

New Jersey Court of Errors and Appeals.

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PAUL STARRETT,

Complainant and Respondent,

and

HARRIETT G. BOYNTON, *et al.*,

Defendants and Appellants.

On Appeal

from

Chancery.

Brief for Respondent.

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The defendants admit in their answer, and it was also conceded on the trial below, that the defendant, Harriet G. Boynton, in the latter part of the year 1901, or early in 1902, placed the property known as 73 Harrison street, East Orange, in the hands of Edward E. Bruen, as agent, for sale. The delegation of this power was not in writing, but it has been held in this state that parol authority is sufficient.

Milne vs. Kleb, 17 Stew., 379.

Mr. Bruen says that both Mr. and Mrs. Boynton were present and gave him the particulars of the property (p. 59 printed case.)

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Mrs. Boynton acquired title to the main property from Martha A. Stockton and Dr. Charles S. Stockton, her husband, in 1897. The property then had a frontage on Harrison street of seventy-five feet and a fraction, running westerly on the south line 140 feet, to a property then owned by the Dennis family. The line then ran northerly along the Dennis property parallel with Harrison street 65 feet, then westerly

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about 135 feet to within six feet of the stable on the rear of the property, then by various courses around the stable and returning about 300 feet, to Harrison street; the last course forming the northerly boundary line of the property as purchased from Stockton.

10 In July, 1899, the Boyntons purchased from Susan L. Palmer a lot immediately adjoining the property purchased from the Stocktons on the north, being 25 feet front on Harison street, running back the entire depth of the property. With this added land, the Boyntons had a frontage of 100 83-100ths feet on Harrison street.

The Stocktons at the time they sold to Boynton owned the property immediately adjoining on the south where they lived, which ran to Berwyn street, and had a depth of 140 feet, terminating on the west at the property then belonging to the Dennis estate.

20 In August, 1899, the Boyntons purchased the Dennis property, which is located on the north side of Berwyn street (then called Dennis place or street). This property was bounded on the east by the Stockton and Boynton places, and on the north by the rear lot of the Boynton property, purchased by the Boyntons from Stockton. At the time the Boyntons purchased from Stockton there was a wooden fence and hedge on the line between the Dennis and Stockton properties. (p. 117.)

30 Five months after the Boyntons acquired the Dennis property they took down the entire wooden fence and hedge, and put up on iron fence and reset the hedge, running it across the entire easterly side of the property bought from Dennis, to Berwyn street, but on a line 10 80-100ths feet further west than the old fence had stood, and also continued the new fence and hedge across the northerly portion of the Dennis property, placing it about 15 feet southerly of the old fence and property line. (pp. 116 and 119.)

40 The effect of these changes was to give an apparent depth of 150 feet to both the Stockton and Boynton

Harrison street house lots, and an increased width of 15 feet to the rear lot of land used by the Boyntons as an approach to their stable.

These changes Mrs. Boynton testified were made about five months after they purchased the Dennis property (p. 129), which was in August, 1899 (p. 143), so that the fence lines must have been changed about January, 1900; and at the time the property was placed in Mr. Bruen's hands for sale in the latter part of 1901 or the early part of 1902, the fences and hedge along the disputed strip had been in their present location for upwards of two years, and had been there four years and eight months when Starrett purchased. 10

Mr. Bruen, the acknowledged agent of the Boyntons, testified that when he was commissioned by them to sell this property, he asked, among other things, the dimensions of the property, and was told by both Mr. and Mrs. Boynton that there was a frontage of 100 feet on Harrison street and about 150 feet in depth, or running back to the hedge; that he made a memorandum of this data (pp. 58, 59), which was afterwards copied by his clerk on a card, which is his office system of booking or listing properties placed in his hands. 20

Mr. Keating, the clerk, testified that he filled out the card from Mr. Bruen's memorandum, and that no changes had been made in the card from the day it was written to the present time, excepting a notation showing a reduction in the selling price of the property, and this was made by him at Mr. Boynton's suggestion. (pp. 75-76.) 30

Mr. Bruen also testified that the card was correctly made from his memorandum. (p. 59.)

The card, Exhibit C 3, reads: "Size lot 100 x about 150 alg. hedge and stable."

The Boyntons took up their residence in the Harrison street property at the time of their purchase from Stockton, and remained there until January. 40

1902 (p. 90), when they rented the property to a Mr. Newhouse (p. 90).

The Boyntons, in addition to shifting the fences over on the Dennis property, made other important changes in the grounds by enlarging the size and shape of the drive as it approached the stable. (p. 117.) They carried the drive over on the disputed strip for a distance of 50 feet and gradually widened it into a circular shape at the stable, where it is $4\frac{1}{2}$ feet on the disputed strip. (p. 49.)

Boynton says (p. 117) they extended the drive over on the disputed strip. "We had that dug out and graveled." The drive is macadamed up to the stable (pp. 34-35), and the macadam extends over on the disputed strip (pp. 35 and 47-48).

The hedge is 4 feet high and 3 feet across the top (pp. 119-120), and the iron fence is against the hedge. (p. 36.)

The Boyntons, after they moved the hedge and erected the iron fence, built a lattice trellis six or eight feet high on the disputed strip, as a screen for the manure pit. The screen has remained there ever since. (pp. 117-118.)

On the morning of Monday, September 19, 1904, (pp. 152-153), Mr. Bruen, still being the agent of the Boyntons, took the complainant to examine this property, with a view of selling it to him. Mr. Bruen, with the consent of the tenant, Mr. Newhouse, showed the complainant through the house, barn and grounds. The complainant says, "Bruen called my attention especially to the nice backyard and the barn and the little garden, and called my attention to the hedge on the west and south." (p. 46.)

Complainant was asked (p. 46):

"Q. Did you see an iron fence enclosing any portion of the property? A. I don't know that I noticed any iron fence. I just noticed the hedge, and was told that the hedge was on

the property and was the boundary line of the lot.

Q. Is there an iron fence? A. There is.

Q. Behind the hedge? A. Yes.

Q. In viewing this property is there anything other than this fence and hedge indicating the property line? A. No, sir."

From Mr. Bruen's examination (p. 60) :

"Q. Well, now, in showing Mr. Starrett the grounds, did you define the property lines? 10

A. I did.

Q. In what way? A. I showed him the frontage, of course, which he could pace off if he wanted to, and I think he did, and then the depth; we went along the hedge; Mr. Newhouse accompanied us.

Q. No, I merely want to know what you showed Mr. Starrett and told him.

A. I told him the property was bounded on the east by Harrison street and on the south by Dr. Stockton's, and on the west by the hedge and along the west of the hedge and following the hedge back to the stable, and including the stable. 20

Q. And did you show him those boundary lines that you have spoken of? A. Yes, sir.

Q. On the ground? A. Yes, sir."

So that what Starrett saw was a property running to the hedge and iron fence as the visible boundary lines at those points, besides being told emphatically by Bruen that those lines defined the boundaries, and it was the property he supposed, and had every reason to believe, he was dealing for. 30

The Boyntons held the property at \$25,000 (p. 61). Starrett, on the morning the property was shown to him, offered Mr. Bruen \$20,000. This offer was submitted by Bruen to Boynton the same morning at Bruen's office (p. 61). Boynton refused Starrett's offer, but told Bruen he would split 40

the difference and accept \$22,500. This figure was submitted to Starrett and he agreed to take the property at that price, the existing mortgage liens amounting to \$14,000, to be assumed by Starrett as part of the consideration. (p. 52.)

10 Bruen asked Boynton to give him a description of the property, and Boynton brought him three deeds and a guaranty by the Fidelity Company. When Boynton brought these papers to Bruen, the latter asked Boynton if they covered the property he was selling to Mr. Starrett, running back to and including the hedge, and Boynton said they did. (pp. 62 and 74.)

20 Bruen then prepared a description from the papers that had been given him by Boynton and took the papers and the description to Mr. Reimer, a surveyor, for the purpose of having the description verified, as it was somewhat involved. Mr. Reimer informed Bruen that the description included all the property shown by the papers. (p. 62.)

30 Bruen, on September 20, 1904, being the day after the property was shown to Starrett, prepared a contract for the sale and purchase of the property, using the description he had drawn, which contract was executed first by Mr. Starrett at his office in New York, and was signed that night by Mrs. Boynton at her house (p. 63). Mr. Bruen testified that Mrs. Boynton did not look at the agreement at all, but that her husband read it and told her to sign it, as it was all right (p. 64). Mrs. Boynton said, however, that she read the paper, looking at it over her husband's shoulder; that they both looked at it together (p. 134).

The contract bears date September 20, 1904.

40 Mr. Starrett says (pp. 51-52) that when Bruen offered the agreement to him for his signature, he looked to see if the frontage was correct, as Bruen had been indefinite as to that line. He noticed the description called for 100 feet and 10 inches front, but he did not attempt to follow the balance of the description, as it

was very confusing and unintelligible. But he did ask Bruen if it was the description of the property he had shown him, and Bruen said it was. Bruen corroborated this (p. 75).

On cross-examination, Mr. Starrett testified (p. 56) that the reason why he looked at the deed (he meant agreement) to see that the 100 feet and 10 inches (front) was a correct dimension, was because every other dimension was indicated when the property was shown to him. "I only looked for the frontage," he says, "because that was the only boundary line that was left indefinite when I talked with Mr. Bruen."

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At Starrett's request, Bruen had the Title Company examine and guarantee the title (pp. 53-54 and 55).

The deed, Exhibit C 6, was prepared by Mr. Bruen, who used the same description as was used in the agreement. The deed was dated and executed September 30, 1904, Mr. Bruen taking the acknowledgment (p. 160). The title was passed the next morning, Saturday, October 1, 1904, at the Title Company's office in Newark. Mr. Starrett did not attend at the passing of the title, but sent his check to Newark by a messenger for the balance of the purchase money, and the deed was sent by the Fidelity Company to the Register's office that morning, for record (p. 151).

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Less than three months after Starrett had acquired the property, he received a letter written by Mr. Boynton, bearing date December 2, 1904, asking him whether he wished to purchase "the land running from the driveway to your stable and the fence line, 1 Berwyn street, 14x135; also the 10 ft. by about 36 on the rear of your house lot. The fences on 1 Berwyn St. are now on property 125x130, and when put back where they belong, would be 135x144."

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Starrett replied to Mr. Boynton, saying he was very much astonished to get a letter asking him to buy what he thought he had already bought, and he would have the ground surveyed and find out where he stood, before he replied further. Starrett had the property

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10 surveyed and found that the strip in question had not been transferred to him, nor included in the description in the agreement. Mr. Starrett then saw Bruen and asked him to take the matter up with Boynton and see if it could not be straightened out. Bruen wrote Boynton (Exhibit C 2, p. 65) under date of January 5, 1905, telling him that Mr. Starrett had recently discovered through a survey that he had not secured all the land he had bought, and requesting Boynton to give Starrett a deed for the omitted portion. Boynton refused to do this, and the present suit followed.

20 It is contended by the complainant, and the evidence establishes beyond a doubt, that the Boyntons intended from the time they set the fences at their present location, that the strip in question should become and remain a part of the Harrison street property. A view of the premises is in itself almost sufficient to determine the question.

The witnesses all agree that all of the surroundings indicate to the eye, that the property line runs to the hedge and iron fence. The macadam drive, as it approaches the stable, extends over on the disputed strip for a distance of 50 feet in length, and at the stable it is $4\frac{1}{2}$ feet over.

The lattice trellis screening the manure pit is on the disputed strip, and is 7 or 8 feet high.

30 When the Boyntons occupied the Harrison street property they kept horses, and Boynton testified (p. 118) that when they laid out the drive, as shown on Exhibit C 1 it was arranged for their convenience in the use of the stable. That before the fences were moved he had to turn his carriages around inside the stable, and he broadened the drive and made more of a sweep both ways so that he could turn his rigs around outside the barn (pp. 126-127).

40 In order to broaden the drive on the south side, he was obliged to move the fences over on the part now in dispute.

Mrs. Boynton tells us (p. 138) that the object in changing the fence lines was "to make our Harrison street property a little more commodious, give us a little more room, * * * * " And (p. 148) that when the fence was moved, they always expected to live in 73 (the street number of the Harrison street property).

Mr. Reimer testified (p. 35) that the north line of the disputed strip, where it terminates in front of the stable, extends up on the wooden platform leading into the stable, and Mr. Starrett gives this encroachment as 6 inches (p. 48). Now, it is undoubtedly a fact that when the Boyntons moved the fence they also enlarged this platform, otherwise the old fence, if it followed the exact property line, would have been on the platform, which is not at all likely.

Mr. Newhouse occupied the Harrison street property from January, 1902, and remained for a year and nine months (p. 41), or until October, 1904, the same month that Mr. Starrett took possession. Mr. Newhouse used the land included within the disputed strip and kept the hedge trimmed and the grass cut up to the hedge, and was told by Mr. Boynton that he would have to see that the hedge was kept trimmed. Mr. Newhouse also had an option to purchase the property during his term. When he was first shown over the premises by Mr. Bruen (who at that time had the property in his hands for sale), Mr. Boynton accompanied them in viewing the property, and Newhouse talked about purchasing the property, and Boynton told him that the hedge was the property line (pp. 42-43).

While the testimony of Mr. Newhouse was very brief, we regard it important for the reason that no attempt was made to contradict it.

The evidence of Mr. Bruen regarding the dimensions of the property he was instructed to sell, is positive and clear. The record of the instructions as noted on the card made at the time, leaves it in no

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doubt that he was expressly authorized to sell to the hedge and along the hedge to the stable. Mr. Bruen swears that both Mr. and Mrs. Boynton gave him those instructions. Someone familiar with the depth of the main house lot certainly talked with Mr. Bruen about the distance from Harrison street to the hedge when the property was first placed on his books, as the entry on the card says: "Size lot 100x about 150 and alg. hedge to stable." The distance from Harrison street to the fence and hedge on the south line is 150 80-100ths feet, and the fact that there is a fractional part of a foot in that line accounts for the word "about" in Mr. Bruen's record. It has not been shown that Mr. Bruen had any knowledge of the property before the Boyntons called to see him about selling it. He could not have obtained the dimensions of the depth as recorded on his card from his atlas, as that showed the property only 140 feet deep on the south line. The Boyntons did know the dimensions and undoubtedly gave Mr. Bruen the information, just as he has stated.

While Mrs. Boynton was the holder of the record title to the Harrison street property, and is still the holder of the record title to the Berwyn street property, she swore, after some equivocation, that not a dollar of her own money was invested in either of the properties, but that her husband furnished all of the money to purchase both (pp. 141-142).

This accounts for the prominent part Mr. Boynton played in the negotiations and sale to Starrett. He was simply dealing with his own property—and some of the checks given by Mr. Newhouse for rent, were drawn to the order of Mr. Boynton (p. 44).

Mrs. Boynton entrusted the negotiations with Starrett (through Bruen) entirely to her husband; she did not meet or speak to Bruen on the subject at all, except when he called to have her sign the contract after the deal had been closed by her husband (p. 134).

The action of Mr. Boynton in changing the lines of this property on Bruen's atlas, indicates clearly that

at that time it was his intention to include the disputed strip if the sale should be made to Starrett.

Mr. Bruen telephoned to Boynton on the evening of September 18, 1904, (pp. 152-153) which was Sunday, that he intended showing the property to a party the next morning and requested Boynton to be at his (Bruen's) office and meet Mr. Starrett. The next morning, September 19, Boynton called at Bruen's office (p. 78) and told Keating, Bruen's clerk, that Bruen had telephoned him (Boynton) that morning, that he (Bruen) and another gentleman, a prospective purchaser, would examine the Harrison street property that morning; that he (Boynton) had looked out of the window and saw them there, so he hurried down in order to give him (Keating) any details or information he could to help out on the lines of the property. Boynton then got out Bruen's atlas and drew a lead pencil line across the rear of the Harrison street and Stockton property west of the original property line, saying, "It is understood the line is to the hedge," and he also drew a red ink line around the remainder of the property, saying, "I will make this more prominent" (p. 79), following relatively the ~~hedge or iron fence~~ lines *of all the property they owned on both streets.*

On cross examination Keating was asked (p. 82):

"Q. Will you repeat or state what Mr. Boynton said to you when he drew the pencil mark on the westerly side of this property and on the southerly side? A. He said this is the hedge or dividing line between my Berwyn street property and No. 73 Harrison street, and continued running parallel with the driveway.

Q. And what conversation did he have with you as to the depth? A. To the hedge.

Q. Well, now, to the hedge doesn't mean anything. I am asking you what conversation did he have with you, if any, with regard to the depth? A. (p. 83) He merely referred to the hedge as the dividing line between the two

properties, and Mr. Starrett would buy to that if he bought at all.

Q. Are you positive, Mr. Keating, that Mr. Boynton told you at that time that Mr. Starrett was to buy to the hedge? A. He outlined it on the map.

10 Q. I am asking you what he said, not what he did, but what he said? A. He said the hedge was the dividing line and he came in for the purpose of giving us the exact lines on the map."

The witness reiterates this on pages 84, 85 and 86 of his testimony.

Boynton, of course, denies that he had this conversation with Keating, but admits that he was at Bruen's office and made the changes on the atlas or map.

He says (pp. 87, 88 and 89) that he "put the lead pencil marks to indicate where the fences were."

20 He could have had no other object in doing this except to indicate the boundaries of the property he thought would be sold to the prospective purchaser.

If it was not the intention to sell back to the hedge, then there was no necessity for Boynton making any changes on the atlas at those points, as the atlas showed the Harrison street property as having a depth on the south line of only 140 feet, the depth which he now says they intended to sell.

30 While Boynton had sworn positively that he went to Bruen's office with no knowledge that any one was looking at the property that morning, he admitted in answer to the question of the court (p. 107) that he "was acquainted with the fact that the property was being negotiated for," and that the person afterwards turned out to be Mr. Starrett. He had that information from Mr. Bruen over the telephone (pp. 107, 108 and 109).

40 The Court continued questioning the witness to some length on pages 109, 110 and 111 about the alterations on the atlas.

“Q. (p. 110) I don't quite understand why you ran that line around both properties.

A. For the simple reason that on the map both properties were marked in the name C. D. Boynton. The initials were incorrect, if it was intended for my name, and the fact that since that map was prepared, as I understand it, the Palmer property, including that 25 feet, appeared in the name of Palmer, *and in case he would have occasion to show that map*, I wanted to have him see what the outlines of the Harrison street property were, and in showing that the fence lines were off the property between the Harrison street property and the Berwyn street property, running in the rear of the house, was 140 feet in depth, whereas the fence line, as shown there, would show that they were some 150 feet in depth.”

What he did was to make the map correspond with the conditions as they existed on the ground, and exactly what he intended the map should show in case Bruen had occasion to refer to it in his dealings with Starrett. He expected Bruen would bring Starrett to the office that morning, as he had telephoned him the previous evening he intended to do, and Boynton altered the lines on the atlas for the purpose of showing Starrett the real property lines. He could have had no other object.

The recklessness with which Boynton gave his testimony runs through his whole narrative. As a sample, on page 105 he swore that when he went to Bruen's office the morning he altered the atlas, he was not aware that Bruen had shown the property to anybody, while three pages further on (pp. 108-109) he testifies that Bruen had telephoned him Starrett's offer two or three days before the marking on the atlas occurred.

Boynton's visit to Judge Dill for the purpose of securing a release of the strip in dispute, from the

Judge's mortgage, is one of the strongest pieces of evidence in the case showing an intention on the part of the Boyntons to include the strip in the sale.

10 Judge Dill testified (p. 30) that one evening in September, 1904, prior to the date of the contract with Starrett, Boynton called at his library and stated that he contemplated selling the (Harrison street) property through Mr. Bruen to Mr. Starrett, and asked if he (the Judge) would release so much of his mortgage as laid upon the Berwyn street property, that is, so much of the Berwyn street property overlapping the hedges, and the Judge says he declined to give the release.

“Q. Didn't you say you would release if he would pay you what the release was worth?”

20 A. Oh, there was something of that sort discussed, but there was never any difference between us; we were entirely friendly, and I preferred not to split up my mortgage or reduce it.

Q. Didn't Mr. Boynton say that he had sold the property to Mr. Starrett?

A. No, sir; I think I have included all he said in my description of the conversation. I think he said he contemplated doing it. *He told me the contract had not yet been drawn.*

30 Q. You cannot fix the exact date of that conversation?

A. I only fix it by the statement *that the contract had not yet been drawn.*”

40 It was attempted to be shown on cross-examination of Judge Dill that Boynton's visit that evening was for the purpose of securing his wife's release on the bond accompanying the mortgage, which Judge Dill held on the Harrison street property. This attempt not only met with a complete failure, but strengthened the Judge's testimony given on the direct examination. The cross-examination proceeded as follows (p. 31) :

"Q. Judge Dill, do you remember if Mr. Boynton called to ask you to release Mrs. Boynton on the Harrison street property that night?

A. The same night?

Q. Yes.

A. It was a subsequent night, sir.

Q. What was the conversation, Judge, if you can recall it?

A. Well, if you want it, Mr. Davis, the Colonel came to see me and said that he had—that *the necessity for releasing the property was now a past matter, had gone by; he said he had entered into a contract with Starrett to sell him the property as originally deeded to him on Harrison street, and that Starrett would assume the mortgage on the Harrison street property, and that I need not bother about the mortgage on the Berwyn street property, and that he would pay it off when he got his money from Starrett.* 10 20

Q. Now, what was said about releasing Mrs. Boynton on the bond on the Harrison street property, if you recall?

A. *Why, nothing was said about releasing her on the bond, that I recall. He simply stated that Mr. Starrett would assume the bond and mortgage on the Harrison street property, and he asked me to do what I did, write Mr. Starrett a letter that I would be satisfied to allow the mortgage to remain at least a year, provided he (Starrett) formally assumed it, and the payment of both the bond and mortgage in the deed of conveyance to him by Mrs. Boynton.* 30

He told me, the witness says, "*that the necessity for releasing the property was now a past matter and gone by.*" Then there must have been a time when Boynton considered the release necessary to carry through his deal with Starrett. But how was the 40

necessity removed? Why, the defendants had succeeded in tricking Starrett into paying \$1,000, and in agreeing in writing to take less land than he had bought and supposed he was getting. They both knew that Starrett believed the agreement contained all the property they were pretending to sell to him, and they thought either that they had Starrett where he could not escape, or, if their deception was discovered
 10 before the title passed, they would be able to make better terms with him than the agreement called for.

That the Boyntons had in mind the permanent separation of the entire strip along the hedge from the Berwyn street property, is shown by the testimony of Mrs. Boynton, who stated that there were some negotiations between Boynton and the Stocktons regarding a sale to them of the strip, between their westerly line and the hedge (pp. 147-149). Boynton also told Bruen that there was some arrangement with
 20 Dr. Stockton for the purchase of the ten feet along his rear. This went so far that Bruen made an appraisal of the strip (pp. 164-167), and both Dr. Stockton and Boynton told Bruen that Dr. Stockton was to have a deed for it.

Before Boynton visited Judge Dill, I am satisfied that both he and his wife intended to include the whole property in their sale to Starrett. Up to that time they probably were honest, but when they found that Judge Dill would not release his mortgage covering
 30 the strip, and fearing that the sale would fall through, they conceived the scheme of withholding from Bruen a proper description, and wilfully lied to him when they represented that the papers they gave to him covered the entire property. I include Mrs. Boynton in this denunciation, because she swore (p. 144) that she knew what papers were given to Bruen for the purpose of drawing the agreement.

In order to entrap Starrett, the defendants were obliged to deceive Bruen, for they knew very well that
 40 if they intimated to him what their scheme was he

would expose them and the sale would probably fall through.

The Boyntons were very anxious to effect a sale of the Harrison street property. This is shown by their dropping from \$25,000 to \$22,500, rather than lose a customer. Besides, Judge Dill was pressing them to pay his mortgage.

If the Boyntons had been honest, they would have called Mr. Starrett's attention to the fact that it was not their intention to include the strip in the sale. They not only said nothing to Mr. Starrett, but designedly permitted their agent to prepare an agreement and deed under the belief that the description furnished him by them included the whole property, when they knew the contrary. 10

The Court below must have been impressed with the iniquity of the transaction, when, at page 124, it put this question to Boynton:

"Well, I still don't understand, Mr. Boynton, why, when you were selling this property to Mr. Starrett, you did not propose to him that he should buy the property as it was inclosed by the hedges?" 20

If Boynton had wished to give the true reason, he would have answered:

"Because I had managed to trick Mr. Starrett into signing an agreement which omitted a valuable part of the land, and we hoped to force him to pay a big price for it later on." The very thing they did undertake to do. 30

The defendant could with just as much reason have furnished a description which would have omitted the stable and the land on which the stable stands, and then have endeavored to compel the complainant to pay an additional sum, if he wished to acquire it.

The stable is not more conspicuously a part of the property than the land up to the hedge.

Boynton denied that he asked Judge Dill to release the strip in question. Of course he did not dare admit 40

that he went to Judge Dill's library for that purpose.

10 Boynton said on his direct examination, that the object of his visit to Judge Dill was to ascertain whether the Judge would release Mrs. Boynton on her bond, and that this conversation occurred several months prior to the sale of the Harrison street property (pp. 97-98), and *before he knew that they were going to sell it*. On his cross-examination, however, he swore that the request to Judge Dill to release his wife on the bond was when Mr. Bruen informed him that Starrett would not sign a new bond, and this was after the agreement of sale had been executed (p. 101).

(By the Court). (p. 101). "I don't quite understand why you went to see Judge Dill."

20 The long-drawn-out answer of the witness to this question, and the answers given by him to the subsequent questions of complainant's counsel, in his laborious effort to give some rational explanation of why he went to see Judge Dill, involved the witness in a maze of contradiction and falsehood only too apparent.

30 He says he made two visits to Judge Dill, the first, to ask him to release the strip—this was before the agreement had been signed—the second visit, when he told Judge Dill that the contract had been signed and he would not need the release, but asked the Judge to write Starrett saying he would extend the time for payment of the mortgage one year, if Starrett would assume it. Nothing was said, Judge Dill testified, by Boynton on either of Boynton's visits, about releasing Mrs. Boynton on her bond.

It was argued in the Court below that if complainant had procured a survey of the property before he took the deed, he would have discovered that the strip in dispute had not been included in the agreement, and that, for this failure, he was chargeable with negligence.

40 It is conceded that it would have been more prudent had complainant secured a survey, but he got no sur-

vey and he employed no one to look after his interests, because, as he says, he relied on the good faith of the parties he was dealing with (p. 54). In other words, he believed that the defendants were honest and trusted them accordingly. That he was mistaken in his estimate of them cannot now be used to his disadvantage.

In the case of *Lloyd vs. Hulick*, decided in this Court, May 19th, 1906 (63 Atl. 616), Chief Justice Gummere said, "In the transaction of business, men ordinarily deal with one another in the belief that each is honest. If the opposite belief prevailed in such dealings, attempted frauds would rarely be successfully carried into execution and the Courts would seldom be called upon to grant relief against them. Failure to discover an intended fraud before it has been actually perpetrated must necessarily exist in every case where the Courts are appealed to to relieve the wronged party from its effects; and the fact that the exercise of a greater degree of prudence on the part of him who has been defrauded, would have prevented the fraud from being successfully carried through, affords no ground for refusing relief." 10 20

Where owners establish visible property lines, and offer their properties for sale by those boundaries, a buyer certainly has the right to rely upon the statements of the owner that the land extends to those boundaries; and if it turns out that the buyer, through the fraud of the seller, receives less land than he bargained for, a Court of Equity should compel the fraud doer to convey the omitted portion. 30

This was substantially the rule laid down by the late Vice-Chancellor Van Fleet in the case of *Megie vs. Bennett*, reviewed by this Court as reported in 6 Dick. at page 282. The opinion of the Vice-Chancellor is quoted by the Appellate Court, from which we take the following extract:

"If the vendor and vendee go upon the land which is the subject of their negotiations, and the vendor 40

point out to the vendee the boundaries of the land, so that the one sells and other buys, upon a view and practical location of the land, and the conveyance subsequently made, in consequence of either mistake or fraud, embraces more or less land than the vendor pointed out, the injured party has a right to have the conveyance reformed and made to conform to the intentions of the parties."

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There was a modification of the decree in this Court, but the correctness of the declaration of the learned Vice-Chancellor above quoted, was not questioned.

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In *Smith vs. Negbauer*, 13 Vroom, 305 (N. J. Sup. Ct.), the deed called for more land than the grantor owned. In an action on the covenant of ownership, setting up a want of title beyond a fence enclosing the property, it was held that this fence formed a *visible boundary* of the property conveyed, and controlled the distance in feet as expressed in the deed, and that consequently there was no breach of the covenant.

We respectfully submit that it has been clearly established by the evidence adduced in this case:

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First. That the disputed strip of land was taken out of the Berwyn street property by the defendants and made a part of the Harrison street property with the intention of annexing it permanently and including it in any disposition that they might make of the Harrison street property.

Second. That as laid out and established by the defendants, the visible boundary of the Harrison street property is the hedge and iron fence at those points.

Third. That the defendants authorized their agent Bruen to include the land back to the hedge and iron fence in any sale he might make.

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Fourth. That the agent exhibited the property to the complainant and assured him that the lines ran to the hedge and iron fence; and the agent having full power, sold to the complainant the property including the land to the iron fence and hedge.

Fifth. That the defendants gave their agent a description which they represented to him covered the property to the hedge, and the agent made out the agreement of sale and deed, believing that all of the property was included in that description.

Sixth. That the complainant signed the agreement for sale, took the deed and paid the price, under the belief and assurance of defendants' agent, that he was receiving a conveyance of the entire property exhibited to him by Bruen, the agent. 10

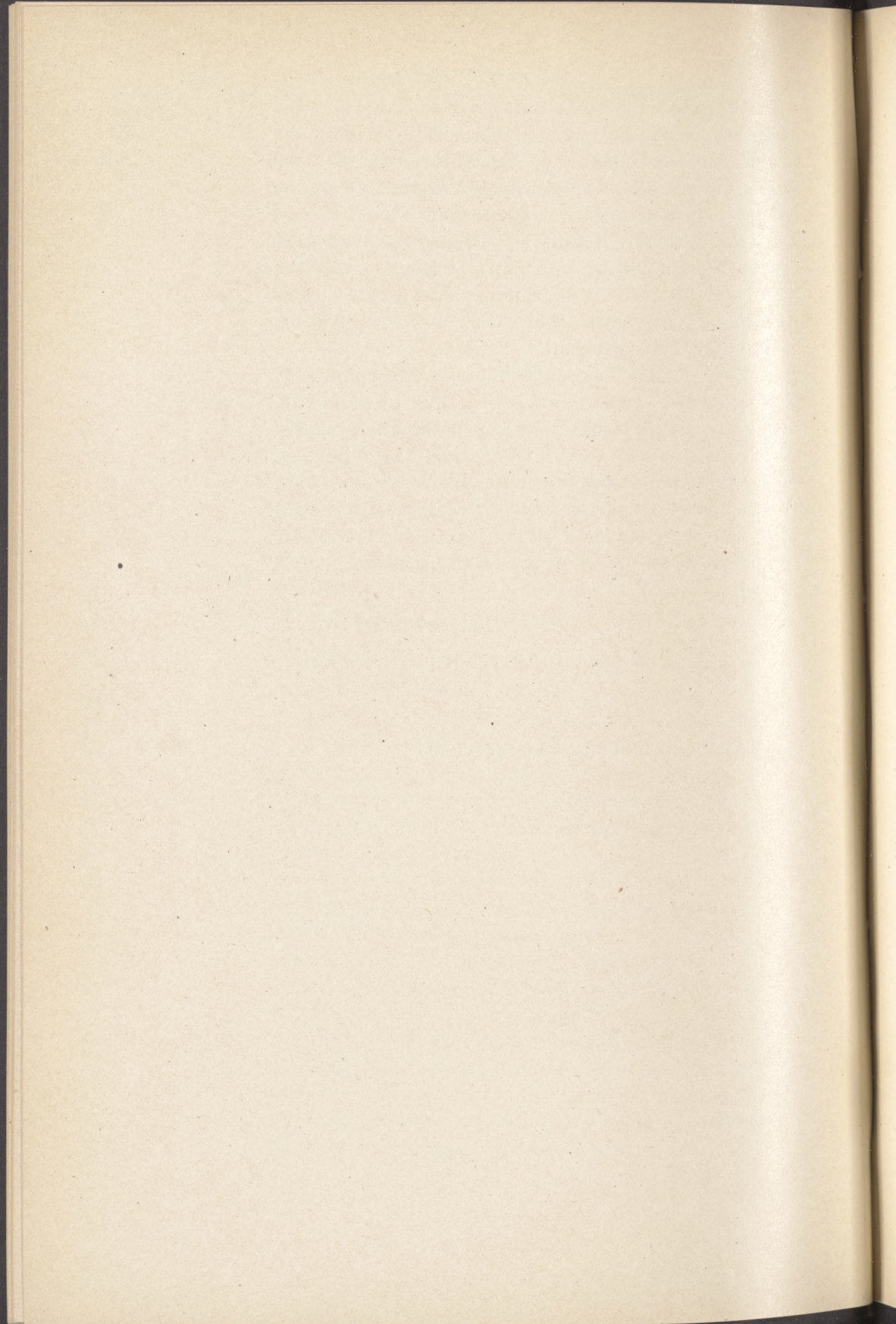
Seventh. That the defendants, knowingly and with a preconceived intention of defrauding the complainant, gave to their agent a description of the property which did not embrace all the land they had empowered him to sell, and knowing also at the time that the agent had bargained with the complainant for all of the property enclosed by the fences and hedges.

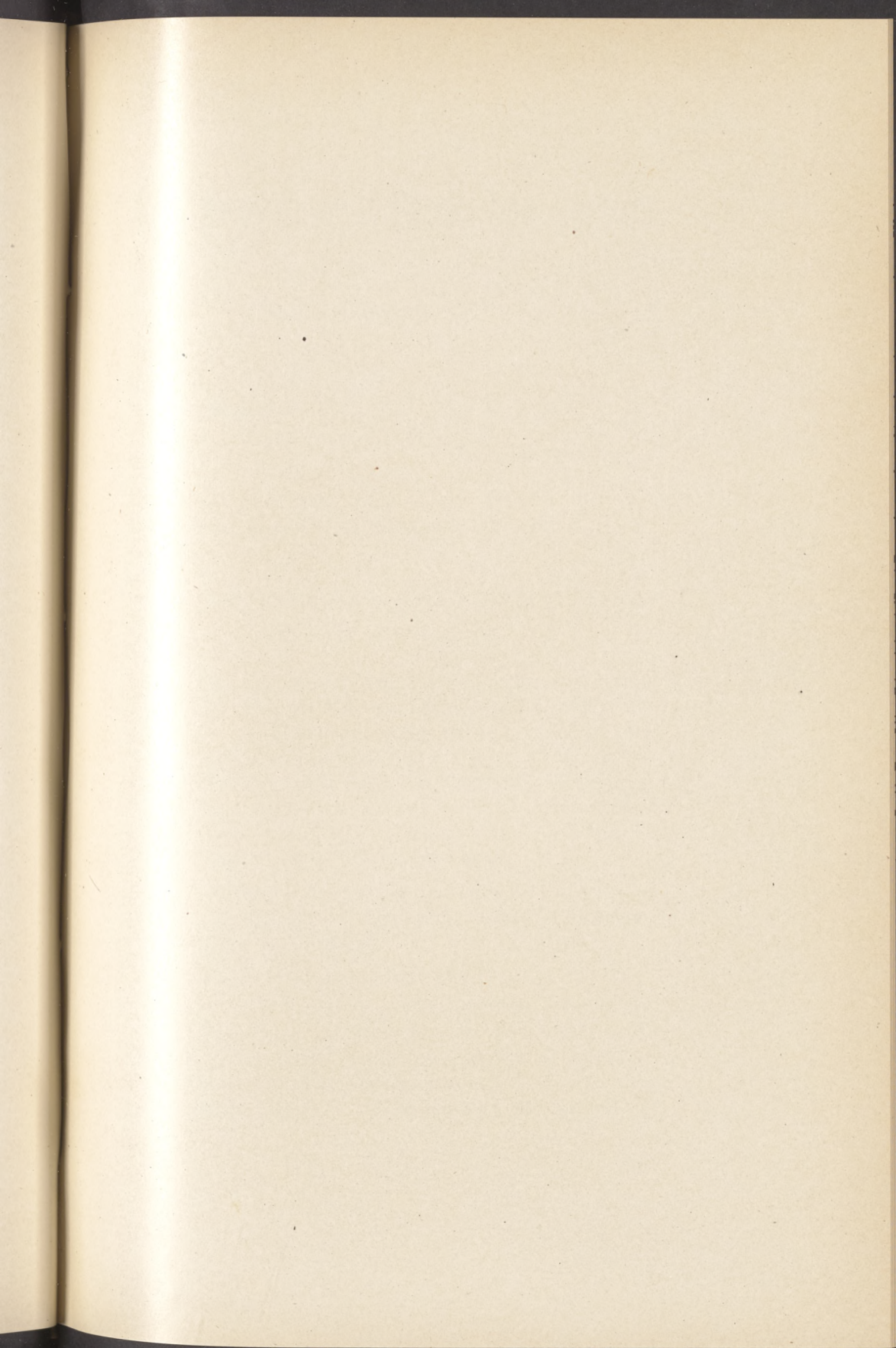
Eighth. The decree appealed from should be affirmed. 20

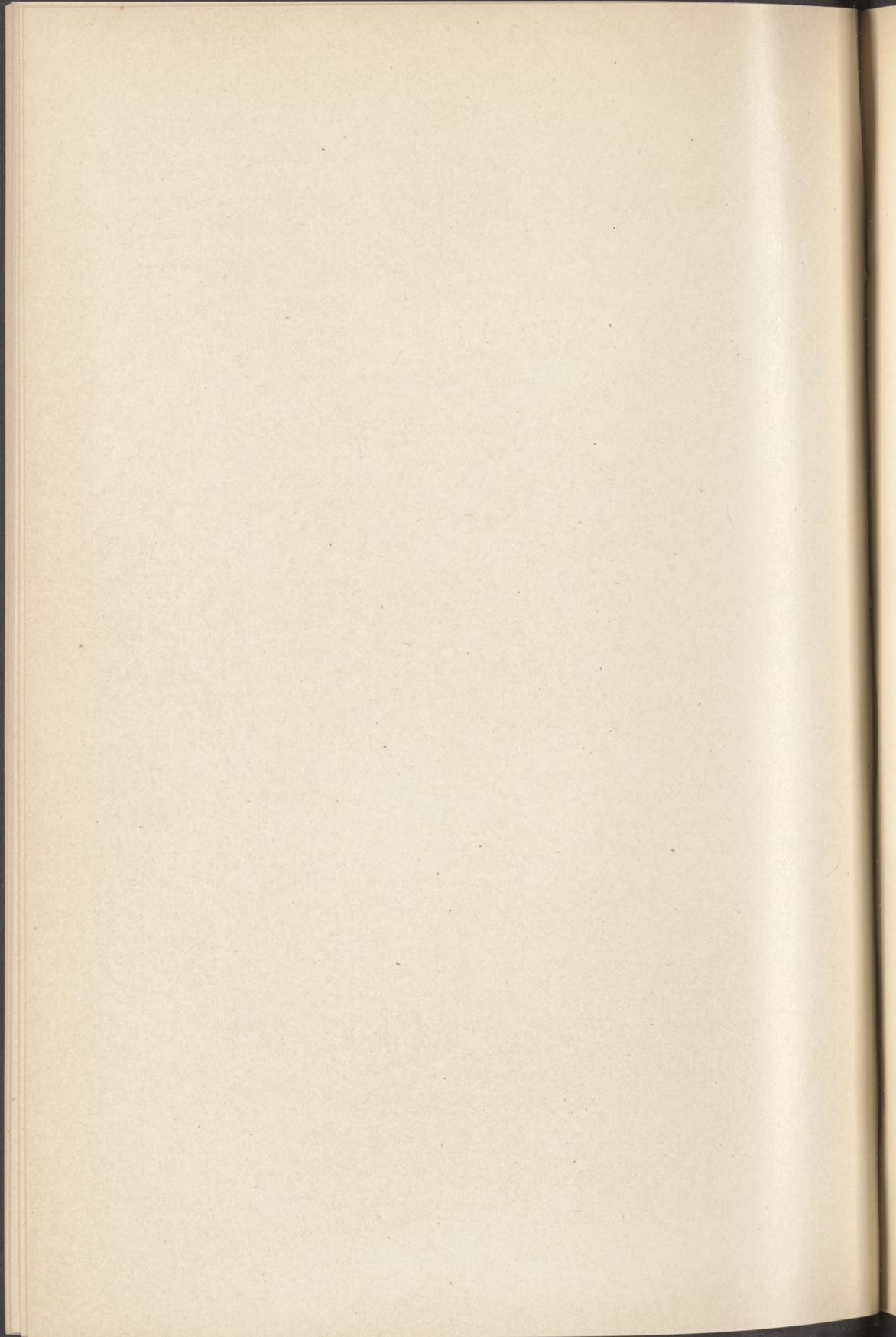
GUILD & MARTIN,
Counsel with Respondent.

