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4. Pursuant to a verbal understanding had before said date complainants and defendant met at the office of the Chelsea Title & Guaranty Company in Atlantic City, New Jersey, and defendant had agreed to accept title insurance from said company. Said company was willing then, and has ever since been willing, to insure complainants' title, but defendant has ever since refused to accept same and perform the agreement on his part.

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5. Complainants still tender themselves ready, able and willing to perform said agreement on their part.

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

(1) That Jacob Stern, who is the defendant to this suit, may answer this bill of complaint, without oath, and each statement herein made:

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(2) That said defendant be decreed to specifically perform the agreement on his part upon complainants performing said agreement upon their part; and complainants have such further relief as may be agreeable to equity.

(3) That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide such decree as this Honorable Court shall make in the premises.

30

COLE & COLE,
*Solicitors for and of Counsel
with Complainants.*

EXHIBIT "A."

ARTICLES OF AGREEMENT, made this Fourteenth day of April in the year of our Lord one thousand nine hundred and twenty-six BETWEEN HARRY GARBER and LENA GARBER, his wife, and HARRY LATT and JENNIE LATT, his wife, all of the City of Atlantic City, County of Atlantic and State of New Jersey, parties of the first part, and JACOB STERN, of the City and County of Philadelphia and State of Pennsylvania, party of the second part;

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WITNESSETH, that the said parties of the first part, for and in consideration of the sum of Eighty-three Thousand (\$83,000.00) Dollars 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, do agree to and with the said party of the second part, that they the said parties of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of General Warranty free from all incumbrance except as hereinafter mentioned, on or before the Fourteenth day of June, 1926, all that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Mullica in the County of Atlantic and State of New Jersey and lying between Second Street and Seventh Street (or Hammonton Avenue) and North of the Camden and Atlantic Railroad, now known as the West Jersey and Seashore Railroad and as also shown on plan of lots in Division H—East Hammonton, Atlantic County, New Jersey, which plan of maps is attached hereto and

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is to be considered a part hereof. Said lands to be more particularly bounded and described as follows:

BEGINNING at the point of intersection of the center line of Camden and Atlantic Railroad, now the West Jersey and Seashore Railroad with the center line of Second Street and extending thence

10 (1) In a Northeastwardly direction, in and along the center line of said Second Street, Six Hundred (600) feet more or less to the center line of the State Highway (or White Horse Pike or Agazziz Street) thence

(2) In and along the center line of the road as aforesaid and in a Northwestwardly direction, Four Thousand (4,000) feet more or less to a point of the center line of Seventh Street (Hammonton Avenue) thence

20 (3) In a Southwestwardly direction in and along the said center line of the said Seventh Street (Hammonton Avenue) Six Hundred (600) feet, more or less to the center line of the said Railroad; thence

(4) Along the said center line of the said Railroad in a Southeastwardly direction, Four Thousand (4,000) feet, more or less to the point of beginning.

30 It is hereby agreed and understood that the following lots as shown on the plan of lots above referred to, are excepted from the above described lands and are not to be included in the within agreement and or conveyance.

Block #3—Lots #13-14-15-16 and 17

Block #5—Lots #13-14-15-16 and 17

Block #6—Lots #10-11-12-13-14-15-16-17-18-19 and 20

Block #12—Lots #11-12-13-14-15-16-17-18-19

Block #13—Lots #1-2-3 and 17

Block #14—Lots #1-2-4-12-17-26-28 and 29

Block #15—Lots #1-3-4-5-6-7-13-14-15-16-17-23-24-25-26-27-28 and 29

Block #16—Lot #1

Together with all of the improvements and hereditaments now contained upon the said premises.

And the said party of the second part, for himself, his heirs, executors and administrators or assigns 10 does covenant, promise and agree to and with the said parties of the first part, their heirs, or assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied unto the said parties of the first part, the said sum of Eighty-three Thousand (\$83,000.00) Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

\$1,500.00 upon the signing of this agreement, the receipt whereof is hereby acknowledged. 20

\$3,500.00 by the party of the second part, paying that amount on or before the Fourteenth day of May, 1926 at 3 P. M.

\$28,000.00 by the party of the second part, making, executing and delivering at the time of settlement, his purchase money mortgage in that amount, covering the premises above described, accompanied by his usual bond for twice the amount. Said mortgage payable at any time within two 30 years from the time of settlement, bearing interest at the rate of six per cent per annum, payable semi-annually.

\$38,000.00 by the party of the second part, making, executing and delivering at the time of

settlement, an Assignment of an existing mortgage in that amount. Said mortgage payable within two years from January 25th, 1926, and covering premises hereinafter described and which mortgage is subject to an existing first mortgage in the sum of Thirty Thousand (\$30,000.00) Dollars and an existing second mortgage in the sum of Thirty-two Thousand (\$32,000.00) Dollars, also covering premises hereinafter described, situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey, being bounded and described as follows:

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BEGINNING at a point at the Southeast corner of Arkansas and Arctic Avenues, extending thence (1) Eastwardly, in and along the South line of Arctic Avenue, forty-six (46) feet and six (6) inches; thence

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(2) Southwardly, parallel with Arkansas Avenue, Ninety (90) feet; thence
 (3) Westwardly, parallel with Arctic Avenue, Forty-six (46) feet and six (6) inches to the Easterly line of Arkansas Avenue; thence
 (4) Northwardly, in and along the same Ninety (90) feet to the place of beginning.

30

BEGINNING IN the Southerly line of Arctic Avenue, Forty-six (46) feet and six (6) inches East of the Easterly line of Arkansas Avenue, extending thence

(1) Eastwardly, in and along the Southerly line of Arctic Avenue, Thirty (30) feet; thence
 (2) Southwardly, parallel with Arkansas Avenue, Ninety (90) feet; thence
 (3) Westwardly, parallel with Arctic Avenue, Thirty (30) feet; thence

(4) Northwardly, parallel with Arkansas Avenue, Ninety (90) feet to the place of beginning.

BEGINNING in the Easterly line of Arkansas Avenue, Ninety (90) feet South of Arctic Avenue, extending thence

(1) South, along the East line of Arkansas Avenue, Twenty (20) feet by East, between parallel line of that width at right angles to Arkansas Avenue, in length Eighty-one (81) feet on the South side and Eighty-two (82) feet on the North side.

10

Twelve Thousand (\$12,000.00) Dollars by the party of the second part paying that amount at the time of settlement.

Settlement to be held at the offices of the Land Title Guaranty Company, New Jersey, of Camden, New Jersey or any other reputable Title Company in the State of New Jersey, on or before the Fourteenth day of June, 1926.

Title to be good and marketable and such as will be insured by the Title Company or companies as above stated.

20

All adjustments of taxes, and interest on the mortgage to be assigned to the parties of the first part to be made as of time of settlement.

Time is the essence of this agreement.

It is hereby agreed and understood by and between the parties hereto that the above referred to purchase money mortgage, which the party of the second part agrees to execute and deliver at the time of settlement, shall contain a provision, whereby the parties of the first part hereto will release any block from the above described premises upon the payment of Twenty-eight Hundred (\$2800.00) Dollars by the party of the second part hereto. A block shall be construed to mean Two Hundred (200) feet front on Agazziz Street or White Horse

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Pike and running between parallel lines of that width to the middle line of the Railroad above referred to.

It is hereby expressly agreed and understood, that in the event the parties of the first part are unable to deliver unto the party of the second part, the exact amount of land fronting on the White Horse Pike (or Agazziz Street) as above described, then and in that event, the party of the second part agrees to accept the amount of land fronting on said White

10 Horse Pike (or Agazziz Street) providing, however, that he be allowed a reduction from the hereinabove stated consideration, at the rate of Twenty-five (\$25.00) Dollars per front foot.

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 the day of settlement and from thence take the rents, issues and profits to and their use.

20 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 thereof.

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

30(Seal)
.....(Seal)
.....(Seal)
.....(Seal)
Jacob Stern (Seal)

SIGNED, SEALED AND DELIVERED
in the presence of
Joseph L. Soloff.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss.

BE IT REMEMBERED, That on this day of April in the year of our Lord one thousand nine hundred and twenty-six before me A Notary Public personally appeared HARRY GARBER and LENA GARBER, his wife, and HARRY LATT and JENNIE LATT, his wife, who, I am satisfied, are the vendor mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified. 10

ANSWER AND COUNTER-CLAIM.

(Filed July 30, 1926.)

IN CHANCERY OF NEW JERSEY. 20

Between
HARRY GARBER, et al.,
Complainants,
and
JACOB STERN,
Defendant. } On Bill, &c.
Answer and Counter-claim.

The defendant, Jacob Stern, answering the complainants' complaint says that: 30

- 1. He admits paragraph 1.
- 2. He admits the payment of the said sum of \$1500 referred to in paragraph 2, but denies all the rest of said paragraph.

3. He denies paragraph 3.

4. He admits that he agreed to accept title insurance from the Chelsea Title and Guaranty Company, pursuant to the verbal understanding referred to in complainants' complaint, but denies that the Company was willing then, or since, to insure complainants' title, in accordance with the terms of said agreement of sale.

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5. He denies paragraph 5.

AFFIRMATIVE DEFENSES.

Defendant further answering says that:

1. Under the terms of said agreement said premises were to be conveyed free and clear of all encumbrances, except such as are set forth in the agreement of sale, and further says that said title was to be good and marketable and such as would be insured by the title company referred to in said agreement.

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2. Defendant further says that he paid the sum of \$1500 on the signing of the agreement and on May 14th, 1926, paid the further sum of \$3500 as per the terms of said agreement, making in all a total payment of \$5000.00.

30

3. At the time fixed for the settlement, defendant was ready, willing and able to perform said agreement on his part, and so tendered himself, but complainants were not ready, able and willing to perform said agreement in accordance with the terms

thereof, and, in fact, said title was not good and marketable nor was the Chelsea Title and Guaranty Company willing to insure said title. At that time said land was subject to the interest of one Abraham Browning, as trustee, or his successors in trust for Stephen Caldwell, which interest became vested in said Abraham Browning through a declaration of trust dated April 27, 1866, and recorded in the Atlantic County clerk's office in Deed Book 28, page 481, which said interest of the said Abraham Browning, trustee as aforesaid, or his successors in trust, was an outstanding interest or encumbrance upon the land in question, not referred to in the agreement. Said premises were also subject to the rights of the Delaware and Atlantic Telephone & Telegraph Company to construct and operate lines, erect poles, etc., as granted by Annie M. Coughlin to said company September 15, 1916, Deed Book 577, pages 42.

10

It was also subject to the rights of the public in all streets, avenues or roads running through or abutting premises in question.

20

It was also subject to a right of way of Camden & Atlantic Railroad, now the West Jersey & Seashore Railroad.

It was also subject to a certain mortgage made by Harry Garber to James Ruberton, Jr. and Rose Ruberton, his wife, dated April 28, 1926, recorded May 3, 1926, to secure the sum of \$30,000 payable in two years.

30

It was also subject to a judgment of the New Jersey Quarry Co. against W. J. Coughlin entered in the New Jersey Supreme Court on March 11, 1915, in the amount of \$2294.36.

It was also subject to a judgment of Alfred W. Booth & Bro. against William Coughlin, *et al.*, en-

tered in the New Jersey Supreme Court, docketed from Hudson County Circuit Court, in the amount of \$887.14, and

Also subject to a recognizance entered into by the said William Coughlin, as surety, to the United States dated July 10th, 1923, in the amount of \$1000, and another recognizance entered into by the said William Coughlin as surety, to the United States on July 12, 1923, in the amount of \$1000.

10 None of which liens, encumbrances or defects of title were referred to in the agreement of sale, and as a result of all or any of which said title was not good and marketable, nor would said Chelsea Title and Guaranty Company insure said premises, and by reason of the same complainants were not able to deliver unto the defendant, such title as was called for by said agreement.

20 4. Defendant was at all times able, willing and ready to carry out and perform his part of said contract, and so tendered himself at the time and place of settlement, but by reason of the defect in said title aforesaid, complainants were not able to carry out and perform their part of said contract.

5. Defendant prays that said bill be dismissed with his costs most wrongfully sustained.

Defendant, Jacob Stern, by way of counter-claim says that:

1. All the allegations in defendant's answer are hereby made a part of this counter-claim.

2. Defendant has at all times been ready, willing and able to carry out and perform the agreement of sale referred to in complainants' bill of complaint, but complainants have not been ready, willing and able so to do by reason of the defects referred to in the answer and by reason of the refusal of the said Chelsea Title and Guaranty Company to insure said title.

3. Defendant paid unto the complainants the sum 10 of \$5000 under and pursuant to the terms of said agreement and has expended money for searches, the return of all of which was demanded from the complainants, when defendant ascertained that complainants were not ready, willing and able to carry out said contract, but the complainants have refused to pay the same unto the defendant.

Defendant, therefore, prays that a decree be entered decreeing that the complainants pay unto him 20 said moneys aforesaid, together with interest thereon.

THOMPSON & HANSTEIN,
Solicitors of Defendant.

REPLICATION, &c.

(Filed Aug. 24, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between	}	On Bill, &c. Replication, &c.
	HARRY GARBER, <i>et al.</i> ,		
	<i>Complainants,</i>		
	and		
	JACOB STERN,	}	
	<i>Defendant.</i>		

20 Complainants join issue on the answer of the defendant.

Denying the right of the defendant to file an affirmative defense, complainants however say:

1. They admit paragraph 1.
2. They admit paragraph 2.
3. They deny paragraph 3.
- 30 4. They deny paragraph 4.
5. They say that if any such defects or encumbrances as are set forth in the affirmative defense appear of record, they could have been and would have been removed at the time of settlement upon

defendant's being able and willing to perform upon his part.

Denying defendant's right to counter-claim, complainants notwithstanding, say:

1. They admit paragraph 1.
2. Paragraph 2 is denied.
3. Paragraph 3 is admitted.

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NOTICE.

To the Within Named Defendant:

Notice that on the hearing of the cause motion will be made to strike the affirmative defense and counter-claim on the ground that conceding to be true the averments therein, it is improperly set up in the answer and there is no jurisdiction on the counter-claim.

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COLE & COLE,
Solicitors for Complainants.

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TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10 Between
 HARRY GARBER, *et al.*,
Complainants,
 and
 JACOB STERN,
Defendant. } On Bill, &c.
 Final Hearing.

Atlantic City, N. J., September 2, 1926.

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TESTIMONY.

Before HON. R. H. INGERSOLL, VICE-CHANCELLOR.

APPEARANCES:

For complainants, MESSRS. COLE & COLE.
 30 For defendant, MESSRS. THOMPSON & HANSTEIN.

Mr. Cole: I offer in evidence an agreement, a copy of which is annexed to the bill.

(Agreement admitted and marked Exhibit C1.)

HARRY GARBER, the complainant, sworn.

Direct examination.

By Mr. Cole:

Q. Are you the Harry Garber referred to in this agreement I have just offered in evidence?

A. Yes, sir.

Q. Where do you live?

10

A. 108 South Rhode Island Avenue.

Q. Atlantic City?

A. Atlantic City.

Q. How long have you lived in Atlantic City?

A. Four years.

Q. Now, did you personally do the work for this agreement? Did you personally do the work of getting the agreement given?

A. Yes, sir.

Q. With whom did you negotiate?

20

A. With Mr. Soloff.

Q. Mr. Soloff of Taylor and Soloff?

A. Of Taylor and Soloff.

Q. What is their business?

A. Real estate.

Q. Did you meet Jacob Stern, the defendant, in connection with the matter at all?

A. Only by signing the agreement.

Q. How is that?

A. Only by signing the agreement. When the 30 agreement was signed.

Q. Where was it signed?

A. In Taylor and Soloff's office.

Q. In Atlantic City?

A. In Atlantic City.

Q. And where is that office?

A. 15—I don't exactly remember the number of the office, Atlantic Avenue by the Chelsea National Building.

Q. With whom did you make the arrangements and the agreement which was finally signed?

Q. With Mr. Soloff.

Q. Now, then, the agreement refers to the Land Title and Trust Company?

10 A. Yes, sir.

Q. Did you ever get from that company a settlement certificate showing on what they would insure this title, on what basis?

Mr. Hanstein: I want to object to this question on the ground that it does not fix the time.

Mr. Cole: I will fix the time, first fix the event.

20 The Court: Question is now did he ever receive such paper. I will permit it.

A. Yes, sir.

Q. Did you ever get from that company a settlement certificate showing on what they would insure this title, on what basis? You say yes?

A. Yes, sir.

Q. About when was that?

A. That was around the fourth of March, I think

30 Q. Of this year?

A. Of this year.

Q. Is this the paper you refer to?

A. Yes.

(Paper offered in evidence.)

Mr. Hanstein: I object to this, not by reason of from the proof but by reason of its relevancy; the fact that they may have gotten a settlement certificate from the Land Title Company would not affect this present situation in any respect unless they got this by way of showing to the purchaser that the Land Title Company was willing to insure this title according to the settlement certificate at the time fixed for settlement.

Mr. Cole: I expect to show that, may it please your Honor that the fact is verified. 10

The Court: I will admit the evidence. The question as to the effect of it I will not rule upon that at the present time.

Mr. Hanstein: I want to say further, not that I want to argue after your ruling, but under the pleadings it is shown that the parties agreed to accept the title of the Chelsea Title Company and whether some other company would be willing to insure or not would be immaterial. 20

The Court: I will permit it.

(Paper admitted and marked Exhibit C2.)

Q. Now, did you notify anybody that you had this settlement certificate from the Land Title Company?

A. We notified at the time we made the agreement, we told Mr. Soloff and Mr. Stern that we got title from the Land Title Company. 30

Q. And you said it was about March the fourth?

A. Yes, sir.

Q. Now the day set for settlement was June fourteenth, wasn't it?

The Court: The papers so state and the bill shows.

Q. June fourteenth? Now, did you go to any title company on June fourteenth?

A. Mr. Taylor called us up and he said—

Q. I can't hear you, Mr. Garber.

A. Mr. Taylor called—

10 Mr. Hanstein: This is not responsive.

Q. Did you go to any title company for settlement on June fourteenth?

A. No.

Q. When did you go, if you went at all?

A. Mr. Taylor called me up and he says—

Mr. Hanstein: I object to that.

20 The Court: Sustain the objection; just answer the question.

(Question repeated.)

A. June fourteenth.

Q. Did you go to the title company on June fourteenth for settlement under this agreement?

A. We went to the Chelsea Title.

Q. On June fourteenth?

A. On June fourteenth.

30 Q. That is what I want to know. Who did you meet there?

A. Mr. Taylor.

Q. Of Taylor and Soloff?

A. Of Taylor and Soloff.

Q. Who else?

A. Nobody else.

Q. Wasn't Mr. Stern there?

A. No.

Q. Anybody else there to represent you?

A. So I represent Mr. Perone and Mr. Sherman.

Q. Anybody there to represent Mr. Stern other than Mr. Taylor?

A. No.

Q. Who was there to look after the settlement on behalf of the Title Company? What was the man's 10 name?

A. This gentleman right here. I don't know exactly his name.

Q. Mr. Moore. You tell his Honor what happened, as you recall it now?

A. They came in, Mr. Taylor called me in and he says, "Be seated, everybody have seats" and Mr. Taylor was very nervous, very, very nervous—

Mr. Hanstein: I ask that be stricken out. 20

The Court: Just tell what happened.

A. That is what I want to say, what happened. He takes out the certificate and he says, "You cannot deliver" he said "We find an exception of Crawford to Mr. Brown." He says "We find an exception of poles" but he says "we don't care for the poles. We don't care for nothing. We want these deeds removed." I told him "Mr. Taylor, why you didn't 30 notify us that this business is an exception here?" Well, he says "I don't know."

Q. Then what happened?

A. And after I says, "Mr. Taylor, what is the reason?" He says, "Nothing is the reason. We want out deposit back." He asked back right away for the deposit.

Q. Then did you leave?

A. We left.

Q. Now at that time—had Mr. Taylor or Mr. Soloff or Mr. Stern before you had met at the Chelsea Title Company on June fourteenth told you about this exception?

A. Yes, Mr. Taylor told me once. I was in his office, unfortunately, he went upstairs to the Title Company, Mr. Taylor came down, he says to me,
10 “Garber, you will not be able to deliver it.” I went away to our representative, to Mr. Perone and told him, Mr. Perone—

Mr. Hanstein: I object.

Q. You can't tell what you told Mr. Perone.

A. I went over to Mr. Perone and told him—

The Court: You can't tell.

20

Q. Don't tell what you told Mr. Perone. You say Mr. Taylor told you?

A. Yes, that it is an exception.

Q. Go back to see Taylor?

A. I called up Taylor, Mr. Perone called up Taylor and he says that he only makes a joke, he only wants to make me feel bad.

Mr. Hanstein: I didn't get who told this.

30

The Court: He is now recounting a conversation had with Taylor by Mr. Perone.

Q. Was it you talked with Taylor?

A. I talked with Taylor, yes.

Q. After you had seen Mr. Perone?

A. No, before.

Q. When was it that Mr. Taylor told you that there was something wrong with this title?

A. I don't remember exactly the date.

Q. How long was it before June fourteenth?

A. How long was it? It was about the twelfth, I think.

Q. What?

A. A couple of days before.

Q. Where were you when he told you? 10

A. In Mr. Taylor's office.

Q. How did you come to be there?

A. Well, I always came in their office.

Q. Then after he had—now just tell us again what he said to you on, you say, two days before?

A. He said that it is an exception from Crawford to Browning, it is an exception of the title, something, I don't know, because I am not very acquainted with this real estate.

