby to ascertain the line as the boundary intended."

Horner v. Stillwell, 35 N. J. L. 307.

See also *Opdyke v. Stephens*, 28 N. J. L. 83, where it is held:

"In settling a question of boundary, where there is a latent ambiguity in the description contained in the deed, or a doubt as to the true location of the lines, evidence *aliunde* is admissible to show where the lines are. Boundaries may be proved by every kind of evidence admissible to establish any other fact."

See also *Baldwin v. Shannon*, 43 N. J. L. 596;

Scott v. Yard, 46 N. J. L. 79.

Wead v. St. Johnsbury and L. C. R. Co., is a Vermont case reported in 24 Al. 361, and related to the ownership of land abutting on a highway, and involved the boundaries of land by reason of descriptions contained in various deeds. With relation to the introduction of parol evidence, the Court said:

"These deeds in effect, make the boundary of the defendant's land on the east line of the highway * * * Parol evidence was admissible not

to vary the deed, but to explain it; to show the location of the east line; to show whether the parties by the description in the deed meant one line or the other. Where a description is equally applicable to two or more objects, parol evidence is admissible to explain to which of these objects the description refers."

To obtain a definite description of the land intended to be conveyed by the agreement, it would be absolutely necessary to introduce evidence to explain the meaning of the terms used in the agreement, unless it is definitely stated by the use of the words, "One hundred and five acres, more or less, lying on the east side of Delsea Drive adjoining the property of Harry J. Jennings, on the north and the William Warner property on the south."

Proof, outside of the description in the agreement, must be produced to show location and boundaries of what is known as Zane farm, and to show that seller purchased same from Arnold heirs in June, 1924. If this is so, then it is necessary and proper for the plaintiff to introduce evidence to locate the lands described; and if this is necessary, surely pertinent evidence of the complete agreement of the parties at time of signing contract, is permissible.

Our contention is that the description in the agreement is not complete; that no perfect understanding of what was intended to be conveyed can be gained from the agreement; and that, consequently, parol evidence may be introduced, not to contradict, but to explain and clarify the meaning of the words used.

The trial Court, we contend, should have permitted the introduction of such evidence, and for this error the judgment should be reversed.

THIRD.

The Court's function is to construe the terms of written contracts, and if the construction placed on same by the trial Court is correct, the direction of a verdict was proper; if, however, parol evidence should have been permitted to explain the contract, the facts should have been submitted to the jury.

AVIS & AVIS,

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JOHN BOYD AVIS,
Of Counsel.

INDEX

	Page
Plaintiff's Petition	1
Answer	2
Verdict	5
Bill of Costs	7
Bill of the Judgment	8
Findings	9
Grounds of Appeal	13
Notice and Grounds of Appeal	14

WITNESSES

Plaintiff's	
William J. Dunne,	
Direct	10
Cross	13
Ella Dunne,	
Direct	14
Cross	18
Julia Walter,	
Direct	19
Cross	23
Loiselle Martha,	
Direct	24
Cross	29
Re-direct	30
Thomas Bealey,	
Direct	32
Cross	37
Annetta Wagner,	
Direct	38