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New Jersey Court of Errors and Appeals

November Term, 1907.

Between

PAUL STARRETT,

Complainant (Respondent),

and

HARRIET G. BOYNTON, *et al.*,

Defendants (Appellants).

On Bill, etc.

BRIEF OF EDWARD M. COLIE FOR DEFENDANTS-APPELLANTS.

This bill is filed to reform the description in a contract in writing for the sale of real estate, which description is by exact metes and bounds, so as to conform to the terms of an *alleged oral agreement*, and to reform the deed containing the like exact description by metes and bounds, delivered, received and recorded in consummation of said contract, so as to conform to the terms of the *alleged oral agreement*.

The premises sought to be included by the Bill in both the agreement and the deed are described on page 8, paragraph X, of the Bill.

The Bill is based on mistake and fraud.

The decree of the court, p. 172, decrees a conveyance of the property by the defendant to the complainant, *but not the property either in substance or effect as prayed for in the Bill*, and the decree does not by any of its terms declare a reformation of the agreement

in writing between the parties. It decrees performance of what it fixes to be the oral contract between the real estate agent, acting for the defendant, and the complainant, ignoring entirely the written contract actually entered into and delivered between the parties, in strict conformity to which a deed was made, executed and delivered in consummation of that contract; and the decree is based on a finding of mistake or fraud.

The rule as to the measure of proof necessary to establish mistake to be used as a basis of reformation and specific performance is thus laid down in this Court:

I.

“UNTIL A MISTAKE HAS BEEN ESTABLISHED WITH SUCH FORCE OR PROOF AS LEAVES NO RATIONAL DOUBT OF THE FACT, NO CHANGE IN THE WRITING SOUGHT TO BE REFORMED IS ENTITLED TO BE CALLED A CORRECTION.”

The above is taken from *Green vs. Stone*, 9 Dick, 387, at p. 399.

The measure of proof is fully and well stated by Pomeroy, Séc. 859, and quoted by Vice-Chancellor Pitney with approval, in *Hupsch vs. Resch*, in 18 Stew., 657 at p. 663. That language is as follows:

“The authorities all require that the parol evidence of the mistake and of the alleged modification must be most clear and convincing, in the language of some judges, ‘the strongest possible,’ or else the mistake must be admitted by the opposite party; the resulting proof must be established beyond a reasonable doubt. Courts of equity do not grant the high remedy of reformation upon a probability, nor even upon a mere preponderance of evidence, but only upon a *certainty* of the error.”

THE PROOF IN THIS CASE, IF THERE WERE NO LEGAL OBSTACLES IN THE WAY OF GRANTING THE RELIEF PRAYED FOR, DOES NOT IN ANY MEASURE APPROACH THE STANDARD REQUIRED.

The evidence in the case shows, that Harriet G. Boynton, wife of Charles B. Boynton, placed a certain parcel of land in the City of East Orange, in the hands of one Bruen, a real estate broker, for sale. Bruen in the capacity of such real estate broker, secured as purchaser of the property the complainant in this case, Paul Starrett. Having secured the purchaser and after some negotiations having brought the parties to an agreement as to the price, Bruen applied to Boynton for a description of the property to be put into a written agreement. Boynton, in pursuance of such request, furnished Bruen with deeds and a policy of title insurance covering the property which Mrs. Boynton was willing to sell. A sketch of the property was made up from these papers by Bruen and, after being approved by a surveyor as correct, a description made therefrom was incorporated into a written agreement, which was signed by both parties. This agreement was dated September twentieth, Nineteen Hundred and Four. A deed of the property, according to the description contained in the agreement of sale, was executed on September thirtieth, Nineteen Hundred and Four and duly delivered and recorded. All of the negotiations were oral and were carried on between the parties through the said Bruen, and the complainant at no time saw or spoke with the defendants personally.

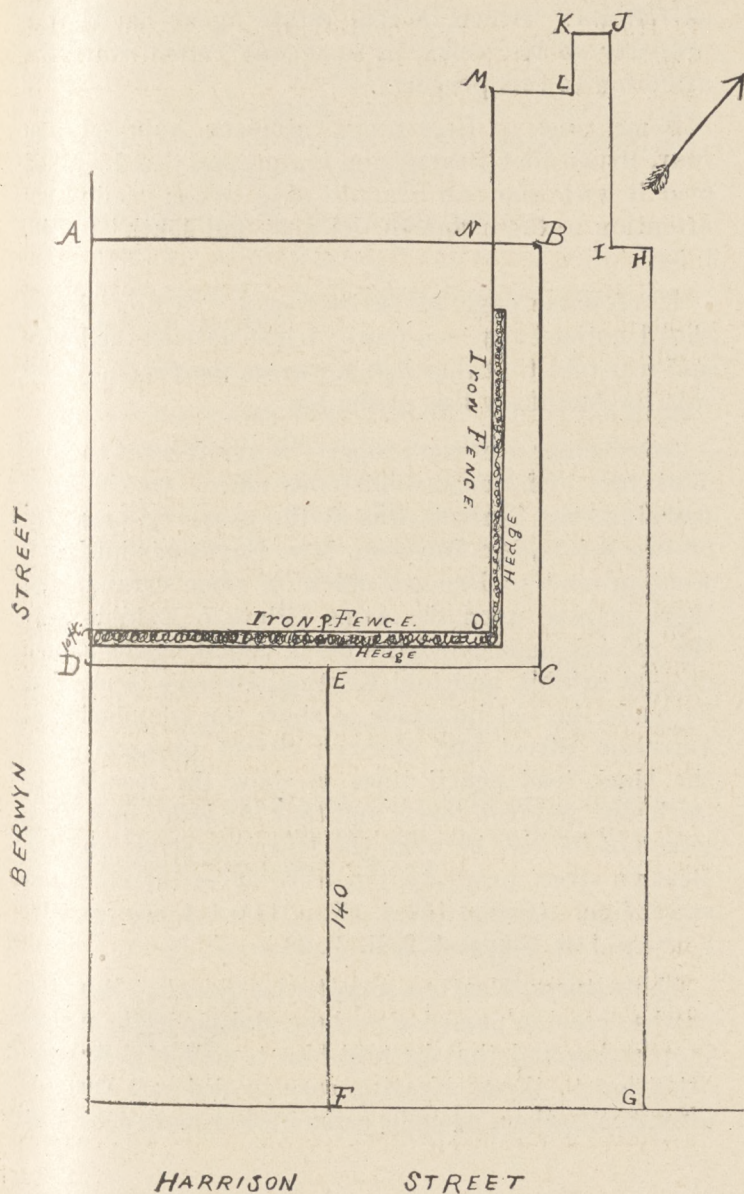
The defendant, Mrs. Boynton, at the time in question was the owner of two pieces of property, one known throughout the case as No. 73 Harrison street, the other as No. 1 Berwyn street. They were purchased independently and each was improved by a dwelling house, as is shown in Exhibit C 4. No. 73 Harrison street was 140 feet deep on its southerly side. At that point it met the easterly line of No. 1 Berwyn

street, which latter property was 135 feet front on Berwyn street and 143 feet deep on its easterly line. There was a privet hedge on the easterly line of No. 1 Berwyn street and distant from Harrison street 140 feet, measured along the southerly boundary of No. 73 Harrison street. The Boyntons occupied as their home No. 73 Harrison street and leased No. 1 Berwyn street. Having made a lease of No. 1 Berwyn street, for a term of years, at some time prior to the time under consideration, they moved the privet hedge from the point at which it was, to a point ten feet westerly therefrom on No. 1 Berwyn street and they also shifted a continuation of the hedge westerly, on No. 1 Berwyn street, a distance of 14 feet more or less and placed an iron fence to the west of the hedge, and to the south of the hedge, where it extended westerly, both the hedge and the fence being on the premises known as No. 1 Berwin Street.

This change in the location of the hedge was made as appears by the testimony because the lease of No. 1 Berwyn Street was made at a very low rental and for a period of years and the Boyntons thought that they might as well for that period enjoy the use of part of No. 1 Berwyn Street, themselves. The hedge was, therefore, moved, as stated, and subsequently the driveway was widened at a point near the stable, so as to encroach to a slight extent upon the Berwyn Street property, and a small corner of the plank platform in front of the stable extended over the same, and a lattice to screen the manure pit was located in whole or in part on the Berwyn Street property.

The relative positions of the two tracts are shown on Exhibit C-4 and Exhibit D-6. The premises described in the agreement by exact metes and bounds and the premises described in the deed by the same description is shown on Exhibit D-6 and the Berwyn street property is shown on each exhibit to be one hundred and thirty-five feet front by one hundred and forty-three feet deep. The privet hedge was changed

from the line D-C to a line westerly of it and from the line B-C to the south of it and the iron fence erected, all in the year eighteen hundred and ninety-nine; the locations are shown on the sketch made a part of this brief.



On the said sketch the situation is clearly disclosed. A, B, C, D is No. 1 Berwyn street. The property in dispute is E, P, O, N, B, C, E. The property conveyed is G, F, E, C, B, N, M, L, K, J, I, H, G.

The matters testified to in the case are substantially as follows: Bruen, a real estate agent having the property on his books, in some way called Starrett's attention to this property.

Some time in September, nineteen hundred and four, Bruen took Starrett on the property and walked over it with him and Starrett says Bruen "called my attention to the hedge on the west and south" (p. 46, l. 5).

L. 17, same page, he further says: "I don't know that I noticed any iron fence; I just noticed the hedge and was told that that hedge was on the property and was the boundary line of the lot."

After going over the property Starrett went to New York City and Bruen went to his office. On the same morning that Starrett was at the property, or a day or two before, Mr. Boynton, Mrs. Boynton's husband, went around to Bruen's office on some errand, and there marked upon the Atlas (Plate 7, Exhibit C-4) the red ink marks and the black pencil marks shown on that exhibit, and told Keating, Bruen's clerk, that he made the red ink lines to show the boundaries of Harrison Street and Berwyn Street property, and the black lead pencil lines to show the location of the hedge and iron fence, and *that the hedge and fence were not the line* between the Harrison street and the Berwyn street property, but *were off* of the Harrison street line. (See p. 110, l. 15; p. 111, l. 1, *seq.*; p. 114, l. 19; p. 116, l. 4; p. 122, ll. 21-28.)

The witness, Keating, admits the fact that Boynton on the occasion named was there and made the marks in question and that he told him to call Mr. Bruen's attention to them; Keating says he did call Bruen's attention to them when he came in that morning. But

Keating gives a different account as to the purpose of making the pencil marks on the map. He says that Boynton told him that the pencil marks represented the hedge and that the hedge was the dividing line between the Berwyn street property and the Harrison street property. Keating's testimony is thus squarely contradicted by Boynton. Boynton's version however that he made the pencil marks to indicate the hedge and stated that the hedge was off the property line and did not mark the boundary, is strongly sustained and supported by Bruen himself.

On page 158, line 32, Bruen was asked :

Q *Well, the clerk (Keating) had taken the trouble to call your attention to the fact that the hedge was somewhere off the line?*

To which Bruen answered, "*Yes, sir.*"

It is thus made very clear that when Boynton made the pencil marks on the atlas he did so for the express purpose of calling Bruen's attention to the fact that the hedge did not mark the property line between the Harrison street lot and the Berwyn street lot, but was off the line of the property.

Keating's account of the occurrence is so unintelligible and unreliable that the complainant's own solicitor admitted that he had given two or three different versions as to what had taken place. See page 83, line 30.

Bruen says the map with the marks upon it in his office, made on that morning, was his authority to offer the property for sale to Starrett.

This is shown by Exhibit C-2, Bruen's letter to Boynton, dated January 5, 1905, in which he says:

"To prove I had your authority to offer the above property to Mr. Starrett, you outlined for my clerk the property for sale on my Atlas of the Oranges in my office, just before you closed with Mr. Starrett, and those lines are still on the map, as you made them,

showing where you had blocked out the property No. 1 Berwin street, leaving all the property north and east of the hedge in the property No. 73 Harrison street, excepting the ten feet in the rear of Dr. Stockton, which I understood you had agreed to sell him."

Bruen does not rely for his authority upon the card, which was filled out by him many years before and on file in his office, and offered in evidence as Exhibit C-3. There is a great conflict of testimony as to that card, Bruen stating that he got his information from both Mr. and Mrs. Boynton and both of them denying that they gave it to him. There is no evidence that Bruen looked at that card, referred to that card, or even remembered it at the time of the negotiations with Starrett and it apparently cut no figure in that transaction. The only thing that cut a figure with Bruen was Exhibit C-4—the marks on the map in Bruen's office made by Boynton on the occasion above referred to.

There is no dispute of the statement of Boynton by Keating or by anybody else that *the red ink line indicated the boundary line.*

After several days of negotiations back and forth, during which time Starrett had offered \$20,000 for the property and Mrs. Boynton's price was \$25,000, an offer was made and accepted of \$22,500, and thereupon, at the request of Bruen, Boynton brought to Bruen, for the purpose of drawing an agreement for sale, deeds and a policy of title insurance of the Fidelity Trust Company, which covered the property shown on the sketch made a part of this brief, and having a depth of one hundred and forty feet on its southerly line and running to the line of the Berwyn street property, as shown on said sketch and on Exhibit C-4 and on Exhibit D-6.

From these papers Bruen testifies he made a sketch showing the depth to be one hundred and forty feet. He then submitted it to Mr. Reimer, a surveyor, for verification, who declared that the sketch was in ac-

cordance with the papers furnished and the description taken from such sketch was inserted in an agreement of sale made between Mrs. Boynton and Starrett, bearing date September 20, 1904. Subsequently, Bruen, acting for Starrett in the matter had the title examined for Starrett (p. 54, l. 8; p. 64, l. 3) and waived a survey of the property (p. 152, l. 1. See copy of application for title insurance printed in case),* and he approved the title and the deed was passed and recorded on October 1, 1904.

Neither the agreement nor the deed included any portion of the property shown on the sketch between the letters E, P, O, N, B, C, E.

The property conveyed was encumbered by two mortgages, amounting to \$14,000. It is so stated in the agreement of sale and it is so in fact. The mortgages cover only the property described in the agreement. No. 1 Berwyn street was at the time of the agreement subject to other mortgages. One held by the Mutual Life Insurance Company of New York and the other by Judge Dill. The two properties were entirely distinct as to their mortgage encumbrances and also as to the original grants to Mrs. Boynton.

When Boynton brought the papers to Bruen for the purpose of making the agreement, he told Bruen that those papers showed the property which Mrs. Boynton would sell; this is not denied. (P. 93, l. 32.) He denies that he ever had any conversation with Bruen relating to or referring to the hedge or fence. Bruen states that Boynton told him that the papers covered all the property back to the hedge. This Boynton emphatically denies.

Besides, the testimony of Starrett, Bruen and Keating, the plaintiff produced the testimony of the tenant who occupied the premises as they then stood, and who claimed an option by his lease to buy the premises leased. There is nothing in his evidence, however, to show what was the line of the property that

* In evidence C. at B. In this I claim the fence boundary; for in 7(b.) the question is fence? then we answer. do then any answer the question, "Had long a time fence Bruen was Star agent at the time he applied for the guarantee and the information had in there"

he had the option of buying or what the terms of the lease and option were. The testimony of Newhouse, the tenant, is not direct testimony, but only inferential testimony and is therefore practically of no value.

Mr. and Mrs. Boynton both emphatically deny any intention or agreement on their part to sell any property other than that which they conveyed. On the other hand there is the utmost confusion in the testimony on behalf of the complainant as to what the alleged actual oral agreement was which he tries to set up, and as to what he thought he was contracting for.

The confusion and uncertainty as to what the alleged actual oral agreement was is shown by the following references:

The bill alleges, p. 1, l. 30, that the complainant when he visited the property with Bruen found that the south line ran *back to an iron fence*, along which a hedge had been grown, *and followed the line of said iron fence*.

On p. 2, l. 16, it is alleged that Bruen exhibited to the complainant a map of the property showing the iron fence and stating that he was authorized to sell the property *up to and following the line of said iron fence*. (If this is true, then Starrett saw the atlas in Bruen's office, after Boynton had made the marks indicating the boundaries thereon.)

On p. 5, l. 6, it is further alleged that the line of the property *ran to and followed the line of said iron fence and hedge*.

On p. 6, l. 14, it is alleged that when a survey was had of the property it was found that two strips had been omitted from the agreement and from the deed, and gives the description of the said two strips.

On p. 8, paragraph X of the bill, complainant sets forth a particular description of the property, which he claims was omitted from the agreement and from the deed. This description differs materially from

the description of the two strips last above referred to and carries the disputed strip to the iron fence.

On p. 46, l. 17, Starrett, the complainant, testifies that when he visited the premises with Bruen he did not notice any iron fence, and that Bruen told him that the hedge was on the property and was the boundary line of the lot. (This shows that the above allegations of the bill are all unfounded.)

Bruen testifies, p. 58, l. 11, that the property ran "back to the hedge" and "following the hedge."

On p. 60, l. 26, Bruen testifies that he told Starrett at the time they visited the property together, that it was bounded "on the west by the hedge along the west side of the hedge."

On p. 67, l. 39, Bruen testifies that the only time he used the hedge was in showing the property. In speaking of the depth of the property, he always said "back to that hedge."

On p. 73, l. 22 Bruen says that he always thought Starrett was buying "back to the hedge."

On p. 74, l. 23 he says he asked Boynton, when Boynton handed him the papers from which the description was made up, if they covered all the property "back to the hedge."

The testimony in the case shows beyond any question that Mrs. Boynton and Mr. Boynton made no mistake as to what they were to convey. They were to convey the Harrison street property as they bought it, and as they knew it, and no part of No. 1 Berwyn street, as they bought it and as they knew it. There was no mistake on their side. If there was any misunderstanding on the part of Starrett as to what he was buying, the foregoing statements as to the different boundaries of the property he thought he was to get, show that there was no distinctness, definiteness or certainty as to those boundaries, and the documents in the case show a wide difference in quantity of land and in the measurements. The width of the

hedge is fully three feet, as appears by the testimony. All the statements made by Bruen or Keating of any statement made by Boynton that the property went back to the hedge, is distinctly contradicted by Boynton, and Exhibit C-4 offered on behalf of the complainant, conclusively shows that the southerly boundary line of the Harrison street property marked in red ink ran only to the line of No. 1 Berwyn street and did not cross any part of that property to the hedge.

Keating was told that the red line showed the boundary and he does not dispute that; the black line indicated the hedge. Bruen saw this map and relied upon it as his authority to sell (see Exhibit C-2). All this Bruen knew before the agreement was signed and the sketch that he made from the papers given him showed the southerly boundary line to be one hundred and forty feet long, exactly that shown on the map as the length of the red southerly boundary line delineated thereon.

The further testimony adduced on behalf of the complainant was that of Judge Dill. He held a second mortgage on the Berwyn street property, covering a portion of the strip that Starrett claims was to be conveyed to him. Judge Dill testifies that Boynton applied to him for a release of that strip from his mortgage, and subsequently that he told him the release was not necessary because he had entered into a contract with Starrett to convey the property according to the original line. This testimony Boynton contradicts and says that Judge Dill has confused the occasion with that of his applying for a release of Mrs. Boynton from the bond secured by a mortgage on the Harrison street property, also held by Judge Dill. Certain it is that that there was a mortgage held by the Mutual Life Insurance Company of New York on the same strip and there is no proof of any application to release that, although such release would have been equally necessary in order to enable

Mrs. Boynton to convey the land to Starrett free of encumbrances; and Boynton expressly declares that no such application was made.

Judge Dill's language in his testimony is carefully qualified. At p. 30, l. 33, referring to the fact as to what Boynton said about selling the property to Starrett, he says: "*I think*, he said he contemplated doing it." On p. 31, l. 30, in conflict with Boynton's testimony, that he applied for a release of his wife from the bond, he says: "Why, nothing was said about releasing her on the bond that *I recall*." The utmost that can be said of Judge Dill's testimony is that from it an inference of mistake or fraud can be drawn. It is not therefore the clear, direct proof which is required by the rule first above stated.

Weighing all the testimony in the cause, it must be perfectly plain that the proof does not rise to the dignity required by the rule of this Court and first above quoted. It is the rule constantly reiterated in all of the cases in this State on this subject.

In order to establish fraud, the proof must be of no less dignity than to establish mistake, and if the evidence is not sufficient, as it clearly is not in this case, to establish mistake, it cannot be held to establish fraud.

Further, it is to be noted that this contract now sought to be forced upon the Boyntons clearly in the face of what they intended, was a contract made through a real estate agent. It would be most dangerous to establish the right or power of real estate agents, where a principal intends to convey a particular and definite piece of land, to enlarge that conveyance by parol representations. The practical effect of such a holding would be most disastrous, considering the character of real estate agents, in general, and the temptation that they are under to effect an agreement in order to obtain their commission.

Moreover, the doctrine in this State is well settled, that real estate agents are special agents, with powers strictly limited by their express instructions, and that persons dealing with them are chargeable with knowledge of the extent of their authority.

See *Cooley vs. Perrine*, 12 Vr., 322, affirmed by this Court in 13 Vr., 623 and *Milne vs. Kleb*, 17 Stew., 378.

Up to the time of the actual signing of the binding contract in writing, Bruen was subject to instructions by the real estate owner. He received such instructions contradicting the claim of Starrett by the red ink lines on the map (Exhibit C-4) and again by Boynton's delivery of the instruments covering what Mrs. Boynton intended to convey. Beyond the authority thus given, Bruen could not go, and the agreement signed was in exact accordance with this authority.

It is important to remember that Bruen by his letter (Exhibit C-2) puts his authority to sell this upon the marks made by Boynton, shown on Exhibit C-4, and that map conclusively shows that the South line of the Harrison street property, to wit, the red line, extends one hundred and forty feet and does not extend to the hedge.

It is also to be remembered that Bruen knew the dimensions of the Berwyn street lot, as shown by his appraisalment (Exhibit D-4) of No. 1 Berwyn Street made on April 29, 1903, which shows the dimensions of the Berwyn Street property to be 135x148 feet, just exactly the dimensions that would leave the Harrison street property the dimensions contained in the agreement and in the deed.

It is also perfectly clear, as testified to by Bruen, that he became the agent of Starrett in the matter of the examination of this title. He knew, as already shown, the dimensions of the Berwyn street property and he knew that the Southerly line of the Harrison street property, as shown in the agreement, to be in-

inserted in the deed, was only one hundred and forty (140) feet. With all this information he must be charged as the agent of Starrett in the examination of this title.

On December second, some two months after the deed was delivered, Mrs. Boynton offered to sell the property to Starrett. Mr. Boynton testifies to this at page 130, *seq.*, and Mrs. Boynton at p. 138, l. 20. There is nothing extraordinary in the fact that they came to the conclusion that they might offer this property to Starrett at this later day.

The testimony throughout the case on behalf of the complainant is most indefinite and unsatisfactory and Starrett's own recollection is very poor, as shown on p. 49, l. 13, where he says he received this letter from Boynton *within a week* after he closed the transaction on October first. Instead of a week, it was two months. Also as shown on p. 45, l. 16, where he says he purchased the property in 1903 while in fact it was in 1904.

We can find no case where, under such testimony as exists here, either the Court of Chancery or this Court has ever granted reformation or enforced specific performance. Nor are we able to find any case where the negotiations between the parties had been reduced to an agreement in writing, describing the property by metes and bounds, and a deed delivered and accepted in strict compliance with the written agreement, where the Court of Chancery or this Court has ever upon parol testimony reformed the written agreement and then decreed specific performance of the agreement as reformed.

The case really made is one of a unilateral mistake on the part of Starrett. It might give him the right to rescind, but such relief could not be obtained under this Bill, as it prays specific relief other than rescission and contains no prayer for general relief.

Upon an application of the rule first above stated to the testimony in this case, the complainant is not entitled to relief.

II.

The decree is erroneous because it violates the fundamental rule that in order to have either a reformation or specific performance of a contract with a parol variation the change sought to be effected in the contract and to be performed must be definite and certain.

It is sufficient to cite *Green vs. Stone, supra.*, decided in this court.

It declares at page 399 that to justify reformation or specific performance "the proof must be clear and convincing, and upon testimony that is unexceptionable, *both with regard to the agreement actually made by the parties* and the mutuality of the mistake through which a different agreement was put in the deed."

The statement made in Part I of this Brief shows how many and varying versions of the boundary of the tract claimed appear in the case on behalf of the complainant.

We need not again repeat it.

The bill claims the property contracted for was bounded by an iron fence, while the testimony is that the complainant never saw the iron fence. Some of the testimony says the property was bounded by the West and South line of the hedge, thus putting the entire hedge within the property to be conveyed; other testimony is that the line ran up to and along the hedge.

Most of the testimony, however, takes it "to" the hedge; the hedge according to the testimony is over three feet wide.

The word "to" in a description of this character is a word of exclusion of the object to which the description runs. So also is the word "along."

Benton vs. Horsley, 71 Ga., 619-626.

Thompson vs. Blackwell 5, La., 465-466.

Bradley vs. Rice, 13 Me., 198-201.

Bonney vs. Morrill, 52 Me., 252-256.

Wells vs. Jackson Mfg. Co., 48 N. H., 491-537.

Stevens vs. Erie R. R. Co., 5 Vr., 232.

The decree in the cause does not construe the alleged oral agreement as going to the hedge nor through the hedge to the iron fence, both of which under the testimony appear to be asserted as boundaries. It makes the boundary the center of the hedge, and instead of giving the complainant 10.80 feet in depth in the rear of the Harrison street lot as the complainant claims specifically in his bill as his construction of the actual oral agreement, gives him 9.55 feet. Excluding the hedge under the rule of construction above laid down would give the complainant only seven feet additional land.

It is clear that an oral agreement which is so variously stated and therefore subject to such different constructions has not that measure of certainty and clearness which the well-settled rule requires. Indeed, if the complainant cannot establish exactly what he declares is the agreement in his bill of complaint and which he seeks to have performed, he cannot have performance of something else.

Particular attention is called to the definite description by metes and bounds in paragraph 10 of the complainant's bill and the decree found on 172, line 31. It will be seen that the descriptions are totally at variance, in that both the courses and distances differ.

III.

Independently of all other considerations, the complainant cannot have reformation and specific performance in this case because of the Statute of Frauds. In New Jersey the statute of frauds has never been *frittered* away as in many other jurisdictions. Our courts always have recognized the value of that statute and the necessity of maintaining it in its integrity.

In this case the complainant is asking that a deed which conveys land by exact metes and bounds be reformed, and as that deed contains the exact description by like metes and bounds as the written agreement of the parties in relation to the land in question, it is necessary to reform the written agreement and then to decree specific performance of the agreement as reformed. The deed cannot be reformed without first reforming the prior written agreement, since the deed simply carries out the agreement. It is therefore the agreement that must be reformed as the basis of all other relief.

The Statute of Frauds provides: "That no action shall be brought upon any contract or sale of lands unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith." Under this statute, a valid and enforceable contract in relation to lands cannot be made by parol. Therefore, the Court of Equity cannot enforce a parol contract for a sale of lands upon parol testimony alone, nor change a written contract for the sale of lands by reforming it so as to include therein more land than is covered by the written agreement, where the agreement describes the lands specifically and by metes and bounds.

The Court of Equity may interpret a written contract where necessary and give a proper construction to ambiguous terms of an agreement upon parol or other evidence aliunde the writing.

But where the writing is in itself clear and definite, describing the land by exact metes and bounds, free from ambiguity, there is no ground for the admission of parol evidence to extend the scope of the agreement.

In suits for specific performance of a written agreement to convey land the rule is that the defendant may offer parol or other evidence aliunde the writing to defeat the complainant's equity, but that the complainant cannot offer parol to secure specific performance of the written agreement with a variation. The English courts have always acted on this principle, the leading case being *Woollam vs. Hearn*, reported 7 Ves., 211 and in White and Tudor's Leading Cases in Equity, Vol. II, page 920 of the American Edition. This case holds that "Though a defendant resisting a specific performance may go into parol evidence to show that, by fraud, the written agreement does not express the real terms, a plaintiff cannot do so, for the purpose of obtaining a specific performance with a variation." The case was one based on fraud or mistake.

Woollam vs. Hearn was put completely on the Statute of Frauds. Sir William Grant said, see Vol. 2, Leading Cases in Equity, p. 925:

"Thinking, as I do, that the statute has been already too much broken in upon by supposed equitable exceptions, I shall not go farther in receiving and giving effect to parol evidence than I am forced by precedent. There is no case in which the court has gone the length now desired."

The reason of the rule which permits parol evidence to defeat specific performance, but denies its competency to support specific performance, rests by express decision upon the language of the Statute of Frauds. The statute does not say that a written agreement *shall bind*. Therefore in an action by the vendor for specific performance of a written agreement to convey, there is nothing in the statute which prevents

the vendee setting up equitable grounds of mistake or fraud to prevent the enforcement of the agreement. In other words, the statute does not say that the written agreement shall bind in any event. This view at the basis of the decisions is declared in *Clinan vs. Cooke*, 1 S. & L., 39, and is set forth in the note on page 929, Vol. 2, Leading Cases in Equity.

Woollam vs. Hearn is the leading case and appended to it is an elaborate note by the American commentators, Hare and Wallace, on the doctrine in this country. The learned commentators declare the weight of authority is in favor of this doctrine and New Jersey is declared to hold this doctrine. Page 994 of the note is the following:

“It follows that a complainant in a bill for specific performance, who proves that the writing on which he relies is vitiated by fraud or mistake, destroys his own case. It is then apparent that the contract as it stands is not the true one, and that the true contract is invalidated by the statute, and as the former ought not to be, and the latter cannot be, enforced, there is no room for a decree of specific performance. The rule extends to the defendant, and while he may defeat the prayer of the bill by showing that the writing does not contain the terms actually agreed on, he cannot compel a specific execution of the contract as thus varied, unless the modification is admitted by the plaintiffs, *Miller vs. Chetwood*, 1 Green Ch. 199; *Best vs. Stow*, 2 Sanford Ch., 298; *Harrison vs. Talbot*, 2 Dana, 268.”

The latest case in the English courts stands by the doctrine in its entirety and holds that where the written contract and conveyance are unambiguous, parol evidence of mistake is inadmissible to support a claim for specific performance of the written contract with a variation. The court said that to rectify a written contract and then to enforce it as rectified was contrary to well settled principle and practice.

May vs. Platt, (1900) 1 Ch., 616. At p. 621, the court says:

“If there is a latent ambiguity in the description of the property conveyed so that the words used are susceptible of two meanings, parol evidence is admissible to show that the facts within the knowledge of both parties agree with one only of the suggested meanings. But where there is, as here, no ambiguity at all, but the property is conveyed by a clear and definite description and plan, parol evidence to contradict the deed is altogether inadmissible.”

This late English case also recognizes the authority of *Davies vs. Pitton*, 2 D. & War., 225 where there was a written agreement for a lease and a lease executed in conformity to the agreement; and the bill sought to reform the lease by introducing a term not found in the written agreement on parol evidence. The case was decided by Lord St. Leonards who stopped the argument of counsel, saying that it was really against first principles to discuss the question whether on a bill for specific performance the court could modify the agreement by parol and then enforce it. As quoted in the opinion of *May vs. Platt*, *supra*, at p. 622, Lord St. Leonards said:

“If the plaintiffs had come here to have the contract executed, I must have given them the precise lease, which actually exists. Can I now, then, reform this lease by that evidence, which, if the lease rested *in fieri*, would be inadmissible to aid in carrying it into execution? It would be more violent, I think, now, to reform this lease by that evidence, than formerly to use it for the purpose of executing the contract.”

The distinction clearly exists with reference to the Statute of Frauds between the right of a defendant to set up by parol a mistake or fraud to defeat specific performance, and of a complainant to use parol evi-

dence to establish a variation for the purpose of asking specific performance of the contract so varied. In one case no provision of the Statute is violated by admitting parol while in the other case such evidence is squarely in the face of the Statute. There is no necessity in order to accomplish justice that the Statute of Frauds should be overridden, for on showing mistake or fraud the party as a defendant may defeat specific performance and as a complainant may claim rescission of the contract or the setting aside of the deed.

This doctrine has been declared many times in this state.

In the leading case of *Miller vs. Chetwood*, 1 Gr. Ch., 199 at page 207, the court says referring to parol evidence:

“There is a difference, also, in the admissibility of the evidence in this court, whether it be offered by the complainant with a view to compel a specific performance, or by the defendant to rebut the equity of the complainant. The true rule, as it appears to me, is to be found in the case of *Winch vs. Winchester*, 1 Vesey and Beam. 378. There the court would not receive parol evidence with a view to the defendant's having the contract performed with an abatement of the price, but it was admitted to defeat altogether the specific performance. The authorities on this subject will be found in a note to the case of *Rich vs. Jackson*, in 4 Brown's C. C., 519.”

Winch vs. Winchester was decided on the authority of *Woollam vs. Hearn*.

Miller vs. Chetwood has been much cited and is an unquestioned authority.

In *The National Iron Armor Company vs. Bruner and Baxter*, IV. C. E. Green, the same doctrine is again asserted at page 336:

"The Statute of Frauds would be of little avail in such cases, if alleged parol representations should be incorporated by this court into the written contract, and performance compelled of this reformed contract. Parol evidence of such representations is received in equity, but for the purpose of showing such actual fraud, or such misleading of the defendant by the mistake of the complainant, as would make it inequitable to decree specific performance, when that is sought by the party making the misrepresentations. But parol evidence is never received to lay the ground for compensation for deficiency. This is the uniform and established doctrine in equity."

This case also has been much cited in this state.

The English cases are based both on the rule that a written agreement cannot be varied by parol and also the Statute of Frauds. Where these cases are rested upon the Statute of Frauds alone, the distinction is drawn between parol evidence which would enlarge the contract as to the quantity of land to be conveyed, and parol evidence which would restrict the contract as to quantity of land to be conveyed, and the rule is that parol proof may be resorted to to take land out, but not to put land in on a bill for reformation or for specific performance. The doctrine is held in the Court of Chancery and in an elaborate opinion by Vice Chancellor Pitney in *Keim vs. Lindley*, 30 Atl., 1063, at p. 1082, where he says:

"In other words, that, in a suit by a vendee against the vendor, parol proof may not be resorted to by the complainant for the purpose of enlarging the scope of the writing, in the way of conveying more land, but it may be used for the opposite purpose; viz., to narrow the scope, and reduce the quantity of land to be conveyed; and in such cases the variation—being in favor of the defendant, and working him no injury—cannot be set up by him as a defense."

This case went to the Court of Errors and was disposed of on another ground, preliminary to the question raised by the Vice Chancellor. In other jurisdictions this doctrine has been held with great force, the leading case being *Glass vs. Hulbert*, 102 Mass., page 24, which case has been cited in this court in *Brown vs. Brown*, 6 Stew., 660, without any disapproval of its main doctrine. An examination of that case will show the strength of reasoning upon which the doctrine rests.

In some jurisdictions the doctrine is not held. Prof. Pomeroy in his *Equity Jurisprudence* does not assent to the doctrine and criticizes the case of *Glass vs. Hulbert*, but in his note he states that the New Jersey doctrine is in conformity with the case of *Glass vs. Hulbert*, and he cites *Miller vs. Chetwood, supra.*, as showing that fact.

In this Court it has never been held that a contract in writing conveying land by exact metes and bounds free from all ambiguity can be reformed upon parol evidence and made to include more land than the contract calls for. As was said by Vice Chancellor Pitney in *Keim vs. Lindley*, referring to the doctrine quoted from him above, regard must be had in considering the cases, to the relations existing between the parties and the manner or form in which the question arises. He says at p. 1082 (2d column) following the quotation above named:

“This seems to me to be according to common sense and general principles of equity, and I think that most of the cases can be harmonized by bearing in mind the relations existing between the parties, and whether it be a suit by vendee against vendor, or the contrary, and whether the effect of the evidence is, when the suit is against the vendor to increase the quantity of land which he agrees to convey, or whether it be, in such case, to diminish the land which he is asked to convey.

The cases in this Court depending on the jurisdiction of Equity to reform written instruments whether affirmed on the opinion of the Court below or decided on an opinion rendered here, may all be grouped under the following heads:

(a) Where this Court has refused specific performance on the ground of insufficient evidence of fraud or mistake and, therefore, has not had to consider the Statute of Frauds.

(b) Where the question was as to an ambiguous reference in a contract followed by a deed, and the Court found in favor of one construction or the other. Of this class is *Conover vs. Wardell*, 7 C. E. Gr., 492.

(c) Where the deed did not conform to the prior agreement in writing. Of this class is *Stines vs. Hays*, 9 Stew., 364, affirmed 11 Stew., 654.

(d) Where the proposed reformation did not involve the Statute of Frauds, but some particular of the deed or agreement which is not protected thereby. Of this class is *Green vs. Stone*, 9 Dick., 387.

(e) Where the doctrine of estoppel was invoked because of improvements on the property in controversy, made with the knowledge and without the dissent of the vendor. Of this class is *Megie vs. Bennett*, 6 Dick., 281.

The cases in the Court of Chancery can in the main be harmonized by consideration of them in the light of the foregoing distinctions, and by also considering the form in which the controversy arose and whether the Bill is filed by the vendor or vendee. In some of the cases in the Court of Chancery the question of the Statute of Frauds was not called to the attention of the Court. In some of these cases expressions occur in the opinions, which certainly would not be found if the provisions of the Statute of Frauds had been pressed upon the attention of the Court. In all cases in which the Statute of Frauds was called to the attention of the Court as in *Miller vs. Chetwood*, *National*

Iron Armor Co. vs. Bruner and *Keim vs. Lindley*, the Court in each case recognized the distinctions above set forth and held the Statute of Frauds inviolate.