Q. Is that all he said? 20

A. All he said.

Q. Did he tell you at that time he wasn't going to take the title?

A. No.

Q. Then did you go and talk with somebody about what he said to you?

A. Yes.

Q. Did you go back to see Taylor after that?

A. No.

Q. Then you didn't see Taylor again until the 30 fourteenth?

A. Until the fourteenth, until the last minute, three o'clock.

Q. At the title company?

A. At the title company.

Q. Did you at that time see the settlement certificate of the Chelsea Title Company?

A. No.

Q. How did you know that there was some exception about telegraph poles?

A. Mr. Taylor mentioned to me by the title company.

Q. In the office?

A. In the office.

Q. Now did he give any other reason for not performing the contract on his part except about that
10 Browning deed?

A. Nothing, that was the only thing that was the exception.

Q. Now had anybody put any sort of a building or structure on this land after the deed?

Mr. Hanstein: I object to that. It is immaterial what anybody may have done.

Mr. Cole: I am trying to make it general enough
20 so the question won't be leading.

The Court: I will permit it at present.

(Question repeated.)

A. Mr. Taylor put up a sign I think on July 13th.

Mr. Hanstein: I object to that and ask it be stricken as being immaterial.

Mr. Cole: You mean the date or the fact?
30

Mr. Hanstein: I think the fact is immaterial. I don't think it matters what Mr. Taylor did. Mr. Stern is the buyer here and defendant in this suit.

The Court: I will hear you, Judge, on that.

Mr. Cole: Please, your Honor, it has already been shown all these negotiations were with Soloff and it has been shown Taylor was the one who suggested this defect and the only man who appeared at the settlement in behalf of Stern. Now, I certainly have a right to show the fact with these things, these structures, if it be a fact, going on this land and with the evidence here, it seems to me there is enough to
10 at least call for an explanation as to how they came to be there.

The Court: What difference can it make whether they are there or not to this case?

Mr. Cole: It can make this, that if they were there they took possession of this land under this agreement.
20

The Court: That is your purpose?

Mr. Cole: Yes.

The Court: I will permit it.

Mr. Cole: And one of the signs we hope to show was up after the time of this meeting.

The Court: I will permit it.
30

Q. Have you seen the sign?

A. Yes, sir.

Q. Is there more than one?

A. Yes.

Q. Is there more than one? Answer yes or no.

A. More than one sign.

Q. I am talking about signs.

A. Three signs.

Q. You have seen them, have you?

A. Yes, sir.

Q. I show you photographs and ask you to look at them and tell me whether they are correct representations of the sign that is on this land?

10 A. Absolutely, Judge.

(Three photographs offered in evidence.)

Mr. Hanstein: I want to object to the introduction of these exhibits on the ground that all they appear to be are "For Sale" signs erected by Taylor and Soloff as realtors without anything showing that they were put up there by Mr. Stern or for his benefit or as agent for Mr. Stern from which he is going to get the benefit.

20

The Court: I will permit the offer, not ruling upon the weight of evidence at all.

(Photographs admitted and marked Exhibits C3, 4, 5 and 6.)

Q. Are the signs still there?

A. Yes, sir.

Q. How lately have you seen them?

30 A. I saw them before yesterday.

Q. Did you put them there?

A. No, sir.

Q. Did you cause them to be put there?

A. No.

Q. Did you authorize anybody to put them there?

A. No.

Q. Now, since June fourteenth have you talked with anyone in the employ or service of the Chelsea Title Company concerning this title?

A. Have I talked with somebody over the—

Q. From the Chelsea Title Company?

Mr. Hanstein: I object to that as being immaterial.

The Court: I will permit the preliminary question. 10

(Question repeated.)

A. No.

Q. Now, do you know whether Mr. Taylor or Mr. Soloff or both have any interest in this agreement? Now, first of all, do you know? You understand my question?

A. No, Judge. 20

Q. Do you know whether either Mr. Taylor or Mr. Soloff or both have any interest in this agreement we are talking about?

Mr. Hanstein: I want to object to that.

A. Yes, sir.

Mr. Hanstein: I want to object to that. In the first place they can't vary the terms of their written contract by parole and in the next place neither Mr. Taylor nor Mr. Soloff is a party to this suit. I think it is entirely immaterial and incompetent whether they have got any interest in it or not. 30

The Court: I will sustain the objection.

Cross-examination.

By Mr. Hanstein:

Q. Now, you saw the settlement certificate that was issued by the Chelsea Title Company, didn't you?

A. No.

10 Q. Didn't you see this settlement certificate at any time?

A. From the Chelsea?

Q. Yes.

A. No.

Q. Wasn't this settlement certificate at the settlement?

A. No.

Q. You didn't see it there?

A. No.

Q. Who was handling this matter for you?

20 A. For us? Mr. Perone.

Q. Mr. Perone? Well, you did know that there was this exception in your title, didn't you?

A. Which title?

Q. In your title that the Chelsea Title Company claimed that there was this exception that Mr. Taylor told you about?

A. Only by the settlement, when we went to the settlement June fourteenth, three o'clock.

30 Q. Well, you knew it a couple of days before that too, didn't you?

A. I didn't know exactly what.

Q. Well, Mr. Taylor told you that there was an exception before that, didn't he?

A. He told me but with a smile, see, I didn't know exactly if he means anything or not.

Q. But he told you?

A. Yes.

Q. Did you have any investigation made to find out whether there was an exception or not?

A. Well, we didn't have the time.

Q. Well, he told you a couple of days before, didn't he?

A. Yes, a couple of days before.

Q. Now, you knew that the Chelsea Title Company would not insure this title, didn't you?

A. I didn't know anything. 10

Q. Well, didn't you know it on the day of settlement that the Chelsea Title wouldn't insure this title?

A. Yes, sir, three o'clock in the minute.

Q. And at that time didn't you go up to see Mr. Wallace about getting this exception removed?

A. No, not me.

Q. Did Mr. Perone go up?

A. I don't know, he represent us, I don't know, maybe he went. 20

Q. You were at the settlement, weren't you?

A. I was at the settlement.

Q. You and Mr. Taylor or somebody representing Mr. Stern had agreed to have your settlement at the Chelsea Title Company, hadn't you?

A. No, we didn't say agreed, only was telephone call that we will have the settlement at the Chelsea Title.

Q. You agreed that you should go to the Chelsea Title Company? 30

A. Because he called me up, Mr. Taylor.

The Court: Not because; did you agree?

A. We came to settlement, yes, three o'clock.

Q. Now, you told Judge Cole that after Mr. Tay-

lor had told you about the exception that you talked to someone about it, who did you talk to?

A. Mr. Perone.

Q. You talked to Mr. Perone about this exception?

A. Yes.

Q. Mr. Perone, you say, was your agent? Was he taking care of this?

A. Yes, sir.

Q. Do you know what Mr. Perone did about it?

10 A. I don't know.

Q. You don't know? Didn't Mr. Taylor state at the settlement that one of the reasons why he wouldn't settle was because the Chelsea Title Company wouldn't insure the title?

A. Mr. Taylor said that he don't care for nothing, he only wants to be removed this exception.

Q. Wasn't it said at that settlement that the Chelsea Title Company wouldn't remove that exception?

20 A. Nobody was at that time in, not Mr. Lambert, not Mr. Wallace, nobody was there, at that time should give authority they will insure it or not.

Q. Now, didn't Mr. Perone go up and talk to Mr. Wallace about it?

A. In the same day?

Q. Yes.

A. I don't know.

Q. You don't know that he did or you don't know that he didn't?

A. Yes, sir.

30 Q. Well, what did you do in regard to this exception after Mr. Taylor told you that there was an exception?

A. I took it over to my representative, to Mr. Perone. I don't know what he done.

Q. That is all you know about it? Did Mr. Tay-

lor or Mr. Soloff show you before the time of settlement this letter from the Land Title Guaranty Company?

A. Mr. Taylor shows before settlement three o'clock.

Q. Didn't he show you this letter before the settlement?

A. No.

Q. Did he show you this letter at the settlement?

A. Only by the settlement at the same time, three 10 o'clock.

(Letter marked D1 for identification.)

Q. Didn't you and Mr. Taylor have a conversation in regard to putting up signs on this property after the agreement was entered into?

A. No.

Q. Didn't you and he have a conversation in which they said that they wanted to put up signs 20 and you said it was all right.

A. Absolutely not.

Q. Did you know that they had put up the signs?

A. No.

Q. Didn't you know that before the fourteenth of June?

A. That there are signs there?

Q. Yes.

A. No, I didn't see until after the settlement.

Q. You didn't know that these signs had been put 30 up?

A. Yes.

Q. How much money was paid to you on account of this agreement?

A. Five thousand dollars.

Q. Who negotiated this transaction, you and Mr. Soloff or Perone and Soloff?

- A. I and Mr. Soloff.
 Q. You and Mr. Soloff?
 A. Yes.
 Q. How long before the time the agreement was drawn up did you start to negotiate?
 A. How long?
 Q. Yes.
 A. Not long, about two days.
 Q. Just two days?
 10 A. Couple of days.
 Q. You never showed Mr. Taylor this settlement certificate that you had from the Land Title Company, did you?
 A. No.
 Q. You never showed it to him?
 A. No.
 Q. Do you know whether or not Mr. Perone left the settlement room and went up to talk to Mr. Wallace during that settlement?
 20 A. I don't know.
 Q. Mr. Moore of the Title Company was there at the settlement, wasn't he?
 A. Yes.
 Q. He told you that the title company wouldn't insure this property, didn't he?
 A. Mr. Moore didn't state exactly; he said he don't know. He said he isn't the boss here.
 Q. Didn't he tell you that he couldn't remove that exception without somebody else giving him authority to do it?
 30 A. Mr. Moore?
 Q. Yes.
 A. He didn't talk about this. The only thing he said, "I am not the boss here and I cannot do anything without instructions from upstairs."
 Q. That is what he said about it?

- A. Yes.
 Q. Who all were present at that settlement? Who were present at the settlement?
 A. Mr. Taylor.
 Q. Didn't Mr. Taylor tell you that Mr. Stern was next door?
 A. No.
 Q. And that Mr. Stern was ready to settle if he could get a title such as his agreement called for?
 A. He said yes. 10
 Q. What is that?
 A. He said he is ready for settlement.
 Q. He said he was ready for settlement and that if you could deliver such a title as your agreement called for he would take it, isn't that so?
 A. Only was mentioned the exception, nothing else, wasn't mentioned any agreement.
 Q. Didn't he say if you could give a clear title he would settle?
 A. Mr. Taylor mentioned only this exception, if this exception will be removed we are ready for settlement. 20
 Q. Well, he said he was ready if he got this exception removed?
 A. Yes.
 Q. I think that is all.
 By Mr. Cole:
 Q. Mr. Garber, I am not sure whether I asked you or not, you got this settlement certificate from the Land Title about the fourth of March? 30
 A. Yes, sir.
 Q. This agreement is dated the fourteenth of April. Did you at any time before the fourteenth of June, yourself now, notify either Taylor or Soloff

or Stern that the Land Title Company would insure this title?

A. Absolutely.

Q. Which one did you tell?

A. I told Mr. Taylor and I told even Mr. Stern once in the Chelsea National Bank.

By Mr. Hanstein:

10 Q. Was that before or after you had agreed to go to the Chelsea Title Company for your insurance?

A. It was before and it was after.

Q. You told them both times?

A. Both times.

Q. You were perfectly willing to make your settlement at the Chelsea under their agreement, weren't you, under their insurance?

A. It isn't the question willing, gentleman calls up three o'clock he says he will have title in the

20 Chelsea Title Company.

Q. What is that?

A. He called us up June fourteenth, he called up, he said we are ready for settlement three o'clock, Chelsea Title Company; it was ten minutes of three.

Q. You knew before that that you were going to settle at the Chelsea Title Company, didn't you?

A. We didn't know exactly where.

Q. It wasn't the Land Title Company?

A. I didn't know where Mr. Taylor ordered the

30 title.
Q. Do you mean to say that you didn't know before June fourteenth that this settlement was to be at the Chelsea Title Company?

A. Maybe I know, I don't know.

Q. You are not sure now?

A. I am sure that Mr. Taylor called me he says

in the Chelsea Title we will have settlement three o'clock.

Q. Yes, but when the order was placed there, you knew that they were going to the Chelsea Title Company?

A. I didn't know when Mr. Taylor ordered title or not.

Q. Weren't you people getting the title to other land immediately adjoining this land insured at the Chelsea Title Company right about that same time? 10

A. At the same time with Mr. Taylor?

Q. Yes.

A. No.

Q. You own a considerable area of land right around this land, don't you?

A. On the other side, this side, it is a different piece entirely.

Q. Isn't it a part of the same title?

A. No.

Q. Well, you told Judge Cole, didn't you, that 20 you had agreed to have the settlement at the Chelsea Title Company? You told him that, didn't you?

A. What do you mean we told him? I told Mr. Cole the same I have said here that we was called three o'clock at the settlement.

Q. Yes, but you knew before ten minutes of three that you were going to have a settlement at the Chelsea Title Company, didn't you?

A. I beg pardon?

(Question repeated.)

30

A. If I knew it? Mr. Taylor called me up—

Q. Wait a minute. Didn't you know before ten minutes of three that you were going to have your settlement at the Chelsea Title Company?

A. Yes.

Q. Certainly. You knew for how long that this title had been ordered from the Chelsea Title Company?

A. A couple of days.

Q. Didn't you know when this order was placed?

A. I knew at that time when Mr. Taylor told me this exception at that time I find out it is the Chelsea settlement.

10 Q. Do you mean to say that is the first time you knew it?

A. Certainly do. I know Mr. Taylor's business.

Q. Didn't you, Mr. Taylor or somebody representing Mr. Stern, agree that you would go to the Chelsea Title Company for that settlement?

A. I only knew it a couple of days before when Mr. Taylor told me.

20 Q. Hadn't you considerably prior to that had a discussion about where you would go for your title insurance?

A. It was only discussed when, at the time the agreement made, that we shall make the title in the Camden Title Company.

Q. Or any other reputable title company in New Jersey?

A. Yes.

Q. Do you say that you don't remember entering into a definite agreement that this title company that you would go to would be the Chelsea?

30 A. I said a couple of days before.

Q. I am asking you if it wasn't much earlier than that.

A. No.

Q. You don't remember that?

A. No, I don't remember. I say a couple of days before when Mr. Taylor told me this exception I

find out it is from the Chelsea, and ten minutes or three he called me on the 'phone we shall go to the settlement.

Q. Hadn't you known where this title was to be insured?

A. I am not a real estate man. I am a delicatessen man. I don't know merely at that time three o'clock.

(Question repeated.)

10

A. It was two days before when Mr. Taylor mentioned to me.

The Court: Had you known it more than two days?

A. No.

20 Q. Do you remember a conversation shortly after the twenty-second of May when Mr. Taylor came to you and said the Land Title Guaranty Company of New Jersey can't insure this title for us and he said lets go to the Chelsea Title Company and you said, "Fine, we are getting other land insured there and there is no need for all of us going up to Camden for this when we can get it done at home" or words to that effect?

A. Who said?

30 Q. I am asking you if you don't remember that conversation and your statements?

A. Never. Never had any conversation like this.

Q. You say you got other land adjoining this that are being insured by the Chelsea Title Company?

A. Yes.

Q. All part of the same title?

A. No.

Q. Not part of the same title?

A. No.

Q. Didn't you have some search work going on in the Chelsea Title Company at the very time this order was placed for land in this neighborhood that came under a similar chain of title or under the same chain of title?

10 A. I only signed for the title in the Chelsea or taken care of this stuff, takes care of it, Mr. Perone, I don't know anything about it. I never was there. I don't know.

By Mr. Cole:

Q. Was either Mr. Taylor or Mr. Soloff on this ground before this agreement was signed by Mr. Stern?

A. Mr. Soloff told me that he was there.

Q. He told you he was?

20 A. Yes.

Q. Were either of them ever there with you when you were there?

A. No.

Q. Do you know personally whether Mr. Stern was on this ground before this agreement was signed?

A. I don't know.

30 Q. The telegraph poles or telephone poles referred to, were they there when this agreement was made?

A. Yes.

Mr. Hanstein: I object to that. That is immaterial.

The Court : I will permit it.

Q. Were they there?

A. Yes.

Q. How long had they been there?

A. How long?

Q. Yes.

A. I don't know myself, for years.

Q. What?

A. I think the poles is long already there.

Q. Are they the poles that carry the wires between Atlantic City and Philadelphia? 10

A. Yes, sir.

Q. Along the right of way of the railroad?

A. Yes, sir.

Mr. Hanstein: Aren't those poles along the White Horse Pike?

Q. I mean along the White Horse Pike, pardon me, I am wrong, along the White Horse Pike?

A. Yes, sir. 20

FRANK T. PERONE, sworn for complainant.

Direct examination.

By Mr. Cole:

Q. Where do you live? 30

A. Atlantic City.

Q. And your business?

A. Real estate.

Q. How long have you been in that business?

A. Five years.

Q. Do you know Mr. Garber who was just on the stand?

A. I do.

Q. Did you have anything to do with this agreement in question or anything to do with the transaction after the agreement was signed?

A. Yes, I took care of the transaction all the way through as a broker.

Q. Did you have to do with it before the agreement was signed?

A. Beg pardon?

10 Q. Did you have to do with it before the agreement was signed?

A. I did.

Q. Who did you meet with respect to the Stern side of this agreement?

A. Mr. Taylor.

Q. Ever meet Mr. Stern?

A. Through introduction only.

Q. What?

A. As an introduction, yes. He was introduced.

20 Q. Now, have you been on the ground in question?

A. Yes, sir.

Q. Were you ever there with either Mr. Taylor, Mr. Soloff or Mr. Stern?

A. No.

Q. Now, when did you first hear, if ever you heard, that there was any trouble about this title?

A. About two weeks before settlement, two or three weeks.

Q. From whom did you hear it?

30 A. Mr. Garber.

Q. As a result of that did you do anything?

A. I communicated with Mr. Taylor, asked him whether that was true and he said no, he said, "I was only kidding Mr. Garber along."

Q. And where did you see Mr. Taylor?

A. I communicated with him by telephone.

Q. What was the next part that you took in the matter?

A. I called to see Mr. Wallace frequently.

Q. Of the Chelsea Title?

A. Of the Chelsea Title Company, I called there several times because we were having another search on a property adjacent to this property and I even asked him whether the property appeared clear, whether the title appeared clear and he said yes and my attention was never called to any exception. 10

Q. Were you there on the fourteenth?

A. At the title company, yes.

Q. What took place then?

A. Mr. Taylor called all principals on Mr. Garber's side to be present at the settlement. We all got together and Mr. Taylor went through the certificate and said that there was an exception of a trust deed which had to be removed before settlement. Well, it was three o'clock, nearly time the title company would close, and I told him it was absolutely impossible to do that on that same day but that I would go up and see Mr. Wallace anyway. So I went up and seen Mr. Wallace but he was absent that day: I told Mr. Taylor that if he would allow us a few days that we could clear that exception because the Land Title Company considered it not a lien and I felt that it was such an exception that we could easily remove, but he said, "No, according to the contract, time is the essence of the contract, and unless—" 20 30

Q. Who said that?

A. Mr. Taylor said that unless it is removed that day that they don't care to make settlement.

Q. Had you at that time known of the certificate from the Land Company agreeing to insure this title without that deed being a cloud?

Mr. Hanstein: I object to that whether he knew of that or not is immaterial.

The Court: I will permit it.

A. I did.

Q. Did Mr. Taylor know about it?

A. I told him. I advised him.

10 Q. What reply, if any, did he make when you told him the Land Title would insure this title free of that deed?

A. He said that he would decide later on.

Q. Did he make any objection to any other exception in the certificate of the Chelsea Title other than this deed?

A. He did not.

Q. Do you recall any reference to the poles?

20 A. I recall reading the exceptions together were there but he felt that no other exception, he didn't object to any other exception except that one exception of the trust deed.

Q. Have you since had this matter up with the Chelsea Title Company with relation to insuring this title?

A. I have.

Mr. Hanstein: I object to that. It is immaterial what the Chelsea Title Company may have done since the time of settlement.

30 Mr. Cole: I think it is material because I am showing possession. I am going to show these signs were up after that date. Of course I am going to contend that is not a proper decision at that time.

The Court: I will permit it.

Q. Have you?

A. I have.

Q. Do you know whether they will insure free of that deed?

A. Yes, after—

Mr. Hanstein: I object.

Q. Do you know? That is what I want to know first. 10

A. Yes.

Q. Who told you they would?

A. Mr. Lambert.

Mr. Hanstein: Please, your Honor, in regard to all this testimony to which I took an objection, it certainly seems to me that if the Chelsea Title Company refused to insure this title on the date fixed in the agreement, and time was the essence of the agreement, if they subsequently said, "We will 20 insure it" that, without any error, I don't think that alters the situation at all. If the Chelsea Title Company was not willing to insure it on the day in question, that wasn't a compliance by complainant with his agreement.

The Court: You mean to say if the title is good and the title company said "We won't insure" that that is sufficient under a contract of this sort to say that it can be rescinded? 30

Mr. Hanstein: Your Honor, this agreement says more than that there shall be a good and marketable title free from all encumbrances.

The Court: I understand, says, "Shall be insured"—do you take the position that an insurance company can simply say, no, we won't insure any land, we won't insure this land at all, that that would be sufficient to rescind the contract under this term where it says the specific company or any other company?