We can find no case in the Court of Chancery where, on parol evidence of mistake or fraud at the suit of a vendee, who had an express written contract for the conveyance of land describing it by exact, unambiguous metes and bounds, and who had accepted a deed under such contract, the court decreed a reformation of the contract and of the deed to include more land than the contract called for. To so hold would be to override the Statute of Frauds and that has never been done in this State. Such a course is unnecessary in order to give full justice to a vendee under such circumstances, because proof of mistake or fraud would give the *negative remedy* of resisting specific performance if he had not accepted the deed, and if he had would give him the *affirmative remedy* of rescission, and in either case the wrong-doer or fraud-doer would be deprived of all benefit of the transaction. Upon a properly framed bill containing a prayer for such relief, or a prayer for general relief, which this bill does not contain, the complainant might obtain the relief of rescission. In the jurisdictions which ignore the Statute of Frauds in cases of fraud or mistake they expressly declare that in such cases the Statute of Frauds is "uplifted." Such is the language of those cases. No such doctrine has ever been held in this State with reference to the Statute of Frauds.

The attitude of this Court upon any proposition to restrict the operation of the Statute of Frauds by extending the number or character of the exceptions in which its express provisions are disregarded and set aside is one of hostility. In *Cooper vs. Carlisle*, 2 C. E. Green, 525, at p. 529, (1866) Chancellor Zabriskie speaking for this Court, declared that:

"The wisdom of the Statute of Frauds, in this respect, has been manifested by the many doubts and difficulties arising from the departure from it, and is further shown by the painful uncertainty of the parol evidence in this very case, and I fully agree with Chancellor Kent in his observations in *Phillips vs. Thompson*, 1 Johns, Ch. R., 149. 'This case, like many others, shows the great utility of the Statute of Frauds, and the danger of relaxing the sanction of its provisions; I agree with those wise and learned judges who have declared that the courts ought to make a stand against any further encroachment upon the statute, and not to go one step beyond the rules and precedents established.' See also *German vs. Machin*, 6 Paige, 293; 1 Story's Eq. Jur., Sec. 765."

The same consistent hostility to any frittering away of the Statute of Frauds by extending exceptions to its operation is shown in the case of *Lawrence vs. Springer*, 4 Dick. Ch., 289, at p. 292, a case decided in 1892. In this case it was sought to enforce an easement upon land by parol testimony. Chief Justice Beasley speaking for this court quotes with approval the language of Lord Rosedale on the subject from the case of *Lindsay vs. Lynch*, 25 Ch. & L., 4, as follows:

"The statute was made for the purpose of preventing perjuries and frauds, and nothing can be more manifest to any person who has been in the habit of practicing in courts of equity than that the relaxation of that statute has been the ground of much perjury and much fraud. If the statute had been rigorously observed the result would probably have been that few instances of parol agreements would have occurred. Agreements from the necessity of the case would have been reduced to writing. Whereas, it is manifest that the decisions on the subject have opened a new door to fraud."

And the learned Chief Justice adds:

“And these strictures are pointed with the emphatic declaration that ‘it is, therefore, absolutely necessary for courts of equity to make a stand and not carry the decisions further.’”

The learned Chief Justice further quotes with approval from Judge Story as follows: (2 Story Eq. Jur., Sec. 766)

“‘Considerations of this sort have led eminent judges to declare that they would not carry the exceptions of cases from the Statute of Frauds further than they were compelled to do by former decisions.’”

The case of *Smith vs. Negbauer*, 13 Vr., 305, 15 Vr., 672 in this court, has no bearing here. That was a case in which it was held that in an action on a covenant in a deed, a specific description controlled where there was no reference to a monument, although the alleged monument, a fence, was some twenty feet short of the distance named in the deed.

Nor does the case of *Megie vs. Bennett*, *supra*, help the complainant. The expressions of Vice Chancellor VanFleet in his opinion in that case were not regarded by this Court in its opinion, which reversed Vice Chancellor VanFleet, and upon the doctrine of estoppel permitted the vendee to hold title to the lot that he had improved upon paying compensation therefor, clearly going upon the doctrine of estoppel. That case makes clearly for the contention of the defendants in this case, as this Court held that the grantee could ask for rescission of his contract under the facts shown, but granted him the further relief based upon the fact that the grantor had permitted him to improve the lot without warning him of the fact that he did not have title thereto. The case recognizes the doctrine that rescission is the sole affirmative remedy in such a case unless the doctrine of estoppel applies.

We respectfully submit that a thorough examination of the authorities shows that on principle and authority a complainant cannot by parol change a written agreement to convey land describing the land by exact metes and bounds free from ambiguity, signed by both parties and consummated by the making and acceptance of a deed in conformity thereto, by having the agreement reformed so as to include more land.

IV.

The decree should be reversed and the bill dismissed for the following reasons:

1. The proof of fraud or mistake does not rise to the quality required by the rule in such cases, and Bruen, the real estate agent, is not clearly shown to have had authority to offer the property claimed by the complainant.

2. The alleged actual agreement of the parties has not been proved with that certainty and exactness which is required by the rule on that subject.

3. Because the Statute of Frauds is a complete bar to enforcing any parol agreement or variation which increases the quantity of land set forth by exact metes and bounds in the written agreement consummated by the making and acceptance of a deed in exact conformity thereto.

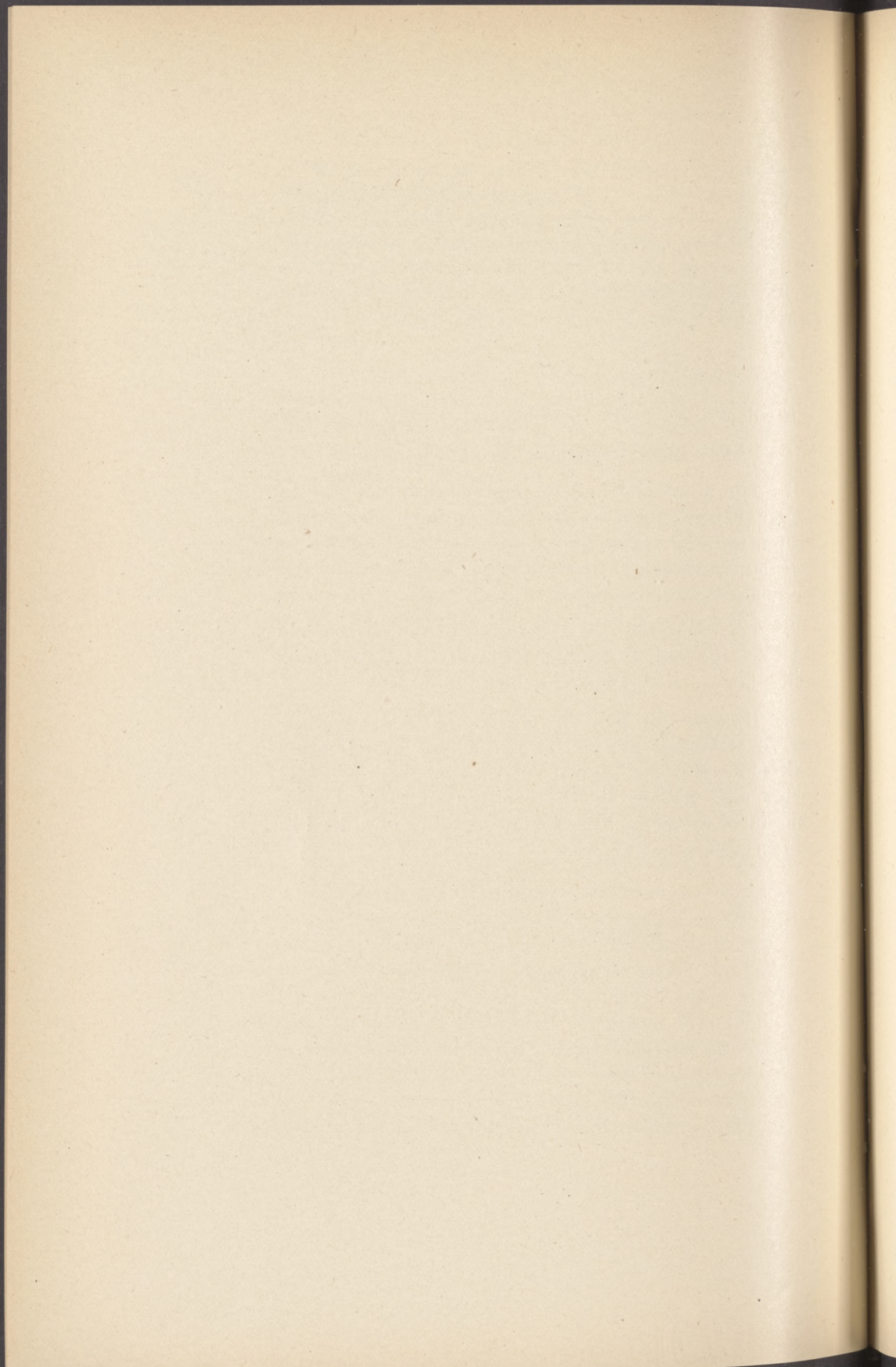
FRANK E. JACOBUS,

Solicitor of Defendants-Appellants.

HOWE & DAVIS,

EDWARD M. COLIE,

Of Counsel with Defendants-Appellants.





THE UNIVERSITY OF CHICAGO

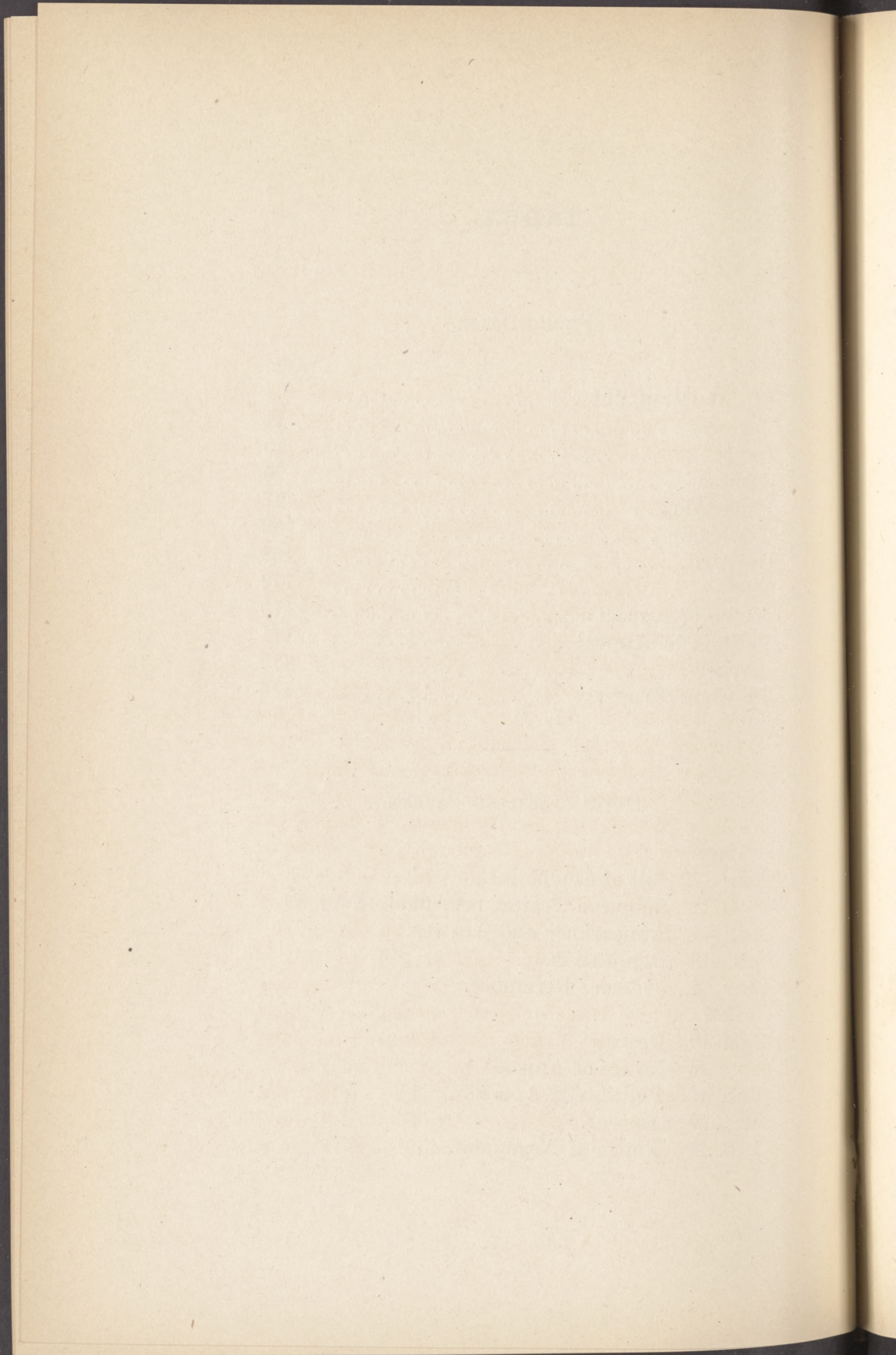
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DATES OF FILING PAPERS.

1905	
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Apr. 4	Appearance and Answer.
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IN CHANCERY OF NEW JERSEY.

To the Honorable WILLIAM J. MAGIE,
Chancellor of the State of New Jersey.

Complaining shows unto your Honor, your orator Paul Starrett, of the City of East Orange, Essex County, New Jersey. 10

I.—That during the latter part of the summer of the year nineteen hundred and four, your orator being desirous of purchasing for himself and family a place of residence in said City of East Orange, called upon Edward E. Bruen, a real estate broker and agent having his place of business at number 25 Washington place in said City, and inquired as to what properties he had in his hands for sale in that City. That among other properties to which the said Edward E. Bruen called the attention of your orator was the property 73 Harrison street in said city, which the said Bruen informed your orator was then owned by Harriet G. Boynton of said city, the wife of Charles B. Boynton. That your orator in the early part of the month of September, nineteen hundred and four, in company with said Bruen viewed the said property and found that it consisted of a dwelling house erected upon a plot of ground on the west side of Harrison street having a frontage on Harrison street of about one hundred feet, the south line running back to an iron fence along which a hedge had been grown. The said Bruen then and there informed your orator that the line of said property followed the line of said iron 20
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fence which ran northerly along the rear westerly line of the main house lot where a jog occurred and then took a westerly course to a point within six feet of a stable erected upon the rear end of said plot where said iron fence and hedge terminated, but the property line continued in a straight line further west so as to include said stable. That said Bruen acting as the agent of said Harriet G. Boynton then and there informed your orator that he had been instructed by said Harriet G. Boynton and her husband, the said Charles B. Boynton, that a sale of said premises would include all of the land up to and along the line of said iron fence and hedge, and said Bruen at his office subsequently made the same representation to your orator and exhibited to your orator a map of said property showing the said iron fence and again stated that said Harriet G. Boynton and her said husband, Charles B. Boynton, had expressly authorized him to sell said property up to and following the line of said iron fence.

II.—And your orator further shows unto your Honor that after certain negotiations between your orator and said Bruen, who was acting as the agent of said Harriet G. Boynton, it was agreed that your orator would purchase said premises at the price of twenty-two thousand five hundred dollars, subject to two mortgages then upon the property amounting to fourteen thousand dollars, and that the balance, namely eighty-five hundred dollars, would be paid by your orator in cash. That subsequently by an agreement in writing bearing date the twentieth day of September, nineteen hundred and four, the said Harriet G. Boynton entered into a contract with your orator in and by which the said Harriet Boynton agreed to sell and convey to your orator, and

your orator agreed to purchase the said premises on or before the first day of October then next, for the sum of twenty-two thousand and five hundred dollars, upon the terms above mentioned, and your orator upon the execution of said contract paid to said Bruen, as the agent of said Harriet G. Boynton, the sum of one thousand dollars in cash. A copy of which said agreement is hereto annexed and made part hereof.

III.—And your orator further shows unto your Honor that afterwards the said Harriet G. Boynton and Charles B. Boynton, her husband, by their deed bearing date the thirtieth day of September, nineteen hundred and four, pretended to convey to your orator the premises which he had purchased as aforesaid by the following description:

Beginning in the westerly line of Harrison Street, at a point distant northeasterly seventy-six and forty-six one hundredths feet from the intersection of the said line of Harrison Street with the northerly line of Berwyn Street (formerly Dennis Place); running thence north forty degrees twenty-nine minutes west one hundred and forty feet; thence north forty-nine degrees forty-one minutes east being parallel with Harrison Street sixty-five and eighty-three one hundredths feet; thence north forty degrees twenty-nine minutes west one hundred and thirty-six and fifty-four one hundredths feet; thence south forty-nine degrees four minutes west fifteen feet; thence north forty-nine degrees twenty-nine minutes west fifty feet; thence north forty-nine degrees four minutes east twenty-five feet to line of land formerly of Theodore F. Seward; thence along that land north forty degrees twenty minutes west nineteen feet and four inches to land now or late of Sarah L. J. Whiting; thence along the same northeasterly

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twelve feet; thence south forty degrees twenty-nine minutes east sixty-nine feet and four inches more or less to line of land conveyed by Susan L. Palmer and husband to Harriet G. Boynton by deed dated July 8, 1899, recorded in the Register's Office of the said County of Essex in Book M 32 of Deeds of said county on pages 551 to 554; thence along the same north forty-nine degrees four minutes east thirteen feet to a corner of the same; 10
thence along the same south forty degrees twenty-nine minutes east two hundred and seventy-six and seventy hundredths feet to said line of Harrison Street; thence along Harrison Street south forty-nine degrees forty-one minutes west one hundred and eighty-three one hundredths feet to the place of beginning. That your orator paid said Harriet G. Boynton and Charles B. Boynton the further sum of seventy-five hundred dollars in cash, as provided in said agreement and received 20
said deed, which was duly recorded in the Register's Office of the said County of Essex on the first day of October, Nineteen Hundred and Four, in Book T 37 of Deeds on pages 568, etc., to which agreement and deed now in possession of your orator he begs leave to refer if it shall become necessary so to do. That upon the delivery of said deed your orator entered into possession of the premises purchased by him as aforesaid including that portion omitted from said agreement and deed and he is now in actual possession thereof and his right to the possession of said omitted 30
portion of said land has never been disputed.

IV.—And your orator further shows unto your Honor, that at the time of executing the said agreement as well as at the time of the delivery and acceptance of the deed for said property your orator fully believed and understood and it

was distinctly represented to your orator by said Bruen, the agent of said Harriet G. Boynton and said Charles B. Boynton, that both said agreement and said deed included all the land shown to him by said Bruen when they viewed the property as aforesaid, and that the line of said property ran to and followed the line of said iron fence and hedge not only to the end of said iron fence near said stable, but that said line continued Westerly in a straight line along said stable.

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V.—And your orator further shows unto your Honor that relying on said representations he did not procure any survey of said premises and had no suspicion that said agreement and deed failed to contain a full and accurate description of the property shown to him by said Bruen and which he purchased, until on or about the second day of December, nineteen hundred and four, when your orator received a letter from the said Charles B. Boynton, of which the following is a true copy:

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1 Berwyn St.,
East Orange, N. J.,
Dec. 2nd, '04.

Mr. PAUL STARRETT,

Dear Sir.—Do you wish to purchase the land running from the driveway to your stable to the fence line of # 1 Berwyn St., 14 x 135', also the 10 ft. by about 36' on the rear of your house lot. The fences on # 1 Berwyn street are now on property 125 x 130, and when put back where they belong will be 135 x 144.

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Awaiting your reply, I am,

Yours truly,
CHARLES B. BOYNTON.

P. S.—I called at your office but was unable to see you.

That upon the receipt of said letter your orator at once caused a survey of said property to be made, which survey disclosed that neither the description in said agreement nor in said deed accurately described nor included all of the land which said Bruen had shown to your orator as aforesaid and which he represented to your orator on all occasions when your orator and said Bruen met regarding the sale and purchase of
10 said property, he had been authorized by said Harriet G. Boynton and Charles B. Boynton to sell to your orator and which he did sell and which your orator purchased and believed was included in said agreement and deed. But said survey showed that the description in both of said instruments failed to include a strip of land along the rear or Westerly line of the main house lot ten feet and eighty hundredths of a foot wide and forty-nine feet and forty-one one hundredths of a
20 foot long, and also omitted a strip along the South side of the lot known as the stable lot or driveway to the stable thirteen feet and forty-five one hundredths of a foot wide and forty feet and twenty-nine one hundredths of a foot long, which land was required to carry the property line of said premises to said iron fence which your orator on several occasions was assured by said Bruen represented the actual boundaries of said property at these points.

30 VI.—And your orator further shows unto your Honor that he is informed in such a way that he believes it to be true that the said Harriet G. Boynton and Charles B. Boynton put up said iron fence where it now stands and planted said hedge for the purpose of fixing those lines as the property lines of said premises purchased by your orator as aforesaid. That there is nothing to in-

dicate that the line of the property purchased by your orator as aforesaid stops short of the said iron fence, but on the contrary said land and grounds are laid out in such a way to make it appear that the said fence marks the boundary of said property at the points where said fence stands; that all of said property up to said fence line has been used by the tenants occupying said property prior to its sale to your orator.

VII.—And your orator further shows unto your Honor that the land omitted from the description in said agreement and from the deed given to your orator as aforesaid is essential and necessary to the full and proper enjoyment of the premises purchased by your orator as aforesaid from said Harriet G. Boynton and Charles B. Boynton, and your orator would not have purchased said premises had it not been his belief, understanding and agreement that the said agreement and deed contained all of the land which the said Bruen represented to your orator belonged to and would be sold with said property.

VIII.—And your orator further shows unto your Honor that after having had said premises surveyed and discovering that all of the land that he had purchased was not embraced in said agreement and deed, he demanded from said Harriet G. Boynton and Charles B. Boynton that they make, execute and deliver to him a further conveyance which would include that part of the said premises not embraced in said agreement and former deed and purchased by your orator, with which request the said Harriet G. Boynton and Charles B. Boynton refused to comply, unless your orator paid them a further sum of money.

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IX.—And your orator further shows unto your Honor and charges that the said Harriet G. Boynton and Charles B. Boynton well knew that the description contained in said agreement and deed did not include all of the land which they had authorized said Bruen to sell to your orator and which your orator in fact purchased; and they also well knew that your orator was acting under the belief that said agreement contained all of said land and that said deed conveyed to your orator the land up to said fence which said Bruen had represented to your orator would be sold with said property. But said Harriet G. Boynton and Charles B. Boynton covertly and fraudulently withheld such knowledge from your orator until after he had accepted said deed and complied with all the terms and conditions of said agreement of sale, when they brought to his attention the fact that an essential part of the land which they had induced their agent to represent to your orator would go with said property, had been omitted from said agreement and said deed.

X.—And your orator further shows unto your Honor that the part of said land and premises purposely and fraudulently omitted from said agreement and from the deed given to your orator by the said Harriet G. Boynton and Charles B. Boynton is particularly described as follows:

30 Beginning at a stake in the Southerly line of land of said Paul Starrett distant on a course of North forty degrees twenty-nine minutes West one hundred and forty feet from the Northwest-erly line of Harrison Street; running thence North forty degrees twenty-nine minutes West ten feet and eighty hundredths feet to an iron fence; thence along said fence North forty-nine

degrees four minutes East fifty-two feet and thirty-three one hundredths of a foot to a corner of the same; thence still along said fence North forty-one degrees ten minutes West one hundred and twenty-five feet to a corner of said Starrett's land; thence North forty-nine degrees four minutes East fifteen feet to an iron spike for a stake; thence South forty degrees twenty-nine minutes East one hundred and thirty-six feet and forty-four one hundredths of a foot to a stake; thence South forty-nine degrees forty-one minutes West sixty-five feet and eighty-three one hundredths of a foot to the beginning. Of which said last described premises the said Harriet G. Boynton and Charles B. Boynton are the owners.

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XI.—And your orator further shows unto your Honor that annexed hereto is a copy of a survey of the whole of said premises including that portion which was omitted from said agreement and deed.

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XII.—And your orator further shows unto your Honor that the acts and doings and the refusal of the said Harriet G. Boynton and Charles B. Boynton, her husband, to convey unto your orator the said premises fraudulently withheld by them from said agreement and deed are contrary to equity and good conscience.

(a) To the end therefor that the said Harriet G. Boynton and Charles B. Boynton, her husband, who are the defendants hereto, may without oath (answer under oath being hereby waived), full, true and perfect answer make to all and singular the premises as fully as if the same were here again repeated and they particularly interrogated thereto; and that the said agreement made

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and executed between the said Harriet G. Boynton and your orator and purporting to properly describe the land agreed to be purchased by him as aforesaid, may by the order and decree of this court be reformed and corrected in the description therein so as to make the said agreement conform to the actual contract made and entered into by and between your orator and the said Edward E. Bruen, the authorized agent of said

10 Harriet G. Boynton and Charles B. Boynton, and by the like order and decree of this Court that said deed may be reformed and corrected so as to fully convey to your orator all of the land which under the actual agreement between himself and the said agent of said Harriet G. Boynton and Charles B. Boynton he purchased and was entitled to have conveyed to him, and that said additional land when conveyed shall be conveyed subject to no other or further liens or encumbrances

20 than the mortgages mentioned in said agreement for sale, and in the deed by which part of said premises were conveyed to your orator as aforesaid, and that if it shall be found that the premises omitted from said agreement and deed are otherwise encumbered, that the said Harriet G. Boynton and Charles B. Boynton, her husband, may be required to pay to your orator such sum or sums of money as may be sufficient to indemnify your orator from such other liens or encumbrances and as will enable your orator to fully

30 discharge said land from such other liens or encumbrances.

(b) And that until the further order of this Court the said defendants, Harriet G. Boynton and Charles B. Boynton, may be enjoined from conveying, mortgaging, selling or otherwise disposing of that part of said prem-

ises which were fraudulently omitted from said agreement and deed or from doing any other act or acts by which your orator's rights therein would be in any wise prejudiced.

May it please your Honor the premises considered to grant unto your orator not only the State's writ of injunction directed to the said defendants, enjoining them and restraining them as hereinbefore prayed, but also the State's writ of subpoena likewise issuing out of and under the seal of this Court and directed to the said Harriet G. Boynton and Charles B. Boynton, commanding them at a certain date and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer the premises and to stand to and abide by and perform such order and decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orator as in duty bound will ever pray, etc.

GUILD & MARTIN,
Solicitors for and of
Counsel with Complainant.

ARTICLES OF AGREEMENT, made the twentieth day of September, in the year of Our Lord One Thousand Nine Hundred and four (1904), between Harriet G. Boynton, of the City of East Orange, in the County of Essex and State of New Jersey, of the First Part; and Paul Starrett, of the City of East Orange, in the County of Essex, and State of New Jersey, of the Second Part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of twenty-

two thousand five hundred dollars (\$22,500), to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that she, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed
 10 of Warrantee, free from all encumbrance on or before the first day of October next ensuing the date hereof, all that lot, tract, or parcel, of land and premises, hereinafter particularly described, situate, lying and being in the City of East Orange, in the County of Essex and State of New Jersey, beginning in the westerly line of Harrison Street, at a point distant northeasterly seventy-six and
 20 $46/100$ feet from the intersection of the said line of Harrison street with the northerly line of Berwyn street (formerly Dennis Place); running thence north $40^{\circ} 29'$ West one hundred and forty feet; thence north $49^{\circ} 41'$ East being parallel with Harrison street sixty-five $83/100$ feet; thence north $40^{\circ} 29'$ west one hundred and thirty-six $54/100$ feet; thence south $49^{\circ} 4'$ west fifteen feet; thence north $49^{\circ} 29'$ west fifty feet; thence north $49^{\circ} 4'$ east twenty-five feet to line of land formerly of Theodore F. Seward; thence along that land north $40^{\circ} 20'$ west nineteen feet and four inches to land
 30 now or late of Sarah L. J. Whiting; thence along the same northeasterly twelve feet; thence south $40^{\circ} 29'$ east sixty-nine feet and four inches more or less to line of land conveyed by Susan L. Palmer and husband to Harriet G. Boynton by deed dated July 8, 1899, recorded in the Register's Office of the said County of Essex in Book M-32 of Deeds of said county on pages 551 to 554; thence along the same north $49^{\circ} 4'$ east thirteen feet to a corner

of the same; thence along same south 40° 29' east two hundred and seventy-six 70/100 feet to said line of Harrison street; thence along Harrison street south 49° 41' west one hundred and 83/100 feet to the place of Beginning.

AND the said Paul Starrett, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, her heirs, executors, administrators and assigns, that he 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 twenty-two thousand five hundred dollars (\$22,500) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

One thousand dollars upon the signing of this agreement, the receipt whereof is hereby acknowledged.	\$1,000.00	10
Seven thousand five hundred dollars upon the passing of the deed.	7,500.00	
Subject to two mortgages now on the said premises amounting in the aggregate to fourteen thousand dollars	14,000.00	
	<hr/>	
	\$22,500.00	30

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

AND IT IS FURTHER AGREED, by the parties hereto, that the said deed of warrantee shall be delivered and received at the office of the Fidelity Trust Company, Newark, New Jersey, between the hours of ten in the forenoon and eleven o'clock in the forenoon on the said first day of October next ensuing the date hereof.

10 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.

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

HARRIET G. BOYNTON. [L. S.]

PAUL STARRETT. [L. S.]

Signed, Sealed and Delivered }
in the presence of }
EDWARD E. BRUEN.

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THIS INDENTURE, made the thirtieth day of September, in the year of our Lord One Thousand and Nine Hundred and Four, BETWEEN Harriet G. Boynton and Charles B. Boynton, her husband, of the City of East Orange, in the County of Essex, and State of New Jersey, of the First Part:

AND Paul Starrett, of the City of East Orange, in the County of Essex, and State of New Jersey, of the Second Part: 10

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar, and other good and valuable consideration, lawful money of the United States of America, to her 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, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to her heirs and assigns forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of East Orange, in the County of Essex, and State of New Jersey: 20 30

Beginning in the westerly line of Harrison street at a point distant northwesterly seventy-six and $46/100$ feet from the intersection of the said line of Harrison street with the northerly line of Berwyn street (formerly Dennis place): running thence north $40^{\circ} 29'$ west one hundred and forty feet; thence north $49^{\circ} 41'$ east, being

parallel with Harrison street sixty-five $83/100$ feet; thence north $40^{\circ} 29'$ west one hundred and thirty-six $54/100$ feet; thence south $49^{\circ} 4'$ west fifteen feet; thence north $49^{\circ} 29'$ west fifty feet; thence N. $49^{\circ} 4'$ east twenty-five feet to line of land, formerly of Theodore P. Seward; thence along that land, north $40^{\circ} 29'$ west nineteen feet and four inches to land now or late of Sarah L. J. Whiting; thence along the same northeasterly
 10 twelve feet; thence south $40^{\circ} 29'$ east sixty-nine feet and four inches, more or less, to line of land conveyed by Susan L. Palmer and husband to Harriet G. Boynton, by deed dated July 8, 1899, recorded in the Register's Office of the said County of Essex in Book M 32 of Deeds of said County on pages 551 to 554; thence along the same north $49^{\circ} 4'$ east thirteen feet to a corner of the same; thence along same south $40^{\circ} 29'$
 20 east two hundred and seventy-six $70/100$ feet to said line of Harrison street; thence along Harrison street south $49^{\circ} 41'$ west one hundred and $83/100$ feet to the place of beginning. Subject to one mortgage of Ten Thousand Dollars (\$10,000) made by Harriet G. Boynton and husband to the Board of Corporators of the Peddie Institution, recorded in Book I 13 of Mortgages for Essex County on page 540, with interest paid to October 1, 1904, at 5% per annum. Also subject to a second mortgage of Four Thousand Dollars (\$4,000) made by Harriet G. Boynton and husband to
 30 James B. Dill and recorded in Book E 16 of Mortgages for Essex County on page 403, with interest from July 1, 1904, at 6%. Being part of the same premises conveyed by deed to Harriet G. Boynton and Charles B. Boynton, her husband, by Martha A. Stockton and husband, dated July 17, 1897, and recorded in Book W 30 of Deeds for Essex County on pages 519-522. Also being part

of the same premises conveyed to Harriet G. Boynton and Charles B. Boynton, her husband, by Susan L. Palmer and husband, by deed dated July 8, 1899, and recorded in Book M 32 of Deeds for Essex County, pages 551-554.

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:

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

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said Harriet G. Boynton doth for herself, her heirs, executors and administrators covenant and grant to and with the said party of the second part his heirs and assigns, that she the said Harriet G. Boynton is the true, lawful and rightful owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

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

10 AND ALSO, that Harriet B. Boynton will WARRANT, secure, and forever defend the said land and premises unto the said Paul Starrett, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal the day and year first above written.

HARRIET G. BOYNTON. [L. S.]

CHAS. B. BOYNTON. [L. S.]

20 Signed, Sealed and Delivered }
in the presence of }

EDWARD E. BRUEN.

Interlineation between 7th and 8th line of description made before execution.

STATE OF NEW JERSEY, }
County of Essex, } ss.:

30 BE IT REMEMBERED, That on this thirtieth day of September, in the year of Our Lord One Thousand Nine Hundred and Four, before me, a Commissioner of Deeds in and for said State and County, personally appeared Harriet B. Boynton and Charles B. Boynton, her husband, who, I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon did acknowledge

that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed:

And the said Harriet G. Boynton being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

EDWARD E. BRUEN,
Commissioner of Deeds.

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[Endorsed.]—Deed.—Harriet G. Boynton & Husb. to Paul Starrett.—Dated, Sept. 30, 1904. —Received in the Register's Office of the County of Essex on the 1st day of October, A. D. 1904, at 11.57 o'clock, in the forenoon and Recorded in Book T 37 of Deeds for said County, on pages 568-569.—Howe & Davis, Counselors at Law, Orange, N. J.—William Read Howe.—Thomas A. Davis. 20

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IN CHANCERY OF NEW JERSEY.

Between—

PAUL STARRETT,
Complainant,*and*10 HARRIET G. BOYNTON and
Charles B. Boynton, her hus-
band,
Defendants.On Bill, etc.
Answer.

The joint and several answers of the said defendants, Harriet G. Boynton and Charles B. Boynton her husband, to the Bill of Complaint of the Complainant.

20 1. These defendants answering say, that it is true as stated in the first paragraph of the said Bill of Complaint, that one, Edward E. Bruen, a real estate dealer of East Orange, had for sale upon his books a property owned by the defendant Harriet G. Boynton, known as No. 73 Harrison Street in the City of East Orange, but this defendant has no knowledge of any statements alleged in said paragraph to have been made by the said Bruen to the complainant, and if the said
30 statements or any of them were so made, these defendants deny that the said Bruen had any authority whatsoever to make them on behalf of these defendants or either of them.

2. These defendants further answering say, that it is true as stated in paragraph second of the Bill of Complaint that the defendant Harriet G. Boynton agreed to sell to the complainant for the sum of twenty-two thousand five hundred dol-

lars (\$22,500) subject to two mortgages amounting to fourteen thousand dollars, certain real estate fronting on Harrison Street in said City of East Orange, being the same premises as were particularly described in the said mortgages, and that such agreement was reduced to writing and signed by the complainant and this defendant, Harriet G. Boynton, and that the whole agreement between the parties to said contract was stated therein, and that there were no other representations or agreements verbally or otherwise entered into between the defendant Harriet G. Boynton and the complainant, concerning the said premises; and that it is true as stated in said paragraph second that upon the execution of said agreement in writing, the complainant paid to the defendant Harriet G. Boynton, the sum of one thousand dollars (\$1,000) in cash.

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3. These defendants further answering say, that it is true as stated in paragraph third of said bill of complaint, that subsequently to the execution of said agreement, and on or about September Thirtieth, Nineteen Hundred and Four, by a proper deed of conveyance bearing date on that day, these defendants conveyed to the complainant, his heirs and assigns forever, the certain lands and premises on the Westerly line of Harrison Street particularly set out by metes and bounds in said paragraph third of the bill of complaint, and which lands and premises were the same as the defendant Harriet G. Boynton had theretofore agreed to sell and convey to the complainant, under the agreement in writing set out in paragraph second of said bill of complaint; and that it is true that upon the delivery of said deed the complainant paid to the defendant Harriet G. Boynton the sum of seven thousand five hundred dollars (\$7,500), being the balance due in

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cash, in accordance with said agreement; but these defendants expressly deny that the complainant, either upon the delivery of said deed or at any other time, entered into possession of any lands or premises excepting such as were described in said agreement and said deed; and these defendants expressly deny that the complainant purchased of them or either of them, any lands and premises excepting such as were particularly described in said agreement and deed; and these defendants deny that the complainant is now or has at any time been in actual possession of any lands and premises by virtue of the said deed, excepting such as were described in said agreement and said deed; and these defendants expressly deny that any lands or premises agreed to be sold by these defendants or either of them to the complainant were omitted from said agreement or deed.

20 4. These defendants further answering say, that if the said Edward E. Bruen represented to the complainant or gave them to understand that their purchase from the complainant included any lands or premises excepting such as were embraced in and particularly described in the said agreement and deed, such representations by the said Bruen to the complainant were entirely unwarranted and were made without any authority
30 whatsoever from these defendants or either of them.

5. These defendants further answering say, that they have no knowledge as to whether or not the complainant procured any survey of the said premises, but charge the fact to be that several days before the execution of said agreement for purchase, these defendants put the complainant in possession of a policy of guaranty issued by

the Fidelity Trust Company and of a deed, which policy and deed contained descriptions of the premises which the complainant had contracted to purchase from the said defendant Harriet G. Boynton, and that at the time of the closing of the title and delivery of deed by these defendants to said complainant, which was done through the said Bruen as an intermediary, these defendants were both present in the office of said Bruen in East Orange, and enquired of him if the survey of the property had verified the descriptions in the agreement and deed as to the metes and bounds of the premises purchased by said Starrett, and the said Bruen then and there answered in the affirmative. These defendants admit as stated in said paragraph five, that on or about December Second, Nineteen Hundred and Four, the defendant Charles B. Boynton communicated to the complainant in writing, the letter set out in said paragraph, which was sent by the defendant Charles B. Boynton to the complainant after defendant Charles B. Boynton had called at complainant's office and failed to see him, but that said communication was sent by the defendant Charles B. Boynton to the complainant without any authority from or knowledge of the defendant Harriet G. Boynton. These defendants have no knowledge of what action was taken by the complainant after the receipt by him of said letter of December Second, Nineteen Hundred and Four, but again deny the statement contained in said paragraph that said Bruen had any authority whatsoever to represent to the complainant that he was purchasing any lands or premises excepting such as were included in the agreement for purchase and the said deed of conveyance.

6. These defendants further answering say,

that it is true that they built the iron fence where it now stands and also that the hedge where it now stands was placed in its present position by these defendants; that before the hedge and fence were placed in their present position, the easterly hedge and fence were on a line about ten feet easterly from the present position, and the northerly hedge and fence were on a line about thirteen to fourteen feet north of their present position; that at the time these changes were made, 10 the defendant Harriet G. Boynton was the owner of the premises known as No. 73 Harrison Street, and that the premises in the rear thereof, fronting on Berwyn Street and known as No. 1 Berwyn Street in said City of East Orange; that the change was made for the convenience of these defendants while they occupied the said Harrison Street house, and that in the making of such change, ten feet of land of the defendant Harriet 20 G. Boynton fronting on Berwyn Street and belonging to the premises No. 1 Berwyn Street was taken off the easterly side of the Berwyn Street front and permitted to be used by the owner of the premises at the northwesterly corner of Harrison and Berwyn Streets, while these defendants elected to permit the said hedge and the said fence to remain in their present position.