10 Mr. Hanstein: Yes, sir. Now, I have got a case on that very well in point, a Court of Errors and Appeals opinion, and I left my office a little hurriedly, I had been busy, and I didn't bring it up, if I may have a moment to send down I will get that authority. I will have that authority here in just a moment.

20 Mr. Cole: While we are waiting I will offer in evidence title policy from the Chelsea Title and Guaranty Company number 47,519, dated the third day of May, 1926, insuring this title free of the exception we have been discussing.

The Court: You mean to say that at the time of the settlement there was a title policy out for this?

30 Mr. Cole: No, I don't think so, please, your Honor. It seems to me the Title Company have simply gone back to the other date and said—I don't know—that they probably made a mistake. That is the date of the policy at all events. Of course so far it really has not appeared very clear what the attitude of the title company was at that time.

The Court: So far it is simply some clerk said, "I can't remove this without authority of the proper officials."

Mr. Cole: What happened when the thing came under an intelligent discussion they did remove it.

Mr. Hanstein: I don't think this title policy is admissible on the mere basis of it being dated the third day of May. I think the date of delivery ought to be controlling. That is, if this thing was issued subsequently and antedated, that might be a factor.

The Court: I will permit you to prove that later 10 if you can.

Mr. Cole: I will say I am going to develop it. The facts will all come out.

The Court: It will be marked.

Mr. Hanstein: I want to object to that.

The Court: What is the objection to this? 20

Mr. Hanstein: Please, your Honor, I take the position—and I think it is a correct legal position—that the Chelsea Title Company could have been wrong in issuing this settlement certificate. The bill of complaint in the first place excludes the provision in the contract that says the Land Title Company of Camden or any other company but alleges an agreement that the parties would accept the Chelsea Title Company. Now that was a subsequent 30 verbal agreement.

That is the way they allege it in their complaint, Pursuant to a verbal understanding had before said date complainant and defendant met at the office of the Chelsea Title and Guaranty Company in Atlantic City, New Jersey and defendant had agreed to ac-

cept title insurance from said company and said company was willing then and ever since has been willing to insure complainant's title and defendant has ever since refused to accept the same and perform the agreement on his part."

10 We admit that we agreed to accept the title of the Chelsea Title Company. The agreement, of course, says settlement to be held at the office of the Land Title Company or any other reputable title company of the state of New Jersey, title to be good and marketable and such as will be insured by the title company or companies above stated, so that the parties under the agreement had the right to settle at the Camden company or any other reputable company and the title was to be good and marketable such as would be insured by said title company or companies, meaning, of course, title to be such as would be insured by the company at which this settlement took place and the specifically allege that we agreed to take the title policy of the Chelsea Company. Now I think that binds everything right down to the Chelsea Company.

The Court: Assuming it does?

Mr. Hanstein: All right. Now, then, I take the position that if the Chelsea Title Company said, "We won't insure this title" that these complainants were not then complying with the terms of their contract.

30 The Court: But the offer now is to show that prior to this time, so far as the date is concerned, the title company had insured the title. That is the offer at the present time.

Mr. Hanstein: Please, your Honor, the title company refused to insure us.

The Court: There is nothing to show that the title company refused to insure you.

Mr. Hanstein: There certainly isn't any doubt, as I view the testimony, that the title company said there was an exception of an outstanding interest in a trustee. Now, if there is nothing else—because 10 the settlement certificate isn't in evidence—that certainly is not the case when the title company said there is this exception in this title.

The Court: Now they present a certificate of the title company dated prior to that time that there is no such exception. Aren't the complainants entitled to offer that?

Mr. Hanstein: I take this view of it. 20

The Court: You are arguing upon the weight of that testimony. I can't rule whether that paper eventually will mean or will prove that for which it is now offered, but isn't it admissible? Of course, unless you object to the form of the proof?

Mr. Hanstein: No, I don't object to the form of proof, but I say it is not material and it is not material because although the Chelsea Title Company 30 may have insured this very parcel of land before as being free and clear, they might in their judgment have determined that they made a mistake in that and there is a defect and when we came to them and said, "Will you insure us?" They said, "No, we won't insure you."

The Court: Have you got to that point?

You are now arguing upon the weight of the testimony. Isn't Judge Cole or the complainant authorized to put all their testimony in to show that that was the situation? You, of course, reply to it, but how can I now decide that the fact is that the title company refused when they want to prove that they did not refuse?

10 Mr. Hanstein: Please, your Honor, I don't think the fact that they insured this title to somebody else has any materiality in so far as proving whether the title company would insure us.

The Court: You take the position that the title company—as you are going to produce your case—that no matter whether this is good and marketable or not, if these men said, "We will go to the title company for their settlement" you insist that they
20 can arbitrarily say there is no title here, when Judge Cole now is endeavoring to show that they previous thereto had said that there was?

Mr. Hanstein: Please, your Honor, I am not entering into the question of whether they can arbitrarily refuse or the question of whether their refusal was based on fraud or whether their refusal is bona fide, we are entitled under this agreement to a title that is insured. Now, I think I might be very
30 glad to buy a particular piece of property but I might be absolutely unwilling to take that title unless it was insured to me by a title company. I do not personally want the worry of determining for myself whether a title is good or bad. I want a title company to say to me, "You have paid ten thousand dollars for this property and we will guarantee you

to the extent of ten thousand dollars that you have got a good title." If I contract for that I am entitled to that. I am not obliged to take anything less than that.

The Court: But your difficulty there is this that you are now objecting to any evidence to show that those are not the facts. That is your objection now. Here is one element of proof. What objection is there to the admission of that? I am not ruling
10 upon what weight it may have. Here is the title company over their seal say this is a good title, it is a good and marketable title at that time. Of course whether it stands or not that is entirely a different thing. I am not questioning that. I will admit this paper.

(Policy admitted and marked Exhibit C7.)

Mr. Hanstein: I say further, without proving the
20 date of delivery, that it has further no probative value whatever.

The Court: I will permit it.

Mr. Hanstein: Now, there was a question on which I was to produce an authority. I do not recall just what the question was but it seems to me it resolved about the legal question that was in your Honor's mind to the fact that whether the complainant had complied with their agreement, if they
30 offered a good and marketable title free and clear of all encumbrances if the title company refused to insure it and the title company was wrong. Is that substantially the question?

The Court: Substantially so, with two or three side issues.

Mr. Cole: Of course I had more in my mind than that. I think the testimony is quite admissible upon other phases of the case. However, I think I know the case by Judge Parker.

Mr. Hanstein: (Quoting *Love v. Fetters*, 98 Law, 10 784) Now, I say that by virtue of that authority, if the title company said, "We will not insure this title" that the complainant has fallen down in his performance of his contract. This title must be such as they would insure, unless, of course, there was some fraud involved or something like that and, of course, there is no suggestion of that in the pleadings.

I think I made my objection that any subsequent willingness on the part of the title company that 20 they would insure this title could not affect this agreement.

The Court: I will permit it to remain.

Q. Now, Mr. Perone, do you know whether on this occasion there was a deed left there at the title company?

A. There was.

Q. Executed?

30 A. Yes, sir.

Q. With whom was it left, do you know?

A. One of the clerks, Mr. Bartha.

Q. Are you sure about that?

A. Yes, sir. I showed it to the clerk making the settlement and then left it with the counter clerk.

Q. Do you happen to know who it was you left it with?

A. Mr. Bartha.

Q. Of the title company?

A. Yes, sir.

Q. That was an executed deed for this property in question, was it?

A. Yes, sir.

Q. Did Mr. Taylor know the deed was there? Did he see it?

A. I don't know. He did know that all principals were there to sign the deed. 10

Q. Was the deed signed in the title company's office?

A. No, sir.

Q. Where was it signed?

A. Outside.

Q. What do you mean by outside?

A. At the residence of the wives of the parties who signed.

Q. Do you recall who took the acknowledgments?

A. I did. 20

Q. Of all the parties to the deed, the grantors?

A. Yes, sir.

Q. Now, do you know anything about signs on this property?

A. Yes, sir.

Q. Have you seen them?

A. I have.

Q. How many are there?

A. There are, I have seen two doubles and one single. 30

Q. Do you personally know how they came to be there?

A. Yes, sir.

Q. How?

A. How they came to be there?

Q. Yes.

A. No, I don't know how.

Cross-examination.

By Mr. Hanstein:

Q. Mr. Perone, there was offered in evidence here a title policy dated May third, 1926, which you say covers this land in question and insures it. Do you know when this title policy was delivered?

A. Yes, sir.

10 Q. When?

A. It was delivered today.

Q. You just got this this morning?

A. Yes, sir.

Q. You were in at the settlement, were you not?

A. I was.

Q. You saw the settlement certificate, did you not?

A. I did.

20 Q. Did you see this settlement certificate before the settlement?

A. I did not.

Q. Did you know of the exceptions on this settlement certificate before the settlement?

A. I knew all of the exceptions except the trust deed.

Q. Didn't Mr. Garber tell you a couple of days before the settlement that there was a trust deed on this?

30 A. No, he told me that there was a cloud, that there were liens against the property.

Q. He told you that there were liens?

A. That there was a strong exception against the property.

Q. He advised you that there was a strong exception?

A. Yes.

Q. You knew that Mr. Wallace of the Chelsea Title Company was searching this title, didn't you?

A. I did.

Q. You had talked to him frequently about it?

A. Yes.

Q. After you were advised that there was a strong exception; did you go up to see Mr. Wallace?

A. I communicated with Mr. Taylor who was supposed to have told Mr. Garber.

Q. Well, didn't you go to the title company to find out what the exception was to this title?

A. I referred to our search when I questioned Mr.—

Q. I am asking you if you didn't go to the title company to find out what the situation was in this title?

A. I did not.

Q. You never went there to find out what this strong exception was, did you?

A. I did indirectly, if you will allow me to explain.

Q. Did you go personally to see Mr. Wallace?

A. I did.

Q. Before the settlement?

A. I did.

Q. Did you see the settlement certificate?

A. I did not.

Q. Did you ask to see it?

A. I did not.

Q. Did you go to talk to him about the exception?

A. Yes.

Q. Do you know what the exception was?

A. No.

Q. What were you going to talk about if you didn't know what the exception was?

A. I didn't go especially for this, on this excep-

tion asked whether there were any liens against the properties.

Q. Well, you had already been told that there was a decided serious exception?

A. No, it was denied by Mr. Taylor. He said it wasn't true, he was only joking with Mr. Garber, only kidding him along, that it wasn't true, that there wasn't an exception.

Q. Wait a minute, Mr. Perone. You testified you
10 first heard of this two or three weeks before the settlement?

A. That is when I heard of it, yes, sir.

Q. When you got in touch with Taylor, then you said Taylor said, "I was joking?"

A. Yes.

Q. Now, when Garber came to you within a couple of days of the settlement—

A. That was within a couple of weeks.

Q. Do you mean to say Mr. Garber didn't go and
20 tell you that there was a strong exception?

A. A couple of weeks before the settlement.

Q. Didn't you a minute ago testify when he came to you, you went to see Mr. Wallace?

A. That was a couple of weeks before.

Q. Didn't you go to see Mr. Wallace a couple of days before?

A. No, a couple of weeks before.

Q. Didn't you know a couple of days before of this exception?

30 A. No. Never knew of this particular exception.

Q. Well, did you go to the title company and ask for a settlement certificate?

A. Not on this particular parcel.

Q. You represented Garber in connection with some other land transactions, didn't you?

A. Yes.

Q. And he had some other land that was contiguous to this, did he not?

A. Yes.

Q. The title was all the same to all of that, wasn't it?

A. That is right.

Q. So you went up and talked about the other tract, is that it?

A. Yes, sir.

Q. Did you know, when you talked to him about
10 the other tract, of this exception?

A. No, there was no exception at that time.

Q. Do you mean to say that Mr. Wallace did not tell you that there was an exception to this policy?

A. Never.

Q. Didn't you know, as a real estate man, that when you were obliged to give a good and marketable title that it is up to you to show that your settlement certificate is clear?

A. I do, but since it was given us by the Land
20 Title Company I took for granted that it was as good at this title as the other.

Q. Well, it wasn't clear when it was given to you by the Land Title Company, was it?

A. Yes.

Q. Weren't there exceptions on the Land Title Company policy?

A. There were two exceptions which I removed previous to our date for settlement, two tax deeds;
30 they had been removed.

Q. Did the Land Title Company issue a policy?

A. No; they are waiting for our request.

Q. Now, you never before asked the Chelsea Title Company for a settlement certificate, did you?

A. No.

Q. You saw the settlement certificate when you got into the settlement, didn't you?

A. On the date of settlement, yes.

Q. You were then advised that the title company would only insure this property subject to the exception that showed, isn't that true?

A. On that particular day unless—

Q. I am talking about on that day, you were advised in the title company that the title company would only insure this property subject to these exceptions, isn't that true?

10 A. Yes, unless I saw—

Q. That is the answer to that. Now, didn't Mr. Taylor at that meeting in the title company—

The Court: Now, Mr. Hanstein, you will argue that you have testimony of this witness that the title company refused to give a title policy on that day. The witness has not said so. He has insisted on saying each time "except" or "unless" he did something. I don't know what it means, whether
20 that could have been done that day or not, but he hasn't—you have refused to permit the entire answer to the question from the witness and I call your attention now I will rule this man has not testified the title company refused to do it.

Q. You saw this settlement certificate at the title company?

A. I did.

30 Q. Do you know whether the title company would insure this property clear of these exceptions?

A. I didn't know that day whether they would.

Q. I am talking about the settlement on the fourteenth of June.

A. The fourteenth day of June I was not sure.

Q. Did you know on that day whether the title company would insure this title clear of exceptions?

A. Not on that day I didn't know.

Q. Did you have a conversation with the settlement clerk on that day in regard to these exceptions?

A. I did.

Q. What did he say about it?

A. He advised me to go up and see Mr. Wallace.

Q. Did he say anything in regard to insuring clear of the exceptions or removing the exceptions?

A. He said, only said, "I will have to see Mr. Wallace before removing it." 10

Q. Did you see Mr. Wallace?

A. I called to see him and he was absent.

Q. Do you know Mr. Lambert?

A. I do.

Q. Did you talk to him that day?

A. No, I didn't, knowing Mr. Wallace would have to be consulted.

Q. Did you talk to any other official of the Chelsea Title Company in an effort to get these exceptions
20 removed on that day?

A. It was too late in the day.

Q. I am asking you if you did?

A. I did not.

Q. Why did you say it was too late in the day? Did you know that they were not in?

A. I knew that Mr. Wallace wasn't in and he was the only man that could decide on that day.

Q. How do you know that he was the only man
30 that could decide?

A. Because all matters pertaining to this search were always called to the attention of Mr. Wallace.

Q. You knew that?

A. I knew that.

Q. You had frequently consulted him about this title?

- A. On this same title.
 Q. On this same title on other tracts?
 A. On other tracts.
 Q. And up until the time of settlement the Chelsea Title Company had never told you that they would insure this clear of exceptions, did they?
 A. Until the date of settlement?
 Q. Yes.
 A. I never spoke to the title company about it.
 10 Q. Did you ever talk to Mr. Wallace about it?
 A. Not about this particular search.
 Q. About this particular title?
 A. No. About the title I did. The title covered this tract and other tracts.
 Q. Yes?
 A. Yes.
 Q. Did he ever say that he would insure clear of these exceptions?
 A. Well, until the time I spoke, during the time
 20 I spoke to him each time he said there were no other exceptions.
 Q. No other than what?
 A. That there were no exceptions, that the property was clear.
 Q. He said that there were no exceptions?
 A. That there were no exceptions.
 Q. Not even the exceptions that the Camden Company showed?
 A. Except the usual exceptions, yes.
 30 Q. Well, did he say that he showed the same exceptions as the Camden Company?
 A. No, he didn't say. I asked him whether the title appeared cloudy and he said no.
 Q. Did you not ask him if there were any exceptions to the title?
 A. I didn't exactly use that wording, I said, I asked him whether the title—

- Q. You never asked him for a settlement on this?
 A. On that particular tract, no.
 Q. You never got anything in writing prior to this date of settlement?
 A. No.
 Q. Do you recall Mr. Taylor asking that a stenographer be brought into the office at the time of the settlement, in the settlement room?
 A. No.
 Q. Don't remember that? 10
 A. No.
 Q. What was it that you said Mr. Taylor claimed were the defects in this title that he objected to?
 A. The rights of the trust deed.
 Q. Is that the only thing he said?
 A. That is the only thing.
 Q. Will you say that Mr. Taylor did not say, have the stenographer brought in and dictate his statement to her?
 A. Statement? No. 20
 Q. He didn't make any demand?
 A. No.
 Q. Are you quite certain of that?
 A. Oh, yes.
 Q. How long were you in this settlement room?
 A. Oh, about twenty-five minutes, I guess.
 Q. You say you saw the Taylor and Soloff signs on this tract?
 A. I did.
 Q. Do you know whether or not Mr. Garber gave 30 permission for those signs to be erected?
 A. I don't know.
 Q. Don't know?
 A. Don't know.
 Q. It isn't an unusual thing for a real estate man to put his signs on a property when his client has

bought the property and has it in mind that he is going to sell it, is it?

Mr. Cole: I object. Not cross-examination.

The Court: I will permit it.

A. You say it is unusual?

Q. Yes.

10 A. In some cases.

By Mr. Cole:

Q. You said that before the day of settlement, June fourteenth, you had arranged for the removal of certain exceptions from the settlement certificate of the Land Title Company, is that correct?

A. I didn't hear you.

20 (Question repeated.)

A. Yes, sir.

Q. Will you look at that and tell us which of the exceptions you had—

A. Exception number eleven, exception number ten and eleven.

Q. Now, it appears on here, number twelve, agreement of sale W. G. Coughlin and James Rubertone. Can you explain that?

30 A. Yes.

Mr. Hanstein: I object to this. I don't see the relevancy of this testimony at all. I don't think that the fact that he may have cleared up a settlement certificate in the Camden Company and gotten a perfectly clear title has any relevancy in this matter.

I think it is purely, as I said before, what the Chelsea Company would do.

The Court: I will permit it.

Q. Tell me what that agreement of the sale means?

A. Mr. Rubertone purchased from Mr. Coughlin and sold to us.

Q. In other words, so you got Rubertone's interest in the agreement?

A. Yes, sir.

10

Q. Now, I notice that there are 13, 14, and 15, judgments, which are marked "removed" on this certificate; do you know whether or not those judgments did in fact involve this land?

Mr. Hanstein: I make the same objection to this entire examination on this settlement certificate.

The Court: I will permit it.

20

A. Yes, they were not the Coughlin in question.

Q. In other words, William Coughlin against whom the judgment was is not the one who owned this land?

A. No.

Q. Now, I don't know whether you know or not, but I have forgotten about the terms of the agreement; there is a mortgage on this land to Rubertone for twenty thousand dollars?

A. Thirty-eight thousand dollars.

30

Q. Had there been any arrangement made to clear this land of that mortgage?

A. No.

Q. How was that to be arranged? Was this agreement provided for taking subject to that mortgage?

A. Yes, sir.

Mr. Hanstein: In other words, that mortgage was to stay on the property?

A. Yes, sir.

Q. You were asked whether you had ever secured a title from the Land Title Company and I ask you whether the Land Title Company are ready to issue
10 a policy?

A. They are.

Mr. Hanstein: I have an objection.

The Court: I will sustain that objection.

Mr. Hanstein: I ask the answer to be stricken.

The Court: It may be stricken.

20

By Mr. Hanstein:

Q. How do you know that those judgments are not against the Coughlin who is in the chain of title?

A. Because Mr. Coughlin took an affidavit to that effect.

Q. Who?

A. Mr. Coughlin.

Q. Who?

30

A. Coughlin, the man in question. The judgments you are referring to?

Q. Yes, he took an affidavit?

A. He took an affidavit to the effect.

Q. That these judgments are not against him?

A. Yes.

Q. Did you have any other affidavit in regard to it?

A. Yes.

Q. What other affidavit?

A. There were two affidavits produced on these judgments by Mr. Coughlin.

Q. They were both Mr. Coughlin's affidavits?

A. Yes, sir.

10

JULIUS TAYLOR, sworn for complainants.

Direct examination.

By Mr. Cole:

Q. Are you of Taylor and Soloff?

A. I am.

Q. Are your signs on some part of this land? 20

A. They are.

Q. Who caused them to be put there?

A. We did.

Q. By that you mean Taylor and Soloff?

A. Taylor and Soloff.

Q. How many signs are there?

A. Six—five—two doubles and one single.

Q. When were they put there?

A. They were placed there about ten days or fifteen days after the agreements were signed. 30

Q. Wasn't one of those signs placed there as late as July thirteenth?

A. Yes, I beg pardon; one of them wasn't finished at that time, it was a large sign.

Q. I ask you wasn't one of them put there as late as July thirteenth?

A. I don't know the exact date but I know it was put there later.

Q. After June fourteenth, wasn't it?

A. I think so.

Q. You caused that to be done, didn't you?

A. We did.

Q. Still there, isn't it?

A. I think so.

10 Q. Can you identify that one of the photographs that was put there after the date of the rescission?

A. These are the signs.

Q. Which one is it, I mean?

A. This is the sign that was put there later.

Q. That is Exhibit C6, that he refers to. For whom were you trying to sell this land under these signs?

A. Jacob Stern.

Q. The defendant in this case?

A. Yes.

Q. Had authority from him to sell it?

20 A. Yes, sir.

Q. And acting under that you put the signs up?

A. That is right.

Cross-examination.

By Mr. Hanstein:

Q. Did Mr. Stern have any interest in the business of Taylor and Soloff?

A. No.

30 Q. When you say you were trying to sell this land for Mr. Stern, in what way were you acting?

A. As his broker.

Q. Did you personally put up these signs?

A. No, Franklin Brothers put up those signs.

Q. When did you instruct them to put them up?

A. About five days after the agreement was signed, or two days.

Q. When did you instruct them to put up this sign that was erected on the fourteenth of July?

A. At the same time we gave the order for all of the signs at the same time.

Q. When did you tell him to put them up?

A. As soon as he could get them finished.

Q. When did you find out that he erected a sign on the fourteenth of July?

10 A. Well, we didn't know exactly what day that big sign was put up there but we know that it wasn't put up when the rest of them were placed.

Q. Was it in fact erected subsequent to the date of settlement, the date fixed for settlement?

A. I am not sure about that. I think so,

Q. You think it was?

A. I think so.

Q. Had you between the intended date of settlement and the time of the erection of that sign, given 20 any instructions to Franklin in regard to the sign?

A. No.

Q. Did you know he was going to put it up?

A. We did.

Q. Didn't you know that he had rescinded this contract on the fourteenth of June?

A. We couldn't rescind we did—we couldn't cancel the order for the sign, that big sign was a thirty-foot sign and we had to take it anyhow, we had given the order for all of the signs at the same time 30 and on account of his being so busy he couldn't get the large sign at the same time he did the smaller ones.

Q. Was anything done by Taylor and Soloff subsequent to the date of the intended settlement with relation to the signs toward directing their erection?

A. No.

Q. This large sign was put up purely as a part of the original contract?

A. That is right.

By Mr. Cole:

Q. If you thought that there had been an adequate and complete rescission of the contract on
10 June fourteenth and you knew the signs were there, why didn't you go and take them off?

A. We made a demand for the deposit and it wasn't—

Q. I didn't ask you that question. I ask you why you didn't go and take the signs off?

A. We wanted to see the result of the suit we had contemplated against the sellers.

Q. You knew you had rescinded the contract, didn't you?

20 A. Yes, sir.

Q. You knew all rights between the parties so far as you were concerned had ended?

A. So far as we were concerned, yes, sir.

Q. But you still kept your signs there?

A. That is right.

Q. Are they there yet?

A. Yes.

Q. On behalf of Mr. Stern?

A. On our behalf now as a matter of advertising.

30 Q. You said Mr. Stern hadn't any interest in the firm of Taylor and Soloff, I believe I asked you whether the firm of Taylor and Soloff have any interest in this agreement?

A. No.

Q. Have a commission interest, of course?

A. Commission, that is all.

Q. Nothing beyond that?

A. That is all.

IRVIN SHERMER, sworn for complainants.

Direct examination.

By Mr. Cole:

10

Q. Mr. Shermer, did you have anything at all to do with this agreement or anything or anything that happened afterwards?

A. Yes.

Q. When were you first brought into it?

A. We sold the agreements to Mr. Garber. We were the agents to sell the ground to Mr. Garber.

Mr. Hanstein: Who do you mean by we?

20

A. Mr. Frank Perone and myself.

By Mr. Hanstein:

Q. Are you partners?

A. Not partners but we work together, co-workers.

By Mr. Cole:

Q. Do you know whether Mr. Taylor, Soloff and
30 Stern were on this ground in question before this agreement was signed?

A. Not personally, no.

Q. Now, did you attend upon the settlement on June fourteenth?

A. I did.

Q. Tell us what took place?

A. Why Mr. Taylor arrived and the principals were there and Mr. Taylor brought forth the certificate that he received from the Chelsea Title Company and told us he was prepared to make settlement but that there was an exception of the deed and we couldn't deliver the title. We asked him what it was and Mr. Taylor told us what it was, it was a trust deed from Coughlin to Browning.

10 Q. Was that at the time of settlement?

A. At the time of settlement with Taylor or rather with Stern.

Q. Was any objection made to any other exception?

A. None.

Q. Recall any reference to the telephone poles?

A. I do.

Q. What was said about that?

20 A. Mr. Taylor, on reading over the entire certificate read the exception of the rights of the telephone and telegraph company and says, well, he says "We don't care about that. What we want is this trust deed removed and if you can remove that today we are prepared to make settlement."

Q. What time of day was that?

A. The time of day?

Q. Yes.

A. Three o'clock, June fourteenth.

30 Q. Now, had you yourself any notice or information about that particular exception, the Coughlin deed before that date?

A. I myself, no.

Q. Did you have anything to do with the negotiations looking to the making of this agreement?

A. I was present at the time Mr. Stern made the agreement.

Q. Who were present?

A. Mr. Perone, Mr. Latt, Mr. Garber, Mr. Taylor, Mr. Soloff and myself and, of course, the stenographer.

Q. And when you say you were together with Mr. Taylor and the defendant just what do you mean by that?

A. Mr. Taylor drew up this agreement; he had the agreement partly drawn when we arrived, that is the facts in it, of course he called the stenographer in to type it. 10

Q. Now, do you know whether or not there was a signed deed from Mr. Garber and his wife and the other party and his wife for this property at the title office?

A. On that day?

Q. Yes.

A. Yes.

Q. Did you see it?

A. I did. 20

Q. Was it signed?

A. It was signed.

Q. Do you know what became of it?

A. Mr. Perone brought it to the title company and left it at the desk.

Q. Had you any talk with Mr. Taylor or Soloff or Stern at any time after this agreement was signed and before June fourteenth concerning this agreement or its fulfillment?

A. No.

Q. You hadn't hadn't seen any of them? 30

A. No. Pardon me, I did have with Mr. Taylor. Mr. Taylor mentioned to me the fact, that is not personally to me but I heard it mentioned, I think it was to Mr. Garber—I was present at the time—we were discussing the commission, the size of the commis-

sion, was a very large commission and Mr. Taylor and Mr. Soloff, either one of the two, mentioned that that commission wasn't coming to them but that was to be used to clear off the ground for Mr. Stern to clear off the ground, they wouldn't receive that entire commission but that—

Mr. Hanstein: I object to that.

10 Q. That was talk with Mr. Taylor, conversation with him?

A. Not personally to me but Mr. Garber and Mr. Taylor. I was present at the time.

Mr. Hanstein: May it please your Honor, I ask that be stricken as not relevant to this matter.

Mr. Cole: I think it is relevant about the relation of Mr. Taylor to this transaction.

20

Mr. Hanstein: I don't think it would matter if Taylor was a partner in this agreement. You haven't sued him as such. Stern is the defendant. Taylor is merely a broker and what he does with his commission is immaterial.

The Court: I will sustain the objection at this time. It may become admissible later.

30 Mr. Hanstein: I will ask that that answer be stricken.

The Court: It may be stricken.

Cross-examination.

By Mr. Hanstein:

Q. Do you recall a stenographer being brought into the settlement?

A. Into the settlement room?

Q. Yes.

A. A stenographer of the Title Company, yes, 10 was brought in by the clerk.

Q. At that time Mr. Taylor dictated his objections to this title, did he not?

A. I don't remember that.

Q. What was dictated to this stenographer?

A. I don't remember, to my knowledge I don't think anything was dictated to the stenographer. She arrived there with her book and nothing was given her, nothing was called off at the time.

20

FRANK PERONE, recalled.

By Mr. Cole:

Q. When Mr. Taylor told you concerning some exception that he was kidding Mr. Garber, as I recall, did you believe that?

A. I did.

30

JOSEPH MOORE, sworn for complainants.

Direct examination.

By Mr. Cole:

Q. Mr. Moore, you are in the employ of the Chelsea Title?

10 A. I am.

Q. And what is your title or position?

A. Settlement clerk.

Q. Did you have something to do with this settlement or attempted settlement between Garber and Stern?

A. I attempted to make it, yes, sir.

Q. Do you recall whether any deed was left with the title company from Garber and wife and others to Stern?

20 A. No.

Q. Have you made any search for it?

A. No.

Q. Have you asked at the counter for it?

A. No, I have not. First I heard about it was yesterday.

Q. Now, will you please tell us your recollection of what happened. Tell us first who were present?

30 A. Mr. Perone, Mr. Taylor, I am not sure of the other gentlemen because I didn't know them. Mr. Garber I think was there but they are the only three that I knew.

Q. Just before you answer that question, do you know when it was that either Taylor, Soloff or Stern, whoever it was, received the settlement certificate? When was it delivered to them?

A. That I don't know.

Q. You have no way of telling that?

A. Well, I might find out from the company.

Q. But you don't presently recall?

A. No.

Q. Tell us what happened on this occasion?

A. Mr. Taylor was representing Mr. Stern and Mr. Perone was representing Mr. Garber. They came in to make settlement and they asked me whether there was any objections against the property.

10

Mr. Hanstein: When you say "they" I wish you would be more explicit.

Q. Who asked that?

A. Mr. Perone and Mr. Taylor asked and I showed them the settlement certificate and they asked me if there was any way of removing them. I looked at them and I said I couldn't remove them myself but I thought maybe Mr. Wallace or one of the officers might be able to and being that Mr. Wallace made the search I went up to see him, he couldn't take them off and I came down and I told them that and that is when they had the argument as to whether the title was marketable.

20

Q. Tell us all that was said on that occasion as near as you can recall it?

A. I don't remember everything was said in it.

Q. All you can remember, tell us.

A. Mr. Taylor read the exceptions and he said that—

30

Q. What exception?

A. Well, there was the exception of the outstanding trust, exception of the Delaware and Atlantic Railroad and Telegraph Company and the Camden and Atlantic Railroad Company, West Jersey now, I

believe, there was three or four of them and he said, "In view of the fact that the title was supposed to be free and clear of all exceptions and they appeared on there that he didn't see how he could accept the title and Mr. Perone said title was clear and all of them could be removed. That was all that was said that I remember.

Q. Do you recall any particular reference to the D & A telephone poles?

10 A. No, what was your question again?

(Question repeated.)

A. Well, yes, they read them out.

Q. What was said about them, if anything?

A. That there was a lien against the property according to the agreement of sale.

Q. Was there anything said by Mr. Taylor as to whether or not he was insisting upon that objection?

20 A. He didn't say that he would insist on it. He said according to the agreement it was against the property but that it wasn't a very major exception, wasn't a major exception.

Q. Now, was that the end of it? Is that all that happened?

A. That is all that I had anything to do with.

Cross-examination.

30 By Mr. Hanstein:

Q. You say you went up to see Mr. Wallace about removing those exceptions?

A. Yes, sir.

Q. Did you see him?

A. Yes, sir.

Q. Mr. Wallace was the representative of the title company had to do with the searching of this title?

A. Yes, he made the search, yes, sir.

Q. Did Mr. Perone go up with you when you went to see Mr. Wallace?

A. No.

Q. Did he go up during the course of that settlement to see him?

A. He left the room, I thought he was going to see Mr. Lambert but I don't know where he went. 10

Q. Well, you were able to see Mr. Wallace while that settlement was in progress, were you not?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. Wallace was there?

A. I am almost certain he was.

Q. Is this the settlement certificate or a copy of it that was used at that settlement?

A. With a few additional exceptions on it, yes, sir. 20

Q. What is that?

A. I think a few additional exceptions put on afterwards which have been removed, this is the copy.

Q. Let me get this straight, is this the settlement certificate that was used at this settlement?

A. Yes, sir.

By the Court:

Q. Is this the physical paper that was used? 30

A. That is a copy that was there at the settlement.

Q. That is what he is asking, is this the paper that was used at the time of the settlement?

A. I don't know.

By Mr. Hanstein:

Q. Do you have your file with you?

A. I believe Mr. Lambert has it.

Q. Do you know if this is the settlement certificate that was physically present?

A. Yes.

(Settlement certificate marked D2 for identification.)

Q. Were you asked at that time if the Chelsea Title Company would insure this property?

A. Yes.

Q. What answer did you make?

A. I said unless those exceptions were removed, the outstanding trust, that we couldn't insure it unless Mr. Lambert or one of the officers would mark it off.

Q. Did Mr. Lambert or any other officer mark it off?

A. Not at that time, no, sir.

Q. Did you go to and talk to Mr. Wallace on the day of the settlement in an effort to get that removed?

A. I believe I did, yes, sir.

Q. And he refused to do it?

A. Yes, sir.

Q. Did you call a stenographer into that settlement?

A. Yes, sir.

Q. Did Mr. Taylor make a statement of his objections to this title at that time?

A. Yes, he did.

By Mr. Cole:

Q. Is it perfectly clear to you that you went to see Mr. Wallace?

A. Yes, I remember going up to see him. I am not certain as to that date but I am almost positive.

Q. We are talking about that day?

A. Yes, I did go upstairs to see Mr. Wallace.

Q. Isn't it a fact you sent Mr. Perone up?

A. I didn't send Mr. Perone up to see Mr. Wallace as I recall. I said he better see an officer of the company or somebody could remove the exceptions but I couldn't, but I would make an effort.

Q. Did you go up to see Mr. Wallace while they were there?

A. Yes, sir.

Q. That is clear, is it?

A. Yes, sir.

20

JULIUS TAYLOR, recalled.

Direct examination.

By Mr. Cole:

Q. Do you know if Mr. Stern saw this land before he signed the agreement?

A. Yes.

Q. How long before?

A. Oh, about a day before he signed the agreement.

Q. Had you seen it before?

A. At the same time.

Q. Were the telephone poles there?

30

- A. No, I didn't see them there.
 Q. What?
 A. I didn't see the poles there.
 Q. See any wires?
 A. I don't recall.
 Q. You think they were there at that time?
 A. Well, they could have been there.
 Q. What?
 A. They could have been on the other side of the
 10 road too. I was looking for land, not for poles.
 Q. That is all.

WILLIAM G. LAMBERT, sworn for complainants.

Direct examination.

By Mr. Cole:

- 20 Q. Are you connected with the Chelsea Title Com-
 pany?
 A. I am.
 Q. What is your position?
 A. I am secretary of the Chelsea Title Company
 of Atlantic City.
 Q. Did there come a time when your attention was
 called to this agreement and title in question?
 A. Yes, sir.
 Q. When was it?
 30 A. I am not clear on the date but I think I am very
 safe in saying it was after the date of the settlement,
 June fourteenth.
 Q. After the date of settlement was there a further
 investigation made by the company touching this
 title?

Mr. Hanstein: I object to that, your Honor on the
 ground that what the company may have decided or
 done about this after June fourteenth would be im-
 material.

The Court: I will permit it.

A. It was after the date of settlement that the
 matter was ever officially taken up with the Chelsea
 Title Company.

Q. How is that? 10

A. It was after the date of settlement that matter
 of exceptions was ever taken up officially with the
 title company.

The Court: Just one moment, let me understand;
 what do you mean by officially with the title com-
 pany? Your settlement certificate had been issued
 long before that.

A. As to the removal of the exceptions, your 20
 Honor.

Q. Did Mr. Taylor or Mr. Soloff or Mr. Stern ever
 bring this exception to your attention before June
 fourteenth?

A. No, sir.

Q. Was it one of the three who had applied for
 this insurance?

A. Yes, sir, Taylor and Soloff applied for the in-
 surance.

Q. Did there come a time when your company, 30
 after it had its attention drawn to this exception,
 agreed to insure?

A. Yes, sir; we agreed to insure against a par-
 ticular exception pertaining to the Browning trust.

Q. And it has since issued its policy, has it not?

A. Yes, sir, as against that one exception.

Q. Whatever the policy shows, of course, is the thing you are excepting?

A. That is right.

Q. Can you tell us about when it was that you came to the conclusion that it was all right to insure against that deed?

A. I believe we finally got a decision from our solicitor on July fifth.

10 Q. Do you know whether that conclusion was communicated to Mr. Taylor or Soloff or Stern?

A. Mr. Taylor or Soloff had never consulted me concerning it. I was under the impression that Mr. Perone representing Mr. Garber was trying to find a new purchaser for the property. He didn't say so but that was the impression I had.

Q. I want to know whether you had in fact yourself communicated it to either Taylor or Soloff?

A. No, sir.

20

Cross-examination.

By Mr. Hanstein:

Q. Mr. Lambert, there isn't any doubt that an application was made to the Chelsea Title Company for the examination of this title?

A. That is true.

Q. And what did the title company do with regard to examining or having this title examined?

30 A. We let the title out on a special contract to a man by the name of William H. Wallace of Newark.

Q. Who has an office in the Chelsea Bank Building?

A. He has an office in the Chelsea Bank.

Q. And you engaged him to search this title for you?

A. Yes, sir.

Q. Engaged him to issue a settlement certificate for you?

A. To run the exceptions for us subject to our approval, yes, sir.

Q. And when a settlement certificate was issued that was the act of the Chelsea Title Company, I presume?

A. Yes, that is ordinarily true.

Q. And the settlement certificate that the Chelsea Title Company issued on this title to Taylor and Soloff is this settlement certificate marked D2 for identification and bearing Chelsea Title Company application number 9378, is it not? 10

A. Yes, sir.

Q. And that is the settlement certificate your company issued?

A. Yes, sir.

Q. For this settlement to be held on the fourteenth of June? 20

A. That is right.

Q. Your company was unwilling, was it not, on the fourteenth of June to insure this title clear of all encumbrance?

A. Impliedly was by the—well, not impliedly was, absolutely was, yes, and still are in accordance with the terms of the agreement.

Q. On the fourteenth of June your company was unwilling to issue a policy of insurance on this title unless it included among other exceptions the Browning deed? Isn't that true? 30

A. Well, that is only impliedly so. We had accepted the settlement certificate of Mr. Wallace and no question had been raised officially to the title company asking us to remove it.

Q. Wasn't Mr. Wallace the one whom you had

authorized the doing of the work in connection with this?

A. Yes.

Q. You relied on his work?

A. We relied on his work.

Q. Anything that he did in regard to this title was all right with the title company, was it not?

A. So far as putting exceptions on were concerned but no authority to remove them.

10 Q. So that the settlement certificate as issued shows the exceptions your company considered to be against the title on that date?

A. That is right.

By the Court:

Q. Did Soloff and Taylor or Stern, either prior to June fourteenth or after, ask for that exception to be removed?

20 A. To my knowledge, not.

Q. Your exception is the interest as trustee of Stephen Colwell. Has the company ascertained whether there existed at that time any interest in anyone as trustee for Colwell?

A. We have ascertained that there is no interest because that is a dry trust.

Q. Then on the fourteenth day of June, although you had that exception in your settlement sheet, the exception itself was not a valid exception?

30 A. That is true.

(Recess taken to 1.00 P. M.)

AFTERNOON SESSION.

(Trial resumed at 1.00 P. M.)

Mr. Cole: I am offering recorded deed dated April 28, 1926, from James Rubertone, Jr., and his wife, to Garber, recorded book 824 of deeds page 104.

(Deed admitted and marked Exhibit C8.) 10

FRANK PERONE, recalled.

Direct examination.

By Mr. Cole:

Q. I show you now a deed executed and acknowl- 20
edged by Garber and his wife and Latt and his wife and ask you whether you just recently handed me that deed since recess?

A. Just handed it to you.

Q. Won't you please explain that deed, how you came to get it to hand it to me?

A. On the date of settlement I had the title com-
pany prepare the deed and then went out and exe-
cuted it and brought it back to the settlement clerk
and asked him to look at it, which he did. 30

Q. Now, did you leave that there? That is what I want to get at?

A. The settlement clerk told me—No, I asked him would it be safe to leave the deed in their possession. He said to take it to Mr. Bartha and leave it with him.

Q. Did you?

A. Then I left it with Mr. Bartha.

Q. All right; now then, where did you get the deed today?

A. From my files.

Q. Where is that?

A. At my office at 112 South—

Q. When did you get it then from the office of the title company?

10 A. About a couple of weeks later.

(Deed offered, admitted and marked Exhibit C9.)

Q. By the way, who prepared that deed for you?

A. Chelsea Title Company.

Q. On that very day?

A. On that very day.

No cross-examination.

20

By Mr. Hanstein:

Q. Mr. Perone, you took those acknowledgments where?

A. Two of them at the title company.

Q. What two at the title company?

A. Well, Mr. Latt and Mr. Garber.

Q. Mr. Latt and Mr. Garber at the title company and where did you take Mrs. Latt and Mrs. Garber?

30 A. At their residence.

Q. They were not at the settlement?

A. They were prepared to come at the settlement.

IRVIN SHERMAN, recalled.

Direct examination.

By Mr. Cole:

Q. What is the character of this land?

A. It is undeveloped, pine trees on it and brush.

Q. No improvements on it at all?

A. None at the time of settlement.

Q. No buildings of any kind to be subject to mechanics' liens?

A. No, sir.

Q. Any municipal improvements?

A. No, sir.

Q. Any such thing as grading, curbing, guttering, paving, sidewalks, sewer or water pipes?

A. No, sir.

Q. Perfectly plain?

A. Timber.

Q. No fences or buildings of any kind?

A. No.

Q. Anybody occupying the property?

A. None to my knowledge.

Q. Now, in this title policy offered in evidence it says "Subject to the interest of Harry A. Latt in the premises?"

A. Yes, sir.

Q. Is he the Harry Latt who is a party to this bill?

A. Yes, sir.

Q. It also says "Subject to a mortgage of Garber to Rubertone for thirty thousand dollars?"

A. Yes, sir.

Q. Had any arrangement been made to get that mortgage out of the way?

A. Yes, sir; at the time of settlement.

Q. Was Mr. Rubertone there?

A. He was.

Q. How was that to be done?

A. Why we were to pay off Mr. Rubertone the thirty thousand dollars, the amount of the \$28,000 mortgage to Taylor and Soloff and we were to pay the cash at the time of settlement.