7. These defendants deny that there was any land omitted from either the agreement or the 30 deed which the complainant had agreed to purchase, and deny that the premises alleged by the complainant to have been omitted are necessary to the full and proper enjoyment of the premises described in said agreement and deed, and deny that they or either of them had any part in influencing the complainant to form the belief or understanding that he was to receive by deed

from these defendants, any land other than was described in said deed.

8. These defendants further answering deny that the complainant made any demand upon them or other of them for the execution of a further deed of conveyance for any of the lands than those embraced in the said conveyance so as aforesaid executed by the defendants to the complainant, and these defendants deny that they are under any obligation or that they ever agreed or represented to convey any other lands.

9. These defendants further answering say, that the description contained in said agreement and deed included all of the lands which they had authorized the said Bruen to sell to the complainant, and which the complainant purchased, and they deny the allegations in said paragraph nine to the contrary, and they deny that they knew that the complainant was acting under the belief that the said agreement contained any other lands excepting what were therein set out by metes and bounds, and they deny that they covertly, fraudulently or otherwise withheld any knowledge of any description from the complainant concerning the lands and premises which the complainant had agreed to purchase; and they deny that they or either of them induced the said Bruen or any other person to represent to the complainant that any additional land would go with the property described in said deed and agreement, except only such lands as were therein described.

10. These defendants further answering deny that the lands and premises described in paragraph ten of said bill were fraudulently omitted from the said agreement and said deed, but allege the truth to be that the said premises de-

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scribed in paragraph ten were rightfully and lawfully omitted from said agreement and said deed, and that the said premises are embraced in other mortgages than those covering and embracing the premises so as aforesaid conveyed to the complainant, and that these defendants or either of them never agreed to convey to the complainant any part of the premises described in paragraph ten of the complainant's bill.

10 11. These defendants further answering deny that the land shown upon any survey or alleged survey attached to the complainant's bill, belonged in any way to the premises so as aforesaid conveyed to the complainant, but on the contrary the land shown on said survey with other land is embraced in the deed for the present residence of these defendants, known as No. 1 Berwyn Street, in said City of East Orange.

20 12. These defendants further answering say, that they have in all particulars performed the contracts, agreements and conveyances entered into by them or either of them with the complainant, and that the complainant has received from these defendants, and is now in possession of, all the lands and premises which these defendants or either of them agreed to convey to him; that all of the other lands and premises in East Orange owned by either of the defendants are
30 are subject to the lien of a mortgage other than those mortgages which at the time of the conveyance to the complainant embraced and were a lien upon the premises described in the deed to him, and these defendants deny that through any representations made by them or either of them, with their or either of their authority or in their behalf, that the complainant has been injured in any degree whatsoever.

These defendants emphatically state that they or either of them would never have sold to the said complainant for the price which the defendant Harriet G. Boynton received the premises which the complainant demands in addition to the premises described in the deed to the complainant.

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FRANK E. JACOBUS,
Sol'r.

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HOWE & DAVIS,
of Counsel with Defendants.

IN CHANCERY OF NEW JERSEY.

BETWEEN—

PAUL STARRETT,
Complainant,

and

HARRIET G. BOYNTON *et al.*

On Bill, etc.
Replication.

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The complainant joins issue on the answers of the defendants filed in the above stated cause.

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GUILD & MARTIN,
Solr. of Complt.

IN CHANCERY OF NEW JERSEY.

Between—

PAUL STARRETT,
Complainant,

and

10 HARRIET G. BOYNTON, *et al.*,
Defendants.

On Bill, &c.

Before his Honor Vice Chancellor Stevens.
Messrs. Guild & Martin, for the Complainant.
Messrs. Howe & Davis, for the Defendants.

20 Transcript of shorthand report of the evidence
given upon the trial of the above stated cause, on
Wednesday, the twenty-eighth day of March, A. D.
1906, at the Chancery Chambers, Newark, N. J.

JAMES B. DILL, SWORN:

Direct examination by Mr. Guild:

Q. Judge Dill, you live in East Orange?

A. Yes, sir.

Q. Do you know Harriet G. Boynton?

A. Yes, sir.

30 Q. Do you know her husband Charles D. Boynton?

A. Yes, sir.

Q. Do you hold a mortgage on the property
owned by either her or her husband, possibly by
both, that fronts on Beryn street, East Orange?

A. Do I now hold it?

Q. Yes.

A. No, sir.

Q. Did you hold such a mortgage in September, 1904?

A. Yes, sir.

Q. Does your recollection permit you to say whether that mortgage extended north and east upon the rear line so as to cover the strip that is now included, so far as physical appearance go, in the property owned at that time or about that time by Mrs. Boynton fronting on Harrison street? 10

A. You have got me, Judge.

Q. Well, now, what I want—I don't know whether I make it plain to you.

A. Well, I can answer your question in my own way, if you want me to.

Q. Do so.

A. I held two mortgages on the property. Do you want me to state the contents of the mortgages, where they went, I can do so if you want me to? 20

Q. Yes.

A. Two mortgages as originally drawn covered the properties as originally deeded to Mrs. Boynton. Subsequently, on the northeast side of the Beryn property the lines of demarkation between the two properties were changed by moving in the fence line, increasing the apparent rear of the Harrison street strip property by about ten feet to the east and the north, decreasing to the same extent the rear of the Beryn street property, and therefore my mortgage on the Beryn street property after the fence and hedge were moved, covered the Harrison street property to the extent of about ten feet on the north side and about ten feet on the east side of the same property. 30

Q. And that was the condition of things September, 1904?

A. Yes, sir.

Q. Now, about September, 1904, did either Mr. or Mrs. Boynton or both call upon you with reference to releasing this strip you have spoken of from the lien of your mortgage or mortgages?

A. Mrs. Boynton never, but Mr. Boynton, yes.

Q. Will you kindly tell us what he said at that time?

10 A. Mr. Boynton, the husband; not Mrs. Boynton; called at my library one evening prior to the date of the contract between Mr. Starret and Mr. Boynton, and stated that he contemplated selling the property, through a Mr. Bruen, a real estate agent, to Mr. Starret, and asked if I would release so much of the mortgage as laid upon the Beryn street property, that is, so much of the property covered by the Beryn street property overlapping the hedges, and I will make a long conversation short by saying that I declined.

Q. What did you say to him?

20 A. I don't remember the entire conversation, but I summarize it with the fact that I declined.

Q. Didn't you say that you would release it if he would pay you what the release was worth?

A. Oh, there was something of that sort discussed, but there was never any difference between us; we were entirely friendly, but I preferred not to split up my mortgage or reduce it.

Q. Didn't Mr. Boynton say that he had sold that property to Mr. Starret?

30 A. No, sir; I think I have included all he said in my description of the conversation; I think he said he contemplated doing it. He told me the contract had not yet been drawn.

Q. You cannot fix the exact date of that conversation?

A. I only fix the date by the statement that the contract had not yet been drawn.

Q. Then you did not, I understand it, agree to release the strip for a consideration?

A. I have stated that I declined.

Cross-examination by Mr. Davis:

Q. Judge Dill, do you remember if Mr. Boynton called to ask you to release Mrs. Boynton on the bond on the Harrison street property that night?

A. The same night? 10

Q. Yes.

A. It was a subsequent night, sir.

Q. What was that conversation, Judge, as far as you can recall it?

A. Well, if you want it, Mr. Davis, the Colonel came to see me, and said that he had—that the necessity for releasing the property was now a past matter, had gone by, he said he had entered into a contract with Starret to sell him the property as originally deeded to him on Harrison street, and that Starret would assume the mortgage on the Harrison street property, and that I need not bother about the mortgage on the Beryn street property, and that he would pay it off when he got his money from Starret. 20

Q. Now, what was said, Judge, about releasing Mrs. Boynton on the bond on the Harrison street property, if you recall?

A. Why, nothing was said about releasing her on the bond, that I recall, he simply stated that Mr. Starret would assume the bond and mortgage on the Harrison street property, and he asked me to do what I did—write Mr. Starret a letter that I would be satisfied to allow the mortgage to remain for at least a year, provided he, Starrett, formally assumed it and the payment of both the bond and mortgage in the deed of conveyance to him by Mrs. Boynton. 30

Q. Did you write that letter, Judge?

A. I did.

Q. Do you recollect whether that letter was written before Starrett took the deed or afterwards?

A. The date will show, I cannot recall it.

Q. That is all.

10

WILLIAM H. V. REIMER SWORN.

Direct examination by Mr. Guild:

Q. What is your business?

A. I am a surveyor.

Q. And you live where?

A. I live in East Orange and am employed by the City of East Orange as their City Engineer, and have an office of my own in the city of Orange.

20 Q. Well, you made this map?

A. No, sir, I did not, that is made from a map which I made. I have compared it and it compares with the map which I made.

Q. Well, now I want to call your attention—it is a map of the property of Paul Starret on Harrison street, East Orange?

A. Yes, sir.

30 Q. I want to call your attention to something here and ask you about it. It shows the south line of the property as shown on this map, and ask you whether—it shows the distance here from Harrison street running west one hundred and forty feet; I would like to ask you whether that is not a mistake?

A. One hundred and forty feet is in a line parallel with this dotted line across here (indicating); that is where it would be.

Q. Now I ask you whether that map shows a correct survey of Mr. Starret's property on Harrison street?

A. It shows the correct survey as indicated on the ground.

By the Court:

Q. You may point out what indicates the hedge?

A. The hedge is indicated along the line running out from Beryn street just east from an iron fence, and then westerly along an iron fence to a point about thirty-five feet from the stable indicated by this rough irregular line as shown on the map. 10

Q. And there is an iron fence there running parallel with the——

A. Running parallel with the hedge; south of the portion running east and west and west of the portion running north and south.

Q. Does that iron fence run to the stable? 20

A. It runs all the way up to the stable, whether it is all iron or not, but I remember it as a fence.

Q. Now I notice on the map a dotted line across the rear of the main property continuing westward or in a northwesterly direction as nearly as far as the stable, and then running off in a southerly direction to the property line, what does that indicate?

A. That is a line indicating the line given by the deed. 30

Q. By the deed from whom to whom?

A. From Mr. Boynton I believe to Mr. Starret.

The Court.—There is no dispute with respect to the facts, and so it is not worth while, I take it, to go into any elaborate examination of this.

Mr. Davis.—While you are on the map—

I was going to suggest that he made this map also, and this map shows probably a little bit more clearly the lines of the property as conveyed to Mr. Starret, and also the line of the property owned by Mrs. Boynton on Beryn street to which Judge Dill referred in his testimony.

The Court.—Well, put that map up.

10 *Further Direct examination:*

Q. Now you are familiar with the situation of this property?

A. Yes, sir.

Q. As far as outward indications are concerned, what are the visible boundaries of Mr. Starret's property at the west of his main house lot?

A. Hedge and an iron fence.

Q. And following the line on the southerly rear portion of the long strip here?

20 A. There is an iron fence along there, and a hedge the larger part of the way.

Q. Now, the hedge that is shown on this map is on what we will call Mr. Starret's property?

A. Yes, sir.

Q. How high is the hedge?

A. Possibly three feet or three and a half feet, may be a little higher.

By the Court:

30 Q. Is that a dry California Privet?

A. Some kind of close hedge, I think it is Privet, I don't recall exactly what.

Further direct:

Q. Is there a drive from Harrison street to the stable on the rear of this property?

A. Yes, sir.

Q. Is that indicated by the white space on the map?

A. Yes, sir.

Q. What does the drive consist of?

A. Macadam roadway.

Q. Curbed?

A. Yes, sir.

Q. Where does the curb begin?

A. As I remember the curb commences at Harrison street and ends about where this curve begins, shown on the plan. 10

Q. So that there is a curb set all along the southerly side of the drive?

A. Yes, sir.

Q. Now, does this drive that is indicated on the map, run over into the disputed strip of land?

A. I believe it does, yes, sir.

Q. Isn't it shown so on your map?

A. It is, yes, sir.

Q. Does the north line of the disputed strip where it terminates in front of the stable, extend up on the wooden platform leading into the stable? 20

A. It runs into the wooden platform going into the stable.

By the Court:

Q. How is that wooden platform indicated?

A. The platform comes out from the stable far enough so that this line running up to it and instead of putting a spike in the doors I put a big spike right in the ground there. 30

Further Direct:

Q. How is that platform indicated on the map?

The Court.—Make a letter to show us.

(Witness did so.)

Further Direct:

Q. That portion of the map which you have marked platform?

A. Yes, sir.

Cross examination by Mr. Davis:

Q. What distance is there, Mr. Reimer, between the iron fence and the hedge?

10 A. Between ten and eleven feet.

Q. Between the iron fence and the hedge?

A. Oh, the iron fence is hard up against the hedge; the hedge would probably over-lap it at points.

Q. Now, calling your attention to this other map, Mr. Reimer, on the oil paper; did you make this map?

A. I did.

Q. And the lines of the Starret property corresponding to the lines on this paste-board map, were they also made by you?

20 A. They were.

Q. And from what?

A. Titles, descriptions given to me of the titles.

Q. Now, you show a plot on this map, of property fronting on Beryn street 135 feet front; whose property is that?

A. I believe that is Mrs. Boynton's.

Q. And you got these dimensions from what,— property fronting on Beryn street?

30 A. Titles which you furnished me, I think.

Q. Did you also compare certain mortgages covering this property, with the metes and bounds of the property, as shown on the map?

A. I did.

Q. With regard to what property did those mortgages cover, how does this map compare as to the Beryn street property?

A. It compares with the property on Beryn street.

Q. That is your metes and bounds of the Beryn street property show the boundary of the property covered by two mortgages?

A. Yes, sir.

Q. And those two mortgages are mortgages that were held by Judge Dill, and another held by the Mutual Life?

A. As I recall it, yes, sir, I don't recall particularly as to that. 10

Q. The property fronting on Harrison street in which you show a depth of one hundred and forty feet and a frontage of one hundred and eighty-three hundredths feet, did you make up that description or sketch from Mr. Starrett's deed?

A. I made it up from the description from these titles. I think there are three different descriptions given in making that title, as I recall it; whether that title is all in one to Mr. Starrett or not, I don't recall now. 20

By the Court:

Q. I notice a dotted line on the *locus in quo*, what does that indicate?

A. Judge, the title originally took in a piece of some seventy feet—seventy-five feet front on Harrison street and ran through all the way to this point (indicating), about nineteen feet from the extreme rear and took in a piece of twenty-five feet by fifty, and then along what is now the Boynton rear, as indicated by the survey, as one piece. Then there was a second piece, of a strip of twelve feet wide by about sixty-nine feet long which was added to it from property which fronted on another street. Then another strip of twenty-five feet wide running from that down to Har- 30

risson street, the whole depth of two hundred and seventy-six feet, so that the Starret property was supposed to take in those three different titles.

Q. Well then the dotted line on the vellum merely indicated the old property line?

A. Yes, sir.

Q. Well, the dotted line on the past-board map in evidence indicates something different than what has already been described?

10 A. Yes, sir, indicates the line given here as 13654 running along east and west.

Q. Yes, I understand; I didn't want to have any confusion about that.

Further Cross:

Q. What official position do you have with East Orange?

20 *The Court.*—What difference does that make?

Mr. Davis.—I want to have him identify the City block maps.

The Court.—Well, the only question in this case is the question of false representations.

Q. Are you familiar with the East Orange City block maps?

A. Yes, sir.

30 Q. And this vellum of ward 3, East Orange Township on page 4, does that show the East Orange City block maps with relation to this property in block 320?

A. It shows all but a strip of twenty-five feet wide on the northerly side.

Q. Is that the strip that is north of the dotted line of your map?

A. That is the strip that is north of the dotted line on the map.

Q. You are speaking now of the Harrison street property?

A. Yes, sir.

Q. The City block lines of East Orange show the depths of the Harrison street property to be what?

A. One hundred and forty feet on the southerly line.

Q. And the City block maps show dimensions of the Beryn street property, No. 1 Beryn street, to be what? 10

A. One hundred and twenty-five feet front on Beryn street, it is 136.54 rear, 143.38 on the east, 144.44 on the northwest side.

Q. Do you know if the numbering of the houses on the streets in East Orange have any relation to the property as shown on the block maps?

A. The only reference they have is giving a block number, and indicating in the tax books some position on the street. 20

Q. And are or are not the taxes in East Orange levied according to the block maps?

A. Yes, I believe so, I didn't have anything to do with that part of it, though.

Re-direct examination:

Q. Well, then this block map does not truly show the dimensions of the property owned by Mr. Starret?

A. Only in part. 30

Q. It doesn't show truly the lines of the property owned by Mr. Starret as conveyed to him by the Boyntons?

A. No, sir.

Q. Nor as those lines existed for some time prior to the sale?

A. No, sir.

Q. When was this block map made?

A. This block map was made ten years ago, and has been corrected along as years go by. Twice, I believe, it has been over-hauled.

Q. Does it correctly show the property lines of this property at the time the block map was made?

A. That I cannot say, I don't know just when that twenty-five foot strip was——

Q. No, that is not my question.

A. It shows the title as conveyed, I think by
10 Doctor Stockton for a piece, but it doesn't show the other part.

Q. That is not my question. My question was whether this block map correctly showed the property lines of the property we are interested in now, at the time the map was made?

A. I presume so, I didn't make it.

Q. And it doesn't show the changes in that property line made since this block map was made?

A. It doesn't.
20

Q. That is all.

Mr. Guild.—We have a witness, Mr. Newhouse, who is here at great personal inconvenience, and we really expected to use him in rebuttal, but with the consent of the Court and Mr. Davis I would like to call him out of order.

The Court.—You may do so.

30

EDGAR L. NEWHOUSE SWORN.

Direct examination by Mr. Guild:

Q. You reside where?

A. West Orange.

Q. Did you ever occupy the house, as a tenant,

now owned by Mr. Starrett, on Harrison street, East Orange?

A. Yes, sir.

Q. Do you remember when you went in first?

A. I don't quite understand your question.

Q. When you first took possession?

A. What date?

Q. Yes, approximately.

A. I think about January 5th or 6th, 1903-1902.

Q. How long did you live in that house?

10

A. I lived there about a year and three-quarters, my impression is, until the following September of 1903.

Q. I call your attention to the paste-board sketch or map, and ask you whether, if you are able to say, it fairly represents the property line of that property?

A. Perhaps I can best explain that by my negotiations for the rent of the house.

Q. With whom?

20

A. With Mrs. Boynton, and Mr. Bruen acting as her agent.

Q. As you were informed?

A. As I was informed.

Q. Well, now, if you will give us that—

Mr. Davis.—Informed by whom?

Witness.—By Mr. Bruen, who took me up there, and by Mrs. Boynton, who advised me that the details would be arranged by him.

30

Q. Now, what do you desire to say about that?

A. Mrs. Boynton suggested, I think, that Mr. Boynton show me around the property, after talking things over in their house.

Q. Were they then living in this house?

A. They were living in the house; this was prior to my taking possession. We walked, accompanied by Mr. Bruen, over the property, up to the

barn. There was a little garden spot pointed out to me by Mr. Boynton where the children could raise flowers and so on, which was right next to the hedge, between the road and the hedge.

Q. Can you indicate on this map where that was?

A. Is this the stable up here (indicating)?

Q. Yes.

A. Right in here (indicating). Later on, at
10 another interview when Mr. Bruen was not present Mr. Boynton and I paced off the property in front of the house on Harrison street and walked over this piece of ground between the Boynton and the Stockton properties, going up to the hedge, and insisting that during my lease of the property that hedge should be trimmed.

Q. By whom?

A. By me as occupant of the property. It is
20 hardly to be supposed that I would trim a neighbor's hedge.

Q. No, only what was said or done. While you lived there did you take care of the grass and grounds up to the hedge?

A. Up to the hedge, including the hedge.

Q. Did you in your lease have any option of purchasing the property?

A. I did, had an option and intended to purchase the property.

Mr. Davis.—Did the lease show that?

30 *Witness.*—The lease showed that. That option was in the lease.

Q. When you were shown over the property by Mr. Boynton, did he say anything to you as to what was the property line?

A. He did.

Q. What did he say?

A. Said that the hedge—in going over the

property, he walked up with me from Harrison street to the hedge, and along the hedge up to the barn, pointing out to me where I could make a garden for the children, and so on, and what a beautiful hedge it was, and how I must keep it trimmed.

Q. Well, did you have any conversation with him at that time about purchasing the property?

A. I did.

Q. Did he say what was the property line?

10

A. I cannot say that it was ever distinctly stated as to what the property line was any more than I have mentioned, than the impression given me by Mr. Boynton, by explaining that the property went up to the hedge, and that I must take care of the hedge, and that the piece of ground between the road and the hedge I could use as a garden for my children, indicated clearly to me that that was the property.

Q. Did you see anything of an iron fence?

20

A. I did.

Q. Was there anything said by Mr. Boynton about the iron fence?

A. Nothing whatever.

Q. Now, Mr. Newhouse, in going over this property on the west side of the main house lot, and the south side of the strip running back to the stable, what is the visible division line between that property and the adjoining property of the Boyntons?

30

The Court.—What you mean is what was the visible line during your occupation?

Mr. Guild.—Yes, sir.

A. Iron fence.

Q. Was there anything else there at that time to indicate that the property line was anywhere else?

A. Absolutely nothing to my best knowledge.

Cross examination by Mr. Davis:

Q. Mr. Newhouse, who was it pointed out to you the place where you might plant flowers?

A. Mr. Boynton.

Q. Was Mrs. Boynton there at that time?

A. She was not.

10 Q. And you and Mr. Boynton, I understand, paced off the property together. Was Mrs. Boynton there then?

A. She wasn't.

Q. Just what part did Mrs. Boynton take in any of these conversations that you had?

20 A. Only in her house, in her bed room. My recollection is that she advised me that Mr. Boynton would show me over the property, and several times I paid money to Mr. Boynton acting as the agent of Mrs. Boynton, the checks being made out to him, receipts being given me by either Mr. or Mrs. Boynton, I forget which, for monies advanced on account of rent.

Q. Now, in the negotiations leading up to the renting of the property by you, you had only this one conversation with Mrs. Boynton, is that so?

A. Excepting when the lease was signed.

Q. Did you talk further then?

A. Nothing further concerning the title.

30 Q. That is all.

Mr. Guild.—I would like to offer that map in evidence.

Marked Exhibit C 1.

PAUL STARRETT SWORN.

Direct examination by Mr. Guild:

Q. You are the complainant in this suit?

A. Yes, sir.

Q. And purchased the property 73 Harrison street, East Orange, from Mrs. Boynton or Mr. Boynton or both of them?

A. Yes, sir.

Q. Who first called your attention to that property? 10

A. Mr. Bruen.

Q. Mr. Edwin E. Bruen?

A. Yes, sir.

Q. Did you visit the property with him?

A. Yes, sir.

Q. Can you tell us approximately the date?

A. Well, it was about the middle of September, 1903, I think.

Q. Wasn't it 1904? 20

A. 1904, that is right.

Q. Who then was occupying the property?

A. Mr. Newhouse.

Q. The gentleman who just preceded you on the stand?

A. Yes, sir.

Q. You went through the house?

A. Yes, sir.

Q. Did you go over the grounds?

A. Yes, sir, went all over the grounds and the barn. 30

Q. And the boundary lines of the property were shown to you by Mr. Bruen?

A. Yes, sir.

Q. What did he say were the boundary lines?

Objected to.

Admitted.

Q. (Question read.)

A. Well, in describing the property to me, Mr. Bruen called my attention especially to the nice back yard, and the barn and the little garden, and called my attention to the hedge on the west and south.

Q. Well now, you were on the ground when he did this?

A. Yes, sir.

10 Q. Was your attention called by Mr. Bruen to the rear boundaries and south boundaries?

A. Not in particular, just showed me this was the property, and we walked over it, and that was the property we walked over.

Q. Did you see an iron fence enclosing any portion of the property?

A. I don't know that I noticed any iron fence, I just noticed the hedge and was told that that hedge was on the property and was the boundary
20 line of the lot.

Q. Is there an iron fence?

A. There is.

Q. Behind the hedge?

A. Yes.

Q. Dividing your property from the Boyntons?

A. There is.

Q. And that is on the rear of the west line of the main house lot and on the south line of the drive of the strip leading up to the stable?

30 A. Yes, sir.

Q. With whom did you have your dealings in this matter?

A. Mr. Bruen.

Q. In viewing this property is there anything other than this fence and hedge indicating a property line?

A. No, sir.

Q. That is, in those places where the fence and

hedge stand, I mean, of course. Mr. Reimer has testified that there is a macadam drive leading from Harrison street to the stable, is that so?

A. Yes, sir.

Q. He also testified that there is a stone curb on the south side of the drive starting from Harrison street and leading to the stable?

A. There is, but I want to call attention to the fact that part of that I put in since I took possession of the property.

10

By the Court:

Q. How far did it extend at the time that you bought it?

A. As near as I can recollect—it extended to about to—

Q. Well, from Harrison street?

A. From Harrison street back probably, well, I don't remember, some place along between the rear of the house and the fence line, I don't remember exactly, I should judge about there, at the point marked small "a."

20

Q. And you extended it back to the stable?

A. Yes, sir, that is, not to the stable, but where the drive begins to curve.

Further direct examination:

Q. As shown on the map?

A. Yes, sir.

Q. Now, was that macadam drive there when you bought the property?

30

A. Yes, sir.

Q. Exactly as it is now?

A. Yes, sir.

Q. Does any portion of the macadam drive extend over into this disputed strip?

A. It does.

Q. As shown on the map?

A. Yes, sir.

Q. Is there a platform leading out from the stable to the drive, a wooden platform?

A. There is, yes, sir.

Q. Does any portion of this strip run on the wooden platform?

A. It does, a very small amount, about six inches, I think.

10 Q. Now, if a fence were erected on the north line of this disputed strip, at the stable, would it interfere with your entrance to the stable, as the stable is now constructed?

A. Well, it would make it more awkward—you could get into the stable but it would be rather awkward.

By the Court:

20 Q. Will you indicate on the map where the stable doors are?

A. The door of the carriage house is here marked "X" and the door to the stalls is here marked "Y." I would like to say there is a trellis work here which——

Q. Well, here doesn't mean anything on the stenographer's notes.

30 A. On the map just inside the line of the disputed strip, that is, on the line claimed by Mr. Boynton which screens the manure pit from the house, and that trellis is on this disputed property.

Q. Now the trellis is parallel with the front of the barn?

A. Yes, sir.

Q. And how far distant therefrom?

A. It is about eight or ten feet I should say.

Q. And consists of what?

A. Consists of an ordinary green lattice about six or eight feet high; and the turning point of

this disputed property is on this platform and indicated by a spike in the platform going into the barn. The strip or driveway on the disputed land is about four and a half feet by fifty running to a point at one end.

Further direct examination:

Q. When did you first learn that this disputed strip was not in your contract of sale and your deed?

10

A. Well, I don't remember the exact date, it is a matter of record. I received a letter from Mr. Boynton within a week, I think, after I paid the final money, asking me if I didn't want to buy the strip of land between my driveway and his hedge, and I replied that I was——

Mr. Guild.—Have you the letter, Mr. Davis?

20

A. (Continuing) I replied that I was very much astonished to get a letter from him asking me to buy what I thought I had already bought, and I would like to have the ground surveyed and find out where I was before I replied further.

Q. What did you do then?

A. I went to Mr. Bruen and asked him if there had been any mistake in that and he——

The Court.—Well, you cannot state what Mr. Bruen said.

30

Witness.—Well, I went to Mr. Bruen about it.

Q. Now, as a result of that did you have the property surveyed?

A. I did.

Q. And found that all of the land that you——

A. I found that the strip indicated between that

dotted line and the hedge had not been transferred.

Q. And was not included in the description in the agreement?

A. No, sir.

The Court.—That is admitted by the pleadings?

Mr. Guild.—Yes, sir.

10 Q. And then you did what?

A. Then I asked Mr. Bruen to take the matter up with Mr. Boynton and see if we couldn't straighten it out, and was informed by—

Q. No, not what he told you. Now you have lived on this property since December?

A. October.

Q. September or October, 1904?

A. Yes, sir.

20 Q. Who has assumed charge of the land in this disputed strip?

A. Why I have taken care of it, although Mr. Boynton has protested twice by letter.

Q. Now, would you, if you had known that this disputed strip was not to go with the remainder of the property, would you have purchased it?

Objected to as immaterial.

Overruled.

30 *Cross examination by Mr. Davis:*

Q. Mr. Starrett, you stated that it was about a week after you got your deed that Mr. Boynton wrote you a letter; are you not mistaken in that?

A. I may be, I don't remember.

Q. Your bill sets up that the deed was recorded about the first of October, 1904, and your bill further sets up the letter from Mr. Boynton to you dated December 2nd, 1904, is that the fact?

A. I cannot state accurately as to dates, you will have to get that all from the record, the record is undoubtedly correct.

Q. If your bill states what I have said to you is the statement of the bill correct, or your statement correct?

A. Whatever the records say the dates of those checks and letters are, is correct,—whatever the bill says.

Q. Do you remember whether you signed the contract for the purchase of this property before or after Mrs. Boynton signed it? 10

A. Before, I think, I am not sure.

Q. And where was it you signed the contract?

A. In my office in New York.

Q. Was Mr. Bruen there at the time?

A. Yes, sir.

Q. And at that time did you give Mr. Bruen a check for \$1,000?

A. Yes, sir. 20

Q. He was to bring that to Mrs. Boynton, was he not?

A. Yes, sir.

Q. What do you know, Mr. Starrett, about how the description in that agreement was made up?

A. I don't know anything about it. All I know is this,—I asked Mr. Bruen when he bought the papers in—he was a little indefinite about the frontage, he said it was over a hundred feet, and when he brought it in I said, this is the description of this property, is it, and he said yes, and I opened it up and looked to see if the frontage was correct, and I remember saying to him, you just got over your hundred feet, it is one hundred feet and ten inches, and I said, now, this is a description of that property you showed me, and he said it is, and I signed it. 30

Q. How does the description in the agreement tally with the description in your deed?

A. I am told it is the same.

Q. Well, before you signed the agreement did you read over the description contained in the agreement?

A. No, sir.

Q. Well, you looked for the frontage only?

A. Yes, sir.

Q. Didn't look for any depth at all?

A. Why, no, I didn't. It is a very confusing
10 and an unintelligible description.

Q. Did you see any atlas before you bought the property?

A. No, sir.

Q. Did you see any map of the property at all?

A. No, sir.

Q. I notice in the agreement that the property is to be conveyed subject to two mortgages of \$14,000?

A. Yes, sir.

20 Q. Do you recall that?

A. Yes, sir.

Q. Were you to get any property, Mr. Starrett, in that conveyance that was not covered by these two mortgages aggregating \$14,000?

A. I never inquired, I didn't know anything about it. I was told there was that encumbrance on the property, as shown me, and I was satisfied myself that those were the facts, I mean to say, I took it for granted when those mortgages were
30 shown me that they were the mortgages covering that property.

Q. Didn't you understand, Mr. Starrett, that all of the property that you were to get by this conveyance was to be mortgaged?

A. Why, I never gave it a thought.

Q. Well, what did that provision in this contract convey to your mind?

A. It didn't convey anything, because I didn't read it.

Q. You didn't read that at all?

A. No, sir.

Q. Did you have a search made on the property, Mr. Starrett?

A. What do you mean by a search?

Q. Before you bought the property didn't you have a search made?

A. I did not; I had a stipulation that I was to get a policy of guarantee—a guarantee policy guaranteeing the title.

10

Q. From whom?

A. From any responsible Guarantee company.

Q. You actually did get it from the Fidelity, didn't you, downstairs?

A. I don't remember the company I got it of.

Q. At the time when you were negotiating for this guarantee, did or did you not have a survey made?

A. I had no survey made until after I received Mr. Boynton's letter.

20

Q. Did you have any dealings whatever with Mr. Boynton yourself?

A. No, sir.

Q. Did you have any dealings whatever with Mrs. Boynton yourself?

A. No, sir.

Q. Will you indicate, Mr. Starrett, please, on the paste-board map just about to what point you built this curb yourself?

A. I indicated it once.

30

Q. You did?

A. Yes, and I am not sure that is correct, it is just my recollection where that letter "A" is.

Q. What I mean is from "A" to what point did you build?

A. Right to where the road begins to curve on each side.

Q. To about here (indicating)?

A. Yes, sir.

Q. Then with your permission I will indicate that by the letter "B." Then you built the curb from point "A" to "B"?

A. Yes, sir.

Q. On both sides of the driveway?

A. I think so.

Q. Have you attended personally to the investigation of this title—did you make your arrangements with the Fidelity yourself?

10

A. No, sir.

Q. To whom did you leave that matter?

A. Mr. Bruen.

By the Court:

Q. Then you employed no one at all to look after your interests?

A. No, sir; I relied on the good faith of the parties I was dealing with.

20

Further Cross:

Q. When you signed the agreement with Mr. Bruen or in Mr. Bruen's presence, did you say anything to him about the land going back to the fence?

A. No, sir.

Q. And at the time you received the deed where was the title closed?

A. I don't know.

30 Q. Were you present at the time the deed was delivered?

A. Was I? I don't remember.

By the Court:

Q. How did you get the deed?

A. I think Mr. Bruen handed it to me; I know I sent my errand boy up to this building with the last money, I did not deliver it myself.

Further Cross:

Q. What building, the Prudential building?

A. I think so, yes, sir.

Q. You didn't appear personally yourself at all?

A. No, sir, never.

Q. And to whom did you send the money for the balance of the purchase price?

A. Mr. Bruen.

Q. Before you sent the money to pay the balance of the purchase price did you get any report from anybody or any company on the condition of the title? 10

A. No, sir.

Q. Well, as a matter of fact you did pay for this guarantee, didn't you?

A. Yes, sir.

Q. Well, before you actually took the deed didn't you ascertain how the title stood?

A. No.

Q. Did you ascertain who held these two mortgages of \$14,000? 20

A. I was told that the Petty Institute held \$10,000 and Judge Dill \$5,000.

Q. Who told you that?

A. Mr. Bruen.

Q. Judge Dill held \$4,000, you said \$5,000.

A. \$4,000, yes, that is right.

Q. At any time did you with Mr. Bruen or by yourself compare the metes and bounds, as stated in your agreement and deed with any map or survey? 30

A. No, sir. Did you say, or any time since?

Q. No.

By the Court:

Q. Up to the time of the receipt of the deed?

A. Yes, that is right.

Further Cross:

Q. Who has paid the taxes on this disputed territory since you got it?

The Court.—That doesn't make any difference.

Mr. Davis.—Withdrawn.

10 Q. That place, Mr. Starrett, from Harrison street westerly, is all laid out in grass, isn't it, as far as the hedge?

A. Yes, sir.

Q. Anything but grass?

A. No, sir. May I say that that is the reason I looked at the deed to see that the hundred feet and ten inches was a correct dimension, because every other dimension was indicated when the property was shown me.

Q. I didn't catch that last.

20 A. You asked me if there was any visible boundary line between the property on the southerly side, and I said no, that that was the reason that when I took the deed I only looked for the frontage, because that was the only boundary line that was left indefinite when I talked with Mr. Bruen.

Q. What were the other dimensions given by Mr. Bruen?

A. No dimensions given except the frontage. He said it was over a hundred feet front.

30 Q. Was that the only dimension he called your attention to?

A. That is the only dimension he called my attention to in feet and inches.

Q. That is all.

EDWARD E. BRUEN, SWORN:

Direct examination by Mr. Guild:

Q. What is your business, Mr. Bruen?

A. Real estate and insurance.

Q. And where is it conducted?

A. 25 Washington Place, East Orange.

Q. You acted as the agent for the sale of this property from the Boyntons to Mr. Starrett?

A. I did. 10

Q. When was the property first placed in your hands for sale?

A. Well, I think it was late in 1901 or early in 1902, I don't recall the date exactly.

Q. By whom was that commission given to you?

A. The first time that the property came to my notice I think Mr. and Mrs. Boynton were going by the office and called in and wanted to know if I could sell their property. I said I would try, and it was at that time placed on my books. After that Mrs. Boynton called very frequently, and also did Mr. Boynton, to know what progress I was making. Late in the fall, I rather think it was in December, Mr. Newhouse came along, or Mrs. Newhouse came along and wanted to rent a house furnished for a season or longer, and while out driving she was attracted by the appearance of this house, and wanted to know if she could rent that house. Well, I said, I will go and see, and I went to the door and Mrs. Boynton first said she didn't care to rent it, but later on, after talking a little while she said, well, let her see through the house, and we will see; as she wanted to talk with Mr. Boynton. And then I took, with her consent, Mrs. Newhouse through the house, and later on rented it to them, in December, I think it was the seventh, for a year and four months, from January 1st, 1903, I think it was. Then later on we 20
30

made a new lease for the property, January 1st, 1904, or early in January, 1904, for one year, and then——

Q. With Newhouse?

A. With Newhouse again, and then in September of that same year 1904, I sold the property to Mr. Starrett.

10 Q. Now, you have gone a little too fast for me. What dimensions of this property were you authorized to sell?

A. The frontage on Harrison street was put on my books, one hundred feet by a depth running back to the hedge,——

Mr. Davis.—Well, now, if the books are here they would probably show best what was on them.

A. ——and following the hedge——

20 *Mr. Davis.*—I object, if your Honor please.

By the Court:

Q. You are now saying what was put on your books; if you have the books here they are the best evidence?

A. I haven't any books, we have a card system, and the cards are destroyed after we sell the property.

30 Q. You haven't any books containing this matter now?

A. Nothing more than the card system that my clerk writes up after I make a rough memorandum, he fills out on the card and places it in my card case.

Q. Have you that card?

A. I think it is destroyed.

Mr. Guild.—No, I have the card.

Witness.—Oh, have you got it, I thought it was destroyed. I looked it up this morning.

Further direct:

Q. Is that the card you refer to (handing same to witness)?

A. That is it.

Q. Who gave you the instructions as to what quantity of property would be sold at this place? 10

A. Why both Mr. and Mrs. Boynton.

Q. And you say that they told you it would be a hundred feet on Harrison street?

A. Yes, sir.

Q. And what was the depth?

A. About one hundred and fifty feet, or running back to the hedge.

Q. And you made the memorandum accordingly? 20

A. Yes, sir.

Q. And the card which you now produce is that memorandum?

A. Yes, sir.

Q. Was that made by you?

A. That was made by my clerk.

Q. Well, is that according to the instructions given you by Mr. and Mrs. Boynton?

A. That was made by my memorandum.

Q. And that was made when? 30

A. Well, as I say, early in 1901 or early in 1902.

Q. In the Newhouse lease was there any agreement or option to purchase?

A. There was.

Q. Did you make any effort to sell the property to Newhouse?

A. I did.

Q. At whose solicitation?

A. Mrs. Boynton and Mr. Boynton.

Q. Did you take Mr. Starrett through this property?

A. Yes, sir.

Q. Through the house and through the grounds?

A. Mr. Newhouse consented to let us go through.

Q. Mr. Newhouse was living in the property at that time?

10 A. Yes, sir; we had no right to, by virtue of his lease, but he consented to take us through. His wife was ill at the time, and he set the hour, we had to be there in the morning before he went to New York.