10 Q. In other words the twenty-eight thousand dollar mortgage you put against it under the agreement with Garber you were to assign to Rubertone?

A. Yes, sir.

Q. By arrangement with him you were to carry that mortgage?

A. Yes, sir.

Q. He was there that day for that purpose?

A. Yes, sir.

Q. Did Mr. Taylor know he was there?

A. Yes, sir.

20

Cross-examination.

By Mr. Hanstein:

Q. There have been certain lots on this tract of land sold out?

A. Yes, sir.

Q. Other people other than Garber and Latt owned these lots?

30

A. Yes, sir.

Q. Who had sold these lots?

A. Why, to my knowledge it was Coughlin, the original owner had sold these lots, the owner that sold to Rubertone had sold these lots.

Q. The people who owned these lots, so far as you know, were neither Garber, Latt or Stern?

A. Or Stern, that is right.

Q. None of those three owned them?

A. Neither owned those lots.

COMPLAINANTS REST.

The Court: I notice that the article of agreement calls for a plan supposed to be attached to it and 10 made a part thereof. There is none in our copy, the copy that has been presented.

Mr. Cole: My client said that there was a plan presented at the time. That is my copy and I haven't it.

Mr. Hanstein: I have it.

Mr. Cole: I will offer it, then.

20

Mr. Hanstein : It is identified by signatures.

Mr. Cole: This is the endorsement: "This map to be attached to and made a part of the agreement of sale with Harry Garber" and signed "Harry Garber" so we will offer it.

(Map admitted and marked Exhibit C10.)

Mr. Hanstein: I want at this time to move to 30 dismiss the counter-claim filed in this matter.

The Court: By consent it is withdrawn.

DEFENDANT'S TESTIMONY.

JULIUS TAYLOR, recalled for defendant.

Direct examination.

By Mr. Hanstein:

10 Q. Mr. Taylor, did you, subsequent to the giving of this agreement, make request of the Land Title Company of Camden to insure this title?

A. I did.

Q. Is this letter marked D1 for identification the letter that you received back in reply to that request?

A. It is.

20 Q. Did you show this letter to the complainant or their agents?

A. I did.

Q. Who did you show it to?

A. I showed it to Mr. Garber.

(Letter offered, admitted and marked Exhibit D1.)

30 Q. Did your request to that company for title insurance which is referred to in their letter marked D1 refer to the tract in question?

A. It did.

Q. Now, when you showed this to Mr. Garber what conversation did you have with him in regard to it?

A. Mr. Garber had come into our office—

Q. Fix the time, please.

A. Oh, I suppose it was right after the time we

received this letter and I told him that we couldn't get title insurance from the Land Title Insurance Company of Camden and he then told me that they had an application at the Chelsea to insure the land adjacent to this tract and that we could get title insurance from the Chelsea and I told him that is what we would do, we would apply to the Chelsea Title Company for our insurance.

Q. Did you then make an application to the Chelsea for this insurance? 10

A. I did.

Q. Did you tell Mr. Garber that you had made the application?

A. I did.

Q. Have you received a bill from the Chelsea Title Company for the making, for the search work that has been done?

A. We have.

Q. How much was that bill? 20

A. One thousand dollars.

Q. Now, when the day of settlement arrived where was Mr. Stern?

A. He was in our office.

Q. Who attended the settlement for him?

A. I did.

Q. How far is your office from the Chelsea Title Company?

A. It is next door.

Q. When you went into the settlement were you familiar with the settlement certificate of the Chelsea Title Company? 30

A. I was.

Q. Was this copy of the Chelsea Title Company settlement certificate number 9378 the one that was delivered to you by the Chelsea Title Company?

A. It is.

Q. Had you prior to—

(Settlement certificate marked Exhibit D3.)

Q. Had you prior to the time of settlement advised Mr. Garber or Mr. Latt or their agents of this settlement certificate and the exceptions thereon?

A. Not in regards to this settlement certificate.

Q. What did you tell them?

A. When I spoke to Mr. Garber I had no intimation at all about the title company—oh, yes, I spoke to Mr. Garber about two days before the settlement.

10 Q. That was after you had the settlement certificate?

A. Yes.

Q. Did you tell him of the defects?

A. I told him that there were several defects in the title.

Q. Now, when you went to the settlement what did you say to Mr. Garber at that time?

20 A. I told Mr. Garber that I was at that settlement representing Mr. Stern, the purchaser under the agreement of sale between Harry Garber, Harry Latt and Mr. Stern and I showed him the certificate and pointed out to them several exceptions shown on that certificate, pointed out the exception, there was one exception of the Camden and Atlantic or the Delaware and Atlantic Telephone Company to maintain poles; there was an exception shown as to the rights of the railroad; there was an exception shown as to the rights of the public about streets and also this exception shown as to the outstanding trust in Abraham Browning.

30 Q. What did you say—by the way, did you have a stenographer present at that time?

A. I did.

Q. Did she make notes of your statement?

A. She did.

Q. What did you—after pointing out these exceptions to them what did you say in regard to your making settlement at that time for Mr. Stern?

A. After I pointed out these exceptions I called their attention to the fact that we had bought this land subject to their delivering a good and marketable title and I said, "Now under this agreement we are to assign a thirty-eight thousand dollars mortgage." I said, "Here is the mortgage, the bond and the assignment for that." I said "We are to make 10 and execute and deliver a purchase money mortgage covering this land in the sum of twenty-eight thousand dollars." I said, "Now here is the mortgage and that bond." I says "Now, if you can deliver to us a good and marketable title we stand ready to pay the balance of the consideration money today."

Q. Did you say something about title insurance?

A. I asked Mr. Moore, the settlement clerk, whether the title company would insure title for us 20 as we bought it under our agreement.

Q. Was Mr. Garber present when you made that request?

A. Yes, and Mr. Moore said that the title company would not insure that way.

Q. Did you go up to see Mr. Wallace?

A. I did.

Q. Who did you go up with?

A. I went up by myself.

Q. Did you request—what did you say to Mr. Wallace in regards to the exceptions? 30

A. I went up to Mr. Wallace's office and I showed him the settlement certificate; I also showed him our agreement of sale and I asked him to explain to me these exceptions, which he did, and he told me that the title company would call for or that he

told me that there was an outstanding trust from Stephen Colwell to Abraham Browning and that, in so far as their records were concerned, they did not show or did not know whether Browning had at any time conveyed that trust out of himself. I said, "Well, now we bought this property subject to their delivering a good and marketable title." I says, "Now is this title good and marketable?" He said, "No."

10 Q. Say anything to him about insuring it?

A. I asked him would the title company insure the title for us free of this exception. He said, "No."

Q. Was Mr. Stern ready to settle at that time?

A. He was.

20 Q. I show you mortgage of Eva Herlick, a single woman, to Jacob Stern, dated January twenty-fifth, 1926, in the amount of thirty-eight thousand dollars, recorded Atlantic County Clerk's office in book 384 of mortgages page 333, &c., also a bond of Eva Herlick, a single woman, to Jacob Stern in the penal sum of seventy-six thousand dollars and ask you if—and an assignment from Jacob Stern to Harry Garber and Harry Latt assigning those mortgages and ask you if you tendered those papers at the settlement?

A. I tendered those papers at the settlement.

Q. Did you have them marked by the settlement clerk?

30 A. I did.

(Bond, mortgage and assignment offered, admitted in evidence and marked Exhibits D4, 5 and 6.)

Q. I also show you a purchase money bond and mortgage from Jacob Stern to Harry Garber and

Harry Latt in the penal sum of fifty-six thousand dollars, conditioned for the payment of twenty-eight thousand, bearing date the fourteenth of June, 1926, also a mortgage to secure that bond covering the premises involved in this litigation and ask you if you tendered that bond and mortgage?

A. I did.

Q. Did you have them marked by the settlement clerk as having been tendered?

A. I did.

10

(Bond and mortgage offered, admitted in evidence and marked Exhibits D7 and 8.)

Q. Did you rely on the title company in examining this title?

A. I did.

Cross-examination.

By Mr. Cole:

20

Q. Were you the agents of Garber in trying to sell this land?

A. Yes, we acted as agent.

Q. When did you get to be agent for Stern?

A. Immediately upon Stern signing the agreement.

Q. What?

A. Upon Stern signing the agreement.

Q. Then you got to be his agent?

30

A. Yes.

Q. Have any understanding with him about that, about your being his agent?

A. Understanding with whom?

Q. Stern?

- A. Yes.
 Q. What was your agency?
 A. Why, as it usually is with Mr. Stern that we act for him in the sale of the properties that he buys.
 Q. You were representing Mr. Garber in an effort to sell to Mr. Stern, weren't you?
 A. Up until—
 Q. Were you now or not? Were you?
 A. Yes, when we sold the property.
 10 Q. At that time were you an agent for Mr. Stern?
 A. No, not at that time.
 Q. Done any work for him at all?
 A. In reference to this particular settlement?
 Q. Before this agreement had you done any work for Mr. Stern?
 A. Oh, yes.
 Q. Had been his agent?
 A. In other matters, yes.
 Q. He ask you to negotiate for the purchase of
 20 this property?
 A. No, he did not.
 Q. How did you come to do it?
 A. Mr. Garber asked us to sell the property for him and we submitted it to Mr. Stern and he bought it?
 Q. Was there any reason that you know of why Mr. Stern did not attend this settlement?
 A. Mr. Stern never attended to settlements where, on properties that we have sold him.
 30 Q. He left that entirely with you?
 A. Yes.
 Q. When you went to the title company that day did you think there may be a settlement?
 A. Yes.
 Q. You knew what was contained in the settlement certificate?

- A. I did.
 Q. With that knowledge you thought there may be a settlement?
 A. Yes.
 Q. Rather expected there would be one, didn't you?
 A. I wouldn't have been surprised if there had been one.
 Q. How did you expect Mr. Garber to get rid of that right of way of the Camden and Atlantic Rail- 10 road?
 A. I don't know how he would get rid of it.
 Q. You knew the railroad tracks were down there, didn't you?
 A. I did.
 Q. It was on the map that you have before you?
 A. Yes.
 Q. Did you honestly think they might get rid of that in some way?
 A. You can never tell what is liable to happen in 20 a settlement.
 Q. I am asking you did you honestly think they might get rid of the Camden and Atlantic Railroad?
 A. I didn't think so.
 Q. What?
 A. I don't honestly think they would.
 Q. If that had been all there was in the case you would not have rescinded this contract, would you?

Mr. Hanstein: I object to that. I don't think he 30 is bound to speculate.

The Court: I will permit that. Cross-examination.

(Question repeated.)

A. I don't know.

Q. You don't know now whether, if there had been nothing on the settlement certificate except the right of way of the Camden and Atlantic Railroad Company, whether or not you would have rescinded the contract?

A. I don't know.

Q. What is your best judgment now, looking backward, if that had been all there was in it, would you have rescinded it?

10 A. I can't say what I might have done.

Q. Did that make a serious impression on your mind, the right of way of the Camden and Atlantic Railroad?

A. Yes.

Q. You were going to insist on that occasion, were you not, that unless that exception was removed you would not take this title?

A. I was. I was going to insist on a good and marketable title.

20 Q. And you did insist on it, didn't you?

A. Yes.

Q. And the same with respect to the telephone poles, same attitude?

A. That is right.

Q. You certainly knew they were there, didn't you when this agreement was signed?

A. I didn't know about poles being there.

Q. When did you find that out?

A. When I got the certificate.

Q. Have you ever seen them?

30 A. I can't recall ever having seen the poles, Judge.

Q. Now, for example, there was an exception there against mechanics' liens, were you going to insist upon that?

A. No.

Q. That was in the settlement certificate, wasn't it?

A. That is a printed exception.

Q. Then you released against that, did you?

A. Yes.

Q. That didn't bother you?

A. No.

Q. Nor the municipal improvements, municipal liens, streets or sidewalks, that didn't bother you, did it?

A. No.

Q. Do you know whether there had been any such 10 on the lands or not?

A. No.

Q. What, then, were the exceptions that you were intending to absolutely insist upon or else rescind this bargain?

A. Why the rights of the telephone company, the outstanding trust and the—

Q. Right of way of the railroad?

A. Right of way of the railroad and there was some judgments against the property. 20

Q. Of course on that occasion it had not been determined as to whether those judgments were really a lien on that land or not, had it?

A. No.

Q. Even the title company didn't know that?

A. I don't know whether they did or not.

Q. Now, these telephone poles, you know now, do you not, that they are the telephone poles carrying the wires between Philadelphia and Atlantic City along the right of way of the Camden and Atlantic Railroad? 30

A. I only heard that this morning in court.

The Court: You mean that along the right of way of the Camden and Atlantic?

Mr. Cole: I mean the White Horse Pike. I don't mean to say the railroad.

Q. White Horse Pike is a public highway, isn't it?

A. It is.

Q. Running from Camden to Atlantic City?

A. That is right.

10 Q. Did it occur to you how that might be relieved against? You offer any suggestion yourself as to how it could be done?

A. No.

Q. You knew it couldn't be done, didn't you, when you went in there that day?

A. No, I didn't know it couldn't be done.

Q. You knew the poles were there that day and you knew the company had the right to maintain those poles?

20 A. I didn't know the poles were there. I hadn't seen the poles.

Q. Mr. Taylor, are you prepared to say whether or not you know that Mr. Stern was really anxious on that day to settle under this agreement?

A. He was ready, willing and able to settle under that agreement.

Q. Was he anxious to settle?

A. Yes, he was anxious to settle.

Q. He really wanted this property, didn't he?

A. He did.

30 Q. And made all preparations with the hope that he was going to get it?

A. He did.

Q. But wouldn't take it under your direction because of the right of way of the Camden and Atlantic Railroad?

Mr. Hanstein: I object to that. That has not

been stated. He stated a lot of reasons why he wouldn't take it.

The Court: Sustain the objection.

Mr. Cole: That is one of them.

Mr. Hanstein: It is the aggregate of them.

The Court: Sustain the objection.

10

Q. You and Mr. Stern talk over this settlement certificate before you went to the title office?

A. Yes.

Q. What did you say? What did you talk about?

A. I said, "Mr. Stern, there are several exceptions shown on this certificate" and I explained them to him and he said, "Well, if they can be removed we will settle; if not," he says, "I want a good and marketable title."

20

WILLIAM H. WALLACE, sworn for defendant.

Direct examination.

By Mr. Hanstein:

Q. Mr. Wallace, is this a copy of the chain of title of the premises in question showing the vest- 30 ing of that title in Harry Garber and Harry Latt?

A. It is.

Q. And was prepared by the Chelsea Title Company under your direction?

A. No, my office.

Q. By your office?
A. Yes.

Mr. Hanstein: By consent of Judge Cole, instead of getting certified copies we got this.

Mr. Cole: That is all right except like to know what is the significance. I don't know whether there is anything I ought to meet or not. What is the
10 significance of the search?

Mr. Hanstein: This search shows this title from the will of Samuel Richards down. In it appears this Colwell-Browning deed.

Mr. Cole: Is that the crux of the thing so far as that search is concerned?

Mr. Hanstein: My purpose in showing this search
20 is to show these items that appeared on the settlement certificate appear in this chain of title.

Mr. Cole: That is all I want to know.

(Search admitted in evidence and marked Exhibit D9.)

Mr. Hanstein: By the way, Judge, I should tell you that the agreement in regard to these telegraph
30 poles is not there. The judgments are in there and so on.

Q. At the time the order was placed with you for the search of the premises in question were you at that time engaged in searching other land for Garber that came through this same chain of title?

A. We were engaged in examining a title to adjacent premises, whether it came through the identical title or not I am not able to say now.

Q. Do you know whether you were able, in making this search represented on your settlement certificate 9378, were you able to make that search at the same time you made this search on adjoining land?

A. Yes.

Q. The chain of title was—

A. Practically the same, I believe, to a certain extent?
10

Q. Was practically the same to a certain extent?

A. Yes.

Q. Now, this settlement certificate which is marked D2 for identification—

(Settlement certificate offered, admitted in evidence and marked Exhibit D2.)

Q. This settlement certificate that has been introduced in evidence and marked Exhibit D2 was made
20 up by you, was it not?

A. Yes, sir.

Q. Made up for the Chelsea Title Company?

A. Yes.

Q. And represented your opinion as to the condition of the title on that date, is that correct,?
?

A. Yes, sir.

Q. Have any of the exceptions on that settlement certificate been removed by you subsequent to June
30 fourteenth, 1926?

A. On July ninth I made a notation here that exception number ten was removed by letter from Mr. Lambert.

Q. Exception number ten is the one that relates to the Browning deed?

A. It does.

Q. And up to that time that exception remained?

A. Remained on this.

Q. Remained on your settlement certificate. Now, were any other exceptions removed?

A. Yes, number thirteen, the two judgments and two recognizances were removed about, the exact date of the affidavit is here, is it, Mr. Lambert? I believe the affidavit is here.

10 Mr. Lambert: I don't have it.

A. But it is only a few weeks ago, I imagine two or three weeks ago an affidavit was furnished eliminating these judgments.

Q. Who furnished the affidavit?

A. One of these gentlemen. I have never been able to tell their names; they are always together.

Q. When you say one of these gentlemen, you don't mean Taylor or Soloff or Stern?

20 A. No, I mean Mr. Perone or Mr. Sherman, I think that they both came together with the affidavit to my office.

Q. Do you recall the day of settlement that a request was made upon you to remove exception number ten?

A. No.

Q. Do you remember Mr. Taylor coming to see you on that day?

A. No, sir.

30 Q. Remember Mr. Moore coming to see you on that day?

A. No, sir, you see we were involved with so many matters at that time these gentlemen would come in at various times and the other fellow. Whether they came in or not I don't know in this particular matter.

Q. When was that settlement certificate issued?

A. It bears date May twenty-eighth and I imagine

it may have been issued, that is prepared a few weeks subsequent thereto, because of the fact that the plant was back about ten days or two weeks, I think it may have been a month after its completion that I built it up. I may not have been able to get at it.

Q. That represented the attitude of your company towards this title, towards the insurability of it?

A. That was my opinion.

Q. On the fourteenth?

A. On the validity of the title at that time. 10

Q. On the fourteenth of June?

A. May twenty-eighth.

Q. Well, on the fourteenth of June I am talking about.

A. My opinion only went back to May twenty-eight. I don't know what was done afterward.

Q. Nothing changed that until you got the letter from Mr. Lambert?

A. True, so far as the one question was concerned.

Q. What was the date of that letter from Mr. 20 Lambert?

A. July ninth.

Q. After June fourteenth?

A. Oh, yes.

No cross-examination.

JULIUS TAYLOR, recalled.

30

Cross-examination.

By Mr. Cole:

Q. Mr. Taylor, either just before or at the time or just after, immediately, the signing of this agreement was there any talk about these telephone poles?

A. Before or immediately after the signing?

Q. Yes.

A. No, sir.

Q. You say there was not?

A. No.

Q. Not in the presence of Mr. Sherman?

A. There was no talk about them at all.

Q. That is what I want to know.

10

MISS SYLVIA GREENFIELD, SWORN for defendant.

Direct examination.

By Mr. Hanstein:

Q. Miss Greenfield, where do you live?

A. Atlantic City.

20

Q. How long have you lived there?

A. Three years.

Q. You work for the Chelsea Title Company?

A. Yes, sir.

Q. How long have you worked for that company?

A. Since January.

Q. Of this year?

A. Yes.

30

Q. Do you recall the fourteenth day of June of this year when there was an attempted settlement between Mr. Garber and Mr. Latt and Mr. Stern?

A. Yes.

Q. Were you called into the room on that occasion?

A. Yes.

Q. Did you take some stenographic notes of what was said on that occasion?

A. Yes, sir.

Q. Do you have your notes with you?

A. Yes, sir.

Q. Will you read your notes?

A. Yes. May I read the transcript of it?

Q. Who were present?

A. Well, I don't remember exactly but I remember Mr. Taylor was there and Mr. Perone and I didn't know any of the other gentlemen.

Q. Do you know Mr. Garber, the gentleman who is coming in now? 10

A. I think he was there but I am not sure.

Q. Have you got the stenographic notes on this?

A. Yes, I transcribed them. Could I read this?

Q. You have transcribed them?

A. Yes.

Q. That is correct transcript of your notes?

A. Yes, sir.

Q. Suppose you read what you have there.

A. This is just what Mr. Taylor said. I didn't take any notes that anybody else said. "I am representing Mr. Stern in making this settlement, for the purpose of settling under the agreement between you and he. There have been exceptions shown on this sheet which makes it impossible for you to deliver according to this agreement. The exception on this sheet, number seven, shows the rights of the Delaware and Atlantic Telegraph and Telephone Company to construct and operate lines, erect poles, and so forth, as granted by Anna M. Coughlin to said company September 15, 1916. Number 8 shows the rights of the public in all streets, avenues, or roads running through or abutting the premises in question. We would like to know what streets they are." —he was interrupted there and then he continued— "Number 9 shows the rights of the Camden and Atlantic Railroad, now the West Jersey and Sea- 20 30

shore Railroad. Number 10 the interest as trustee for Stephen Colwell, which became vested in Abraham Browning through declaration of trust dated April 27, 1866, recorded in book 28 page 481 still remains outstanding in said Browning or his successor in trust. There is an outstanding trust in the title of this property which"—he was interrupted there—"There is the schedule"—and he was interrupted—"Well, now, this is what we have done. We have
10 taken it up with Mr. Wallace, who made this search, who tells us that they will not insure against the outstanding declaration of trust and, therefore, the title is not marketable."—He was interrupted again—"Well, yes, saying so, Frank, doesn't make it so. I mean it in this way, the records don't show where the declaration of trust has been removed in any way at all"—Interrupted again—"Now, just one minute, we bought the property free and clear of all encumbrances except those which"—He was inter-
20 rupted there—"We bought it free and clear of all encumbrances except as hereinafter mentioned and in the agreement"—he was interrupted again—"we are here prepared to make settlement. We have an assignment of a thirty-eight thousand dollar mortgage. We have a purchase money mortgage, bond and mortgage prepared and executed by Mr. Stern and are prepared to deliver the consideration. If you can deliver to us a good and marketable title"—He was interrupted—"a good and marketable title
30 such as will be insured by the title company"—Interrupted again—"Here is a letter from the Land Title Company showing that they won't insure it"—he was interrupted—"Mr. Moore, here is a copy of the agreement under which Mr. Stern bought the premises. Under that agreement he is to assign as part of the consideration a thirty-eight thousand

dollar mortgage. Here is the mortgage and thirty-eight thousand dollar bond and the assignment for that. As a further consideration he is to execute a purchase money bond and mortgage of twenty-eight thousand dollars. Here is the purchase money bond and mortgage. We also stand ready to pay the balance of the consideration money if you can insure that title today as it was purchased."—He was interrupted—"Now, if you think there is any use of
10 making up figures you can go ahead but I can't see the use in doing that."—He was interrupted—"I am explaining to you my position here. I am representing Mr. Stern who insists on getting the title as he bought it."—He was interrupted—"Well, I can't say that I do, no. If you knew it at that time it should have been put in the agreement. Now, about your map, Frank, there is no map on file. The search does not disclose a map"—he was interrupted—"Well, now, here is the search by the title com-
20 pany which does not show the map filed and does not show where the declaration of trust business has been straightened out. We are here prepared to settle the way we bought it and if you cannot deliver the way we bought it"—he was interrupted—"We demand a return of the money."—He was interrupted again—"We beg to differ with you. We want the land the way we bought it."—he was interrupted—"Now, don't say that"—He was interrupted—"We are not here to disclose whether the contract is binding or not. The main serious objec-
30 tion there is against the title of this property is exception 10 regarding the declaration of trust, if"—He was interrupted—"Don't let's go into suppositions, if you can deliver a good and market title free of the exceptions we are here prepared to settle."

Cross-examination.

By Mr. Cole:

Q. Who was interrupting?

A. Mr. Perone interrupted part of the time. I don't know who else interrupted him.

Q. What were you asked to do?

A. I was asked to take notes.

10 Q. Of what?

A. Of what Mr. Taylor said.

Q. Only what he said?

A. Yes, sir.

Q. Who told you that?

A. Mr. Moore asked me.

Q. Did he tell you not to take what the other fellow said?

A. No, he just told me to take what Mr. Taylor said.

20 Q. So you made no note of what replies were made to what Mr. Taylor was saying?

A. No.

Q. You recall whether anything was said when Mr. Taylor said that the Land Title of Camden would not insure the title?

A. I don't remember.

Q. Something was said, wasn't there?

A. Probably was.

30 Q. These interruptions weren't they challenging some things that Mr. Taylor had said?

A. They probably were but I didn't take no notice of what anyone else said.

Q. Sort of an ex parte affair.

DEFENDANT RESTS.

REBUTTAL.

JULIUS TAYLOR, recalled.

Direct examination.

By Mr. Cole:

Q. Calling your attention to the letter of May 10 twenty second from the Land Title I ask you when it was that you 'phoned for that insurance?

A. About a week before that time.

Q. What did you say?

A. Why, I explained to Mr. Denmead that Mr. Stern had bought this property from Latt and Garber and I understood that they had insured that title before, when we could come up to see them about making an application for insurance for Mr. Stern, 20 and I was told over the 'phone that they would send us a letter that day and we would get it the next morning. Well, we didn't. I called again. The second call was the result of this letter.

Q. Did you tell them when you wanted the insurance?

A. Yes, June fourteenth.

Q. Had you applied to any other company before that date?

A. No.

30

IRVIN SHERMAN, recalled.

Direct examination.

By Mr. Cole:

Q. Was there any talk at which Mr. Taylor was present and in which he engaged concerning the telephone poles before the day of settlement?

10 A. Yes, sir.

Q. Where was that?

A. That was at the time of making the agreement in Mr. Taylor's office.

Q. Tell us what took place.

A. It was done at the time we made the agreement in Taylor and Soloff's office.

Q. What was said?

20 Mr. Hanstein: Just a minute, please, your Honor. If this is an effort to vary the terms of this written agreement—

Mr. Cole: To contradict Mr. Taylor. He answered the question without objection. As to how relevant it may be I don't know.

Q. What was said?

A. Mr. Perone brought up the fact—

Q. Mr. Perone?

30 A. Mr. Perone brought up the fact of the rights of the railroad and the rights of the D. & A. Telephone Company, after he had typed the agreement. Mr. Taylor says, "Oh, that is not necessary," he says, "That is an understood fact That is not necessary" and remarking, you might say, that was

one of the interruptions at the time of the settlement, Mr. Perone remarked on that, that he had told him to put that into the agreement and Mr. Taylor passed it off as of no account. He says, "That is an understood fact."

Q. What was there in the written agreement that provoked a discussion about the right of way of the poles? What was the language in the written agreement that brought that about?

A. In the agreement that was drawn out about the 10 exceptions of the lots, we excepted certain lots that had been sold, and Mr Perone marked as to further exceptions, the exceptions of the Delaware and Atlantic Telegraph and Telephone Company and the rights of the railroad.

Q. That is all.

JULIUS TAYLOR, recalled.

20

Direct examination.

By Mr. Hanstein:

Q. Do you recall any discussion at the time this agreement was signed relative to the rights of the Delaware and Atlantic Telephone Company and the—

A. No.

30

Mr. Cole: He answered my question that he didn't; he denied it.

TESTIMONY CLOSED.

Atlantic City, N. J., September 23, 1926.

Trial of the cause resumed.

10 Appearances as before noted.

ALEXANDER P. DENMEAD, SWORN for complainant.
Direct examination.

By Mr. Cole:

Q. What is your employment?

20 A. Secretary of the Land Title Guaranty Company of Camden.

Q. Did your company have anything to do with application for insurance or any other way with the title of Garber here in Atlantic County along the White Horse Pike?

A. As I understand it, the Garber title is after our examination. We examined the title to the Coughlin tract, as we know it, on the White Horse Pike.

Q. There appears to be—do you recall a settlement certificate you issued with respect to that title?

30 A. Yes, we issued a settlement certificate.

Q. Now, do you recall having received a letter from Taylor and Soloff or telephone message or something about insuring the title?

Mr. Hanstein: Just a minute, your Honor. I want to object to the line of testimony. I know which

way Judge Cole is headed on this and I might just as well state my objection now. My point is this: I presume the effort is to show something about our endeavor to get title insured by the Camden Company, but I want to call your Honor's attention to the fact that in the pleadings the complaint sets up that pursuant to a verbal understanding the complainant and defendant met at the office of the Chelsea Title and Guaranty Company in Atlantic City and defendant had agreed to accept title insurance from said company. Now, that is the issue. There is no issue about that. We admit that. We were agreed to meet at the Atlantic-Chelsea Title Company for this settlement so that Judge Cole's offer to show that this company was ready to insure or whatever it may be is entirely immaterial. I say whether this company or fifty companies were ready to insure this title, if they have brought their suit on the theory that the Chelsea Title Company was the place where we agreed to accept insurance and that that company was willing, then, as they say, and has ever since been willing to insure the complainant's title and that we refused to accept it, I say it is immaterial anything about this Camden Company, whether they were willing to insure it or whether they were not, so I say all of this testimony is incompetent.

Mr. Cole: It is argued, may it please your Honor before, and you will remember that Mr. Taylor insisted that he called the company up about getting insurance and he got this letter in reply. Now, at least we are entitled to explain that. If my friend thought his position was perfectly good, it seems to me he should have let it rest at that. He didn't do that. He then tried to show he had in fact tried to

get title insurance from the Land Title and they wrote this letter saying they would not do it. Certainly the Land Title have a right to explain that transaction.

The Court: I will permit it.

A. We never received any letter from Taylor and Soloff. I remember or recall receiving a telephone
10 message from the office of Taylor and Soloff in which, during which they asked us to insure title to some land in Atlantic County. At that particular time we had one man working in Atlantic County and we were discussing the fact of taking him out of Atlantic County and bringing him to Camden where most of our work is and I hesitated about taking the order. I told him—I don't know who called me; said was the office of Taylor and Soloff—I told the party that we would consider it because we had not
20 decided to come out of this county at that time, although we were considering it, so I received a message a day or two later, 'phone message, wanting to know what we had decided. I told him that we had decided not to take the title but I believe there was a letter produced here to the effect that we refused to insure this title on the White Horse Pike. I had no knowledge that the title in question was the title on the White Horse Pike because we have always and still continue to take those—

30 Mr. Hanstein: I object to that.

Q. Did the person who spoke to you on either occasion point out specifically that you were asked to insure this Garber title?

A. No.

Q. And when you wrote the letter did you have that Garber title in mind?

A. No.

Cross-examination.

By Mr. Hanstein:

Q. What is your position with the company?

A. Secretary.

Q. What do you do in connection with applica-
10 tions? What is your duty in regard to them?

A. You mean new applications?

Q. Yes.

A. I really haven't much to do with the new applications until the matters are ready to be passed upon and delivered. If it is a question of an order in Atlantic County I would have considerable to do with it from the time it was sent in there because I am familiar more or less with Atlantic County titles
20 and usually handle those myself.

Q. Did you know of your own knowledge, right off-hand, that your company had issued a settlement certificate on this title you refer to?

A. Coughlin Title?

Q. Yes.

A. Yes, I knew our company had issued a settlement certificate on it, yes.

Q. You were very busy in Camden at that time, weren't you?

A. Yes.

Q. Had you personally issued the settlement certificate on that Coughlin title?

A. Had I personally issued it?

Q. Yes, I mean had you personally been the one to sign the settlement certificate?
30

A. No.

Q. How did you come to know that there had been a settlement certificate on that?

A. Mr. James Rubertone, for whom we did the work, came to my office and discussed the cost of such a settlement certificate. Mr. Rubertone of Hammonton is the man who ordered the certificate and I discussed with him the price. I had also discussed with the examiner in Atlantic County the title. I did not write the exceptions when passed.

Q. You knew then that your company had issued a settlement certificate on what you call the Coughlin title?

A. Coughlin title, yes.

Q. Now, that is more or less of a local name for that, isn't it, I mean a name that you men in the title company may refer to, isn't that true?

A. Coughlin?

Q. Yes.

A. I don't recall ever having a Coughlin title in Atlantic County.

Q. How did you happen to know this title as the Coughlin title?

A. Because Coughlin owned the title.

Q. That is the way you knew it?

A. Yes.

Q. If this matter had been called to your attention as being land that Garber owned, would that have meant to you that it was the same tract of land?

A. No.

Q. That wouldn't have meant the same thing to you?

A. No.

Q. If this property had been described to you by metes and bounds, would that have brought the Coughlin title to your mind?

A. Well, I would ordinarily say no, but, if this title was described to me by metes and bounds, I would say yes. I have a reason for that. That particular title covers just one mile of ground on the White Horse Pike, 5280 feet, which is an unusual situation. If that property had been described to me by metes and bounds I would have known it.

Q. The mere reference to your mind of a tract of land a mile long on the White Horse Pike wouldn't have brought this to your attention, would it? There are plenty of tracts a mile long on the White Horse Pike, aren't there?

A. No, I don't think so.

Q. If this tract had been described to you as a tract four thousand feet long, for instance, would that have brought the Coughlin tract to your mind?

A. No, I don't think it would.

Q. So that if somebody had called you up and said, "We want a piece of property on the White Horse Pike four thousand feet long insured, that wouldn't have suggested the Coughlin tract to you?"

A. No.

Q. Well, if—how was this property brought to your attention? In what way did Mr. Taylor, in talking to you, refer to this tract?

A. My recollection is that Mr. Taylor—I don't recall if it was Mr. Taylor, whoever called me from Taylor and Soloff's office, simply asked me if we would take an order for title insurance covering property in Atlantic County and I—it is possible the acreage may have been discussed, I don't recall even that. There was nothing to bring this title in question to my mind, the Coughlin title.

Q. But you say they did call to your attention that they wanted the land insured?

A. In Atlantic County.

Q. And they didn't describe it, as you recall it, any more specifically?

A. No.

Q. Mr. Denmead, when I show you this letter does that bring anything to your mind?

A. No.

Q. There is no doubt that you wrote this letter which is marked D1?

A. That is my signature on the letter.

10 Q. And your letter to the title company says, to Messrs. Taylor and Soloff says, "Because of the pressure of business that we have in Camden County it will be impossible to take the order for title insurance covering premises on the White Horse Pike, Atlantic County about which you 'phoned." That would certainly suggest, would it not, that the property had been directed to your attention as property on the White Horse Pike, isn't that true?

A. Repeat that, please.

20 Q. I say the fact that you wrote this letter would certainly indicate that they had directed your attention to the property on the White Horse Pike?

A. Yes.

Q. Isn't that true?

A. Yes.

Q. If they had described this property to you by metes and bounds and the description had not been exactly a mile long that would have suggested to you the Coughlin tract, would it?

30 A. If they had said to me it was the Coughlin tract I would have known immediately what they were talking about.

Q. Yes, but if they, in expressing in detail the work had read you a description of this property that wouldn't necessarily have suggested the Coughlin tract, would it?

A. I said a while ago if they had read me the description of that tract I would have certainly recognized it as the Coughlin tract.

Q. But you say you would have because the Coughlin tract was one mile long?

A. That is a very singular thing.

Q. Let me read you this description and see if this suggests the Coughlin tract to you: "Lying and being in the township of Mullica, county of Atlantic and state of New Jersey, lying between Second Street and Seventh Street and north of the Camden and Atlantic Railway, now known as the West Jersey and Seashore Railway, and also shown on plan of lots in Division H., East Hammonton, Atlantic County, New Jersey, described as follows: Beginning at the point of intersection of the center line of Camden and Atlantic Railway, now the West Jersey and Seashore Railway, with the center line of Second Street, and extending thence (1) in a northeasterly direction in and near the center line of said Second Street, six hundred feet, more or less, to the center line of the State Highway or White Horse Pike, or Agassiz Street; thence (2) in and along the center line of the road as aforesaid in a northwesterly direction four thousand feet, more or less, to a point in the center line of Seventh Street, Hammonton Avenue; thence in a westerly direction in and along the said center line of said seventh Street, Hammonton Avenue, six hundred feet, more or less, to the center line of said railway; thence (4) along the said center line of said railway in a southeasterly direction four thousand feet, more or less, to the place of beginning."

A. That is no doubt a part of the Coughlin tract, that description that you have read. That is not the description that we insured.

Q. If that description had been read to you would that alone have suggested the Coughlin tract?

A. Well, over the telephone of long distance it might or it might not.

Q. Do you know this tract of land by any other name?

A. No.

Q. Do you know a tract known as the Colwell tract?

10 A. The Colwell tract?

Q. Yes.

A. No, this property at one time was owned by a Colwell, but I never knew it as the Colwell tract.

Q. You knew the Colwells were involved in this title, didn't you?

A. After we made the examination.

Q. And had your attention been directed to this as being the part of the Colwell tract?

A. No.

20 Q. Was there any reference to Colwell in this?

A. Not to my knowledge, no.

Q. Did you ask if this was the Coughlin tract?

A. What?

Q. Did you ask if this was the Coughlin tract?

A. Did I ask who, Mr. Hanstein?

Q. Whoever talked to you?

A. No.

30 Q. As a matter of fact your company has insured considerable land in Atlantic County from time to time, hasn't it?

A. I wouldn't say considerable, but we have come down into Atlantic County more on searches than title insurance but we have made a number of examinations for title insurance in this county.

Q. To whom had you issued your settlement certificate?

A. To who?

Q. Yes.

A. James Rubertone, Hammonton.

Q. Was there any reference in this telephone conversation to Rubertone

A. Not to my knowledge, no.

Q. How long ago did all this conversation take place?

A. I should say approximately four or five months ago. 10

Q. Around that time your company was very busy?

A. Yes.

Q. You weren't particularly looking for outside work, I mean work outside of Camden, were you? You had all you could do in Camden, didn't you?

A. Yes.

Q. Didn't you tell the party to whom you talked that you had discontinued your Atlantic County work? 20

A. My recollection is I told them we were considering discontinuing our Atlantic County work and we were at the time.

Q. You say you got two 'phone calls about this?

A. Yes, my recollection is two 'phone calls.

Q. What did you do between the first 'phone call and the second 'phone call in regard to this matter?

A. The first 'phone call I received was a request to insure title in Atlantic County. As I said we were considering discontinuing the work. We hadn't 30 fully made up our mind, but we were considering it and my recollection is I told the party that I would consider it and after the first call we discussed it among ourselves, that is, the president and myself, as to whether we would take any more work down there or whether we would discontinue it and decided

we would not take this and on the second message I think that was my reply, that is all there was to the second message.

Q. Well, you knew at the time that it was property on the White Horse Pike, of course?

A. Yes, I understood it was property on the White Horse Pike.

Q. And when the second 'phone call came you told them that you people had decided not to take any
10 work in Atlantic County?

A. Yes.

Q. If you had understood that to have been a tract that you had searched before, which would have necessitated a continuance of the search, of course, would you still have refused to have taken the order?

A. No, we have never refused. It would be a bad business to refuse to take what we call re-insurance. We are still doing that in Atlantic County
20 on work that we have been over and made an examination we are still taking orders for re-insurance.

JULIUS TAYLOR, recalled.

Direct examination.

By Mr. Hanstein:

30 Q. Mr. Taylor, you have previously testified that you made the two calls to Mr. Denmead?

A. I did.

Q. How did you refer to this property in discussing it with him?

A. The first time I called the Camden Title Com-

pany, or Land Title, whatever their title is, this is the way I described the land to him and pointed it out to him, I told him that we understood that they insured this title commonly known as the Colwell tract for a Mr. Rubertone and the voice over the 'phone told me that they had. I told them well, Mr. Rubertone had sold that land to Harry Latt and Harry Garber, who in turn had sold it to Jacob Stern, that we wanted to apply for title insurance for Mr. Stern and went on and told him it was a parcel on the
10 White Horse Pike beginning at a certain point in Second Avenue there and running back to the railroad for a distance of six hundred feet and running along the White Horse Pike four thousand feet, more or less. We understood that the tract was commonly known as the Colwell tract and Mr. Denmead told me that he knew about this tract of land, in other words, he said, "Yes" when I told him we understood they had insured it for Mr. Rubertone
20 and I asked him——

Q. Just a minute. Did you have a description of the property before you when you discussed it with him?

A. I had that agreement of sale and Mr. Denmead seemed to recognize the property immediately and he then explained to me that he couldn't give us a definite answer at that time but he would write us a letter about it.

Q. Why did he say he couldn't give you a definite
30 answer?

A. Well, he applied for this title insurance and he says, "Well, now, I don't know whether I can give you or insure this title for you because we have taken our man out of Atlantic County and we are not taking on any more work down there, but," he said, "I will let you know" and the conversation

ended. We waited possibly two or three days and not having heard from them I called Mr. Denmead again and I told him that my name was Taylor, the person who had spoken to him before in reference to the title insurance on the land which they had insured for Mr. Rubertone, which Rubertone had sold to Garber and Latt, which they had in turn sold to Jacob Stern, land known as the Colwell tract. He said, "Yes, we have been so busy and not been able
10 to give you a reply on that." He says, "I will send a letter off today. You will get it in the morning,"
13222 COLE 11C EVK
and the next morning's mail brought that letter which you have there.

Cross-examination.

By Mr. Cole:

20 Q. Then you knew when you talked with Mr. Denmead the Land Title Company had insured the title in Rubertone, did you?

A. That was my understanding.

Q. I am asking you whether you didn't know it?

A. I didn't know it because I hadn't seen the title policy.

Q. You told him, didn't you, that his company had insured it?

A. No, I told him that we understood they had insured it.
30

Q. Where did you get the understanding from?

A. From Mr. Perone, Mr. Sherman and Mr. Garber.

Q. They all told you that this company had insured the title in Rubertone, did they?

A. Yes.

Q. Did you inquire of Rubertone?

A. Beg pardon?

Q. Did you inquire of Rubertone whether he had had insurance?

A. No.

Q. Did you see the Land Title settlement certificate?

A. I did not.

Q. Never?

A. Not until it was produced here in court. 10

Q. Did you tell anybody at the Chelsea Title Company, when they made this exception of the Browning deed, that you understood the Land Title Company in Camden had insured this title?

A. I did not.

Q. If you had been told, as you now say you had, and that Mr. Denmead told you he knew the title and had insured it, why didn't you tell the Chelsea Title Company, when they had made this exception, that that title had been insured under a previous deed? 20

Mr. Hanstein: I don't think that is proper on cross-examination. No examination on his direct examination at all.

Mr. Cole: I know, but he is now trying to show he knew this title had been insured.

The Court: I will permit it.

A. I didn't have any special reason for it. 30

Q. You didn't do it, did you?

A. No, I didn't.

ALEXANDER P. DENMEAD, recalled.

Direct examination.

By Mr. Cole:

Q. Mr. Denmead, did you say to the person who talked to you on the 'phone that you knew that title?

10 A. I have no such recollection of ever saying anything like that. My call was a request to insure some acreage in Atlantic County.