Q. Well now, in showing Mr. Starrett the ground, did you define the property lines?

A. I did.

Q. In what way?

20 A. I showed him the frontage of course which he could pace off if he wanted to, and I think we did, and then the depth, we went down along the hedge. Mr. Newhouse accompanied us.

Q. No, I merely want to know what you showed Mr. Starrett and told him?

A. I told him the property was bounded on the east by Harrison street, and the south by Doctor Stockton's and on the west by the hedge, along the west of the hedge and following the hedge back to the stable and including the stable.

30 Q. And did you show him those boundary lines that you have spoken of?

A. Yes, sir.

Q. On the ground?

A. Yes, sir.

Q. Now, there were some negotiations back and forth between Mr. Starrett and the Boyntons and yourself, as the medium, before you agreed upon a price?

A. Yes, sir.

Q. And the price was finally agreed upon?

A. Yes, sir.

Q. After the price was agreed upon who did you see of the Boyntons?

A. Mr. Boynton.

Q. And you told him what?

A. I told him I had got an offer of \$22,500, first I got an offer of \$20,000, and then he said that he wouldn't take that amount, and the next day I got an offer, in the mean time from Mr. Starrett, of \$22,500, which Mr. Boynton agreed to accept. 10

Q. Well, did the suggestion for the price of \$22,500 come from Mr. Boynton or from Mr. Starrett?

A. Mr. Boynton said he wanted \$25,000, but he would split the difference and I got Mr. Starrett to consent to give him \$22,500.

Q. So that the \$22,500 was first suggested by Boynton? 20

A. Yes, sir.

Q. And then you took word back to Boynton that Mr. Starrett would pay that price?

A. Yes, sir.

Q. Who did you see?

A. Mr. Boynton.

Q. Where?

A. At my office.

Q. And was anything said to him about drawing an agreement or papers in connection with the matter? 30

A. I always draw a contract.

Q. Not what you always do; what was said?

A. I always, I say—

Q. I know, I haven't any doubt you do it always, but I want to know what was said between you and Mr. Boynton?

A. I asked him for a description of the prop-

erty, and he went home and brought me back a deed. I don't recall who they were from, I think one from Mr. Boynton.

Q. He brought you two or three deeds?

A. Brought me back two or three deeds and a title guarantee made by the Title Guarantee company.

Q. The Fidelity company?

A. Yes.

10 Q. And those papers were supposed to contain what?

A. A description of the property.

Q. Well, did you ask him anything about that?

A. I asked him after he handed me the description, after he handed me the papers, I asked him if that covered the property he was selling to Mr. Starrett, running back to and including the hedge, and he said it did.

20 Q. Did you say to him that you would prepare the agreement?

A. Yes, sir.

Q. Did you prepare such a paper?

A. I drew a rough sketch and then——

Q. Rough sketch of what?

A. Of the property.

Q. Of the description?

30 A. Yes, from these papers, and then I had some other business for Mr. Reimer, and I took them to him and asked him if he would verify it, see that I had drawn it correctly, and Mr. Reimer went all over it for me, and said that covered the papers made out.

Q. That is the description you had prepared from the papers given you by Mr. Boynton included all of the property described in those different papers?

A. Yes, sir.

Q. Now, when you prepared the description did

you believe that it included the property up to the——

The Court.—No, that won't do.

Q. After you had prepared the contracts what did you do with them first?

A. I took them to New York and secured Mr. Starrett's signature.

Q. Did he ask you anything about the description in the agreement, as to what it contained? 10

A. He merely asked me if that covered the property that he was buying, and I said it did, and he made some remark about some times more or less guessing of frontage, and he didn't want to find, when he got the deed that he was five or ten feet short on his frontage.

Q. Mr. Starrett made you a payment?

A. Yes, sir.

Q. A check payable to who?

A. To Mrs. Boynton. 20

Q. And you took that check to her?

A. Yes, sir.

Q. When?

A. That evening. I telephoned over that I had returned from New York, and I went over to Mrs. Boynton's house, and Mr. Boynton perused the contract carefully, and then told his wife to sign it, and showed her where to sign it.

Q. Who examined the contracts?

A. Mr. Boynton. 30

Q. And did Mrs. Boynton remark about the papers at all?

A. She never read it, not a word of it.

Q. Well, who advised her as to whether they were correct?

A. Mr. Boynton.

Q. Did she ask him?

A. He told her to sign,—said they were all right.

Q. Well, now, do you know whether the Fidelity company passed upon the title?

A. Yes, sir; I gave them instructions to do so.

Q. For Mr. Starrett?

A. Yes, sir.

Q. And they gave you a certificate, or gave him a certificate that the title was all right with the exception of those two mortgages, subject to
10 which he was purchasing?

A. Yes, sir.

Q. Did you afterwards draw a deed, according to the description that was in the agreement for sale?

A. Yes, sir.

Q. And upon the delivery of that deed, about October 1st, 1904, Mr. Starrett paid the balance of the purchase money?

A. Yes, sir.

Q. Where was the deed executed?
20

A. Well, I don't recall whether it was at my office or at their house.

Q. Before you as a commissioner?

A. Yes, sir.

Q. And was the deed left with you by the Boyntons?

A. Yes, sir.

Q. When did you first learn that this disputed strip had not been included in the conveyance?

30 A. Why, I returned from New York one afternoon, and my clerk said that Mr. Boynton had called; I don't remember exactly the date Mr. Boynton called; and wanted to know if we would see Mr. Starrett and ask him if he would like to have that strip of ten feet on the rear of the Harrison street property, and on the southerly line leading to the stable, and my clerk expressed himself surprised and——

Q. No, that won't do. Did you see either Mr. or Mrs. Boynton about it?

A. No, sir.

Q. Did you write to them?

A. I wrote Mr. Boynton upon hearing from Mr. Starrett.

Mr. Guild.—I don't know whether that letter is of any importance or not, only in that letter Mr. Bruen asked that they might correct the description conveying this strip, and they, in their answer, say they have never been asked to do so. 10

The Court.—Well, you can prove that.

Mr. Guild.—Have you that letter, Mr. Davis?

(Letter produced.)

Q. I show you a letter written on one of your letter heads, dated January 5, 1905, addressed to Charles B. Boynton, and seems to bear your signature, and ask you whether that is the letter that you wrote? 20

A. I did.

Q. To Mr. Boynton, and to which you referred in your testimony?

A. Yes, sir.

Mr. Guild.—I would like to offer this letter.

Marked Exhibit C 2. 30

Cross examination by Mr. Davis:

Q. You have said that at the time this property was put on your books for sale that either Mr. or Mrs. Boynton told you that the depth was about 150 feet, is that what you said?

A. I don't recall that I said exactly; when he placed it on the books, I think they made mention

that it ran back to the hedge, and they thought it was 150 feet deep.

Q. May I see that card?

A. (Same handed to counsel.)

Q. The card has no date, do you recall when this was made out?

A. I think it was late in 1901, or early in 1902, I don't recall exactly.

Q. And in whose handwriting is it?

10 A. Mr. Keating's, my clerk.

Q. Do you know when the second line was written, about the size of the lot, it says 100 by about 150 to and along hedge to stable; who wrote that?

A. Mr. Keating.

Q. Just look and see if it was written at the same time as the rest of the card?

Mr. Guild.—Cannot Mr. Keating tell better about that?

20 Q. Well, do you know?

A. I don't know I am sure. I gave him a memorandum. This is all in his own hand writing and was done at the time I gave him the memorandum.

By Mr. Guild:

Q. Did you see him write it?

A. No; we have property coming in all the time and I make memoranda and hand it over to him.

30 *Further Cross:*

Q. You first thought this card had been destroyed?

A. Yes, sir.

Q. When did you discover that it hadn't been destroyed?

A. I looked for it this morning.

Q. You got it this morning?

A. I looked for it this morning.

Q. When was it you discovered it to give it to Judge Guild?

A. I don't know.

Q. Do you remember when it was you first handed it to Mr. Guild?

A. When the case was first started.

Q. How often did Mrs. Boynton call at your office?

A. Very frequently. 10

Q. Well, by that you mean once in how many weeks or months?

A. Three or four times a month.

Q. Now was it she or her husband that told you this thing was a hundred and fifty feet deep?

A. Why I heard it from both of them.

Q. On what occasion?

A. On what occasion?

Q. On what occasion, yes?

A. Why nothing more than when we were speaking about the property originally, and also when we were discussing it I don't recall any particular time. 20

Q. You drew the contract after submitting the description to Mr. Reimer?

A. Yes, sir.

Q. And at that time did you have this card on file?

A. Yes, that has been on file ever since we had the property on our books. 30

Q. When you went to Mr. Reimer did you tell him this property was to go back to the hedge?

A. I don't recall, I don't think I did.

Q. Well, that hedge was considered by you quite an important matter, to get property back to the hedge, wasn't it?

A. The only time I used the hedge was in showing the property in speaking of the depth of the

property we always say back to that hedge, or back to that building.

Q. When you went to Mr. Reimer did you give him any instructions whatever in checking up the survey to the effect that this property was to go back to the hedge?

A. No, sir.

Objected to as misleading.

10

Q. Did he mention the description which was put in the agreement? I understand that Mr. Reimer made up that description.

A. I had started it and drawn it up roughly and I took it to Mr. Reimer and asked him if he would not verify my description, and I gave him the deeds and what papers had been given to me by Mr. Boynton.

Q. You drew the contract yourself?

20

A. Yes, sir.

Q. And you notice in the contract that the depth that you say was to be by your card one hundred and fifty feet is stated precisely at one hundred and forty feet?

A. Yes, sir, I noticed that afterwards; at the time I didn't give it a thought.

Q. Now, how long after was it Mr. Bruen, that you noticed that?

30 A. I don't remember; not until my attention was called to it by Mr. Starrett.

Q. When Mr. Boynton brought you these papers from which you made up the description in this agreement, didn't he tell you that the property described in this guarantee that he handed you, and in a certain deed, was the property that he was selling or his wife was selling?

A. I asked him the question; I asked him if it covered all the property.

Q. What did he say?

A. He said it did.

Q. Well, now, won't you just state the conversation that took place between the two of you, then and there?

A. Well, I don't remember what we did talk about, we talked about everything that pertains to the sale of a piece of property.

Q. I mean with regard to this particular transaction?

10

A. Nothing more than when he brought the papers in he said that was all the papers he had, covering the property; and that is the reason I asked him if it covered the property we were selling to Mr. Starrett and he said it did.

Q. You gave him a receipt, didn't you, at that time?

A. I don't recall.

Q. I show you a paper, or a receipt written on your letter head, under date of September 20, 1904, is the signature to that receipt your signature?

20

A. Yes, sir.

Q. Now, will you read that?

A. (Reading) "Received from Harriet G. Boynton deed dated July 8, 1889 from Sarah L. Palmer and Albert W. Palmer, her husband, also certificate of guarantee of the Fidelity Title & Trust Company, Newark, N. J., covering the property known as No. 73 Harrison street, East Orange, N. J. Edward E. Bruen."

30

Q. Those were the only papers you received from Mr. Bruen?

A. I presume so.

Q. You say received from Mrs. Boynton, as a matter of fact you received them from Mr. Boynton?

A. I received them from Mr. Boynton, but they were in Mrs. Boynton's name.

Q. Those were the two papers you submitted to Mr. Reimer?

A. Yes, sir.

Q. What did you say to Mr. Starrett about the encumbrances on the property?

A. I told him that there were two mortgages on the property aggregating \$14,000.

Q. On what property?

A. On this Harrison street property.

10 Q. Well, on the property that he was buying, or the property that run back to the hedge, or what property?

A. The property he was buying.

Q. Well, did or did you not tell him that he was buying all the property that was mortgaged?

A. No, I did not.

Q. Well, what did you say to him with regard to the property that he was buying as related to the property covered by the mortgages?

20 A. I don't recall anything of that sort, I don't think that he showed much interest of how much mortgage there was on it. He said he would like to take up the mortgages if there were any on the property.

Q. Was Mr. Starrett to get any property that would be free and clear?

A. That was never discussed.

Q. Well, the understanding between you and him was what with regard to that, that he was or was not?

30 A. I was to have a title guarantee made, and when we were ready for him he would give me the balance of the money.

Q. Did Mr. Starrett leave to you the matter of the examination of the title?

A. Yes, sir.

Q. And did he leave to you the matter of getting or not getting a survey?

A. A survey never was mentioned.

Q. Didn't the Fidelity Trust Company ask you if you wanted a survey, and didn't you waive it?

Mr. Guild.—Is that cross examination?

A. I don't remember the conversation with the Fidelity people; that is a matter of record, anyhow.

Q. You had in your possession, Mr. Bruen, didn't you, as to this number 73 Harrison street, didn't you have in your possession an atlas showing what 73 Harrison street was? 10

A. Yes, sir.

Q. Have you that here?

A. Yes, sir.

Q. Will you produce it?

A. Yes, sir.

Q. Now, as shown on the Atlas, what are the dimensions of 73 Harrison street? 20

Objected to; withdrawn.

Q. Did you, Mr. Bruen, inspect this Atlas you have before you at all, in your dealings with Mr. Starrett, for the purpose of getting the dimensions of that property?

A. No, sir.

Q. Where was it that you got the number 73 Harrison street?

A. Given to me by both Mr. and Mrs. Boynton. 30

Q. And how did you know, when you gave this receipt that these two papers did cover the property 73 Harrison street?

A. Took Mr. Boynton's word for it.

Q. Did you not inspect that Atlas Mr. Bruen, before the contract with Mr. Starrett was made?

A. I don't recall further than my attention was

called to the Atlas after Mr. Boynton made the marks on there, or outlined the property.

Q. When was that?

A. That was the morning that I had Mr. Starrett over to this house.

Q. Well, that was before the contract with Mr. Starrett was signed, wasn't it?

A. Yes, sir.

10 Q. Then did you show the Atlas to Mr. Starrett on that occasion?

A. No, sir.

Q. Well, you looked at it yourself on that occasion, didn't you?

A. My attention was called to it by my clerk when I returned, he said Mr. Boynton had been in and had outlined the property in red ink, and also outlined in lead pencil where the shrubbery or hedge was.

Q. At that time did you look at the atlas?

20 A. Yes, sir, but not for a description. I went entirely by the papers that he gave me.

Q. The talks with Mr. Boynton before the signing of the contract, where did they take place?

A. At my office.

Q. Were they not carried on over the 'phone?

A. A great deal of talk was over the 'phone.

Q. And the talk at which the \$22,500 was agreed upon, was that at your office or over the telephone?

30 A. I rather think that we talked that evening, and Mr. Boynton came over to my office the next morning.

Q. When he came over to the office the next morning did he say he had seen Mrs. Boynton and that she agreed to take that figure?

A. No, he didn't say that, but I took that for granted that he had.

Q. You never had Mr. Starrett meet Mr. and Mrs. Boynton at all, did you?

A. No, sir.

Q. Now, where was it that the title was closed, that the deed was delivered?

A. Fidelity Trust Company.

Q. Were Mr. and Mrs. Boynton here at the time?

A. No, sir.

Q. Where was it they delivered to you the deed and you delivered to them the check? 10

A. I am quite sure that the acknowledgment was taken that morning at my office, if my memory serves me right, it was taken—they gave me the deed and I was to get a certified check payable to Mrs. Boynton, which I did, and delivered it to her.

Q. What precautions, if any, did you take in the matter of the examination of this title to find out whether or not the property described in this agreement and deed ran back to the hedge? 20

A. Nothing further than from the very start I thought Mr. Starrett was buying back to the hedge, never knew anything different until my attention was called to it.

Q. I understand you to say you didn't call Mr. Reimer's attention to that fact, that Starrett was buying back to the hedge, at the time he checked up his description?

A. No, sir, I don't think I mentioned it. 30

Q. You knew, did you not, Mr. Bruen, that the premises No. 1 Beryn street facing on Beryn street were owned by the Boyntons?

A. Yes, sir.

Q. And you knew at the time of the contract with Mr. Starrett what the dimensions of that property were, didn't you?

A. No, sir, I did not.

Q. Didn't you appraise it for Mr. Boynton in 1903, and give him the dimensions?

A. I believe I did.

Q. And in that paper and letter of April 29, 1903, did you not state what the dimensions were?

Objected to.

(Question withdrawn.)

10 Q. At the time you drew up the contract and the deed, did you know of the dimensions of this property on Harrison street as contained on this card?

A. Only as I recalled at the time. I depended fully upon the description of the papers that were handed to me; I didn't think of the card, I didn't think it was necessary.

Q. On the morning of the Starrett transaction did you say anything to Mrs. Boynton about the
20 fence or the hedge?

A. No, sir.

Q. Or to Mr. Boynton?

A. No, sir, further than the question that I asked when he brought me in the papers, if that covered all the property back to the hedge, which he was selling to Mr. Starrett, and he said it did.

Q. I understand you to say when he brought you in these two papers you asked him if that covered all the property back to the hedge?

30 A. Yes, sir.

Q. Didn't you tell Mr. and Mrs. Boynton when the contract was signed that Mr. Starrett bought this property on your personality?

A. No, I don't recall that.

Q. When Mr. Starrett signed the contract did you read him the description at all of the property?

A. Who?

Q. Mr. Starrett, when he signed the contract, did you read to him the metes and bounds?

A. No, sir.

Q. What did you tell him?

A. Told him there was the contract covering the property that I had shown him, and he signed it. He was very busy.

Q. Now did Mr. Starrett authorize you not to have a survey made?

A. No, sir, a survey was never mentioned.

10

Q. That is all.

WILLIAM L. KEATING, SWORN.

Direct examination by Mr. Guild:

Q. You are a clerk in the office of Edward E. Bruen?

A. Yes, sir.

20

Q. At East Orange?

A. Yes, sir.

Q. I show you a card, on the top line, street, Harrison; No. 73; and bears the name Harriet G. Boynton, and ask you what that card is?

A. Well, I made it.

Q. No, I merely ask you what it is.

A. Why, listing the property No. 73 Harrison street for sale.

Q. Is it part of the system of card listing you have in Mr. Bruen's office?

30

A. Yes, sir.

Q. Who filled up the matter that appears in ink in this card?

A. I filled it up.

Q. Do you know when?

A. Well, I don't remember the exact date, but it maybe about around the latter end of 1901, or early part of 1902.

Q. And from where did you get the data?

A. Mr. Bruen gave me a memorandum.

Q. And did you copy the memorandum?

A. I did.

Q. Literally, on this card?

A. Yes.

Q. I call your attention particularly to the size of the lot and ask you to read what it says?

A. 100 by 150 and along hedge to stable.

10 Q. I ask you whether you wrote the words "and along hedge to stable" at the time you wrote the other?

A. I did.

Q. Has there ever been any change made in that card from the time you wrote it to the present time?

A. No, sir, only one time, I suppose, changed this here from 30 to 25.

20 Q. You mean \$30,000 to \$25,000 difference in the change of price?

A. Yes, sir.

Q. The change is made in your figures as well?

A. Yes, sir.

Q. You made that change pursuant to whose direction?

A. Mr. Boynton was in the habit of calling in the office quite often, and they were very anxious about selling the property.

30 Q. No, I merely ask you who directed the change?

A. I think probably it was him.

Q. Mr. Boynton?

A. Yes.

Mr. Guild.—I offer this card in evidence.
Marked Exhibit C 3.

By Mr. Davis:

Q. Mr. Keating, did you use two kinds of pens at the time you wrote this card?

A. No.

Q. Will you just notice, please, and see if the writing on the first three lines is not of a finer character than the writing on the rest of it?

A. Well, it appears that way, but if you will notice on the line under it is also fine; of course it is a little smaller, but it has been written by the same pen. 10

Q. Well, how do you account for that, that a few lines are so much finer than the balance?

A. Well, that would be accounted for—if the pen should carry a little of the card board with it, that would make heavy lines.

Q. Well, what actually took place as to whether it carried the card board or not; why was the lower part of the card in heavier hand writing than the upper part? 20

A. I cannot account for that, I am sure.

Further direct examination:

Q. There is an Atlas on the desk in front of you; to whom does that belong?

A. To Mr. Bruen.

Q. And used in his office?

A. Yes.

Q. Will you turn to that map of this Atlas that shows properties on Harrison street, East Orange? 30

A. It is right here.

Q. Now on Plate 7, this property of Mr. Starrett's is shown as being on the west side of Harrison street, is that right?

A. That is right.

Q. I call your attention to a lead pencil line starting from the north side of Beryn street run-

ning north and then again west, stopping at a red line, and ask you who made that lead pencil mark?

A. Mr. Boynton.

Q. Was it made in your presence?

A. Yes, sir.

Q. And under what circumstances and when?

A. On September 19, 1904, Mr. Boynton called into the office and told me that Mr. Bruen and another gentleman was around at No. 73 Harrison street looking at it, and this other gentleman
 10 was a prospective buyer. I told him I didn't know anything about it, but he told me that Mr. Bruen had called him up over the telephone that morning, and said that they were coming that morning, and he said he looked out the window and saw them there, so he hurried down in order to give me any details or any information he could to help out, on the lines of the property, and he seemed to make his clearest point on this end,
 20 on this side—he said that originally that this property—

By the Court:

Q. On this side. On what corner with reference to the points of the compass?

A. Well, it would be on the northerly line.

Q. On the northeast corner?

A. Yes, sir; that originally this property contained about seventy-five feet front, but he later
 30 bought twenty-five feet from Palmer, and that that was a point that he wanted to make clear, so I told him the better thing to do would be to outline it on the atlas; so he started on this side here (indicating).

Q. On this side here; now just mark that point. On this side here which I mark with a cross?

A. Yes, he started here, making the lead pencil line along the hedge. He said the hedge—

Q. Well, on the westerly side?

A. That would be on the westerly side of the lot, and then going west along this line.

Q. In a westerly direction to——

A. In a westerly direction to this point.

Q. And that is where?

A. Well, here is a stable.

Q. Yes.

A. To this point.

10

Further Direct:

Q. That is in lead pencil?

A. In lead pencil, and he started it by saying, it is understood the line is to the hedge. Then he took the red ink which was right near him on the deck and lined along as you see here, saying, I will make this more prominent, as Mr. Starrett wanted to be clearly understood by him, he is getting one hundred feet front. Well, it was a trifle over, you will notice here, the lead pencil, and followed it on here, and then over and then back. I told him I would call Mr. Bruen's attention to it, upon his return.

20

Q. Now the name of Albert W. Palmer is shown on this map within the lines that you have spoken of?

A. Yes, sir.

Q. The name being crossed out with lead pencil?

30

A. Yes.

Q. Who did that?

A. Mr. Boynton.

Q. On a lot immediately north of the rear line of the lot fronting on Harrison street there seems to have been indicated a building which has lead pencil marks on it?

A. Yes.

Q. Then still further to the north and a little further back from the street is a drawing of a building, at least, lies not quite square, I mean a little longer than wide; now I will ask you who made those changes?

A. Mr. Boynton.

Q. What did he say when he did it?

A. Now, this house here——

10 *By the Court:*

Q. Well, this house to which Judge Guild has just referred. Go on.

A. Was marked out by Mr. Boynton claiming it should be here.

Further Direct:

Q. It should be where the lead pencil——

A. Where the lead pencil lines you see are.

20 Q. Further back and more to the north?

A. Just.

Q. That is the four straight lines I have referred to?

A. Yes, sir.

By the Court:

30 Q. I suppose what you mean to say is, or what he meant to say was that that property was not correctly indicated on the map, is that what you mean?

A. Yes, sir, that is what he meant and that was his idea.

Further Direct:

Q. Well, as a matter of fact the house that he has—we will say scratched out—the house that he scratched out with lead pencil, originally stood

close and partly over this red line, is not that so?

A. He didn't explain it that way.

Q. Where does the building stand now?

A. About as he has it.

Q. About as he had drawn these four lead pencil lines?

A. Yes, sir.

Q. Now, with reference to the time the contract for the sale of this property was drawn between the Boyntons and Mr. Starrett was it that Mr. Boynton was at your office and made those charges on this atlas? 10

A. The day he called Mr. Bruen and the gentleman was up looking at the property for the first time, and the contract was signed; that was on the 19th of September, 1904, and the contract was signed on the 20th or 21st of the same month, a day or so afterwards.

Q. Do you know why Mr. Boynton didn't continue the use of the lead pencil that he started with in defining the property lines? 20

A. Only in this way,—he started by saying, this is the hedge, which is understood is the dividing line between my Beryn street property and 73 Harrison street, and he followed it around in that way, and then took up the red ink and started off to make this more prominent, as he had acquired that later, that is, after he bought the original property. 30

Mr. Guild.—I would like to offer that Atlas in evidence, or that much of it which contains this plate 7.

Marked Exhibit C 4.

Cross examination by Mr. Davis:

Q. Mr. Keating, what time of the day was this talk with Mr. Boynton?

A. About 8.30 in the morning, between eight and eight thirty.

Q. How was the knowledge conveyed to you that Mr. Bruen and Mr. Starrett were up at the Harrison street house?

A. By Mr. Boynton.

Q. Will you repeat or state what Mr. Boynton said to you when he drew the pencil mark on the westerly side of this property and on the southerly side?

10 A. He said, this is the hedge or dividing line between my Beryn street property and No. 73 Harrison street and continued running parallel with the driveway.

Q. And what did he state to you when he made the red ink lines around the whole of the property?

A. He mentioned that he thought it would be well to make that line prominent.

20 Q. Did he say for what reason?

A. Well, only in order for us to bring it very clearly to Mr. Starrett that he was getting one hundred feet front, and not seventy-five, as outlined on the original map.

Q. Now, the line you understood that he wanted to make prominent was the red ink line or the pencil line?

A. The red ink line.

Q. And he particularly called your attention to the frontage that Mr. Starrett was buying?

30 A. Yes.

Q. And what conversation, if any, did he have with you as to the depth?

A. To the hedge.

Q. Well now, to the hedge doesn't mean anything. I am asking you what conversation did he have with you, if any, with regard to the depth?

A. He merely referred to the hedge as being the dividing line between the two properties, and Mr. Starrett would buy to that, if he bought at all.

Q. Why didn't you tell Judge Guild that when he asked you, that Mr. Boynton told you that Starrett was going to buy to the hedge?

A. I don't remember it.

Q. Are you positive, Mr. Keating, that Mr. Boynton told you at that time that Mr. Starrett was to buy the hedge? 10

A. He outlined it on this map.

Q. I am asking you what he said, not what he did, but what he said?

A. He said the hedge was the dividing line, and he came in for the purpose of giving us the exact lines on the map.

Q. That is all he said, is it?

A. Yes, and he outlined it in the way it was stated here.

Q. Then he didn't say, as you said a moment ago, that Mr. Starrett was buying to the hedge, he simply told you that the hedge was the dividing line between the two properties? 20

A. Well, if Mr. Starrett bought at all he would buy what he outlined on the map.

Q. Never mind what he did do, I am asking you what Mr. Boynton told you?

(Question repeated.)

A. Yes.

Re-direct examination: 30

Q. Let us know a little more about this. You have given two or three different versions, under the clever manipulation of Mr. Davis. Did or did not Mr. Boynton say that the property would go to the hedge, if Mr. Starrett bought it?

A. He did.

Further cross examination:

Q. When did he say that?

A. On the morning that he called.

Q. Give me his words, please?

A. He said the exact lines of this property is, running along the hedge here, with his lead pencil, and then outlining the whole thing over the L shape and back to and around—back to the hedge, if he buys. It was with that purpose he called in
10 to give us the lines.

Q. Did Mr. Boynton at that time, as a matter of fact mention to you the name of Starrett?

A. I think he did, I am not positive; he referred to him as the gentleman at the place with Mr. Bruen.

Q. I am asking you if he mentioned the name of Starrett?

A. I don't recall that.

Q. Well, then if you don't recall that, why do
20 you say that Mr. Boynton did mention the name of Starrett?

A. Well, I meant to say that he referred to the prospective buyer; I am not sure whether he knew Mr. Starrett by name then or not.

Q. Well then, a moment ago, in quoting Mr. Boynton as mentioning the name of Mr. Starrett, you say now that you don't know whether he mentioned his name or not, is that so?

A. That is so.

Q. Why then, a moment ago, did you say that
30 Mr. Boynton did mention the name of Starrett?

A. I think I mentioned that Mr. Boynton told me Mr. Bruen and a gentleman was then looking at the property.

Q. That is what you want to be understood as saying now?

A. Yes.

Q. Then if you have testified that Mr. Boynton

on that occasion mentioned to you the name of Mr. Starrett, you are mistaken, are you not?

A. I am, yes.

Q. Then he didn't say, as you said a moment ago, that Mr. Starrett was buying to the hedge, he simply told you that the hedge was the dividing line between the two properties? That is a question which was asked you and was your answer to that question correct?

A. That he was buying to the hedge? 10

Q. "Then he didn't say as you said a moment ago, that Mr. Starrett was buying to the hedge, he simply told you that the hedge was the dividing line between the two properties?" And your answer to that was, "Yes." Was that former answer correct, to that question?

A. That he was buying to the hedge.

Q. You understand the question, Mr. Keating, don't you?

Mr. Guild.—That is his answer. 20

Mr. Davis.—No, it is not.

A. He told me he was buying to the hedge.

Q. You say now that he told you that he was buying to the hedge?

A. That he was buying to the hedge.

Q. Why, then a moment ago did you say that he didn't tell you that he buying to the hedge, and that simply the hedge was the dividing line between the two properties? 30

A. I misunderstood your question.

Re-direct examination:

Q. Did you know that Mr. Starrett was at the property at the time Boynton called to see you?

A. I don't think I did know the gentleman's name.

Q. You knew there was a gentleman there?

A. I knew there was a gentleman there only from what Mr. Boynton told me; I hadn't seen Mr. Bruen at all.

Q. That is all.

10 *Mr. Guild.*—Now, Mr. Davis has suggested to me the propriety of offering the deed from Boynton to Mr. Starrett, and also the agreement, to complete the form of proof.

I offer the agreement made between Harriet G. Boynton and Paul Starrett, dated September 20th, 1904, and the deed from Harriet G. Boynton to Charles B. Boynton, her husband, to Paul Starrett, dated September 30th, 1904, and ask that they may be marked.

20 The answer admits the allegations of the Bill so far as they were concerned, and it didn't strike me that they were very material, but Mr. Davis thought he would like to have them in.

Marked Exhibits C 5 and C 6.

COMPLAINANT RESTS.

CHARLES B. BOYNTON SWORN.

30

Direct examination by Mr. Davis:

Q. You are the husband of Harriet G. Boynton?

A. I am.

Q. And are you or is your wife the owner of the Beryn street property?

A. My wife.

Q. And as to the Harrison street property, who is the owner of that?

A. At the present time Mr. Paul Starrett.

Q. Before Mr. Starrett got it who owned it?

A. Mrs. Boynton.

Q. Do you recall a visit to Mr. Bruen's office for the purpose of putting this property on Harrison street on Mr. Bruen's books for sale?

A. Never.

Q. Did you ever go there for that purpose?

A. Never.

Q. Did you ever accompany your wife to Mr. Bruen's office and put the property in his hands for sale? 10

A. I never did.

Q. With whom were the negotiations carried on by Mr. Bruen, with regard to the sale of this property to Mr. Starrett?

A. With Mrs. Boynton, through receiving messages over the telephone, I conveyed them to Mrs. Boynton.

Q. Well, who did the actual talking to Mr. Bruen? 20

A. I did the talking to Mr. Bruen.

Q. And that you say was over the telephone?

A. Yes, sir.

Q. You did call at Mr. Bruen's office, didn't you, shortly before the contract was entered into between Mrs. Boynton and Mr. Starrett?

A. I did.

Q. How long before, Mr. Boynton?

A. I think it might have been a day or two, I cannot recall the exact time. 30

Q. Who did you see on that occasion?

A. I saw Mr. Keating.

Q. And you were shown an atlas, weren't you?

A. I was.

Q. State what the occasion was for referring to that atlas.

A. As the fences were not on the line between

the Harrison street properties and the Beryn street properties I indicated by a pencil where the fences were.

Q. Mr. Boynton, directing your attention to plate 7 of the atlas—

A. Yes, sir.

Q. And the sketches in the block between Beryn Street and Webster Place, on the westerly side of Harrison street, do you see in that territory any
10 marks made by you?

A. I do.

Q. Did you make the red ink lines and the pencil lines?

A. I did.

Q. And in the property north of the name Albert W. Palmer where the outline, in pencil, of a house is indicated, did you make this line?

A. I did.

Q. Will you state the conversation you had with
20 Mr. Keating when those marks were made?

A. I put those red marks in, ink marks, to indicate the properties belonging to Mrs. Boynton, giving an entire out-line; I put the lead pencil marks in to indicate where the fences were. I never discussed with Mr. Keating in any way, shape or manner what the metes and bounds were that we were negotiating, because that did not come up. I merely made those red lines for the
30 purpose of giving the extreme outside boundaries practically as they were.

Q. When you went there, on that occasion, you had a conversation with Mr. Keating, didn't you?

A. I did.

Q. Well now, state what the conversation was.

A. I called his attention to the fact that there were twenty-five feet of the A. W. Palmer property which belonged to the Boynton property, and I indicated it by a red ink line showing that twen-

ty-five feet out on the north side of the driveway of 73 Harrison street.

Q. When you came to make those pencil marks on the west side of Harrison street and on the south side of the driveway, what did you say to Mr. Keating with reference to them?

A. I merely stated that those pencil lines indicated where the fences were at the present time.

Q. Is that all you said?

A. That is all I said. I never mentioned what we were to convey or anything about it. 10

Q. I call your attention to the fact that the easterly of those pencil marks runs as far as the northerly side of Beryn street in the rear of whose property is the south end of that pencil mark?

A. You mean easterly side?

Q. I am talking about the easterly pencil mark, and I call your attention to the fact that it runs south to the north side of Beryn street, and I ask you, in the rear of whose property is the southerly end of that pencil mark? 20

A. Martha A. Stockton.

Q. What does that easterly pencil mark denote on the map?

A. It denotes that there is ten feet of land belonging to Boynton, that is still their property, although the fence lines are ten feet over; in other words, the Stockton property have the use of ten feet of our land there which has never been conveyed and which is not sold. 30

Q. When was it that the fence, the iron fence on the easterly side was put in its present position?

A. We were——

Q. When was it, Mr. Boynton?

A. I think it was in 1899.

Q. Where were you then living?

A. 73 Harrison street.

Q. And did or did not Mrs. Boynton then own the Beryn street property and the Harrison street property?

A. Yes, sir.

Q. Where did the fence line stand before it was changed?

A. Before it was changed they stood where the boundary lines are, between the Harrison street and Beryn street properties.

10 Q. As shown on the atlas?

A. As shown on the map.

Q. What was the occasion for changing the lines of the fence?

A. Mrs. Boynton decided to rent the Beryn street property at that time for a term of years, and in doing so the rent was considered pretty low, and she thought that it would not be advisable to throw in so much land with the property, and as she owned this other property she merely moved the fences back temporarily, and put that additional land on the Harrison street property while the other was rented, and gave the Stocktons the privilege of the use of that for their flower beds on the rear there.

20

Q. Up to what time did your family occupy 73 Harrison street?

A. We moved in Harrison street, I think it was in 1897, and we left there in 1902 or 1903, I think 1902.

Q. From Harrison street where did you move?

30

A. From Harrison street we moved into A. W. Palmer's, next door, I think that was it, or else we went to boarding, I am not quite sure.

Q. Who succeeded you in the occupancy of No. 73 Harrison street?

A. Mr. Edgar L. Newhouse.

Q. He was the witness who was here this morning?

A. Yes, sir.

Q. Then he stayed there until you made this sale to Mr. Starrett?

A. Yes, sir.

Q. Mr. Keating has testified that when you called, on the occasion of making these marks on the atlas, that you told him that Mr. Starrett was buying or that you were selling to Mr. Starrett the Harrison street property in depth back to the hedge, did or did you not make that statement to Mr. Keating?

10

A. In the first place—

Mr. Guild.—Mr. Keating did not say any such thing.

Mr. Davis.—What did he say?

Mr. Guild.—He said that there was a gentleman looking at the property who was a prospective purchaser, and if he purchased he was to have the property back to the hedge fence.

Mr. Davis.—Well, then, take out the name Starrett, or just strike out the question and I will deframe it.

20

Q. On the occasion of your visit, when you had this conversation with Mr. Keating, he states that you told him that you were selling to this gentleman—to the prospective purchaser that Mr. Bruen had, the Harrison street property running back in depth to the hedge; did you or not make that statement to Mr. Keating?

30

A. I did not, most positively.

Q. How many conversations did you have yourself with Mr. Bruen before the contract was signed with Mr. Starrett?

A. None.

Q. Well, did you not have some telephone communications?

A. Well, the time—about the middle of Sep-

tember, when he telephoned, stating that he had a prospective purchaser who would pay \$20,000, which I reported to Mrs. Boynton, and Mrs. Boynton directed me to return the message, that she positively declined to entertain any such proposition.

Q. When \$22,500 was mentioned, who mentioned it, Mr. Bruen or Mrs. Boynton or yourself?

10 A. Mr. Bruen.

Q. Did that first come from him?

A. That \$22,500 did.

Q. Well, to whom did he communicate that?

A. By telephone, and I immediately consulted with Mrs. Boynton, and Mrs. Boynton consented to sell the Harrison street property for that sum, subject to the two mortgages.

Q. Where was that answer given to Mr. Bruen?

A. That was given over the telephone, I think, while those negotiations were pending.

20 Q. While you were where?

A. In our residence, No. 1 Beryn street.

Q. Mr. Bruen wasn't there, he was some other place telephoning?

A. He was telephoning from, I don't know where.

Q. How soon after that did you see Mr. Bruen next, about this sale?

A. Mr. Bruen, when I conveyed to him Mrs. Boynton's decision to dispose of the Harrison street property, came around the next evening with—I beg your pardon, I will correct that. He said that he could sell it, he could get the \$22,500, and he would like to have the papers—give him the deeds, so that he could make out the contract.

30 Q. Well, did you give him those papers?

A. I took them around the next morning.

Q. What papers did you give Mr. Bruen?

A. I gave him the deed, the original deed of con-

veyance from Albert W. Palmer and his wife, conveying that twenty-five feet; also the policy, title policy, Fidelity title policy giving the metes and bounds and describing the property conveyed by Martha J. A. Stockton to Harriet G. Boynton, comprising the metes and bounds, known as 73 Harrison street.

Q. Mr. Bruen gave you a receipt, did he, for those?

A. He did.

10

Q. And that is the receipt (showing witness receipt)?

A. It is.

Offered in evidence.
Marked Exhibit D 2.

Q. At that time, Mr. Boynton, did you have any conversation with Mr. Bruen about the mortgages on the property?

20

A. I mentioned the fact that the properties—that they were subject to two mortgages, a first mortgage amounting to \$10,000 held by the Petty Institute, and a second mortgage held by James B. Dill, for an amount of \$4,000; that the property would be sold subject to those two mortgages.

Q. In that conversation Mr. Bruen states that you told him that these two papers you gave him embraced the property back to the hedge, did or did you not make that statement?

30

A. I never had any conversation with him relating to the metes and bounds, as to the hedge, or anything else. I merely turned over the deed and the title policy showing that those were the papers which Mrs. Boynton gave me to hand to him, which was the property she would sell.