Q. Was there anything said to you on either of these occasions from which you knew that they were talking about the title, what do you call it?

A. The Coughlin tract.

Q. That you insured in Rubertone?

A. No, I didn't know that.

20 Cross-examination.

By Mr. Hanstein:

Q. Mr. Denmead, when you first went on the witness stand today you didn't even recall that it was brought to your attention that it was property on the White Horse Pike, did you, until this letter was shown to you, you didn't even know that it had been referred to you as White Horse Pike property, did you?

30 A. That 'phone call has been some four or five months ago. My recollection is that it referred to me as Atlantic County property, except from that letter that it was referred to me as White Horse Pike property.

Q. What I am getting at, at the time you went on

the witness stand you had even forgotten that it had been brought to your attention as White Horse Pike property, hadn't you?

A. Yes. I might say here, if I may be permitted

Q. There is no question.

TESTIMONY CLOSED.

EXHIBIT C1.
9/2/26 L.

ARTICLES OF AGREEMENT, MADE THIS Fourteenth day of April in the year of our Lord one thousand nine hundred and twenty-six. BETWEEN HARRY GARBER and LENA GARBER, his wife, and HARRY LATT and JENNIE LATT, his wife, all of the City of Atlantic City, County of Atlantic and State of New Jersey, parties of the first part, and JACOB STERN, of the City and County of Philadelphia and State of Pennsylvania, party of the second part; WITNESSETH, that the said parties of the first part, for and in consideration of the sum of Eighty-three Thousand (\$83,000.00) Dollars 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, do agree to and with the said party of the second part, that they the said parties of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of General Warranty free from all incumbrance Except as hereinafter mentioned, on or be-

fore the Fourteenth day of June, 1926, all that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Mullica in the county of Atlantic and State of New Jersey and lying between Second Street and Seventh Street (or Hammonton Avenue) and North of the Camden and Atlantic Railroad, now known as the West Jersey and Seashore Railroad and as also shown on plan of lots in Division H

10 —East Hammonton, Atlantic County, New Jersey, which plan of maps is attached hereto and is to be considered a part hereof. Said lands to be more particularly bounded and described as follows:—

- BEGINNING at the point of intersection of the center line of Camden and Atlantic Railroad, now the West Jersey and Seashore Railroad with the center line of Second Street and extending thence
- (1) In a Northeastwardly direction, in and along the center line of said Second Street, Six Hundred (600) feet more or less to the center line of the State Highway (or White Horse Pike or Agazziz Street) thence
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- (2) In and along the center line of the road as aforesaid and in a Northwestwardly direction, Four Thousand (4,000) feet more or less to a point of the center line of Seventh Street (Hammonton Avenue) thence
- (3) In a Southwestwardly direction in and along the said center line of the said Seventh Street (Hammonton Avenue) Six Hundred (600) feet, more or less to the center line of the said Railroad; thence
- 30
- (4) Along the said center line of the said Railroad in a Southeastwardly direction, Four Thousand (4,000) feet, more or less to the point of beginning.

It is hereby agreed and understood that the following lots as shown on the plan of lots above referred to, are excepted from the above described lands and are not to be included in the within agreement and or conveyance.

Block #3 —Lots #13-14-15-16 and 17

Block #5 —Lots #13-14-15-16 and 17

Block #6 —Lots #10-11-12-13-14-15-16-17-18-19 and 20

Block #12—Lots #11-12-13-14-15-16-17-18-19

10

Block #13—Lots #1-2-3 and 17

Block #14—Lots #1-2-4-12-17-26-28 and 29

Block #15—Lots #1-3-4-5-6-7-13-14-15-16-17-23-24-25-26-27-28 and 29

Block #16—Lot #1

Together with all of the improvements and hereditaments now contained upon the said premises.

AND the said party of the second part, for himself, his heirs, executors and administrators or assigns, does covenant, promise and agree to and with the said parties of the first part, their heirs, or assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied unto the said parties of the first part, the said sum of Eighty-three Thousand (\$83,000.00) Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

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\$1,500.00 upon the signing of this agreement, the receipt whereof is hereby acknowledged.

\$3,500.00 by the party of the second part, paying that amount on or before the Fourteenth day of May, 1926 at 3 P. M.

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\$28,000.00 by the party of the second part, making, executing and delivering at the time of settlement, his purchase money mortgage in that amount, covering the

premises above described, accompanied by his usual bond for twice the amount. Said mortgage payable at any time within two years from the time of settlement, bearing interest at the rate of six per cent per annum, payable semi-annually.

\$38,000.00 by the party of the second part, making, executing and delivering at the time of settlement, an assignment of an existing mortgage in that amount. Said mortgage payable within two years from January 25th, 1926 and covering premises hereinafter described and which mortgage is subject to an existing first mortgage in the sum of Thirty Thousand (\$30,000.00) Dollars and an existing second mortgage in the sum of Thirty-two Thousand (\$32,000.00) Dollars, also covering premises hereinafter described, situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey, being bounded and described as follows:—

BEGINNING at a point at the Southeast corner of Arkansas and Arctic Avenues, extending thence

- (1) Eastwardly, in and along the South line of Arctic Avenue, Forty-six (46) feet and six (6) inches; thence
- (2) Southwardly, parallel with Arkansas Avenue, Ninety (90) feet; thence
- (3) Westwardly, parallel with Arctic Avenue, Forty-six (46) feet and six (6) inches to the Easterly line of Arkansas Avenue; thence
- (4) Northwardly, in and along the same Ninety (90) feet to the place of beginning.

BEGINNING in the Southerly line of Arctic Avenue, Forty-six (46) feet and six (6) inches East of

the Easterly line of Arkansas Avenue, extending thence

- (1) Eastwardly, in and along the Southerly line of Arctic Avenue, Thirty (30) feet; thence
- (2) Southwardly, parallel with Arkansas Avenue, Ninety (90) feet; thence
- (3) Westwardly, parallel with Arctic Avenue, Thirty (30) feet; thence
- (4) Northwardly, parallel with Arkansas Avenue, Ninety (90) feet to the place of beginning.

BEGINNING in the Easterly line of Arkansas Avenue Ninety (90) feet South of Arctic Avenue, extending thence

- (1) South, along the East line of Arkansas Avenue, Twenty (20) feet by East, between parallel line of that width at right angles to Arkansas Avenue, in length Eighty-one (81) feet on the South side and Eighty-two (82) feet on the North side.

Twelve Thousand (\$12,000.00) Dollars by the party of the second part paying that amount at the time of settlement.

Settlement to be held at the offices of the Land Title Guaranty Company, New Jersey, of Camden, New Jersey or any other reputable Title Company in the State of New Jersey, on or before the fourteenth day of June, 1926.

Title to be good and marketable and such as will be insured by the Title Company or companies as above stated.

All adjustments of taxes, and interest on the mortgage to be assigned to the parties of the first part to be made as of time of settlement.

Time is the essence of this agreement.

It is hereby agreed and understood by and between the parties hereto that the above referred to purchase money mortgage, which the party of the second

part agrees to execute and deliver at the time of settlement, shall contain a provision, whereby the parties of the first part hereto will release any block from the above described premises upon the payment of Twenty-eight Hundred (\$2800.00) Dollars by the party of the second part hereto. A block shall be construed to mean Two Hundred (200) feet front on Agazziz Street or White Horse Pike and running between parallel lines of that width to the middle line of the Railroad above referred to.

10 It is hereby expressly agreed and understood, that in the event the parties of the first part are unable to deliver unto the party of the second part, the exact amount of land fronting on the White Horse Pike (or Agazziz Street) as above described, then and in that event, the party of the second part agrees to accept the amount of land fronting on said White Horse Pike (or Agazziz Street) providing, however, that he be allowed a reduction from the hereinabove stated consideration, at the rate of Twenty-five (\$25.00) Dollars per front foot.

20 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 the day of settlement and from thence take the rents, issues and profits to and their use

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

IN WITNESS WHEREOF, the said parties have

hereunto interchangeably set their hands and seals the day and year first above mentioned.

James L. Stern (SEAL)

SIGNED, SEALED AND DELIVERED

in the presence of

Joseph L. Soloff

STATE OF NEW JERSEY,)
ATLANTIC COUNTY,) ss.

Be it Remembered, That on this day of April 10
in the year of our Lord one thousand nine hundred
and twenty-six before me A Notary Public person-
ally appeared HARRY GARBER and LENA GAR-
BER, his wife, and HARRY LATT and JENNIE
LATT, his wife, who, I am satisfied, are the vendor
mentioned in the above deed or conveyance, and I
having first made known to them the contents there-
of, they acknowledged that they signed, sealed and
delivered the same as their voluntary act and deed.
All of which is hereby certified.

20
AGREEMENT
FOR SALE OF LAND
HARRY GARBER, et al

to
JACOB STERN
Dated April 14th, 1926.

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EXHIBIT C2.
9/2/26 L.

LAND TITLE GUARANTY COMPANY OF NEW
JERSEY

Camden, N. J.,
March 1, 1926

Pursuant to application No. 12804 the Land Title
10 Guaranty Company of New Jersey will, upon the
surrender of this certificate, the payment of the
premium and expenses, and the production and rec-
ord of the papers hereinafter called for, insure
James Ruberton, Jr., as Owner of premises (For
description see inside sheet) to the amount of Two
Thousand Dollars, against all liens or defects in
title, except the following, which may now exist, and
will be made exceptions in the policy unless removed,
viz:

20 It is important that all exceptions which are not
to appear on the title policy be properly removed
from this certificate before it is surrendered to the
Company, because, upon surrender of the certificate,
title policy will be issued containing all of the excep-
tions appearing on the certificate except those which
have been removed by an authorized officer of the
Company.

Where insurance is under a mortgage, the produc-
tion and approval of the bond and mortgage will be
30 required before issuing policy.

It will not be guaranteed that there are any build-
ings or improvements on the land intended to be
insured unless a survey, made under the direction
of this company, is produced.

This Company will not assume any responsibility
for unpaid gas, electric light, sewer or other corpora-

tion claims NOT LIENS; nor for the proper execu-
tion of papers until approved by it; nor will it per-
form the work required for the removal of any
proper exception. Counsel should be employed
where legal services are required. All papers should
be submitted for approval BEFORE settlement day.

If this certificate is to be continued to show a deed
affecting premises herein described, expressing a
nominal consideration, an exception will be made
unless a satisfactory statement is made to the Com- 10
pany that such cooveyance was made for a valuable
consideration.

No liability assumed after this date; if settlement
is postponed search should be continued.

Upon satisfactory evidence being produced, we
shall gladly remove any exception appearing on this
settlement certificate or the policy which shall take
its place.

See that Revenue Stamps are affixed to all instru-
ments as required by law. 20

1. Tenure of present occupants.

2. Rights of way and rights of the public and
others in streets, roads, lanes or alleys bounding or
crossing insured premises.

3. Variation of lines and deficiency in quantity of
ground, and such state of facts as an accurate survey
and inspection of insured premises would disclose.

4. Loss or damage by reason of mechanics' lien
claims not filed or of record at this date.

5. Taxes, water rents and municipal claims as fol- 30
lows: Official tax search dated Nov. 25, 1925, shows
taxes paid to 11/25/25.

6. Prospective assessments for municipal im-
provements if any.

7. Rights of adjoining owners and others in any
party walls.

(Written across paragraph No. 7 "Removed, Sparks.")

8. Easements granted to Delaware and Atlantic Telegraph and Telephone Company.

9. The following conveyance in chain of title, expressing a nominal consideration, proof will be required that such conveyance was made for a valuable consideration, not in fraud of creditors, and free from any trust or limitations, expressed or implied;

10

viz; Deed made by Annie M. Coughlin, widow, to William G. Coughlin, dated November 27, 1920, recorded in Deed Book 642 page 322.

(Written across paragraph No. 9 "Removed, Sparks.")

10. Certificate of Tax Sale made by L. E. Stone, Collector of Mullica Township, to Mullica Township, dated November 15, 1899, recorded November 24, 1899 in Book 12 page 284, to secure \$80.96.

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11. Certificate of Tax Sale made by John A. Abbott, Collector of Mullica Township, to Mullica Township, dated October 31, 1900, recorded November 8, 1900 in Book 12 page 458, to secure \$23.61.

12. Agreement of Sale: W. G. Coughlin and James Ruberton, dated October 17, 1925, recorded October 22, 1925 in Deed Book 784 page 369.

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13. Judgment: New Jersey Supreme Court: Alfred W. Booth & Bro. vs. William Coughlin, et als, Docketed in Supreme Court Jan. 28, 1926, Damages \$850.02, Costs \$47.12, Total \$897.14. S. A. Travers, Attorney.

(Written across paragraph No. 13, "Removed, Sparks.")

14. Recognizance: United States vs. William F. Burns, Principal. William Coughlin, Surety, 120 West 9th St., Bayonne, N. J. Entered July 12, 1923. Amount \$1000.00.

(Written across paragraph No. 14 "Removed, Sparks.")

15. Recognizance: United States vs. William F. Burns, Principal. William Coughlin, Surety, 120 West 9th St., Bayonne, New Jersey. Entered July 10, 1923. Amount \$1000.00.

(Written across paragraph No. 15 "Removed, Sparks.")

16. Production and record of deed from William G. Coughlin, et ux, if any, to the Assured. 10

Record title is in William G. Coughlin by deed from Annie M. Coughlin, dated November 27, 1920, recorded in Deed Book 642 page 322.

Land Title Guaranty Company of New Jersey
Robert C. Sparks.

Description of insured premises—#12804

All that certain tract or parcel of land and premises situate in the Township of Mullica, County of Atlantic, State of New Jersey, bounded and described as follows:— 20

BEGINNING at a point of intersection of the centre line of Camden and Atlantic Railroad, now the West Jersey and Seashore Railroad, with the centre line of Fifth Street, from said beginning point extending (1) along the centre line of Fifth Street, North 46 degrees 38 minutes East 713 feet more or less, to a point in the centre line of the State Road, or Agassiz Street; extending thence (2) along the centre line of Road last aforesaid, North 43 degrees 22 minutes West 5280 feet to a point in the centre line of Seventh Street; extending thence (3) along the centre line of Seventh Street, South 46 degrees 38 minutes West 713 feet, more or less, to the centre line of said railroad; and extending thence (4) along the centre of said Railroad, South 43 degrees 22 minutes East 5280 feet to the point and place of Beginning. 30

CONTAINING 80 acres of land, more or less, exclusive of a strip of land thirty feet wide, the southerly boundary of parcel so excluded being the centre line of the Camden and Atlantic Railroad, which strip of land is hereby excepted.

ALSO excepting the following:

BEGINNING at a point in the north side of Atlantic Avenue, 35 feet from the centre of the track as now laid of the Camden and Atlantic Railroad and extending along the said Avenue, Northeastwardly, 40 feet; extending thence Northwestwardly, between parallel lines at right angles to said Atlantic Avenue, and parallel to the rails as now laid down of said Railroad, the distance of 1000 feet.

ALSO EXCEPTING:

BEGINNING at a point in the middle of said Railroad of the said Company heretofore known as the Camden and Atlantic Railroad, where the middle of Fifth Street, as laid down on the lithographic plan of Weymouth Farm, and Agriculture Co.'s land, filed, etc., would intersect the said centre line if extended northeastward; extending thence along the middle of said Fifth Street, North 46 degrees 38 minutes East 30 feet to a stake; thence by other land of the said Annie M. Coughlin, and by land conveyed by the said Annie M. Coughlin, et vir, to Camden and Atlantic Railroad Co. by deed dated June 5, 1882, parallel with the middle of aforesaid Railroad, North 43 degrees 22 minutes West 5280 feet to a stake in the middle of Seventh Street as laid down on the aforesaid plan, it being also the boundary line between the Townships of Mullica and Hammonton; thence extending along said Township line, South 46 degrees 38 minutes West 30 feet to a stake in the middle of the aforesaid railroad, which said stake is distant 5 feet northeast from the centre line of the track of the

said railroad, as originally constructed, and extending thence along the middle of said Railroad, South 43 degrees 22 minutes East 5280 feet to the point and place of Beginning.

CONTAINING 3.63 acres.

ALSO excepting the following:—Lots 13, 14, 15, 16, 17, Section 3, of Division H; Lots 13, 14, 15, 16, and 17, Section 5, Division H.

Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Sec. 6, Div. H. 10

Lots 11, 12, 13, 15, 16, 17, 18 and 19, Sec. 12, Division H.

Lots 1, 2, 3, and lot #17, Section 13, Division H.

Lots 1, 2, 4, 17, 26, 28, and 29, Sec. 14, Division H.

Lots 1, 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 23, 24, 25, 26, 27, 28, and 29, Section 15, Division H.

Lot 1, Section 16, Division H.

so named and shown on Plan of Weymouth Farm and Agricultural Company's land.

SETTLEMENT CERTIFICATE 20

Under Application No. 12804
for Hammonton Realty Company
premises Mullica Township
Atlantic County
New Jersey

EXHIBIT C7.

9/2/26 L.

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CHELSEA TITLE AND GUARANTY COMPANY
CHELSEA TITLE BUILDING
ATLANTIC CITY, NEW JERSEY
App. No. 9957 Policy No. 47519 Amount \$6,000.
This Policy of Insurance WITNESSETH THAT

the CHELSEA TITLE AND GUARANTY COMPANY, of Atlantic City, N. J., in consideration of the payment of its charges for the insuring of the title to the land hereinafter described hereby covenants that it will indemnify, keep harmless and insure HARRY GARBER, of the City of Atlantic City, County of Atlantic and State of New Jersey and all persons lawfully claiming the estate and property hereinafter mentioned under him by descent or will, and all persons to whom this Policy may be transferred with the assent of this Company, testified by the signatures of its proper officers, endorsed thereon, against all loss or damage, not exceeding SIX THOUSAND (\$6,000.00) dollars, which the said Insured shall sustain by reason of defects in or unmarketability of the title of the Insured to the estate, mortgage or interest described in Schedule A, hereto annexed, or because of liens or incumbrances charging the same at the date of this Policy;—saving estates, defects, objections, liens or incumbrances excepted in Schedule B or by the conditions of this Policy, hereto annexed; which Schedules and Conditions are hereby incorporated into and made part of this Contract. The loss and the amount to be ascertained in the manner provided in the said Conditions, and to be payable upon compliance by the Insured with the stipulations of said Conditions, and not otherwise.

This Policy is issued upon an application by the Insured, numbered 9957 and agreed by all persons claiming under this Policy to be a warranty of the facts therein stated.

In Witness Whereof, the CHELSEA TITLE AND GUARANTY COMPANY has caused its common seal to be hereto affixed, and these presents to be signed by its President or Vice-President and at-

tested by its Secretary or Assistant Secretary this Third day of May in the year of our Lord one thousand, nine hundred and twenty-six (1926).

H. Walter Gill,
President.

Attest:

Wm. G. Lambert,
Secretary.

(SEAL)

SCHEDULE A.

No. 1. The estate or interest of Insured covered by this Policy.

As Owner of an Estate in fee simple.

No. 2. How Title is vested in the Insured.

By Deed—James Ruberton Jr., and Rose, his wife, to Insured, dated Apr. 28, 1926, and recorded May 3, 1926.

No. 3. Location and description of the property insured.

ALL THAT LOT, Tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Mullica, in the County of Atlantic and State of New Jersey, and lying between Second Street and Seventh Street (or Hammonton Avenue) and North of the Camden and Atlantic Railroad, now known as the West Jersey and Seashore Railroad, and as also shown on plan of lots in Division H—East Hammonton, Atlantic County, New Jersey. Said lands to be more particularly bounded and described as follows:

BEGINNING at the point of intersection of the centre line of Camden and Atlantic Railroad, now the West Jersey and Seashore Railroad, with the centre line of Second Street; and extending thence

(1) In a Northeastwardly direction, in and along

the centre line of said Second Street, six hundred (600) feet more or less to the centre line of the State Highway (or White Horse Pike, or Agaziz Street); thence

- (2) In and along the centre line of the road as aforesaid and in a Northwestwardly direction, four thousand (4,000) feet more or less to a point in the centre line of Seventh Street (Hammonton Avenue); thence
- 10 (3) In a Southwestwardly direction in and along the said centre line of the said Seventh Street (Hammonton Avenue) six hundred (600) feet more or less to the centre line of the said Railroad; thence
- (4) Along the said centre line of the said Railroad in a Southeastwardly direction, four thousand (4,000) feet more or less to the point of Beginning.

IT IS HEREBY AGREED and understood that the following lots as shown on the plan of lots above referred to are excepted from the above described lands:

- Block No. 3—Lots Nos. 13, 14, 15, 16 and 17.
- Block No. 5—Lots Nos. 13, 14, 15, 16 and 17.
- Block No. 6—Lots Nos. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.
- Block No. 12—Lots Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19.
- Block No. 13—Lots Nos. 1, 2, 3, and 17.
- 30 Block No. 14—Lots Nos. 1, 2, 4, 12, 17, 26, 28 and 29.
- Block No. 15—Lots Nos. 1, 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 23, 24, 25, 26, 27, 28 and 29.
- Block No. 16—Lot No. 1.

SCHEDULE B

Showing estates, defects or objections to title, and liens, charges and incumbrances thereon, which do or may now exist, and against which the Company does not agree to insure or indemnify.