Q. Did you tell him that?

A. I did, and he thereupon gave that receipt which you have just offered in evidence.

Q. This guarantee of title that is referred to there—have you got it, Mr. Guild?

A. It was for \$21,000.

Q. Well, the guarantee of title—how many feet front on Harrison street did it cover?

A. About 73 feet.

Q. And a depth of what?

10 A. 73 to 75 feet, and a depth of 140 feet to the Beryn street property, which was then owned by the Dennis estate.

Q. And is that seventy-three feet the northerly seventy-three or the southerly seventy-three of the piece that was conveyed to Mr. Starrett?

A. It is the southerly seventy-three feet—no, seventy-five feet and eighty-three one-hundredths inches, and known as No. 73 Harrison street. That is the correct dimension, seventy-five feet and a
20 fraction.

Q. Did you say anything to Mr. Bruen as to how these \$14,000 worth of mortgages were held?

A. I did.

Q. What did you say to him?

A. I stated that \$10,000 was held by the Petty Institute, and that the \$4,000 was held by James B. Dill.

Q. Where was it that the title was closed finally?

A. Mr. Bruen's office.

30 Q. And on that occasion who were present?

A. Mrs. Boynton, Mr. Bruen and myself.

Q. Before we get to that. What was the next time you saw Mr. Bruen after you handed him these two papers?

A. A contract signed and brought around to our residence for Mrs. Boynton to sign—the duplicate, which she did sign, and upon receipt of same she was tendered a check for \$1,000. Be-

fore that, however, I would state, that before that was done I read over the description of metes and bounds to see that it conformed to the property which was to be conveyed, in accordance with the papers given him, which Mrs. Boynton offered for sale.

Q. Did Mrs. Boynton read it over at all?

A. I think she did.

Q. Mr. Bruen says she didn't, that you simply told her to sign it, and she signed it without looking it over? 10

A. She looked it over with me, and I told her it was correct, and then she signed it.

Q. How many copies did Mr. Bruen have with him of that contract?

A. Well, I didn't see but one which had Mr. Starrett's signature on—let me see, I think there were two, one that she signed, and which he kept and then she signed the other one, which he acknowledged as a Notary, and she kept one contract and Mr. Bruen went away with the other, after tendering the check for \$1,000. 20

Q. Mr. Starrett's name was signed there before your wife signed?

A. Yes, sir.

Q. Well, now, from that time until the passage of the title, or closing of the title, did you have any talks with Mr. Bruen?

A. I did not.

Q. And the closing of the title, you say, took place at his office? 30

A. Yes, sir.

Q. Who were present at that time?

A. Mrs. Boynton, myself and Mr. Bruen.

Q. What conversation did you have with Mr. Bruen?

A. I asked him if he found the properties all right, and he said that he did, and he said it was the crookedest piece of property he had ever con-

veyed—one of the crookedest pieces of property he had ever conveyed. He even had a paper there with lead pencil marks, which he stated he had got a copy from the Fidelity, when he went down there, showing the metes and bounds, as described in the guarantee policy of title,—something of that kind.

10 Q. These \$14,000 worth of mortgages, Mr. Boynton, how far back do they run, fronting on Harrison street, how many feet in depth do they cover?

A. One hundred and forty feet.

Q. The disputed piece of land—that L shaped piece, is that covered in any way by these \$14,000 worth of mortgages?

A. Not in any way, sir.

Q. Is it covered by any other mortgages?

A. It is.

Q. What other mortgages?

20 A. Covered by the two mortgages which were originally on the Beryn street properties.

Q. By the Beryn street property you mean this square piece marked "D"?

A. Correct, yes, sir, marked "D."

Q. That is known as what?

A. No. 1 Beryn street.

Q. At the time of the sale to Mr. Starrett of this Harrison street property, what mortgages were on the Beryn street property?

30 A. There were two, one of \$7,000, which was owned by the Mutual Life Insurance Company of New York, and a second mortgage of, I think it is \$3,150, which belonged to Mr. James B. Dill.

Q. And those latter mortgages, you say, covered the disputed strip?

A. Yes, sir.

By the Court:

Q. Are they still on it?

A. The original \$7,000 is on it; the one of Mr. Dill's we discharged.

Further direct:

Q. Did you pay that off entirely?

A. We paid the second mortgage off entirely.

Q. When was that?

A. That was soon after the conveyance of the Harrison street property.

Q. Judge Dill then gave you a discharge of that mortgage, did he, Mr. Boynton?

A. He did.

Q. Is this the discharge?

A. It is.

Q. Dated September 29th, acknowledged September 29th, and recorded October 10, 1904, that is the discharge, is it?

A. Yes, sir.

Offered in evidence.

Marked Exhibit D 7.

Q. Now, how long before that discharge was given had you any conversation with Judge Dill about the paying off of that mortgage?

A. At the time that the property was being negotiated for.

By Mr. Guild:

Q. With whom?

A. Being negotiated by Mr. Bruen. If Mrs. Boynton sold the property she wished to be relieved on the bond.

Further direct:

Q. What bond?

A. The bond of \$4,000, or \$8,000, accompanying the \$4,000 mortgage on the Harrison street property. In other words—

Q. Well, when was that conversation?

A. That conversation was held prior to the signing of the contract for the sale of the Harrison street property.

10 Q. Did Judge Dill accede to that or not?

A. He did not accede to it. I wanted Mrs. Boynton to be released—

Q. No, what you told him, what conversation you had with him?

A. Well, that was my conversation with Judge Dill.

Q. Now, when did you have any conversation with Judge Dill about the paying off of this mortgage covering the Beryn street property?

20 A. Well, I had that conversation several months prior to the sale of the Harrison street property. Mr. Dill had been to me and said he would like to have Mrs. Boynton relieve him of that mortgage, that he wanted it paid off. I told him as soon as we sold the Harrison street property that we would pay off that mortgage.

30 Q. Now, your contract with Mr. Starrett, Mr. Boynton—Mrs. Boynton's contract, is dated September 20, 1904, and the date and execution of this discharge from Judge Dill is September 29th, I believe, 1904, nine days after the date of the agreement with Mr. Starrett; now I ask you when was it you had the conversation with Judge Dill in which you told him you were going to pay off this \$4,000 mortgage on Beryn street?

A. That was several months before we knew when we were going to sell the property. It didn't take place in either of those two interviews which he referred to in his testimony this morning.

Q. Well, after the signing of the contract with Mr. Starrett of September 20, 1904, you must have told Judge Dill before this discharge of mortgage was executed, that you were going to pay off this mortgage.

A. Yes.

Q. Now I ask when was it—if you told him you were going to pay off the mortgage, when was it you told him?

A. Well, it was between the date that the contract was signed for the selling of the Harrison street property, and the time when it was actually paid off. 10

Q. And the title, I believe, was closed with Mr. Starrett, on October 1st, is that right, under the contract?

A. I think it was, yes, sir.

Q. Now, how long after October 1st, was it that you actually paid Judge Dill the money and he delivered to you this discharge of the mortgage? 20

A. I think it was within two or three days—it was with reasonable promptness, we wanted to be relieved of that obligation.

Q. Judge Dill testified this morning that shortly before the contract was made between Mrs. Boynton and Mr. Starrett that you came to him with a request that he release from his mortgage on the Beryn street property the property covered thereby, lying north and east of the hedge, did or did you not have that conversation with Judge Dill? 30

A. Judge Dill is mistaken about that. The question of release was entirely about releasing Mrs. Boynton's bond when we sold the Harrison street property, it had nothing to do with the Beryn street property whatever; he has got a little confused on that subject.

Q. Well, you say you didn't make that request, did you?

A. I think if I had asked to be released on any portion of the Beryn street property from the Mutual Life Insurance Company or Mr. Dill I would have had to have gotten it from the Mutual Life just as much as I would from Mr. Dill, in order to convey any of that other property, and he has got that feature confounded in regard to asking for the release of Mrs. Boynton on the bond, as I was given to understand that Mr. Starrett would not sign a new bond, which is very often the case in New York, they don't like to go on bonds.

Cross-examination by Mr. Guild:

Q. What is your business?

A. I am retired from business.

Q. How long have you been retired?

A. I resigned from active business in the Boynton Furnace Company, which I was vice-president and treasurer of for sixteen years, in January, 1900.

Q. So that you are engaged in no business at the present time, and have not been since that date?

A. Nothing special.

Q. Well you say nothing special, what do you mean by that?

A. I mean that I am not engaged in any regular business.

Q. Well, are you engaged in any business that brings you an income?

A. No.

Q. Have you any income?

A. No.

Q. This property that was sold to Mr. Starrett, and the property on Beryn street, No. 1, I think you call it, you said belongs to Mrs. Boynton?

A. Correct.

Q. Doesn't it, in fact, belong to you?

A. No, sir.

Q. Did it never belong to you?

A. Never.

Q. Did you never tell Mr. Bruen that it did belong to you, but you had it in your wife's name merely for convenience or other good reasons?

A. Never did in my life.

Q. You say that Judge Dill is mistaken in saying that you asked him to release this strip that we are controverting about, from the lien of his mortgage? 10

A. Yes, sir, I do.

Q. When was it, do you say, that you went to him and asked to be relieved, or your wife relieved from the \$4,000 bond he held?

A. When Mr. Bruen informed me that Mr. Starrett would not sign a new bond.

Q. Was that after the agreement had been executed? 20

A. Yes, sir.

Q. Well, you knew, did you not, at that time, at the time the contract was executed, that the property was to be conveyed subject to both those mortgages, and that Mr. Starrett would assume both?

A. No, sir, I was given to understand that he would not execute a new bond.

By the Court:

Q. I don't quite understand why you went to see Judge Dill. 30

A. I think, if your Honor please, I can explain that. Judge Dill had been acting as counsel for me many years in corporations that I had been interested in, he had incorporated companies that I had been interested in, and he had acted as counsel, and he had often told me that when I wanted

any legal advice or anything to come to him. I do not know that business men in New York who have dealt in real estates, especially in 1873, because we owned a great deal at that time, that people that went on a bond and the property was subsequently sold, that they were—— all their equities afterwards were wiped out, because they were not relieved of that original bond. I wanted Mrs. Boynton relieved from that bond if that
 10 property was sold, especially being a second mortgage, so that if anything should happen in the future, or any equities or any complications arise that she would not be on the original bond of record of that real estate, and that is why I went to Mr. Dill, to ask him if he would relieve Mrs. Boynton, release her on that bond and take Mr. Starrett's instead, and then I understood that Mr. Starrett would not issue a new bond, but would
 20 take title to the property subject to these two mortgages, but he didn't give any bond for that \$4,000.

Q. Well now, was that before or after the agreement was actually signed by Mr. Starrett?

A. That was after the agreement was signed?

Q. Before the deed was made?

A. And before the deed was made. I didn't know but what at the time of the title passing, but what that adjustment could be made at the same time, and in the contract it was taken subject to those two mortgages, and his assuming
 30 those two mortgages, and I wanted Mrs. Boynton to be relieved of the bond, owing to my experience in 1872, 1873 and 1874 of people who had been wiped out of thousands of dollars on account of the great depreciation in real estate, which occurred in New York City, and I didn't know what would be the future of this.

Further Cross:

Q. Now, are you quite through?

A. Yes, sir.

Q. You examined this contract made between Mrs. Boynton and Mr. Starrett?

A. I did.

Q. And you passed on the regularity of it, as far as your wife was concerned?

A. With her assistance, yes, sir.

Q. You told her that it was all right?

10

A. She read it over with me there, looked it over and I compared the metes and bounds.

Q. Well, do you mean to say that you read this description and carried in your mind all the crooks and turns in that description?

A. Yes, sir.

Q. Well, if you read this contract you knew that the property was to be conveyed subject to those two mortgages, didn't you?

A. I did.

20

Q. And you knew that that meant that Mr. Starrett would assume the mortgages that were on the property?

A. I did.

Q. What conversation, if any, did you have there either with Mr. Starrett or with Mr. Bruen or with anybody else with reference to Mr. Starrett executing a new bond?

A. I had no conversation with anyone except with Mr. Dill.

30

Q. Then you went to Mr. Dill with this proposition of yours, without knowing whether Mr. Starrett would give a new bond, is that so?

A. I had understood that he would not sign a new bond.

Q. I ask you who you had that understanding with when you went to see Judge Dill; now you say you went to Judge Dill to see if he would not, as you say, release your wife on that bond?

A. Yes, sir.

Q. And take Mr. Starrett as a substitute; in other words, he give a new bond?

A. Yes, sir.

Q. I ask you whether you ever had any conversation with anybody, Mr. Starrett or Mr. Bruen or anybody else, with a view of reaching Starrett, as to whether he would give such a bond?

A. Not to my recollection.

10 Q. Then you went to Judge Dill, having no assurance that he would give a new bond?

A. No, I had no assurance from Mr. Starrett, I didn't even know him by sight for months after this property was conveyed.

Q. Having no assurance at all from Mr. Starrett that he would give a bond, why did you go to Judge Dill on any such errand as that?

20 A. For the simple reason that I didn't know but what Judge Dill would be perfectly willing to release Mrs. Boynton on that bond, providing he assumed it.

Q. Who?

A. Mr. Starrett, if he assumed the mortgage.

Q. Well, he had agreed to, hadn't he, in the contract?

A. Yes, sir.

Q. Then it wasn't necessary to see Judge Dill about that?

30 A. I wanted to see if it could be arranged for Mrs. Boynton to be relieved on that bond, that is all; there was no special importance attached to that.

Q. Oh, there wasn't?

A. Except what I have stated here.

Q. But it was important enough for you to see Judge Dill about it?

A. Yes.

Q. But now you don't think it was of much importance?

A. I thought under the circumstances it was unnecessary for me to go see Judge Dill about it.

Q. Then the Judge is wrong when he says you came to see him for altogether different purpose?

A. The Judge is wrong when he says I came to see him about releasing any of the Beryn street property, he is wrong about that. I went to see him about releasing this bond of \$4,000.

Q. Now, going back to this Atlas you have in front of you, you say that you—tell me first, what you were doing at that office at that time, why you went there, or tell the Court, rather. 10

A. In the first place, I had been preparing a Prospectus of a new corporation which was to be formed in New York City.

Q. I merely want to know what took you there, with reference to this business?

A. What took me there was to engage the services of Mr. Bruen's stenographer who often does outside work, when not engaged in his business. 20

Q. You knew that Mr. Starrett—you didn't probably know at that time his name?

A. I didn't.

Q. But you knew that Mr. Bruen and a gentleman were looking at the property, didn't you?

A. Not on that morning I didn't know anything about it.

Q. Do you mean to say you didn't know, when you left your home, or shortly afterwards, that Mr. Bruen that morning was showing a gentleman— 30

A. I didn't know it, sir, most positively.

Q. Did you tell Mr. Keating that morning you were there and made those lines on the Atlas, that Mr. Bruen and a gentleman were looking at the property?

A. I did not.

Q. Well, how did the subject of the property come up, why did you start talking about it?

A. The Atlas was lying on the desk there.

Q. Well, one moment. Please stop right where you are.

Adjourned until Thursday, March 29th, 1906, at 9.45 A. M. at the Chancery Chambers, Newark, New Jersey.

10

March 29, 1906.

CHARLES D. BOYNTON recalled:

Further cross-examination by Mr. Guild:

Q. I was endeavoring yesterday afternoon, Mr. Boynton, to find out from you how you started to talk with Mr. Keating about this property, if
20 you didn't go there for any purpose connected with the sale of it, and when I say "there" I mean to Mr. Bruen's office. That is my question.

A. I didn't understand that to be a question.

Q. I was endeavoring yesterday afternoon, Mr. Boynton, to find out from you how you started to talk with Mr. Keating about this property if you didn't go there for any purpose connected with the sale of it, and when I say "there" I mean Mr. Bruen's office.

30 A. I stated in my original direct examination—

Q. I don't care what you stated in your original direct examination, I want an answer to that question.

A. I went in there for the purpose of getting some typewriting done, which I was unable to have done. The Atlas being there and that question came up, and in examining the property I put

those lines upon the map, the red lines showing the outline of the two properties, the Beryn street property and the Harrison street property. I put the lead pencil lines on there to show that the fence as that time located—to show where the fence lines were, and that that was not the dividing line between the Harrison street properties and the Beryn street properties.

Q. Now, you haven't answered my question at all. I ask you how you came to talk about it or look at the Atlas; now, you say the question came up, how did the question come up and who brought up the question?

10

A. I can only give you an impression of how it came up; the incident occurring some two years ago I cannot recall to mind every little detail in relation to it.

Q. I don't ask you to do that. You have no trouble in remembering other things connected with your visit there that day, and it seems to me it is very strange if you cannot tell us how the conversation started?

20

A. I was made acquainted with the fact that the property was being negotiated for sale.

By the Court:

Q. Well, who made you acquainted with that fact?

A. My recollection is that it was at the time that Mr. Bruen was negotiating to sell the prop-

30

erty.

Q. To Mr. Starrett?

A. Well, I didn't know the party's name at that time.

Q. Well, to the man who afterwards turned out to be Mr. Starrett, is that it?

A. Yes, sir.

Further cross:

Q. Mr. Boynton, isn't it a fact that you were at Mr. Bruen's office that morning at his request made to you over the telephone the night before?

A. No, sir.

Q. Isn't it true that he told you that he would have Mr. —, a gentleman, at the property— Harrison street property the next morning, giving you his name, Mr. Starrett, and that he would like you to go to his office, Bruen's office, and he would bring Mr. Starrett there to meet you?

A. No, sir.

Q. You say that is not true?

A. That is not so.

Q. Isn't it a fact that it was growing out of that talk over the telephone with Mr. Bruen that you went to his office that morning?

A. No, sir.

Q. You say you went there for the purpose of having his stenographer do some typewriting for you?

A. Yes, sir.

By the Court:

Q. You haven't told us yet how you came to go there. What information you had with respect to these negotiations?

A. I didn't go there for the purpose of consulting or imparting any information at that time in regard to the real estate transactions.

Q. That you have already said. Now, what I want to know is what you knew about these negotiations at the time that you went there?

A. Yes, sir.

Q. Can you answer that?

A. I had heard that there were such negotiations.

Q. From whom had you heard it?

A. From Mr. Bruen, over the telephone.

Q. Well, how long before?

A. I think it might have been, I cannot recollect the exact time, but I think it was two or three days, as near as I can remember, so many months ago.

Q. That is the only information you had then, is that the only information you had that these negotiations were going on?

10

A. Yes, sir.

Q. You hadn't seen Mr. Starrett on the ground?

A. Never.

Further cross:

Q. Did you know at the time you were at Mr. Bruen's office, and when you made those alterations on his Atlas or lines, that he had a possible purchaser for the property?

A. I had that information; yes, sir.

20

Q. Now, you say that the reason why you made the lead pencil marks on the Atlas—

By the Court:

Q. Won't you tell me, as nearly as you can, how it happened that when you went there and found you couldn't secure the services of this stenographer, that a conversation in reference to this matter began; who did you see there?

A. Mr. Keating.

30

Q. Anybody else?

A. No.

Q. Anyone else in the office?

A. Not to my recollection.

Q. Now, tell us what you recollect with respect to that matter?

A. On the desk, directly in back of the rear in the office there was a table there, which was used

as an office table, and this map or Atlas—or an Atlas laid there, and I opened it, and I was aware of the fact, having seen the maps in another office, that the lines were not exact in the 73 Harrison street property, that twenty-five feet was conveyed by Palmer, and incidentally I opened that map, and without drawing it to a scale, I merely showed practically with red ink lines what the Harrison and Beryn street properties consisted of, which was in the name of Boynton.

10

Q. I understand that; now you must have had some conversation with Mr. Keating. Do you remember what it was,—what did he say and what did you say?

A. I stated to him—now, I said, when I draw the lead pencil marks there is where the fence was, which is not on the line between the Harrison street and the Beryn street properties.

20

Q. Well, you cannot recollect anything else that you said to him?

A. That was all, to my recollection, and then I passed on.

Q. You cannot recollect anything that he said to you?

A. No, sir, only that he said, “Well, all right, I will show it to Mr. Keating—I will show it to Mr. Bruen, or call Mr. Bruen’s attention to it.”

Q. Well, did you ask him to call Mr. Bruen’s attention to it?

30

A. Not specially, no, because the negotiations were all with Mr. Bruen, and we were having no negotiations with his clerk.

Q. Then your marking of the red lines around the properties did not proceed from any request on your part?

A. Not at all, just voluntarily.

Q. I didn’t quite understand why you ran that line around both properties?

A. For the simple reason that on the map both properties were marked on the map C. B. Boynton; the initials were incorrect, if it was intended for my name, and the fact that since that map was prepared, as I understand it, the Palmer property, including that 25 feet, appeared in the name of Palmer, and in case he would have occasion to show that map I wanted to have him see what the outlines of the Harrison street property and the Beryn street properties were, and in showing that the fence lines were off of the property between the Harrison street property and the Beryn street property, the map showing that the Harrison street property, running in the rear of the house, was one hundred and forty feet in depth, whereas the fence line as shown there would show that they were some 150 feet in depth.

10

Q. Well, I don't still understand what was the occasion of drawing the red lines around the Beryn street property.

A. Well, if you will permit the map to be brought here I will make that a little clearer to you. This map, as you see it, it is drawn, here is the stable which is shown on there, this stable here seems to me as rather indefinite. The words Ward Brigham, and the "ham" coming on to the end of the stable there and running over on to the barn, I merely took this and drew the lines showing that the C. D. Boynton properties ran around in this form, away around, including that.

20

Q. Well, including your house on the Beryn street block?

30

A. Including the house and lot on the Beryn street block and on the Harrison street properties, and also to show that where the name Albert W. Palmer—that that which was purchased subsequently to this purchase here was now included in the 73 Harrison street property. That was the object of doing it.

Further cross:

Q. But you seemed not to have been satisfied with drawing a red ink line on the outside boundaries of your entire holding, but you went further than that and drew a lead pencil line indicating the line of the iron fence and hedge?

A. I did, and also to indicate——

Q. I don't care——

A. To indicate that that was not included in
 10 the property to be sold, and that the property to be sold was to be the property covered by the two mortgages which was to be turned over and negotiated.

Q. Is that indicated on this Atlas, anything about that there?

A. Only these whole lines.

Q. Now, the original rear line of the two properties on Harrison street, your property and Doctor Stockton's property are shown on this Atlas,
 20 are they not, with a red black pink line?

A. They are 140 feet in depth.

Q. And the lead pencil lines that you have inserted there are on the iron fence or hedge line?

A. On the iron fence there, practically so, not drawn to a scale but approximately.

Q. Well, we will assume that they are correct. Now, you say that you drew those lead pencil lines to indicate where the fence was?

A. I did.

Q. Is not there a fence around the north side
 30 of this property?

A. On which property?

Q. Why the north side of the property now owned by Mr. Pennington?

A. Yes, put on at the same——

Q. Never mind, I merely asked you whether there wasn't a fence there?

A. Yes, that is all right, no objection.

The Court.—Now owned by Mr. Starrett?

Mr. Guild.—Now owned by Mr. Boynton.

Q. I mean on the north line of Mr. Starrett's property, is there not a fence there?

A. I believe there is.

Q. Well, don't you know there is?

A. I think there is.

Q. I don't ask you what you think?

A. I didn't put it there, but I noticed in going by that there was a fence and a hedge there put up, which I had nothing to do with, and was not consulted at any time by the adjacent owner when it was put up.

Q. As a matter of fact, Mr. Boynton, did you say a word to the young lady in Mr. Bruen's office, that morning, about typewriting for you?

A. I did—I think so.

Q. Well, I know you think so; you say that is what you went there for?

A. Well, I went there for that purpose.

Q. I ask you whether you said a word to her that morning about typewriting?

A. My recollection is that she wasn't in.

Q. I didn't ask you that at all.

A. Well——

Q. You are apparently trying to evade the question.

A. No, I am not.

Q. Well, then answer it?

A. I would say no.

Q. You didn't speak to her?

A. No.

Q. And you are quite right too. Now, didn't you wait at Mr. Bruen's office that morning until he came there?

A. No.

10

20

30

Q. You say you didn't see him——

By the Court:

Q. I want you to state again what you recollect that you said to Mr. Keating. Now, all that you said to Mr. Keating?

A. I have stated all that I——

Q. Just repeat, now your memory having been refreshed, as far as it is possible to refresh it,
10 state now what you said to Mr. Keating?

A. I stated to Mr. Keating—I remember asking for a pen and ruler, that some of the lines here were not correct. I then took the map——

Q. I don't want you to say what you did, I want you to say what you said and all you said to Mr. Keating as you now recollect it?

A. After I had finished these lines——

Q. No, what did you say?

A. I stated that the—showed him the map; I
20 said, here is where the fence lines are now, which is not on the dividing line between the Harrison and Beryn street properties.

Q. Now, do you recall that you said anything else?

A. And that the fence line was not on the property, on the line of the property between the Harrison and Beryn street property; that is all, and he said, as I went out, I will call Mr. Bruen's attention to it when I came in. That is all I said
30 to Mr. Keating in any shape or manner.

Further Cross.

Q. Then you do admit that you knew that Mr. Bruen was showing that property that morning to somebody?

A. Not that morning, no, sir.

Q. But that either that morning or prior to that time he had shown it to somebody?

A. I wasn't aware that he had shown it to anybody.

Q. When Mr. Bruen came back to his office that morning didn't he tell you he had been to the property with Mr. Starrett and that Mr. Starrett had offered him \$20,000 for the property?

A. No, sir, I didn't see him that morning. He wasn't in that morning when I was there.

Q. When did you first learn that he had an offer from Mr. Starrett?

A. Over the telephone at our residence. 10

Q. When?

A. I think it was two or three days before this marking of the map occurred.

Q. Did you expect that the description for the property, if it were sold, would be prepared from this Atlas?

A. Not necessarily.

Q. Well, at all?

A. I didn't know what course he would pursue. I believed that after he sent to me for the papers, the policy of the Fidelity and the deed of the Palmer property that he would draw his contracts from those papers, which were subject to the two mortgages. 20

Q. I don't care about that. Well, had he sent to you for the papers when you had these alterations on the Atlas made?

A. When——

Q. No, merely answer my question, please.

A. How is that? 30

Q. (Question read.)

A. Subsequent to making the alterations on the Atlas, yes.

Q. Well then he hadn't sent to you for the papers when you made the alterations, is that what I understand your answer to be?

A. No, sir, not until afterwards.

Q. What purpose did you expect the alterations that you made on the Atlas would serve in the transaction?

A. It would serve to show first that the fence line as there indicated was not on the dividing line between the Harrison street and Beryn street properties, and second, to show that the twenty-five feet of the Palmer property was included in the Harrison street property, which was not indicated on the map.

10 Q. Yes. Well, now, with reference to the lead pencil line, will you tell me what any person of average intelligence would be apt to gain—

The Court.—No, that won't do.

Mr. Guild.—Very well, strike the question out.

Q. What do you mean when you say it was laid out?

20 A. The driveway was already on the property when she purchased it, and after she purchased it she had it improved by having broken stone put on it, and she had a curb run on the side.

Q. Indicate it on this map, please?

A. Yes, sir. When this property was originally purchased, the sod ran on an incline down to the driveway, as this was elevated on a terrace; on account of wagons frequently driving over the edge and breaking the sodding, she arranged to have curbing put in down to the rear end, and to the rear of the house, practically, there.

30 Q. Down to the letter "A"?

A. Yes, sir; also a curbing was put in on this side, on the north side, practically the same distance; after that the driveway was—some broken stone put on it and rolled down to make it in a nicer condition.

Q. Now, let me ask you this question. Before

the iron fence was moved, was it on the dotted line south of the drive as shown on the paste-board map?

A. No, sir, it was a board fence instead of iron.

Q. Then there was a fence on that dotted line?

A. There was on the extreme end of the property.

Q. I want to know whether that wooden fence you speak of was on the dotted line, just south of the drive shown on the pasteboard map?

10

A. There was, yes, sir.

Q. Did that run up close to the stable, that fence?

A. It did.

Q. And you had that wooden fence removed?

A. I did.

Q. Did you extend the driveway over into this disputed strip as shown on the paste-board map?

A. Yes, we had that dug out and graveled.

Q. Did you put up the trellis marked on the paste-board map?

20

A. There was one just like it, and this was replaced by a new one similar.

Q. About how high is that?

A. I should imagine it was—oh, seven feet or eight feet, six, seven or eight feet, I cannot tell from memory.

Q. How wide?

A. It ran just a distance, far enough to conceal the manure pit.

Q. And put there for that purpose, wasn't it?

30

A. Yes, sir, put there for that purpose, and there was one there before.

Q. I didn't ask you that, I asked you about the one that is there now?

A. Yes, sir.

Q. And it stands on this disputed strip, doesn't it, as shown by this survey?

A. Well, I assume this survey is correct.

Q. Yes.

A. I think very likely it is on our line, on the Beryn street line now.

Q. I ask you whether it was on this disputed strip.

A. I think very likely it is about a few inches.

Q. Have you kept horses at any time since you owned the Harrison street property?

10 A. Yes, sir.

Q. And you used the stable for that purpose?

A. I did.

Q. And in laying out this drive, as shown on this paste-board map, you arranged the drive for your convenience, in the use of the stable?

A. Yes, sir.

Q. Was that stable built originally for use of the Harrison street property?

A. Yes, sir.

20 Q. Who built it?

A. I assume that Martha A. Stockton built it at the time she built her own.

Q. It was there then when you purchased?

A. Yes, sir.

By the Court:

Q. Did you purchase this property and the Beryn street property together?

A. No, sir.

30 Q. Separately?

A. Yes, sir.

Q. At different times?

A. Yes, sir.

Q. If you had left that wooden fence where it stood originally, as you have told us, it would have made it rather inconvenient to approach the stable?

A. Not at all, sir.

Q. Did you not remove the wooden fence and put up the iron fence where it is now, as a matter of convenience to yourself?

A. No, sir.

Q. In the general use of the property?

A. Not for convenience, no, sir.

Q. Well, why did you do it?

A. Because we rented the Beryn street property for a term of years at quite a reasonable rent, and we thought we would not throw in quite so much land, with it, renting it for a term of years, and put it on to the Harrison street property to use it ourselves, as we lived there. 10

Q. Well, when you established this fence line you ran it across the rear of Doctor Stockton's property on Harrison street, did you not?

A. No, sir, we ran it ten feet inside of our own property, and gave them the use of that ten feet, which they have to-day, and which is not owned by them. 20

Q. But this iron fence runs all the way through to the Beryn street?

A. It does.

Q. Who planted the hedge?

A. We planted the hedge, set the hedge back, rather, it was already on the old lines, and we merely transplanted it back on the line, or where the new fences were put up. Before that was done there was no iron fence there, it was merely a hedge between. 30

Q. So you made it more prominent in putting up the iron fence?

A. Not exactly.

Q. How high is that hedge?

A. I should think about, well, if it is kept trimmed it would be about four feet,—four feet six.

Q. High?

A. Yes, sir.

Q. How wide is it on the top where it is trimmed?

A. Well, I should think three or four feet.

Q. It is a very substantial hedge, is it not?

A. Yes, sir, and it was at the time it was transplanted, it has been there for a good many years.

Q. Now, did you not have an agreement with Doctor Stockton to sell him the strip in the rear
10 of his property?

A. I never did.

Q. Did you write a letter to Mr. Starrett in December, 1904, asking him whether he would buy this strip?

A. I did.

Q. I cannot produce the original, but I show a copy to Mr. Boynton and ask him whether he thinks that is a copy of the letter?

A. Yes, sir, I recognize it as the purport—I
20 cannot tell if it is exactly the wording.

Q. Will you kindly read it?

A. "1 Beryn street, East Orange, N. J., December 2nd, 1904, Mr. Paul Starrett. Dear Sir: Do you wish to purchase the land running from the driveway to your stable to the fenceline of 1 Beryn street, 14 x 135; also the ten feet by about 36 feet on the rear of your house lot; the fence is on 1 Beryn street and now on property 135 x 130, and when put back where they belong would be 135 x 144. Awaiting your reply, I am Yours truly, Charles B. Boynton." P. S.—I called at
30 your office but was unable to see you."

Q. Why did you write him that letter?

A. When we sold the Beryn street property it was our intention at that time to immediately put the fence on the lines where they belonged.

By the Court:

Q. When you sold the Beryn street property?

A. When we sold the Harrison street property it was our intention to set the fence lines back in their proper place, between the two properties, and it was not our intention—we were advised not to do that in October, because if we did that, and transplanted the hedge it might kill the hedge, as Nurserymen said that hedges have to be transplanted at certain seasons of the year. It got to be along about December, and Mrs. Boynton said to me that possibly—

10

Further cross:

Q. No—well, all right, go ahead.

A. Yes, it is proper in this case, I think your Honor will determine. She said that perhaps we can get along without that extra strip of land, which belongs to this Beryn street property, and I would suggest that you write to Mr. Starrett and ascertain if he would like to add this land to his property that he had purchased in October. So I called to see Mr. Starrett once or twice and was unable to have an interview with him, to talk the matter over, and so I wrote him this letter to ascertain, and he wrote me back and stated—

20

Q. No, I didn't ask you what he wrote you back, sir?

A. All right.

30

Q. When did you first learn that this strip had not been included in Mr. Starrett's deed?

A. Before the signing of the contract. It was never thought of being included in the sale of the properties, and it was remotest from our minds, we would not have signed any such contract, Mrs. Boynton would not, I would not have permitted it, if I had anything to say, if we had the remot-

est idea that we were to take a slice off of the Beryn street property, and in the contract it was furthest from our thought and mind.

Q. Well, if you thought, and your wife considered that this property had any value to Mr. Starrett, and you knew that it was not included in the description in the agreement, and was not included in the deed, why didn't you call his attention to it at that time?

10 A. I never met Mr. Starrett until several months—

Q. Why didn't you call the attention of your agent to it?

A. It was called attention to with the lines, and we supposed that he would understand that himself.

Q. Understand what?

A. We didn't know that he had ever represented it to Mr. Starrett that that was included, sir, we never knew it for an instant.

20 Q. You say that you supposed he would understand it; understand what?

A. That the fence lines as indicated by the lead pencil would show that the fence lines were off of the lines between the Harrison street and the Beryn street properties, and he would know from that if there was any question—that is the thought in my mind.

Q. That is what you think now?

30 A. Well, the original too; that wasn't brought up.

Q. You didn't say anything to Mr. Bruen, your agent, about not including the property up to the hedge and iron fence line?

A. Never said anything one way or the other.

Q. Now I ask you again if you consider that this property had any value to the Harrison street property, if this strip had any value to the Har-

risson street property why you did not ask Mr. Starrett or Mr. Bruen at the time of the negotiations, at the time of the sale, whether Mr. Starrett did not want to buy it; now simply answer that question?

A. I will give you the reason for it. The reason that that question was not brought up at the time, if it had even been thought of, was because we could not give title to the extra strips of land without having the mortgage released from the Mutual Life, the first mortgage, and a release of the other, which was not brought up in any way, shape or manner. 10

Q. Well then, is that your only reason?

A. No.

Q. Why you didn't call his attention to it?

A. No, because we had always said, that when we sold the Harrison street property we would keep the Beryn street property its full size, 135 x 140 odd feet. 20

Q. But you and your wife afterwards concluded in December that you could get along without this strip in connection with the Beryn street property?

A. Yes, we determined then that we could dispose of it.

Q. And was the property then not subject to the same two mortgages?

A. Yes, sir.

Q. So that you were in no better position in December, so far as the mortgage— 30

The Court.—It was then subject to one mortgage, as I understand it, the other mortgage was paid off.

Q. All right. You were still subject, in December to the \$10,000 mortgage held by the Mutual Life?

A. No, sir, \$7,000.

Q. Well, whatever it is; so that if Mr. Starrett had agreed to take the property and pay for it, in December, you would still have to get the release from the Mutual Life?

A. Yes, sir.

Q. Is that so?

A. Yes, sir, which I could have done.

10 *By the Court:*

Q. Well, I still don't understand. Mr. Boynton, why, when you were selling this property to Mr. Starrett, you did not then propose to him that he should buy the property as it was enclosed by the hedges?

A. The reason for that, if your Honor please, is because at that time we hadn't the remotest idea of disposing of any portion of the Beryn street property, and it was an afterthought which
20 occurred away in December, two or three months after the transaction took place.

Further Cross-examination:

Q. Now, where do you say that the title to this property was closed?

A. In Mr. Bruen's office.

Q. Was the deed delivered there to Mr. Starrett?

A. No, it was delivered to Mr. Bruen; he witnessed the signature of Mrs. Boynton and myself.
30

Q. And was the money paid at that time?

A. A check was paid over to Mrs. Boynton at that time.

Q. You are certain about that?

A. I am.

Q. Wasn't the deed delivered to Mr. Bruen

and didn't he bring it to Newark and receive the money in Newark, at the Fidelity Company's office?

A. I think he had the check with him, payable to Mrs. Boynton's order, and he asked for his commission to be deducted, and Mrs. Boynton said that she would have to have that deposited first before she could give him a check for his commissions for the sale of this property. This occurred after banking hours on a Saturday, I think 10
it was Saturday, October first, in the afternoon.

By the Court:

Q. As I understand it, your recollection is that at the time when you and Mrs. Boynton acknowledged the deed you received the check, is that it?

A. Yes, sir.

Further Cross:

Q. Will you examine the certificate of acknowledgment to the deed marked Exhibit C-6, and tell me the date; just the date of the acknowledgment I want, sir? 20

A. This here?

Q. Up there at the top.

A. September 30th.

Q. I show you a check for \$7,500?

A. Yes, sir.

Q. George A. Fuller Company to the order of Paul Starrett and endorsed by him to Harriet G. Boynton, is that the check? 30

A. Which was received that Saturday afternoon.

Q. And will you examine the check and see what date it bears?

A. October first.

Q. Now, do you still say that this transaction

was closed the same day you acknowledged the deed?

A. That would seem to be a discrepancy of one day, September 30th or October first.

Re-direct Examination:

Q. Mr. Boynton, did your wife get the Harrison street property or the Beryn street property first?

A. The Harrison street property.

10 Q. How many years did she own the Harrison street property before she acquired the Beryn street property?

A. Two or three years.

Q. How long after acquiring the Beryn street property was this fence moved back?

A. Within a few months, I cannot recall exactly when.

20 Q. How long did you use the barn connected with the Harrison street property with the old fence line in its original position before you made the change?

A. Until after we moved it back.

Q. Well, how many years?

A. That was from 1897 up to I think 1899, some time.

Q. Were or were not you able to use the stable on this property without inconvenience, under that situation of affairs?

30 A. I was able to drive into the stable, and in turning around had to turn around inside of the stable.

Q. What was the object of widening the road-bed just at that westerly end of the driveway?

A. Westerly end?

Q. Yes, there where it spreads out.

A. Merely to make a little more of a sweep there.

Q. For what purpose?

A. Merely for sweeping—turning about there, instead of cutting out more on the upper north of that line, up toward the line of the Palmer property I merely made a sweep both ways.

Q. Well, was that to enable you to turn the rigs around outside of the barn or what?

A. Yes.

Q. Well, was that the purpose of it?

A. Yes, sir.

Q. What time in the day was it that you called at Mr. Bruen's office on the occasion you made these alterations on the map? 10

A. I think it was in the neighborhood of—I was going to take the 9.01 train for New York, and I think it was somewhere about eight or half-past eight, along there.

Q. How long did you stay there?

A. I think about fifteen minutes.

Q. Was Mr. Bruen there or did he come in while you were there? 20

A. He did not.

Q. Now, this \$20,000 offer that Mr. Bruen made to you for the property, how was that communicated to you?

A. By telephone.

By the Court:

Q. Before or after you had been to Mr. Bruen's office on this morning?

A. Before. 30

Re-direct Examination:

Q. How long before?

A. Two or three days.

Q. This fence line running southerly to Beryn street, what position is that in at the present time, is it as shown on the map, or as it was before it was moved back?

A. I don't know. The southerly line?

Q. Is the fence line running southerly to Beryn street as shown on the map?

The Court.—Do you mean the actual fence?

Mr. Davis.—Yes, sir.

The Court.—I understand there is no dispute about that.

10 Q. That is so, is it not?

A. Yes, sir.

Q. The strip of land lying between that fence and Doctor Stockton's property, by whom is that now owned?

A. Mrs. Boynton.

Q. Has she parted with it at all, since she acquired the Boynton street property?

A. She has not.

20 Q. At the time you made these pencil marks, why did you consider this easterly pencil mark all the way to Beryn street?

A. For the purpose of showing that the fence as located was not on the line between Harrison street and the Beryn street properties.

Q. The conversation that you had with Mr. Keating at the time these marks were made, was or was there not anything stated in that conversation about you having received an offer from Mr. Bruen for this property?

30 A. Nothing to Mr. Keating, because I had no business transactions with him.

Q. Well, on the occasion of that visit, was there anything said by you to anybody?

A. No, sir.

Q. That is all.

HARRIET G. BOYNTON SWORN.

Direct examination by Mr. Davis:

Q. You are the wife of the last witness?

A. I am.

Q. And one of the defendants in this case?

A. I am.

Q. I owned both the Beryn street property and the Harrison street property before you sold it to Mr. Starrett, did you?

10

A. Yes, sir.

Q. We understand that you bought the Harrison street property before you bought the Beryn street property?

A. Yes, sir.

Q. How long before you bought the Beryn street property was it that you bought the Harrison street property?

A. Two or three years.

Q. How long were you living in the Harrison street property before you bought the Beryn street?

20

A. Two or three years.

Q. How long after you bought Beryn street was it that you made an alteration in the fence line?

A. About five months.

By Mr. Guild:

Q. How long?

30

A. About five months.

Further direct examination:

Q. At the time you purchased Beryn street was or was not the Mutual Life's mortgage on the property?

A. It was.

Q. At the time you purchased the Harrison

street property was or was not the Petty mortgage on the property?

A. It was.

Q: I understand then that you placed, or your husband placed the Dill mortgages on both properties?

A. Yes, sir.

Q. Now, Mrs. Boynton what negotiations did you have with Mr. Beryn with regard to the sale
10 to Mr. Starrett of this Harrison street property?

The Court.—Hadn't you better go back.

Q. Yes. Did you ever call at Mr. Beryn's office at any time for the purpose of placing this property on Harrison street on his books for sale?

A. I did.

Q. How long before the actual sale to Mr. Starrett was that visit?

A. It was in 1891 or 1892.

20 Q. 1901 you mean?

A. 1901 or 1902.

Q. And the sale took place about three years afterwards, did it?

A. Yes, sir.

Q. In 1904?

A. Yes, sir.

Q. On the occasion of that call were you alone or was Mr. Boynton with you?

A. I was alone.

30 Q. And who did you see?

A. Mr. Bruen.

Q. Now, will you state the conversation you had with Mr. Bruen as far as you can remember?

A. Simply that I wanted the property sold, I would like to have him sell the property 73 Harrison street.

Q. Did you give him a price?

A. I did.

Q. What was the price?

A. \$30,000.

Q. And did you give him any dimensions?

A. No, only the front possibly.

Q. What is that?

A. I didn't give him any dimensions, possibly the front dimensions.

Q. Did you tell him how deep it was?

A. I did not.

10

Q. Mr. Bruen has stated that on this occasion when the property was put on his books, that it was you and your husband that went there, is that so?

A. It is not.

Q. He has also stated that on this occasion you told him that the property to be sold ran back to the hedge, a distance of about 150 feet, is that so?

A. It is not.

20

Q. What did you tell Mr. Bruen about the depth of that property?

A. It was never mentioned.

Q. Did you know the depth of it?

A. Not exactly, no.

Q. Now, what was the next—well, did you go to Mr. Bruen's office frequently after that time?

A. After what time?

Q. After the time you put it on his books for sale?

30

A. There was a time when I went there, because he had my furniture in storage in his store house, in back of his office, for two years, or a year and a half, and I went there frequently then to get my things.

Q. Was that after you had put the property in his hands for sale?

A. It was.

Q. And how often did you go there a month—
he states it was several times?

A. Well, I might have gone several times during the month, whenever I needed anything from the store house, I really cannot tell you.

Q. On each occasion of going there to get into the store house, did you or not have to pass through his office?

10 A. I passed through his office yes, not his private office, but the hallway into the store house.

By the Court:

Q. Did he have control of the store house?

A. Yes, he owned it, I suppose.

Q. He owned it and conducted that business—
storage business?

A. Yes, sir.

Further direct:

20 Q. And this store house was located where, with regard to his office?

A. In the rear of his office.

Q. You say there was a hallway leading from his office into the store house which didn't go through his own private office?

A. Yes.

30 Q. Now, on every occasion of your visit there to his office, either for the purpose of going to the store house or otherwise, did you always inquire about the sale of this property?

A. No.

Q. How often, after you placed this in his books for sale, did you go there and make inquiries about the property?

A. I don't remember of asking him at all about it.

Q. Now, with regard to the sale to Mr. Starrett,

what was the first you knew that Mr. Bruen had a prospective purchaser?

A. By telephone—it was upstairs, and my husband answered it, and came down to the library and told me that Mr. Bruen had had an offer for the property of \$20,000, which I immediately rejected.

Q. Now, this contract bears date on September 20, 1904, how long before that, Mrs. Boynton, was it that this \$20,000 offer was communicated to you? 10

A. A few days.

Q. A few days before?

A. Yes, sir.

Q. After the rejection of the \$20,000 offer, what was the next you heard?

A. By telephone again, the next day, or the following, I don't exactly remember, it was very near.

Q. What time of the day was that telephone? 20

A. It was right after breakfast, I think—the first one was in the evening.

Q. And the second one was when?

A. After breakfast in the morning.

Q. What was the second one, did it name any figure?

A. Yes, said he, had an offer of \$22,500.

Q. And who answered the telephone?

A. Mr. Boynton.

Q. Is that what he told you after answering the telephone? 30

A. Yes, sir.

Q. Well, what action did you take on that?

A. Why, I said I would sell it if there was no extra expense to me, and I would get all that amount.

Q. And so your husband went back to the telephone, did he?

A. And told him.

Q. How long after that was it that you saw Mr. Bruen?

A. I didn't see him at all.

Q. During the negotiations did you see Mr. Bruen at all?

A. I did not.

Q. Well, when was the first time that you did see Mr. Bruen after accepting the \$22,500 offer?

10 A. When he came to the house with the contract, which was in the evening, just before dinner.

Q. Who were there?

A. Mr. Boynton and myself.

Q. And the contract was already drawn, was it?

A. It was.

Q. And signed by Mr. Starrett?

A. It was.

20 Q. What part did you take, if any, Mrs. Boynton, in the inspection of that contract?

A. I looked over Mr. Boynton's shoulder, as he read it, as I never sign a paper without looking at it.

Q. Well, how much of it did you read over?

A. Well, I think I read it all over.

Q. Do you know if your husband read it over for you, or read it over?

A. We were both looking at it together.

Q. Now then you signed it, did you?

30 A. I did.

Q. And you received \$1,000?

A. \$1,000.

Q. Did you have any communication with Mr. Bruen between that time and the time when the deed was transferred?

A. No.

Q. Where was it that you and your husband signed the deed?

A. Mr. Bruen's office.

Q. And do you know what day that was?

A. It was on Saturday, at two o'clock, the first day of October.

Q. I notice in the acknowledgment to the deed, that the acknowledgment appears to be taken on September 30, 1904, before Mr. Bruen—now, October 1st was Saturday, was it not?

A. It was.

Q. Well, did you acknowledge the deed and sign it before you received the money? 10

A. I did not.

Q. Where was it you received the money?

A. In Mr. Bruen's office.

Q. In what shape was it?

A. In a check.

Q. From whom did you receive the money?

A. Mr. Bruen.

Q. Did you or your husband come to Newark to the Fidelity's office to close this matter? 20

A. No, sir.

Q. Now, Mrs. Boynton, I notice on the second page of this contract, it speaks of the property being conveyed subject to two mortgages, aggregating \$14,000, was there any talk between you and your husband and Mr. Bruen concerning those mortgages?

A. Only that the two mortgages which were on the Harrison street property—

Q. Well, who had this talk about the mortgages? 30

A. I don't remember that there was any talk.

Q. At the time you first put the property on Mr. Bruen's books, did you say anything to him about the encumbrances?

A. I think I said there was a mortgage on it, or two mortgages.

Q. Do you remember whether you did or not?

A. I did, always did.

Q. Do you know whether it was you or your husband or someone else that imparted this information to Mr. Bruen, that the Harrison street property had two mortgages on it, aggregating \$14,000?

A. I told him.

Q. When did you tell him that?

A. Why I suppose when I put it on his books, but I cannot recollect exactly.

10 Q. At the time the contract was signed, did you have any further talk with him about the mortgages?

A. No.

Q. Did you ever see Mr. Starrett and Mr. Bruen looking over the grounds?

A. Never.

Q. Did you ever see Mr. Starrett during the negotiations?

A. Never, no, I didn't know Mr. Starrett.

20 Q. Now, at the time of the closing of this matter and the getting of your money on October 1st or thereabouts, what conversation did you or your husband have with Mr. Bruen in your hearing?

A. At the time of the signing.

Q. At the time that you got the balance of your money?

30 A. Why Mr. Boynton asked Mr. Bruen if he found everything all correct, and he said he did, only it was a very crooked piece of property, and that was all.

Q. Do you remember, Mrs. Boynton, whether you made a visit to Mr. Bruen's office for the purpose of signing the deed, and another visit for the purpose of getting the money?

A. No, they were both the same. I came out from New York on the one o'clock train and went directly to Mr. Bruen's office.

Q. You came out from New York?

A. Yes, sir.

Q. What day of the week was it?

A. Saturday, October first.

Q. Did your husband go with you, was he on the train with you?

A. He was. We attended a funeral in New York of a relative of mine.

Q. In the morning?

A. Yes, sir. 10

Q. What was the first you knew about any marks being made on this Atlas?

A. I didn't know that there were any marks on the Atlas.

Q. Well, what was the first time you did know it?

A. Why some time after Mr. Starrett had served us with papers, I don't know, a long time after the suit had begun.

Q. Did you authorize your husband to go there and make these marks? 20

A. I did not.

Q. Did you ever authorize your husband or anybody else to sell the Harrison street property back to the fence line?

A. I did not.

Q. Was that ever spoken about by you to Mr. Bruen or anybody else?

A. No, sir.

Q. Did you send your husband to Judge Dill to ask for a release of this disputed piece of land? 30

A. I did not.

Q. Did you speak to your husband or Judge Dill about a release of this disputed piece of land?

A. I never had any conversation with Judge Dill on that subject.

Q. Well, with your husband, did you ever authorize him to go and ask for it?

A. I never did.

Q. What was the purpose, Mrs. Boynton, of changing that fence line, after you bought the Beryn street property?

A. To make our Harrison street property a little more commodious, give us a little more room, and we rented the other property for a small amount, and didn't see any use of letting them have the use of the ground.

10 Q. You know Doctor Stockton, don't you?

A. I do.

Q. Did you ever have any agreement or understanding with him that he was to buy that strip in the rear end?

A. I never talked to Doctor Stockton on the subject.

Q. What do you know about this letter written by your husband to Mr. Starrett in December, suggesting that he buy this disputed land?

20 A. Simply that we talked it over, and we thought possibly we might sell some or all of the property if Mr. Starrett would like to buy it.

Q. You knew about that letter then?

A. Oh, yes.

Cross-examination by Mr. Guild:

30 Q. You say that you knew about this letter having been written by your husband to Mr. Starrett, asking him whether he wished to purchase this strip?

A. Yes, sir.

Q. And that was done with your approval?

A. Yes, sir.

Mr. Guild.—I would like to see the answer in the case, please.

(Same produced.)

Q. Your answer says this, "These defendants admit, as stated in said paragraph 5, that means of the bill, that on or about December 2nd, 1904, the defendant Charles B. Boynton communicated to the complainant in writing the letter set out in said paragraph, which was sent by the defendant Charles B. Boynton, to the complainant, after defendant Charles B. Boynton had called at complainant's office, and failed to see him, and that such communication was sent by the defendant Charles B. Boynton to the complainant, without any authority from or knowledge of the defendant Mary G. Boynton." Now, that is your answer. Why, if you had authorized your husband to write that letter to Mr. Starrett, did you say in your answer that you knew nothing about it?

10

A. I didn't authorize him, but I knew of it.

Q. Well, you say here, it was done without your knowledge?

A. Well, I don't know.

20

Q. You don't know?

A. What is it, you say?

Q. I ask why you set up in your answer the exact opposite of what you testify to now, with reference to your knowledge of that letter having been written?

A. I don't know.

Q. You don't know what, madam?

A. I didn't know that it was in there. Do you want me to account for it?

30

Q. You say in your answer, and you are making that statement as an answer to this bill in this suit, that you never knew that your husband had written any such letter to Mr. Starrett, and if he did write it it was done without your knowledge and consent, and yet you testify now that you did know about it, and it was as a result of your conversation with your husband, and it was sent

with your approval. Now, I want to know why, if it was sent with your knowledge and with your approval, why you deny in your answer that you knew anything about it?

A. I cannot tell you.

Q. Now, tell me again, please, what train you took from New York on the Saturday that you say you signed this deed and received the balance of the purchase price of this property?

10 A. It was either the 12.50 or the one o'clock. I left the cathedral in New York some time about twelve o'clock, I cannot tell you the trains, either 12.50 or half-past one, I left 50th street and Fifth avenue about 12 o'clock, and I went directly to the Christopher street ferry and went to Mr. Bruen's office.

Q. What time did you say you reached Mr. Bruen's office?

20 A. About two o'clock or half-past one, I cannot tell you the exact moment, it is one of those trains, and I stepped from the depot into his office.

Q. And it was in the neighborhood of two o'clock, you say, in the afternoon of Saturday, October first?

A. It was.

Q. 1904?

A. It was.

Q. Now there cannot be any doubt about it?

A. Not any doubt whatever.

30 Q. And it was on that day, and on the afternoon of that day that you say you signed this deed to Mr. Starrett?

A. It was.

Q. Exhibit C 6, that is the way it is marked?

A. Yes, sir.

Q. And did Mr. Bruen take the acknowledgment of yourself and your husband to the deed—asked you whether you signed it?

A. I think so.

Q. And the deed was signed in his presence by you and your husband?

A. Yes, sir.

Q. Now, his certificate of your having executed this deed and having acknowledged it before him as commissioner of deeds, says that it took place on the 30th day of September, 1904?

A. That was Friday.

Q. I don't know.

10

A. Well, I certainly cannot account for that, sir.

Q. Now you say it did take place on Saturday?

A. On Saturday, October first.

Q. After 12 o'clock?

A. Yes, sir.

Q. I show you the official endorsement of the Register of Essex County, on that day, which certifies that it was recorded at 11.57 in the forenoon of that day?

20

A. Well, I went to this funeral of the Consul General of Mexico, and everybody knows----

Q. No, that endorsement is there, is it not?

A. I guess so.

Q. Well, read it please, and see if it is not there?

A. I don't know.

Q. Is it there?

A. Why I suppose so.

Q. The deed bears that endorsement?

30

A. Yes, sir.

Q. And yet you say that you didn't sign this paper until two o'clock in the afternoon of that day. Now you say that you bought these properties on Harrison street and the Beryn street properties, did you buy them with your own money?

Mr. Davis.—Is that material?

The Court.—Yes.

A. My personal money?

Q. Yes.

A. I don't know as all of it I did.

Q. Where did the money come from that went into those two properties?

A. I suppose from my husband, some of it.

10 Q. And the greater part of it, did it not?

A. Yes.

Q. What moneys, if any, belonged to you, went into the purchase of these properties—your individual money?

A. Well, I don't know as any went in the Harrison street—none went in the Harrison street.

Q. Did any of your personal funds that did not originally come from your husband enter into the purchase of the Beryn street property?

20 A. No, sir.

Q. So that whatever you invested or has been invested in these two properties represents money that originally came from Mr. Boynton?

A. Yes, sir.

Q. Now you say that these fences were changed from their old position to their present position about five months after you acquired the Beryn street property?

A. Yes, sir.

30 Q. And were put there principally for your convenience?

A. Yes, sir.

The Court.—Is the date of the acquisition of the Beryn street property in evidence?

Mr. Davis.—I don't think it is in evidence, if your Honor, please.

The Court.—I think it had better go in—the deed.

Mr. Davis.—This is the deed, August 15, 1899.

Q. From whom did you purchase the Beryn street property?

A. From the Dennis estate.

Q. From Alvira Wolters, widow and Elvine L. Dennis and others; do you remember those names??

A. I suppose so, it was the Dennis estate.

10

Q. I show you a deed bearing date the 15th of August, 1899, from Alvira Wolters and others to Harriet G. Boynton, consideration \$9,000, conveying to you, Harriet G. Boynton, wife of Charles B. Boynton, property on the northerly line of Dennis Place in the Township of East Orange, and ask you whether you recognize that as the deed of what you now call the Berwyn street property?

A. I do.

20

Offered in evidence.

Marked Exhibit C-9.

Q. I understand that when you placed this property for sale, in Mr. Bruen's hands for sale, you merely stated that you wanted to sell No. 73 Harrison street?

A. Yes, sir.

Q. Giving him no dimensions whatever?

30

A. Yes, sir.

Q. And the fence lines then were as they are now?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. About the time—shortly before the sale of this property to Mr. Starrett, had you not been somewhat anxious to find a purchaser?

A. Yes, sir.

Q. Judge Dill had been urging you to pay a mortgage that he held on one of your properties, either this or the Berwyn street property, hadn't he?

A. Simply said he would like to have it, didn't urge us at all.

Q. Your husband testified yesterday that he was anxious to get the money?

10 A. Well, he said as soon as convenient to pay it off.

Q. He wasn't pressing you for it?

A. He wrote one letter, I believe, and said as soon as convenient he would like to have it paid.

Q. And that was one reason why you were somewhat desirous of effecting a prompt sale?

A. Not particularly. The house was rented and it was of no more use to us; we didn't live there.

20 Q. When you looked over this contract of sale did you know that the strip now in question was not included in the contract?

A. Of course, I never intended it to be included.

Q. I didn't ask you what you intended; I asked you whether you knew it was not included in the description?

A. Of course I knew.

Q. How did you know?

A. Why I never supposed it——

30 Q. I didn't ask you whether you supposed it; I ask you how you knew?

A. Well, I couldn't tell you. I supposed it was drawn up from the lines I gave Mr. Bruen that day.

Q. What lines did you give him?

A. Why, the deeds and the Fidelity Trust paper.

Q. Well, now, will you tell us what you did give him?

A. Two deeds and the Fidelity Trust Company title; or Mr. Boynton handed them to him.

Q. Did Mr. Boynton come to you for those papers, or did he have them?

A. They were in the safe in my present house.

Q. He went there and got them?

A. I don't know whether he went or I went.

Q. Now, when you signed the deed, did you read the description or was it read to you?

A. I think it was; I never sign anything unless I read it. 10

Q. Did you know then that this disputed strip was not included?

A. I suppose so.

Q. Did you know?

A. Well, I think I did, I didn't intend to sell it.

Q. You didn't intend to include this strip?

A. I did not.

Q. Did you never state that you intended to include it? 20

A. Said I did not intend to include it.

Q. Have you never said that you did intend to include it in the sale of this property to Mr. Starrett?

A. No, I never said I intended to sell it.

Q. You are a frequent visitor at the house of Doctor Stockton, are you not?

A. Yes, sir.

Q. They are your neighbors? 30

A. Yes, sir.

Q. Were you in there a short time after the sale of this property had been consummated, one evening?

A. Why I go in there frequently, because his daughter is my friend; I don't know that I was there then. I never said anything to him about the sale of the property.

Q. Were you not at Doctor Stockton's house one evening shortly after the sale of this property, when Doctor Stockton was present, and he told you that he had read of the conveyance in the newspaper; do you remember such an occasion as that?

A. I do not.

Q. And that he noticed that the depth of the property from Harrison street back was only
10 one hundred and forty feet, do you remember such a conversation as that?

A. I do not.

Q. And that he asked you whether you had not included—why you had not included this disputed strip?

A. I don't remember of having that conversation with Doctor Stockton.

Q. Did you not tell him at that time that you intended to include it, but that Mr. —

20 A. I did not.

Q. Now, wait until I get through, please; but that Mr. Bruen had omitted to put it in the description, and it was up to Mr. Bruen to make good?

A. I did not.

Q. You say that, knowing that you are under oath?

A. I do, sir.

Q. Did you say anything that would indicate
30 what I have stated?

A. Not to my recollection.

Q. To Doctor Stockton or, to his daughter, or Doctor Stockton's wife?

A. No, sir.

Q. On that occasion or at any other occasion after the conveyance of this property?

A. I don't recollect that I did. I was very careful. I don't talk about my private affairs with any of the neighbors.

Q. Well, didn't you talk in Doctor Stockton's house about the conveyance of this property to Mr. Starrett, soon after it was consummated?

A. No, sir.

Q. You say no such conversation took place?

A. Not that I recollect.

Q. Had you ever made an agreement, an oral agreement with Doctor Stockton to sell him the part of this strip lying to the west of his property?

10

A. I never had any conversation with Doctor Stockton on the subject.

Q. For which, in exchange, he was to render you or your family professional services?

A. Never.

Q. Do you know of your husband having made any such arrangement?

A. No, sir.

Q. Has Doctor Stockton not made a demand upon you for a conveyance of that property, in accordance with such an arrangement?

20

A. No, sir.

Q. Why did you hesitate in answering that question?

A. Why, I knew he was anxious to buy the property, but we were not anxious to sell it.

Q. You say that he was anxious to buy it?

A. Yes, sir.

Q. How do you know?

A. Why because he wanted to enlarge his property there.

30

Q. Did he ever talk to you about purchasing it?

A. No, sir.

Q. Well then, how do you know he was desirous of enlarging his property?

A. Well Mrs. Stockton wanted to use the land which I loaned her and she uses now, and she would like to buy the property, which I have absolutely refused.

Q. Well, what has she said or done that indicated a desire on her part to purchase?

A. What has she said or done?

Q. Yes, you say she was very anxious to purchase it; now, what has she done to indicate any anxiety or desire?

A. Why, when we moved the fence back we moved it down, and she was to use it, and she wanted to buy it.

10 Q. Oh, she did?

A. Well, she never said so to me.

Q. Well, how did she indicate her desire?

A. Well, I think Dr. Stockton and Mr. Boynton had some conversation on the subject.

Q. Oh, you do think so. Now, wasn't the fence moved back with the expectation that you would sell that part of it adjoining Doctor Stockton, to him?

A. Not for that—how is that?

20 Q. (Question repeated.)

A. Well, there was nothing at the time stated, and if we sold the Berwyn street property why we might have sold it to him then but we eventually lived there and that of course settled it.

Q. Well, I know, but that was after the fence was moved?

A. Yes, but when the fence was moved we always expected to live in 1873. We never expected to live in No. 1 Berwyn street, we expected to sell it.

30 Q. Well, since you have lived in the Berwyn street property you have had no use of this disputed strip at all have you?

A. Not at all, Mrs. Stockton has used it.

Q. Then there was some talk with some member of the Stockton family about their purchasing this strip?

A. Mr. Boynton had some talk with the doctor.

Re-direct examination:

Q. Did you yourself have any talk with Doctor Stockton or any member of his family about selling that strip to him?

A. No, sir.

Q. The information you got came through your husband?

A. It did.

Re-cross examination:

10

Q. I would like to ask you one more question. Did Mr. Boynton in your presence, have a conversation at Doctor Stockton's house regarding your expectation or intention of having included this strip in the sale to Mr. Starrett, in your presence of course I mean?

A. No, sir.

Q. No such conversation ever took place in your presence with Doctor Stockton or any member of his family with you, or in your presence with anybody else?

20

A. I don't recall that there was any such conversation.

Q. That is all.

CYRUS VAIL SWORN.

Direct examination by Mr. Davis:

30

Q. Mr. Vail, do you hold any position with the Fidelity Trust Company?

A. Yes, closing titles.

Q. You have been connected with the Fidelity Company for how long?

A. Three years.

Q. Have you with you an application made to

the Fidelity Company for the examination of the title to property conveyed by Mr. and Mrs. Boynton to Mr. Paul Starrett?

A. I have.

Q. Will you produce it, Mr. Vail?

A. (Witness does so.)

Q. What is the number of it?

A. 12,762.

Q. This is what—this paper is what?

10 A. That is the application for guarantee of title—search and guarantee.

Q. And at what stage of the search or guarantee is the application put in?

A. The beginning, before any search is made.

Q. That is the first step, is it, in the process?

A. Yes, sir.

Q. By whom was that made?

A. Signed Paul Starrett, per Edwin E. Bruen.

20 Q. Are you well enough acquainted with Mr. Bruen's signature to say whether that is his signature or not; did you see him sign?

A. No, I didn't see him sign.

Q. What statement, if anything, is made on that application with regard to requiring a survey of this property?

The Court.—Well, it will speak for itself, won't it?

A. He didn't order one.

30 Q. Whose handwriting is that application, the body of it, Mr. Vail?

A. It is one of our clerk's down there.

Q. Is the clerk there now?

The Court.—Well, that don't make any difference.

Cross-examination by Mr. Guild:

Q. If nothing is said about a survey it is marked "waiver," is it not?

A. Our guarantee says subject to such state of facts as an accurate survey would show.

Q. That is not necessary.

A. It means we are not to order one and we don't furnish it.

Q. If it is not asked for and they don't furnish one it is marked "waived." I show you deed marked C-6, and ask you whether you ever seen that paper before? 10

A. Yes, I passed on it.

Q. Are your initials on the back of the paper?

A. On the front, yes.

Q. What are they?

A. C. H. V.

Q. Did you have charge of this matter yourself?

A. I think it might be said that I did, yes. 20

Q. Do you remember what was the Register's endorsement that the deeds show as to the date and time of record?

A. Recorded first of October, 11.57 A. M., 1904.

Q. Do you remember whether that deed was in your possession on the morning of that day?

A. It must have been, we sent it up for record.

Q. Properly executed?

A. Yes.

Q. And it was sent by your office to the Register's office for record on the morning of October 1st, 1904? 30

A. Yes, sir.

Q. That is all.

EDWARD E. BRUEN, recalled.

Direct Examination by Mr. Davis:

Q. Will you say whether or not you signed that application for a search, and whether the application was filled in at the time you signed it?

A. It was filled in at the time I signed it, yes, by one of the officers down stairs.

10 Q. Did you have any talk with the representative of the Company about a survey?

A. I don't recall anything at that time mentioned, any more than if we had a survey, and I think I said no.

Q. You don't remember what the conversation was, about the survey?

A. No, I don't.

Mr. Davis.—I would like to offer that paper in evidence.

20 *Mr. Davis.*—Will you furnish a copy of it, Mr. Vail, if required?

Mr. Vail.—Yes, sir.

By Mr. Guild:

Q. Mr. Bruen, Mr. Boynton says that he had no word from you prior to the morning when you showed Mr. Starrett through the house and the Harrison street property, that you would be there or had such purchaser in prospect?

30 A. I called Mr. Boynton up on September 18th to say that I had a party that I had mentioned his property to, No. 73 Harrison street, and he wished me success, etc., and I said that I got him to consent to meet me to-morrow morning at eight o'clock at the Brick Church platform and go over to the property. I also called up Mr. Newhouse and he very kindly consented to allow us to go through the property. His wife was very

ill, but he would meet us if we would come before nine o'clock, and show the property, and be glad to do anything he could to effect a sale. Mr. Starrett met me on the platform. I hadn't advised my clerk of my going with Mr. Starrett, I hadn't time, and we went over to the house. Mr. Newhouse was waiting for us, and we were very pleasantly received, and after going through the house he took us out to the stable and also around the ground, as I have already stated. I asked Mr. Boynton if he would not kindly come to my office and meet Mr. Starrett— 10

Q. When did you ask him—

By the Court:

Q. Do I understand that Mr. Boynton went with you?

A. No, sir, Mr. Starrett.

Q. Mr. Starrett went with you and Mr. Boynton did not? 20

A. No, sir, and Mr. Newhouse met us. He waited at his home to go over the house, his wife being sick.

Q. When you went over the ground, I understand you to say Mr. Boynton wasn't with you?

A. No, sir, we were with Mr. Newhouse.

By Mr. Guild:

Q. Now you started to say that you asked Mr. Boynton to meet you; when did you make that request? 30

A. On the evening of the 18th.

Q. That was the night before you showed Mr. Starrett the property?

A. At my office, I wanted him to meet Mr. Starrett.

Q. After you had shown Mr. Starrett the property where did you go?

A. Back to the Brick Church platform, and asked Mr. Starrett to go with me to the office to meet Mr. Boynton, and he said, I haven't time, I am very busy, and must take this train.

Q. Where did you go?

A. Back to my office.

Q. Was Boynton there?

A. No, sir, he had been there and had left and said he would be back.

10 Q. Did he come back?

A. He did.

Q. Did you make him any offer for the property then or at least submit Mr. Starrett's offer?

A. I did.

Q. And that was the offer of what?

A. \$20,000.

Q. Did he accept or decline it?

A. He did not, said he would have to talk with his wife.

20

By Mr. Davis:

Q. Is it usual in your business for you to bring the prospective purchaser and the seller together before you have any offer out of the purchaser?

A. I have had better success by bringing the two principals together in all the sales I have ever made; I have done better and could make a sale quicker if we could get the two principals together early.

30 Q. Is not that unusual in the real estate business?

A. No, sir, and I have been twenty odd years in the business.

Q. Now, this occasion when you had this meeting with Mr. Starrett on the Brick Church platform, did I understand that that was the morning when you allege that Mr. Boynton had made these marks on the Atlas?

A. Yes, sir.

Q. And you say that after that, after you arrived at the office Mr. Boynton had gone, but he came back again?

A. Came back again.

Q. Did he have a conversation with you then?

A. He most certainly did.

Q. That was the time you presented the \$20,000 offer?

A. Yes, sir.

10

Q. Wasn't that offer telephoned, Mr. Bruen?

A. No, sir.

Q. When Mr. Boynton came back there did he speak to you at all about what he had done with your Atlas?

A. Why, I don't recall him saying anything about that, because my clerk had told me during his absence about that.

Q. Your clerk had called your attention to that, eh?

20

A. Yes, sir.

Q. Did you look at the Atlas—

The Court.—Well, I suppose it would be competent and proper to find out what the clerk told him, is there any objection to that?

Mr. Guild.—No, sir, not as far as I am concerned.

The Court.—Have you any objection to that, Mr. Davis?

30

Mr. Davis.—It would hardly be competent, it seems to me, in the absence of Mr. Boynton, I don't know what the clerk told him.

The Court.—Well, Mr. Bruen was Mr. Boynton's agent, and therefore Mr. Guild will have the right to know what the sub-agent or the clerk had told the agent.

Mr. Davis.—I withdraw my objection, if your Honor thinks that way.

By the Court:

Q. Well, you can state what your clerk told you?

A. He said that Mr. Boynton had been there, and that while there he had outlined, as you have already noticed on the Atlas, the boundaries of
10 the property, and the book was still open lying on the table in the front office. There is no table in the rear office, Mr. Boynton was mistaken about that, there is no table in the rear where he said, it was in the front office and the book still laid open just as he had left it.

By Mr. Davis:

Q. Well, you don't know that?

A. Beg pardon?

20 Q. You weren't there when he left it so that you don't know whether it was just as he left it or not?

A. Well, my clerk said he left it that way.

By the Court:

Q. Tell us all that the clerk told you at that time?

30 A. Nothing more than I have already repeated in yesterday's testimony, that he said that the lines were indicated of the property belonging to Mr. Boynton or Mrs. Boynton—was indicated by the red line, that the lead pencil line indicated the fence or hedge dividing the Berwyn street from the Harrison street property.

By Mr. Davis:

Q. Now you and Mr. Boynton then had no conversation then and there about these lines?

A. No, I don't recall anything whatever, sir.

Q. And the clerk's conversation with you was before Mr. Boynton came back, Mr. Bruen?

A. Yes, sir.

Q. Well now, did you examine the Atlas when the clerk called your attention to it?

A. Yes, sir. 10

Q. It was lying there on the desk open before you?

A. Yes, sir, lying there open on the front table.

Q. And that was how long before the contract was drawn?

A. The contract was drawn the next day.

Q. The next day?

A. Yes, sir.

Q. Now, you say from your inspection of the Atlas, as changed by Mr. Boynton, that this red— or that the pencil line was considerably west of the red ink line of the property line, didn't you? 20

A. Yes, sir.

Q. And you had this Atlas in your possession for how long before this matter came up?

A. What do you mean—

Q. Well, you owned this Atlas how long?

A. Well, it was in my possession there at the time.

Q. At the time you drew the contract you had the Atlas still in your possession? 30

A. Yes, sir.

Q. You knew that the pencil line was considerably west of the hundred and forty foot line?

A. I never gave it a thought, never referred to my Atlas from the start to finish on the sale of this property.

Q. Well, what did you inspect the Atlas for?

A. Just because my attention was called to it by my clerk.

Q. He called your attention to the fact that the property line as shown on the Atlas and the hedge line did not agree?

A. Merely said that Mr. Boynton had outlined the property as it was, and as the fences were now located.

10 Q. Didn't he speak about the hedge, that he had outlined the hedge too?

A. Yes, sir.

Q. What did he say, that he outlined the property fence or hedge?

A. Merely said that the lead pencil indicated the fence and where the hedge was.

Q. How careful an examination did you give the Atlas when you did that?

A. Just a casual look at it.

20 Q. And you knew, didn't you, that the Atlas shown you of 73 Harrison street was only 140 feet in depth?

A. No, I didn't give it a thought. I only looked casually at it, and may have seen the figures, but I never gave it a thought.

Q. Well, now, knowing that the hedge was off the property line, and having given a receipt for these papers covering 73 Harrison street, why was it you took no precautions to find that the line went back to the hedge—the depth went back to the hedge?

30 A. In giving receipt for those papers I didn't give any thought of the dimensions at all.

Q. Well, the clerk had taken the trouble to call your attention to the fact that the hedge was somewhere off the line?

A. Yes, sir.

Q. Not saying how many feet?

A. That was the day before I received any papers.

Q. But you had that knowledge before you received the papers, didn't you?

A. Yes, in a casual way.

Q. And you had that knowledge when you drew the contract?

A. Of what?

Q. The contract for the sale of the property?

A. What?

Q. I say you had that knowledge, or knowledge had been imparted to you by the clerk before you drew the contract, that the hedge was off the line? 10

A. Well, I knew that merely as it was mentioned, that is all.

Q. Well, you knew of it only two days before, didn't you?

A. That the hedge was off the line?

Q. Yes.

A. I never knew any other line except the hedge, from the time I offered the property for sale.

Q. What was it that Mr. Keating called your attention to about the hedge if he didn't call your attention to the fact that the hedge was off the line? 20

A. Never said a word about being off the line.

Q. What did he say those pencil marks meant?

A. The hedge.

Q. The only dimension given there is 140 feet from the Harrison street back to the rear line of Doctor Stockton's, isn't it?

A. I believe it is. 30

Q. And there is no dimension given whatever from that rear line to the pencil line showing where the hedge is?

A. Not to my knowledge.

Q. And you took no precaution whatever to find that the line in the deed or the contract went back to the hedge, did you?

A. No, sir.

Q. Now, Mr. Bruen, what afternoon was it, if you can remember, when you handed to Mr. or Mrs. Boynton the check in final settlement?

A. The settlement was to be at eleven o'clock here at the Fidelity Company's office, and the deed was acknowledged the day before, both Mr. and Mrs. Boynton called at my office, and I took their acknowledgment, and the following day I went down to Newark with the deed, and Mr. Starrett
10 sent his clerk from New York out to the Title Guarantee Company's office with a certified check payable to Mrs. Boynton. I had to go on to New York about eleven o'clock and I had arrangement with Mr. and Mrs. Boynton to meet me at my office that evening which they did, and there I passed the certified check from Mr. Starrett.

Q. That was then on Saturday that you passed the certified check?

A. I don't remember the day.

20 Q. Well it was the day after the deed was acknowledged, was it?

A. Yes, sir.

Q. Do you recall about what time in the afternoon or evening, as you call it, that it was?

A. No, I do not. It may have been in the morning.

Q. I mean that you passed the check over?

A. Well, it was either that afternoon or the next morning, if I remember right, the check was to be sent out from New York by Mr. Starrett to
30 this building, and I was to see Mr. and Mrs. Boynton, as soon as I received the check or the check passed upon by the Title Guarantee company.

Q. Well, the appointment for closing was at the Fidelity at 11 o'clock?

A. I think so. The paper will show.

Q. And that eleven o'clock was eleven o'clock of the day following the time they signed the deed?

A. Yes, sir.

Q. Then I understand you to say you left Newark and went over to New York and came back to East Orange, and was it on that same day that you received the check at the Fidelity that you handed later to Mrs. Boynton at your office in East Orange?

A. I rather think it was. I remember this conversation with Mrs. Boynton that she couldn't give me a check for my commission until after she had deposited that check, and I don't remember whether that was in the evening or the next morning. 10

Q. Do you know whether you were at your home or your office when you telephoned to Mr. Boynton about Mr. Starrett coming to see the property?

A. I was at my home.

Q. Was that early in the morning?

A. No, sir, that was the night before. 20

Q. What time of the day, what time of the morning was it that you reached your office on the morning that Mr. Starrett and you looked at the property?

A. I think Mr. Starrett and Mr. Newhouse took the 9.01 train there at Brick Church, I remember Mr. Newhouse came down there; we were talking on the platform and took the train at the same time Mr. Starrett did. 30

By Mr. Guild:

Q. Mrs. Boynton says that the deed was not signed by her until the morning of the first of October, 1904?

A. I never acknowledge a paper except on the day that the acknowledgment is taken.

Q. Then you say it was signed and acknowl-

edged the day that your certificate bears date, the 30th day of September, 1904?

A. Yes, sir.

Q. And it was brought by you to the Fidelity's office the next morning?

A. Yes, sir.

Q. And you didn't receive the check, I understand you, until after the Fidelity Company had passed on the deed?

10 A. Yes, sir.

Q. Now, can you recall in your conversation with Mr. Keating when you came back from the station, when you left Mr. Starrett, as to whether Mr. Boynton had said anything to him, Keating, about how much land would be included in the sale?

A. I don't recall, I don't recall more than he spoke about the hedge indicating the Harrison street property.

20 Q. That Mr. Keating told you that Mr. Boynton had said that to him?

A. Yes, sir, but I don't think any figures were mentioned whatever.

Q. But you do say that Keating told you that Boynton said that the hedge or the pencil line that he had made indicated——

A. The Harrison street property.

By Mr. Davis:

30 Q. You have said to Judge Guild that Mr. Keating told you that Mr. Boynton had said to him that the Harrison street property ran to the hedge, is that what I understand you to say?

A. Yes, sir.

Q. Well, now, why was it that you didn't tell me that he said that in answer to my question as to what Mr. Keating had said?

A. I don't remember your question.

Q. Well, at the Court's suggestion I asked the question: What was it that Mr. Keating had said to you after Mr. Boynton had left that morning? And in replying you didn't say that Mr. Keating had told you that Mr. Boynton had stated that this Harrison street property ran back to the hedge. Now, I ask you why is it you said that to Judge Guild when you didn't state it on the former question?

A. I have no doubt I would be glad to answer it if you put it properly as Judge Guild put it. 10

Q. When you were asked to state what Mr. Keating had told you you didn't state all, did you?

A. I don't remember whether I did or not.

Q. Will you state now, Mr. Bruen; give the whole statement, that Mr. Keating gave to you, after Mr. Boynton left the office that morning, as having been made to him by Mr. Boynton?

A. Mr. Keating said that Mr. Boynton had been there and gone and would be back; that he had marked on the Atlas the outlines of the Berwyn and Harrison street properties; that he had run the pencil line around the Berwyn street and Harrison street property, that is the dividing line, to show where they were separated by the fence and the hedge, and that the hedge indicated the depth or the description of that Harrison street property. 20

Q. Now, will you turn to page 7 again?

A. (Witness does so.) 30

Q. Was that all he said with regard to those pencil marks?

A. I cannot recall probably word for word, I have given you as near as I can remember.

Q. Did he call your attention to the fact that the pencil mark brought the hedge back of Doctor Stockton's property?

A. No.

Q. Did he make any remark about that at all?

A. No, I don't recall his doing it; I knew it anyhow without his telling me.

Q. You knew that?

A. Yes, sir.

Q. You knew what?

A. I knew the conversation between Mr. and Mrs. Boynton and Doctor Stockton, for I gave
10 them appraisal on that piece of ground, what they should pay for it.

Q. Then you knew that there were ten feet or some number of feet belonging to the Berwyn street property with the hedge cut off?

A. For Doctor Stockton.

Q. Didn't you know that that ran all the way back, you knew it was a straight line?

A. I was told on the very start that the hedge indicated the size of that property.

Q. Size of what property?

20 A. Harrison street property.

Q. What was it you knew with regard to the piece that is over in Doctor Stockton's land?

A. I knew that only from hearsay, through both Mr. Boynton and Dr. Stockton, that they had an arrangement between them for that ten foot strip, and that they wanted me to give them an appraisal.

Q. And you actually did give an appraisal, didn't you?

30 A. I believe I did.

Q. Didn't you know at that time, Mr. Bruen, that that strip of land that belonged to the Boyntons, went all the way through the full depth of the Berwyn street property?

A. No.

Q. Where did it end, to your mind?

A. Because I was always given to understand

what property was in the Harrison street frontage ran through to the hedge; that was part of the property.

Q. Didn't you know that the fence between Berwyn street and the other street, Harrison street properties was on a straight line. You could inspect that and see for yourself, that the fence was straight, couldn't you?

A. Which line are you referring to?

Q. The fence running north from Berwyn street? 10

A. So is the hedge a straight line.

Q. Now you knew, as I understand you, that some of the Berwyn street property was east of that hedge and fence?

A. Not that it was to be taken out of the Harrison street property.

Q. That is not the question, Mr. Bruen. Didn't you know that some of the Berwyn street property—some of the land belonging to No. 1 Berwyn street was east of the hedge and the fence? 20

A. Not that it was ever to be separated.

Q. Well, then, what do you mean. You knew that Doctor Stockton didn't own that ten foot strip?

A. I knew that he was working it out.

Q. Well, you knew that the Boyntons owned it, didn't you?

A. Yes, I knew—at least I understood from the Doctor and both the Boyntons, that he was to have a deed for it. 30

Q. Well, Mr. Bruen, just answer the question?

A. I will.

Q. You knew all the time that that strip of land, ten feet wide, or whatever it might be, was owned by Mrs. Boynton, didn't you?

A. I knew she owned all the property.

Q. And didn't you know that that strip of land

ran all the way to the full depth of what is known as No. 1 Berwyn street?

A. Sure, it came out of that.

Q. It came out of that?

A. Yes.

Q. Now, when did you have the information that that strip of land came out of Berwyn street?

A. At the time that the property was put on my books.

10 Q. How long ago?

A. I should judge 1901 or 1902—early in 1902. I rented No. 1 Berwyn street for Mrs. Boynton to a family named Williams, and at that time this hedge was already moved.

Q. Then, at the time the property was put on your books, you knew that beginning at Harrison street and running back in depth to the hedge, that there were two titles involved, one of Berwyn street and the other of Harrison street?

20 A. If I had given it a thought, yes, but I never recalled it.

Q. As a matter of fact you knew that?

A. Sure.

Q. And you know it now?

A. Yes.

Q. And you knew it then?

A. Yes, why shouldn't I?

Q. And you went so far as to make an appraisal of the Berwyn street?

A. I was asked to make a friendly appraisal.

30 Q. And it was in connection with those ten feet of land that was east of the hedge?

A. On Doctor Stockton's line.

Q. Well, now, is that your appraisal made in 1903?

A. That is my signature.

Q. And just state what dimensions you state as the dimensions of No. 1 Berwyn street?

A. "Confirming my promise, relative to the appraisal of your property, No. 1 Berwyn street, East Orange, will say that I consider lot 135 x 148, on account of its close proximity to Harrison street, where ground is now high, at \$250 a front foot——" (witness read same).

This has nothing to do with Doctor Stockton's valuation at all; this has nothing to do with the question you put to me.

Q. What has that to do with it?

10

A. Mr. Boynton came to me and asked me if he could get a larger loan on his property, and asked me if I would value it for him. That has nothing to do with this question at all.

Q. You had another appraisal at the time Doctor Stockton——

A. I was asked to make a friendly appraisal.

Q. Did you commit that to writing?

A. Yes, sir, and both have a copy of it.

20

Q. This 135 feet front covered the Berwyn street property, the whole frontage and took in the 110 feet?

A. Those are the figures Mr. Boynton asked me to figure on, and he outlined it for me.

Q. And the hedge was set back?

A. Back where it is now.

Q. And this depth you gave of 148 feet, didn't that take in the full depth of the Berwyn street property?

30

A. Yes, he asked me to figure that way.

Q. And the hedge was set where it is now?

A. Where it is now.

Mr. Davis.—I would like to offer in evidence this appraisal of Mr. Bruen that he has identified, and the receipt which he gave on September 20th for these two papers, the Palmer deed and the Fidelity

Guarantee, and also the map, I think it has been already offered, but if I have not offered it in evidence I offer it now, the map which I presented; and the Atlas you have offered in evidence, Mr. Guild, haven't you?

Mr. Guild.—Yes, sir.

Appraisement by Mr. Bruen marked Exhibit D-4.

10

Receipt marked Exhibit D-5.

Map marked Exhibit D-6.

Letter from Charles B. Boynton, December 2, 1904, offering to sell disputed strip of land to Mr. Starrett, offered in evidence.

Marked Exhibit C-10.

DEFENDANTS REST.

CASE CLOSED.

20

IN CHANCERY OF NEW JERSEY.

STARRETT

v.

BOYNTON.

30

On Bill, &c.
Memorandum.

STEVENS, V. C.:

I have come to the conclusion that the complainant is entitled to a decree. By deed dated September 30, 1904, defendant conveyed to plaintiff a house and lot in East Orange, known as 73 Harri-

son street, for the price of \$22,500. The question in dispute is whether the property agreed to be conveyed extended to a privet hedge on two of its rear boundary lines, or stopped ten feet short of that hedge, as it does in the written contract and the deed of conveyance. I have no doubt that defendant's agent Bruen offered to complainant, and that complainant agreed to buy, the property extended to the privet hedge. The verbal agreement actually concluded between the agent and Starrett related, undoubtedly, to the property thus bounded. Both Bruen and Starrett so testify and there is no testimony to the contrary. If confirmation were needed it would be found in the relation which the ten feet strip bore to the rest of the lot.

The decided weight of the evidence is, further, that Bruen had been originally authorized to sell up to the hedge and that in this respect his instructions were never varied. The evidence, too, is convincing that Mr. Boynton, whose money had bought the property, purchased in his wife's name, and who completely represented her, intended, while the negotiations were pending, to include the disputed strip in the sale. The evidence of Judge Dill, who testifies to a conversation with Boynton relative to the release of that strip from a mortgage, and the evidence of Bruen's clerk, Keating, much outweighs the evidence of Mr. and Mrs. Boynton, whose recollection is so inaccurate in other respects that it cannot be relied upon.

The case, then, presents one of two aspects. Either Mr. Boynton, by oversight, failed to hand to Mr. Bruen a description of the disputed strip, or, as he himself testifies, he gave to Mr. Bruen a description which he knew did not embrace it. If it was, in fact, a case of mutual mistake, both parties supposing that the description embraced the strip, then *Green v. Stone*, 9 Dick., 387, is appli-

10 cable. If the act of Boynton was fraudulent the rule stated in Pom. Eq. Jur., § 870, § 1376 (3d. Ed.) applies. If A agrees to sell to B ten pounds of flour, he cannot, by a mental reservation, made at the time or afterwards, to the effect that he will only give him nine, escape from the effect of his bargain. So if Bruen had been authorized to include the strip in the sale and did include it and Boynton knowing that it had been included, furnished a description which both Bruen and Starrett thought covered it and said nothing, but took Starrett's money for it, he cannot now escape from the effect of what he and Mrs. Boynton actually authorized by saying, I mentally reserved the strip and did not mean to convey it.

20 IN CHANCERY OF NEW JERSEY.

Between—

PAUL STARRETT,
Complainant,

and

HARRY G. BOYNTON *et als.*,
Defendants.

30 } On Bill, &c.
Notice of
Appeal.

To FREDERICK F. FULD, Esq.,
Solicitor for Complainant.

Take notice that the defendants hereby appeal to the New Jersey Court of Errors and Appeals from the final decree in the above stated cause,

and from the whole and every part thereof, made on January eighth, Nineteen Hundred and Seven.

FRANK E. JACOBUS,
Solicitor of Defendants.

HOWE & DAVIS,
Of Counsel.

Dated January 22, 1907.

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

10

THOMAS A. DAVIS,
Of Counsel with Defendants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

20

Between—

PAUL STARRETT,
Complainant,

and

HARRIET G. BOYNTON, *et als.*,
Defendants.

On Bill, &c.
Petition of
Appeal.

30

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

The petition of Harriet G. Boynton and Charles B. Boynton, her husband, the appellants in the

above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey, by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the 8th day of January, 1907, wherein the said Paul Starrett was complainant, and the said Harriet G. Boynton and Charles B. Boynton, her husband, were defendants, in this respect, to wit:—

10 That the said decree orders, adjudges and decrees, as follows:—

“It is thereupon on this eighth day of January, Nineteen hundred and seven, on motion of Guild & Martin, of counsel with the complainant, and in the presence of Thomas A. Davis, of counsel with defendants, by William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this court, does hereby
 20 order, adjudge and decree, that the defendants do within thirty days from the service upon them or their solicitor of a true copy of this decree, make, execute and deliver to the complainant, for the consideration heretofore paid by him upon the delivery of the said deed dated September thirtieth, nineteen hundred and four, a deed with appropriate words of bargain and sale, conveying to the complainant, his heirs and assigns, the following described premises, being in the City of
 30 East Orange, Essex County, New Jersey.

Beginning at a stake in the southerly line of land of the said Paul Starrett distant on a course of North forty degrees twenty-nine minutes West one hundred and forty feet from the Northwesterly line of Harrison Street; running thence north forty degrees twenty-nine minutes west nine feet and fifty-five one hundredths of a foot to the center line of the main stems of a privet hedge; thence

North forty-nine degrees four minutes east through said center fifty-three feet and sixty hundredths of a foot to a corner in said hedge; thence still through said center line North forty-one degrees ten minutes west one hundred feet to the end of the hedge; thence producing the last mentioned course Northwesterly twenty-six feet and twenty-five one hundredths of a foot to line of land of said Starrett; thence along the same north
 10
 forty-nine degrees four minutes east thirteen feet and seventy-five one hundredths of a foot to a corner of said Starrett's land; thence still along the same South forty degrees twenty-nine minutes east one hundred and thirty-six feet and fifty-four one hundredths of a foot; thence still along the same south forty-nine degrees forty-one minutes west sixty-five feet and eighty-three one hundredths of a foot to the place of beginning.

And it is further ordered that the defendants do pay the costs of the complainant in this cause to be taxed and that the complainant have execution therefor according to the course and practice of this Court. And that there be included in such
 20
 costs the sum of forty-nine dollars and sixty cents, paid by the complainant for a copy of the testimony taken in this cause and used by the Court, and that there be also allowed and taxed in said costs a fee to complainant's counsel of seventy-five dollars, and that either party is to be at liberty to apply to this Court for further directions or relief in the premises if occasion should
 30
 require."

And your petitioner humbly appeals from those parts of the said decree of the Chancellor, which decree as aforesaid, upon the ground that the same is erroneous, for that the said decree should not have directed the making, execution, and delivery by the said two defendants of any deed,

containing either the description set out in said decree, or any other description;

And that the said decree should not have ordered the defendants to pay the taxed costs of the complainant, or a counsel fee to the complainant's counsel;

That the said decree should have adjudged that the complainant was entitled to no relief as against the defendants.

10 That the said decree should have directed the complainant's bill to be dismissed.

Your petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside, and for nothing holden; and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

FRANK E. JACOBUS,
Solicitors of Appellants and Defendants.

20

HOWE & DAVIS,
Of Counsel with Appellants.

30

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between—

PAUL STARRETT,
Complainant and Respondent,

and

HARRIET G. BOYNTON, *et al.*,
Defendants and Appellants.

On Bill, &c.
Answer to
Petition of
Appeal of
Harriet G.
Boynton and
Charles B.
Boynton.

10

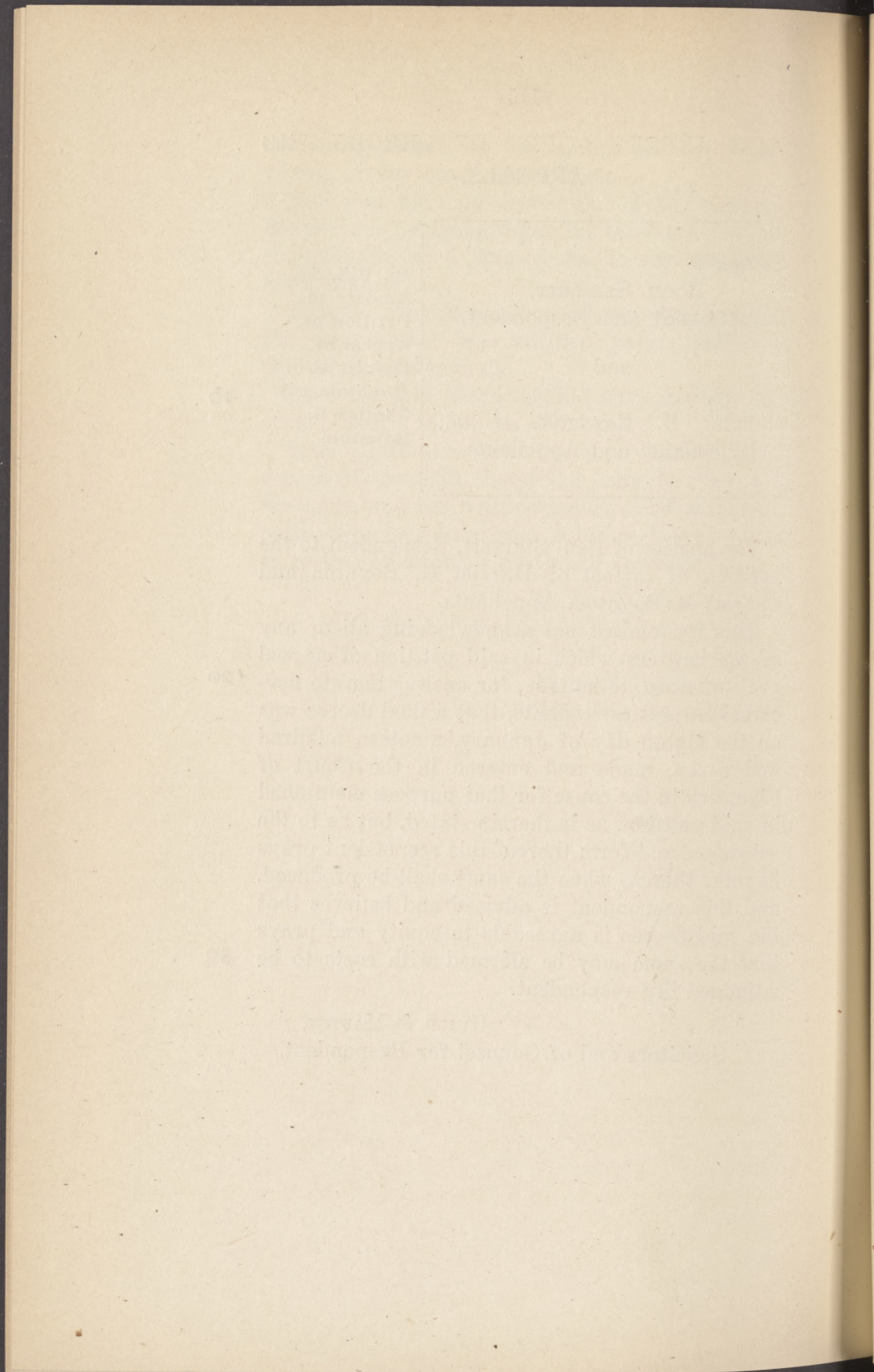
The answer of Paul Starrett, Respondent to the petition of appeal of Harriet G. Boynton and Charles B. Boynton, Appellants.

This respondent not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits, that a final decree was on the eighth day of January, nineteen hundred and seven, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition, as is therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that the said decree is agreeable to equity and prays that the same may be affirmed with costs to be adjudged this respondent.

20

30

GUILD & MARTIN,
Solicitors and of Counsel for Respondent.



(EXHIBIT C. 2.)

(COPY.)

EAST ORANGE, N. J., January 5, 1905.

Mr. CHARLES B. BOYNTON,

1 Berwin Street, East Orange, N. J.

DEAR SIR:

In a recent interview with Mr. Paul Starrett, the purchaser of No. 73 Harrison Street, East Orange, he informed me that by a late survey, which has just been made, he finds that you and Mrs. Boynton failed to deed to him all the property, which was offered him by your Agent, which embraced all the property between the Stockton line on the South, Harrison Street on the East, Palmer property on the North, running back to the hedge, which separates the property No. 1 Berwin Street from the property which he purchased. As I was instructed by both you and Mrs. Boynton to offer the property embraced in the above boundaries to both Mr. Newhouse, the former tenant, and Mr. Starrett, the present owner, I did so and did not know that you had failed to deed the same until I was informed by my clerk, Mr. Keating, who said you had called several weeks after the sale and wished to know if we could get Mr. Starrett to purchase the ten feet in the rear of the house and fourteen feet along the driveway on the South, which you had reserved, but which we supposed had been covered by the deed to Mr. Starrett.

To prove I had your authority to offer the above property to Mr. Starrett, you outlined for my clerk the property for sale on my Atlas of the Oranges in my office, just before you closed with Mr. Starrett, and those lines are still on the map, as you made them, showing where you had blocked out the property No. 1 Berwin Street, leaving all the property North and East of the hedge in the property No. 73 Harrison Street, excepting the ten feet in the rear of Dr. Stockton, which I understood you had agreed to sell him. All the property embraced in No. 73 Harrison Street, as above described was placed on my books by Mrs. Boynton and you confirmed her statement a number of times in regard to the selling of the property.

Mr. Starrett requested me to inform you that he proposed to bring suit against Mrs. Boynton and you for all the property which he supposed he had purchased, as his lawyer advises him to do so, stating that he could and should recover the same. Since it is his intentions to carry this matter into court, my advice would be to execute a deed to him for the property in question and save further complications, which are sure to follow, as he states when he starts in to recover this property he will put it through to a finish, no matter what it costs.

Kindly advise me at once your intentions, as Mr. Starrett is waiting to hear from me your decision in the matter.

Yours truly,

EDWARD E. BRUEN.

(EXHIBIT D. 2.)

(COPY.)

EAST ORANGE, N. J., Sept. 20, 1904.

Received from Mrs. Harriet G. Boynton deed dated July 8, 1899, from Sarah L. Palmer, and Albert W. Palmer, her husband; also Certificate of Guarantee of the Fidelity Title and Trust Company, Newark, N. J., covering the property known as No. 73 Harrison Street, East Orange, N. J.

EDWARD E. BRUEN.

By consent of counsel the following descriptions of real estate appearing in Fidelity Trust Co. guaranty and deed from Palmer to Boynton, mentioned in Exhibit D 2, are printed instead of the whole of said instrument :

All those three certain tracts or parcels of land, situate, lying and being in the City of East Orange, County of Essex, and State of New Jersey.

FIRST TRACT—Beginning at a point in the northwesterly line of Harrison street, distant seventy-six and forty-six one-hundredths feet north-easterly from the northwesterly corner of the same and Dennis place ; thence north forty degrees and twenty-nine minutes west one hundred and forty feet ; thence north forty-nine degrees forty-one minutes east parallel with Harrison street sixty-five and eighty-three one-hundredths feet ; thence north forty degrees twenty-nine minutes west one hundred and thirty-six and fifty-four one-hundredth feet ; thence south forty-nine degrees four minutes west fifteen feet ; thence north forty degrees twenty-nine minutes west fifty feet ; thence north forty-nine degrees four minutes east twenty-five feet : thence south forty degrees twenty-nine minutes east three hundred and twenty-six and sixty-four one-hundredths feet to the northwesterly line of Harrison street aforesaid ; thence along the same south forty-nine degrees forty-one minutes west seventy-five and eighty-three one-hundredths feet to the place of beginning. 10

SECOND TRACT—Beginning at the southerly corner of lands of Theodore F. Seward which were conveyed to him by William T. Mersereau by deed dated July 1st, 1872, and recorded in Deed Book K 16, page 421, and in line of lands of Martha A. Stockton ; thence running northwesterly along the southwesterly line of land of said Theodore F. Seward sixty-nine feet and four inches to lands formerly of Sarah L. J. Whiting ; thence northeasterly along the same twelve feet ; thence southeasterly parallel with the first course sixty-nine feet four inches, more or less, to line of lands now or formerly of E. M. Cowdrey ; thence southwesterly along the same twelve feet, more or less, to the place of beginning. 20

THIRD TRACT—Beginning at a point in the westerly line of Harrison street distant one hundred and fifty-two and twenty-eight one-hundredths feet northerly from the northwesterly corner of the same and Dennis place, which beginning point is in the northerly line of land formerly of Mary Barrell, and is the northeasterly corner of the first tract of land described in the deed from Martha Stockton and husband to Harriet G. Boynton, dated July 17th, 1897, and recorded in Book W 30 of Deeds for Essex County, on pages 519, etc., and from thence running along the northerly line of said land north forty degrees twenty-nine minutes west two-hundred and seventy-six and sixty-one-hundredths feet ; thence north forty-nine degrees and four minutes east along land formerly of Theodore F. Seward, and partly along the easterly line of the second tract described in the aforesaid deed from Martha Stockton to Harriet G. Boynton twenty-five feet ; thence easterly parallel with the first course two-hundred and seventy-six and seventy one-hundredths feet to the westerly line of Harrison street, aforesaid ; thence southerly along the same twenty-five feet to the place of beginning. 30 40

Envelope seen

SEAL HERE
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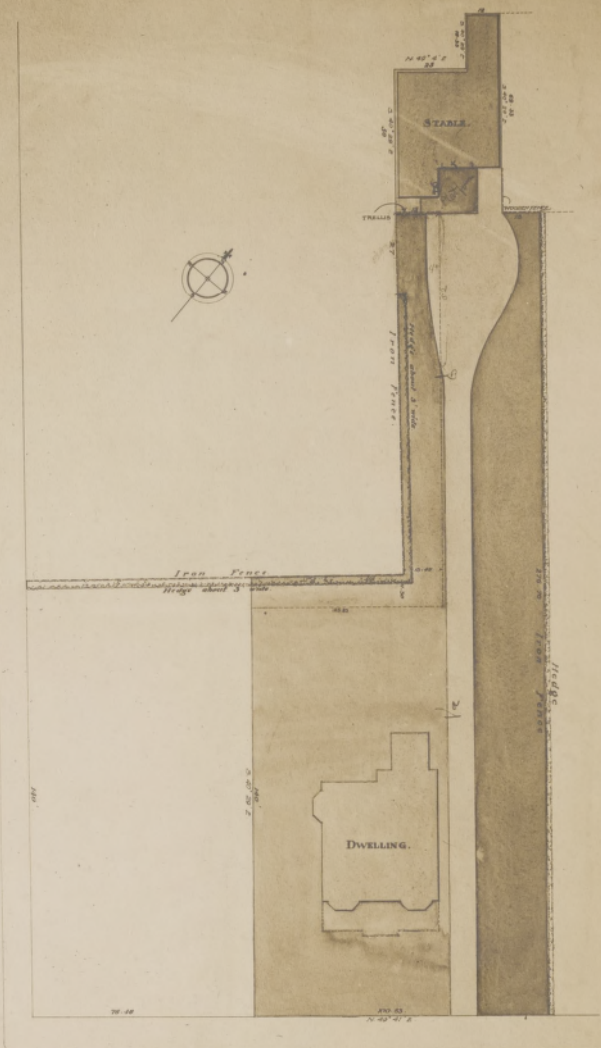
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MS & 117 WALLUM ST., N.
PATENTED JAN. 29, 11

Vol - 416

1907

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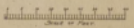
S T R E E T .



H A R R I S O N S T R E E T .

Map of Property
of
EAST ORANGE N.J.
Surveyed for
Paul Starrett.

December 1904



5.
C.1

B

The undersigned hereby applies to

FIDELITY TRUST COMPANY

for a Guaranty in its usual form guaranteeing the title of the land hereinafter described in this application for the sum of \$22,500, for which the undersigned agrees to pay the charges specified in this application.

The applicant hereby assents to the following provisions:

Statements made herein are correct and true to the best of applicant's belief. Unanswered questions indicate that the applicant is without any information thereon. The applicant and party to be guaranteed will promptly furnish to the Company all information or intimation as to defects, objections or liens affecting said premises now known or before the issuing of the guaranty received, and the acceptance of the guaranty shall be deemed a statement of fact included in this application that the same has been done.

When the Company is not directed by the applicant to procure a survey, it will not guarantee against any state of facts that an accurate survey would show.

Liens, defects and insufficiency of records, if any, are to be reported to the person named below, and may be excepted in the guaranty unless removed by documentary evidence furnished to the Company. All labor and expense of obtaining possession of the premises in question is assumed by the applicant.

When a definite date for closing the title is agreed upon, a postponement not requested by the Company will subject the applicant to reasonable charges for continuation of the search, unless forty-eight hours' notice of the postponement be given the Company.

The charges of the Company for the examination of the title and incidental expenses shall be due at the time of the making of this application and are payable whether a guaranty can be issued or not. In case no guaranty shall be issued, the applicant shall not be required to pay any premium charge.

1. Name and address of party to be Guaranteed.	Paul Starrett	Premium,	78.34
		Examination,	15.
2. Value of Property.	Fee.	Survey,	waived.
3. Estate to be Guaranteed. (State whether a Fee, Mortgage or Assignment of Mortgage.)		Conveyancing,	.....
4. Location and description of Premises. City or Town.....East Orange, .....Essex County, N. J. Block 3461.....Lot 4..... Street.....No..... (Please give brief but definite description. Refer to a recorded instrument is possible. Do not give Street and No. alone.)	W. s. Harrison St., 76.46' N. E. fr Dennis Pl. (now Berwyn St.) As in Sch. 9599 Gty 6539 Stay out.	Settlement Fee, .....	.....
5. Is there an agreement to Sell? If so, between whom? Furnish copy.	Yes, bet. Boynton & applicant.	Appraisal Fee, .....	.....
6. Are there Mortgages or other Encumbrances? If so, by whom given, the amount, and address of holders. How to be disposed of?	2 mtgs, 14,000. To remain.	Asst. Guaranty, .....	.....
7. (a) Is the land cultivated? (b) Is it fenced? (c) Are there buildings on it? (d) State as nearly as you can for how long a time it has been cultivated, How long a time fenced, How long a time built upon.	Bldg. thereon.	Recording Fees, Deed 2.	.....
8. Has any building upon premises been erected, or repairs been made within four months?	No.	Gty 4291 to be cancelled allowed for.	.....
9. Have Street improvements been made or Sewer laid in street within one year?	No.	This is copy of original with Fidelity Trust Co.	.....
10. Who is in possession? Under what claim?	Tenant, under lease to May 1st, 05, releases will be furnished.		.....
11. Is any part of premises used by any person other than owner? If so, state particulars.	No.		.....
12. Are there party walls thereon?	No.		.....
13. Do any roads, streets, alleys, streams or drains run through premises to or from other lands? If so, what?	No.		.....
14. Do you know of any objections to the Title? If so, state them.	No.		.....
15. Is this a Martin Act title or one derived through sale for taxes or assessments?	No.		.....
16. Give name, residence, and occupation of Grantor and husband and wife if any.	Harriet G. Boynton. Charles B. " her husband. No. 1 Berwyn St., E. O.		.....
17. Can inspection of the premises be made without objection?	Yes.		.....
18. Shall Company procure a survey?			.....
19. Will applicant furnish a survey which this company may retain and upon which this Company may rely at date of guaranteeing as complete and correct?	Waived.		.....
20. Remarks.			.....

To be reported to E. E. Bruen, 25 Wash. Pl., E. O., 1904.
To close at F. T. Co., 10 a. m., Oct. 1st, 1904.
Papers to be drawn by Company as per requisition on the back hereof
Papers left with Company, Gty 4291, by Mr. Bruen.
To be cancelled, may be retained by Company.

Received by E. W. C., per
PAUL STARRETT, Applicant.
Address EDWARD E. BRUEN,
25 Washington Pla., E. O.

Draw
 From
 of the of the County of and State of
 To
 of the of the County of and State of
 Date Time Amount Rate
 Premises
 Recite Subject
 Restrictions Privilege

Draw
 From
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 To
 of the of the County of and State of
 Date Time Amount Rate
 Premises
 Recite Subject
 Restrictions Privilege

Offered in evidence
See p. 152 of case.

No. 12762 28

Application for Guaranty of Title.

*Of Land at..... E. Orange.....
 W. S. Harrison St.,

 For..... Paul Starrett.....

 Block Plan..... 3461-4.....
 Judgment Searches..... 9-29-'04.....
 Continuations.....
 Chancery Exdm's.....
 Docket Compared by.....
 Tax Search..... Sept. 23, 1904.....
 Survey Waived.....
 Report Wanted..... S. p.....
 Reported by..... W..... 9-27, 1904
 To close at..... F. T. Co.....
 10 A. M..... 1904
 Guaranty No. 8806.*

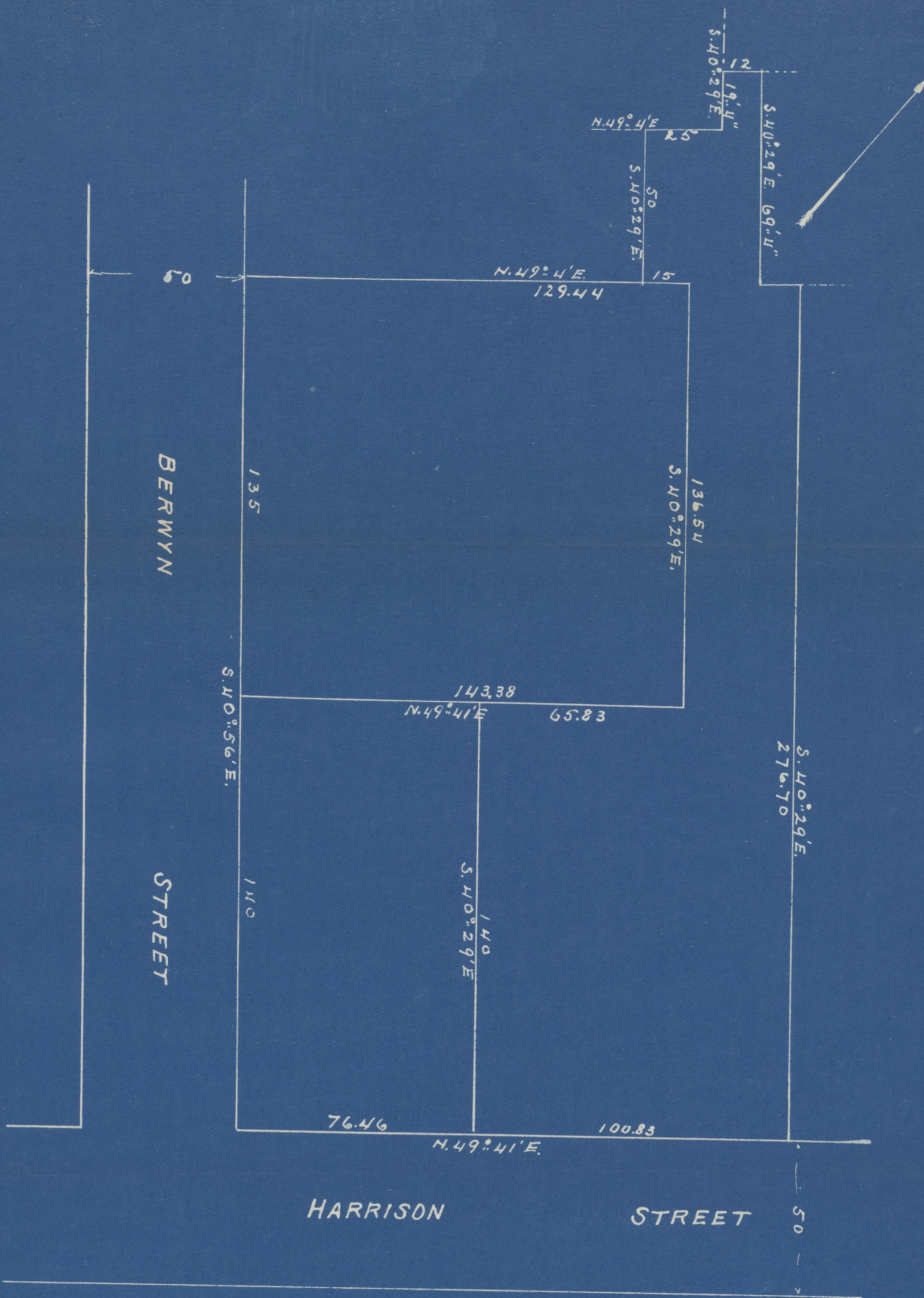
Fidelity Trust Co.

CAPITAL AND SURPLUS OVER \$9,000,000

HOME OFFICE:
 PRUDENTIAL BUILDING, NEWARK, N. J.

UNION COUNTY AGENCY:
 142 BROAD STREET, ELIZABETH, N. J.

*Received by Plant,
 Received by Title Officer,
 Received by Settlm't Officer,
 Closed,*



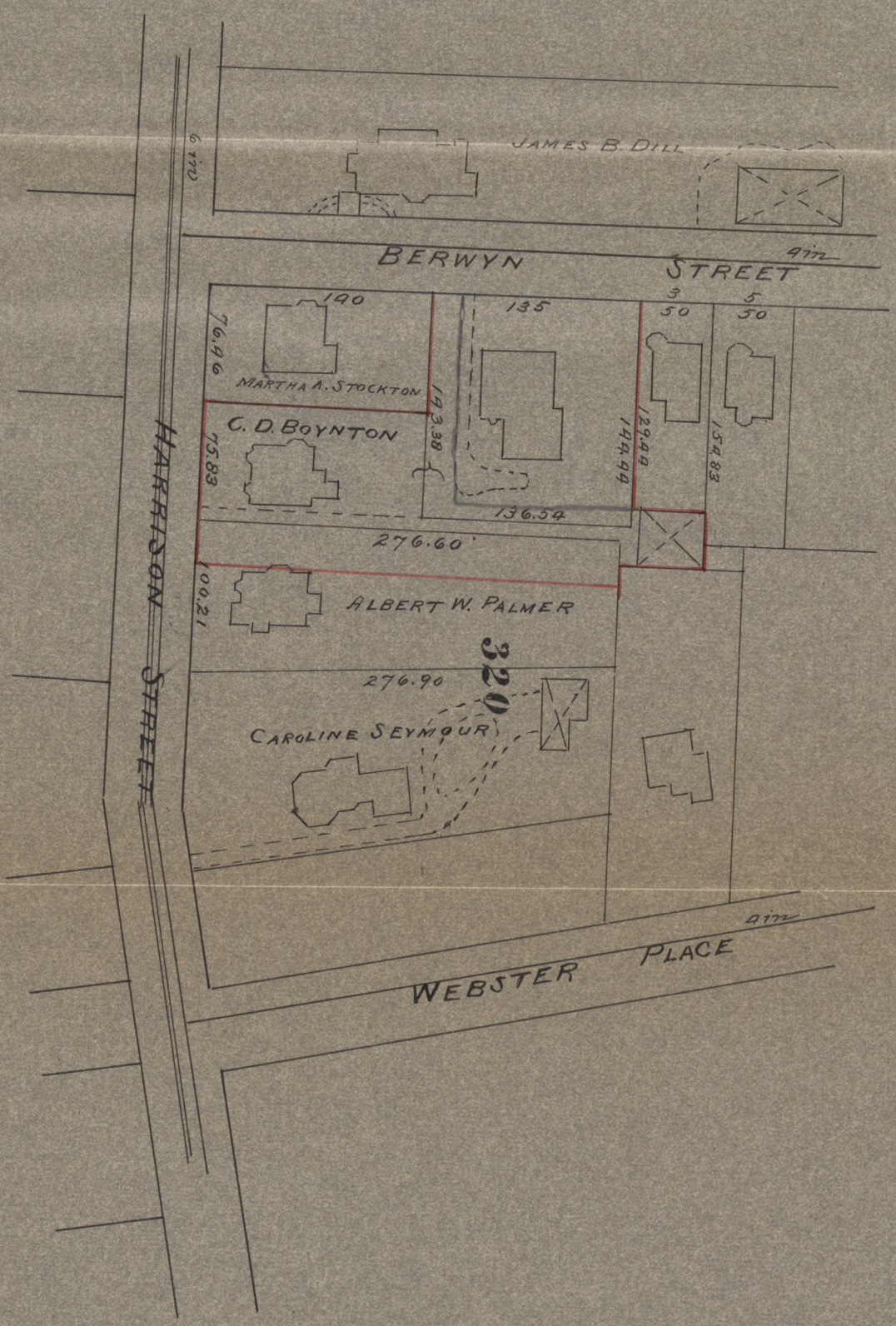
MAP OF PROPERTY
of
STARRETT ^{3/4} BOYNTON
referred to as map on oil paper in testimony
EXHIBIT D-6

M. N. K. Keimig, l.e.s.
Orange N.J.

Scale 1" = 40'

M. L. AUSTIN,
BLUE PRINTS,
28 WASHINGTON PL.,
EAST ORANGE, N. J.

Portion of Plate 7 of Atlas
Exhibit No. 4



Part of Plot 1 of Atlas
Colored by