1. Tenure of present occupants. 2. Rights of way, not of record. 3. Any variation in location of lines, or dimensions, encroachments, objections or easements, which an accurate survey, approved by this Company, showing all physical conditions, including ways, buildings, fences and windows, would disclose, or which are visible, or are known to the Insured. 10
4. Loss or damage by reason of mechanics' lien claims not filed nor of record at this date. 5. Taxes, water rents and municipal claims for the year 1926. 6. Liability of premises for municipal improvements, such as grading, curbing, guttering, paving, sidewalks, sewers, water pipe, etc., constructed or being constructed, but not assessed.
7. Rights of Delaware and Atlantic Telegraph and Telephone Company to construct and operate lines, erect poles, etc., as granted by Annie M. Coughlin to said Company, September 15, 1916, recorded in Deed Book 577, page 42. 20
8. Rights of the public in all Streets, Avenues or Roads running through or abutting insured premises.
9. Except right of way of Camden and Atlantic Railroad, now the West Jersey and Seashore Railroad.
10. Subject to the interest of Harry Latt in insured premises by virtue of Agreement with James Ruberton, Jr. 30
11. Mortgage—Harry Garber to James Ruberton, Jr., and Rose, his wife, dated April 28, 1926, and recorded May 3, 1926.

To secure the sum of \$30,000., payable at any time within two years from the date thereof. Interest 6%.

Parties of the second part will at any time release that portion of the land lying Westwardly from White Horse Pike upon payment of \$20,000., and will also release at any time that part of the land lying Eastwardly from White Horse Pike upon Payment of \$15,000.

10 CONDITIONS OF THIS POLICY.

1. No claim shall arise under this Policy, unless (I) the party insured has been actually evicted under an adverse title insured against; or (II) there has been a final judgment and execution upon a lien or incumbrance not excepted in this Policy; or (III) where the Insured shall have contracted in good faith, in writing, to sell the insured estate or interest, and the title has been rejected because of some defect or incumbrance not excepted in this Policy, and notice in writing of such rejection shall have been given to this Company within ten days thereafter. For thirty days after receiving such notice, this Company shall have the option of (a) paying the loss (of which Insured must present proper proof), or (b) of maintaining or defending, either in its own name, or, at its option, in the name of the Insured, some proper action or proceedings, begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title—in which event this Company shall be liable on this Policy, only in case a final determination is made in such action or proceeding sustaining the objection to the title; or (c) offering to again guarantee in a guaranty similar to this and for regular charges, any grantee or mortgagee of the party herein guaranteed, against every
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alleged estate, incumbrance or defect not excepted herefrom; or (IV) where the insurance is upon the interest of a mortgagee and the mortgage has been adjudged, by a final determination in a court of competent jurisdiction, to be invalid, or ineffectual to charge the premises described in this Policy, or subject to a prior lien or incumbrance not excepted in this Policy.

2. Any untrue statement made by the Insured or his agent, affecting the insurance, or any suppression of any material fact, or any untrue answer to written questions signed by the Insured or his agent before the issuing of this Policy, shall avoid this Policy; but an assignee for value to whom this Policy has been transferred with the consent of the Company endorsed thereon, shall not be affected by any untrue statements, or answers, or suppressions, or breach of warranty contained in the application, of which he was ignorant at the time the assent to the transfer to him was endorsed by the Company.

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3. All interest in this Policy (saving that for damages accrued) shall cease by the transfer of this Policy, or of the title insured; except where the transfer of this Policy is authorized by its conditions and transferred and approved. Partial transfers of title shall reduce the insurance in the proportion of the value of the estate transferred to that retained. Such transfers shall not affect the interest of a holder of this Policy transferred with the consent of the Company endorsed as collateral security.

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4. The liability of the Company to any holder of this Policy transferred as collateral security, with the consent of the Company endorsed, shall in no case exceed the amount due from the pledgor to the pledgee, upon the debt intended to be secured by the pledge at the time of the loss; and the liability of the

owner shall be diminished to the extent of the payment made to the pledgee.

5. This Policy may be transferred as follows, viz.

I. As collateral security to mortgagees or others interested only as creditors in the title insured.

II. If it shall have been issued solely upon a mortgage or other incumbrance, and then only to the assignee of such mortgage or incumbrance, or to the mortgagor, when the mortgage is cancelled.

10 III. If it shall have been issued to cover some special risk (such as decedent's debts, or mechanics' liens). In case of transfers of this Policy, defects and incumbrances arising after the date of this Policy, or created or suffered by the Insured, are not to be deemed covered by the contract of insurance. No transfer will be valid until it shall have been approved by the Company, upon application made therefor within thirty days after the assignment of the interest insured.

20 6. THE CHELSEA TITLE AND GUARANTY COMPANY will, at its own cost, defend the Insured in all actions of ejectment or other proceedings founded upon a claim of title or incumbrance prior in date to this Policy, and thereby insured against. In case any person who has an interest in this Policy shall receive notice or have knowledge of any such action or proceeding, it shall be the duty of such person at once to notify the Company thereof in writing, and secure it the right to defend the action. Unless the Company shall be so notified within 30 ten days after the service of the first writ, pleading or other paper, in such action or proceeding, the insurance shall be void; and in such defence the Insured shall furnish, without charge to the Company, required in the conduct of the cause; and this condition shall be a condition precedent.

7. In every case where the liability of this Company such personal service and attendance as may be such personal service and attendance as may be pany has been definitely fixed, in accordance with these conditions, the loss or damage shall be payable within thirty days thereafter. Provided, however, that in every case, if demanded by the Company, a valuation of the insured estate or interest shall be made by three arbitrators or any two of them, one to be chosen by the Insured and one by this Company, and the two thus chosen selecting the third. 10 And no right of action shall accrue until thirty days after notice of the valuation ascertained as aforesaid shall have been served upon this Company, and the Insured shall have tendered a conveyance or transfer of the insured estate or interest to this Company or to a purchaser to be named by this Company, at such valuation so ascertained, less the amount of any incumbrance on said insured estate or interest not hereby insured against, and this Company shall have failed within that time to find a purchaser for the estate or interest upon such terms; 20 but under no circumstances shall this Company be liable in any event to pay an amount greater than that named in this Policy. All payments under this Policy shall reduce the amount of the insurance pro tanto. No payment or settlement can be demanded without producing this Policy for indorsement of the fact of such payment or settlement. If this Policy be lost; indemnity must be furnished to the satisfaction of this Company.

8. Whenever this Company shall have settled a 30 claim under this Policy it shall be entitled to all the rights and remedies which the Insured would have had against any other person or property in respect to such claim had this Policy not been made; and the Insured will transfer, or cause to be transferred, to

this Company such rights, and also the right to use the name of the Insured for the recovery or defence thereof. If the payment does not cover the loss of the Insured, this Company shall be subrogated to such rights, in the proportion with said payment; and the Insured warrants that such right of subrogation shall vest in this Company unaffected by any act of the Insured.

9. Defects or incumbrances caused or arising from or suffered by any act of insured, or judgments or liens against the insured, and defects or incumbrances arising after the date of this Policy, and assessments not confirmed at the date of this Policy, are not to be deemed covered by it; and no approval of any transfer of this Policy shall be deemed to make it cover any such defect, incumbrance or assessment. The term "Insured," wherever it is used in this Policy, includes all described on its first page as those whom it insures, and the term "Company," whenever it is used in this Policy, means the CHELSEA TITLE AND GUARANTY COMPANY.

10. No responsibility is assumed under this policy, that the building or buildings erected, or to be erected, upon the lands insured hereunder, comply with the Building Code or Ordinances of the municipality in which insured premises are located.

THIS POLICY
GUARANTEES

30 Against all defects and errors of record. It is based upon the most complete and thorough investigations.

The policy holder is protected by deposits with the Commissioner of Banking and Insurance of the State of New Jersey.

Unlike life and fire insurance, this pol-

icy requires no annual premiums. The initial payment is the only payment.

Our policy holders are protected forever.

When payment of principal and interest is guaranteed, it means absolute safety for the principal, and payment of interest on the day it falls due.

10

EXHIBIT C8.

9/2/26 L.

THIS INDENTURE, made the twenty-eighth day of April in the year of our Lord one thousand nine hundred and twenty-six.

BETWEEN JAMES RUBERTON JR., and ROSE RUBERTON, his wife, of the City of Hammonton, County of Atlantic and State of New Jersey, hereinafter called the party of the first part, and HARRY GARBER, of the City of Atlantic City, County and State aforesaid, hereinafter called the party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the sum of ONE THOUSAND DOLLARS and other good and valuable consideration, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensembling and delivering of these presents, the receipt whereof is hereby acknowledged, has or have granted, bargained, sold, aliened, enfeoffed, released, conveyed, assigned, transferred, ratified, approved and confirmed, and

30

by these presents does or do grant, bargain, sell, alien, enfeoff, release, convey, assign, transfer, ratify, approve and confirm unto the said party of the second part, his, her, their, its, heirs, successors and assigns, ALL those lots, tracts or parcels of land and premises situate, lying and being in the Township of Mullica, County of Atlantic and State of New Jersey, bounded and described as follows:

BEING all the right, title and interest of the said
 10 James Ruberton in the premises described as follows: Bounded on the North by the Pleasant Mill Stream; on the East by Fifth Street; on the South by the Camden & Atlantic Railroad, and on the West by Seventh Street. Fifth and Seventh Streets referred to in this instrument being the extension Northeast of streets so named and shown on plan of Weymouth Farm and Agricultural Company's lands, filed.

20 EXCEPTING out of the above described lands, any lands heretofore sold by the said James Ruberton Jr. or any prior owner.

ALSO EXCEPTING the two following described tracts or parcels of land:

30 BEGINNING at the point of intersection of the center line of Fifth Street with the Northerly line of the right of way of the West Jersey and Seashore Railroad, and running thence (1) North, fifty-one degrees, forty-nine minutes East along Fifth Street, six hundred ninety-six and four tenths feet to the center of the White Horse Pike (formerly Agassiz Street); thence (2) North, thirty-eight degrees eleven minutes West, thirteen hundred forty-five feet along said White Horse Pike to the center line of Second Street; thence (3) Along Second Street, South fifty-one degrees, forty-nine minutes West, six hundred ninety-six and four tenths feet

to the aforesaid right of way thence (4) along the same, South thirty-eight degrees, eleven minutes East, thirteen hundred forty-five feet to the point and place of beginning.

ALSO all of that certain tract of land known as the Annie M. Coughlin tract, bounded on the West by Second Street, on the South by the White Horse Pike, on the East by Fifth Street and on the North by the Old Indian Trail.

BEING all that part of the premises that the said
 10 James Ruberton bought of William G. Coughlin by deed dated and recorded April 14, 1926, in the Atlantic County Clerk's Office at Mays Landing, New Jersey, as lie in the Township of Mullica.

TOGETHER with all and singular the lands, buildings, improvements, waters, water courses, water rights (riparian and pier rights granted or to be granted if the within conveyed property is tangent to, touches upon or embraces water front or fronts to which they would or may attach or be entitled), mineral rights and deposits, woods, streets, alleys, passages, ways, rights, liberties, privileges, hereditaments, incidents, appendants and appurtenances in the line of title and to the same belonging, granted, or in any wise appertaining with the full right to and use of the same that may have been granted heretofore to these or the prior owners hereof or to which they were, may or will be in any way entitled, and the reversion and reversions, remainder and remainders, rents, issues, benefits and the profits thereof, and of every part and parcel thereof:
 20
 30

AND ALSO, all the estate, rights, title, interest, property, privileges, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances, appendants, incidents and hereditaments now vested in the party of the first part or

that may hereafter be vested in the party of the first part in fulfillment and in perfection by estoppel of the title hereto both as to the quantity and quality of the same intended and purported to be granted and conveyed by this deed, if there is ascertained to be in any manner any deficiency of title either as to the quantity or quality thereof or both.

10 TO HAVE AND TO HOLD the said premises, with all and singular the buildings, appurtenances, appendants, incidents and hereditaments thereunto belonging as aforesaid unto the said party of the second part, his, her, their, its, heirs, successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, his, her their, its, heirs, successors and assigns.

20 AND the said party of the first part for himself, herself, themselves, itself, his, her, their, its, heirs, executors, administrators, successors, DO or DOTH by these presents covenant, grant and agree to and with the said party of the second part, his, her, their, its, heirs, successors and assigns, that the said party of the first part, his, her, their, its, heirs, successors, all and singular the hereditaments, appurtenances, appendants, incidents and premises herein above described and granted, or mentioned and intended to be so unto the said party of the second part, his, her, their, its, heirs, successors and assigns, against the said party of the first part, his, her, their, its, heirs, successors and against all and every other person or

30 persons whomsoever lawfully claiming or to claim the same, or any part thereof, by, from, through, or under him, her, them, it or any of them, SHALL and WILL, subject to the above mentioned encumbrances, conditions, exceptions and reservations, if any, WARRANT and forever DEFEND.

IN WITNESS WHEREOF the individual parties of the first part to these presents has or have here-

unto set his, her or their hands and seals, and the corporate parties hereto have caused its or their common or corporate seal or seals to be affixed and set hereto duly attested by their proper and authorized officers thereof affixing their signatures hereto, in attestation of their due execution and delivery, the day and year first above written.

Signed sealed and delivered }
in the presence of }
Frank T. Perone } 10

James Ruberton Jr. (Seal)
Rose Ruberton (Seal)

STATE OF NEW JERSEY }
ATLANTIC COUNTY } ss.

20 BE IT REMEMBERED, that on this twenty-eighth day of April in the year of our Lord one thousand nine hundred and twenty-six before me, the undersigned subscriber, a notary public for the state of New Jersey personally appeared JAMES RUBERTON, JR., and ROSE, his wife, who, I am satisfied is or are the grantor or grantors mentioned in the above Deed on Conveyance, and I having first made known to him, her or them the contents thereof, he, she or they acknowledged that he, she or they signed, sealed and delivered the same as his, her or their voluntary act and deed. All of which is hereby certified.

Frank T. Perone,
Notary Public for N. J. 30

My comm. ex. 12/18/27

In accordance with the statute I have presented an abstract of the within to the collector of the taxing disriet therein mentioned

WILLIAM A. BLAIR,
Clerk.

TITLE AND GUARANTY CO.,
OFFICE NO. 1626
5/3/26

App. No.....

DEED

JAMES RUBERTON JR. et ux
to

HARRY GARBER
108 S. R. I. Ave.

10

Dated 1926
Received in the CLERKS office of the
County of ATLANTIC on the 3 day of
MAY A. D. 1926 at 11 o'clock in the
FOREnoon, and recorded in Book 824
of DEEDS for said County, on pages
104 etc WILLIAM A. BLAIR, CLERK
M. A. S.

20

CHELSEA TITLE AND GUARANTY
COMPANY
CHELSEA NATIONAL BANK
BUILDING
ATLANTIC CITY, N. J.

EXHIBIT C9.
9/2/26L

30

THIS INDENTURE, made the
day of in the year of our
Lord one thousand nine hundred and twenty-six
BETWEEN HARRY GARBER and LINA GAR-
BER, his wife, and HARRY LATT and JENNIE
LATT, his wife, all of the City of Atlantic City,
County of Atlantic and State of New Jersey, herein-

after called the party of the first part, and JACOB
STERN, of the City, County and State aforesaid,
hereinafter called the party of the second part:

WITNESSETH, that the said party of the first part,
for and in consideration of the sum of ONE THOU-
SAND DOLLARS and other good and valuable con-
sideration, lawful money of the United States or
America, well and truly paid by the said party or
the second part to the said party of the first part, at
and before the ensealing and delivering of these
presents, the receipt whereof is hereby acknowl-
edged, has or have granted, bargained, sold, aliened,
enfeoffed, released, conveyed, assigned, transferred,
ratified, approved and confirmed, and by these
presents does or do grant, bargain, sell, alien, enfeoff,
release, convey, assign, transfer, ratify, approve and
confirm unto the said party of the second part, his,
her, their, its, heirs, successors and assigns, ALL
those certain lots, tracts or parcels of land and prem-
ises situate, lying and being in the Township of
Mullica in the County of Atlantic and State of New
Jersey, and lying between Second Street and Sev-
enth Street (or Hammonton Avenue) and North
of the Camden and Atlantic Railroad, now known
as the West Jersey and Seashore Railroad and as
also shown on plan of lots in Division H—East
Hammonton, Atlantic County, New Jersey. Said
lands to be more particularly bounded and des-
cribed as follows:

BEGINNING at the point of intersection of the
center line of Camden and Atlantic Railroad, now
the West Jersey and Seashore Railroad with the
center line of Second Street and extending thence
(1) In a Northeastwardly direction, in and along
the center line of said Second Street, six hundred
feet more or less to the center line of the State High-

way (or White Horse Pike or Agazziz Street); thence

(2) In and along the center line of the road as aforesaid and in a Northwestwardly direction, four thousand feet more or less to a point of the center line of Seventh Street (Hammonton Avenue); thence

(3) In a Southwestwardly direction in and along the said center line of the said Seventh Street (Hammonton Avenue) six hundred feet, more or less to the center line of the said Railroad; thence (4)

10 Along the said center line of the said Railroad in a Southeastwardly direction, four thousand feet, more or less to the point of beginning.

IT is hereby agreed and understood that the following lots as shown on the plan of lots above referred to, are excepted from the above described lands:

Block #3—Lots 13-14-15-16 and 17

Block #5—Lots 13-14-15-16 and 17

Block #6—Lots 10-11-12-13-14-15-16-17-18-19 and 20

20 Block #12—Lots 11-12-13-14-15-16-17-18-19

Block #13—Lots 1-2-3 and 17

Block #14—Lots 1-2-4-12-17-26-28 and 29

Block #15—Lots 1-3-4-5-6-7-13-14-15-16-17-23-24-25
26-27-28 and 29

Block #16—Lot 1.

30 TOGETHER with all and singular the lands, buildings, improvements, waters, water courses, water rights (riparian and pier rights granted or to be granted if the within conveyed property is tangent to, touches upon or embraces water front or fronts to which they would or may attach or be entitled), mineral rights and deposits, woods, streets, alleys, passages, ways, rights, liberties, privileges, hereditaments, incidents, appendants and appurtenances in the line of title and to the same belonging, granted, or in any wise appertaining with the full

right to and use of the same that may have been granted heretofore to these or the prior owners hereof or to which they were, may or will be in any way entitled, and the reversion and reversions, remainder and remainders, rents, issues, benefits and the profits thereof, and of every part and parcel thereof:

AND ALSO, all the estate, rights, title, interest, property, privileges, possession, claim and demand whatsoever both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances, appendants, incidents and hereditaments now vested in the party of the first part or that may hereafter be vested in the party of the first part in fulfillment and in perfection by estoppel or the title hereto both as to the quantity and quality of the same intended and purported to be granted and conveyed by this deed, if there is ascertained to be in any manner any deficiency of title either as to the quantity or quality thereof or both. 10

20 TO HAVE AND TO HOLD the said premises, with all and singular the buildings, appurtenances, appendants, incidents, and hereditaments thereunto belonging as aforesaid unto the said party of the second part, his, her, their, its, heirs, successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, his, her, their, its, heirs, successors and assigns.

30 AND the said party of the first part for himself, herself, themselves, itself, his, her, their, its, heirs, executors, administrators, successors, DO or DO'N by these presents covenant, grant and agree to and with the said party of the second part, his, her, their, its heirs, successors and assigns, that the said party of the first part, his, her, their, its, heirs, successors, all and singular the hereditaments, appurtenances, appendants, incidents and premises herein above des-

cribed and granted, or mentioned and intended to be so, unto the said party of the second part, his, her, their, its, heirs, successors and assigns, against the said party of the first part, his, her, their, its, heirs, successors and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, by, from, through, or under him, her, them, it or any of them, SHALL and WILL, subject to the above mentioned encumbrances, conditions, exceptions and reservations, if any, WARRANT and forever DEFEND

10 IN WITNESS WHEREOF the individual parties of the first part to these presents has or have hereto set his, her or their hands and seals, and the corporate parties hereto have caused its or their common or corporate seal or seals to be affixed and set hereto duly attested by their proper and authorized officers thereof affixing their signatures hereto, in attestation of their due execution and delivery, the day and year first above written

20 Signed, sealed and delivered }
 in the presence of }
 F. T. Perone

Harry Garber (Seal)
 H. Lina Garber (Seal)
 Harry Latt (Seal)
 Jennie Latt (Seal)

STATE OF NEW JERSEY }
 ATLANTIC COUNTY } ss.

30 BE IT REMEMBERED, that on this fourteenth day of June in the year of our Lord one thousand nine hundred and twenty-six before me, the undersigned subscriber, personally appeared Harry Garber and Lina, his wife; Harry Latt and Jennie his wife, who, I am satisfied is or are the grantor or grantors mentioned in the above Deed or Convey-

ance, and I having first made known to him, her or them the contents thereof, he, she or they acknowledged that he, she or they signed, sealed and delivered the same as his, her or their voluntary act and deed. All of which is hereby certified

Frank T. Perone
 Notary Public for N. J.

App. No.

DEED
 HARRY GARBER et ux etals 10
 to
 JACOB STERN

20

30

CONCLUSIONS.

(Filed Jan. 13, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between

HARRY GARBER, *et al.*,
Complainants,

and

JACOB STERN,
Defendant.)On Bill for Specific
Performance.On Final Hearing.
Conclusions.

20 * MESSRS. COLE & COLE, for the complainants.
MESSRS. THOMPSON & HANSTEIN, for the defend-
dants.

INGERSOLL, V. C.:

On the 14th day of April, 1926, the complainants and defendant entered into an agreement wherein the complainants agreed to sell and the defendant to
30 buy certain premises therein described, for the sum of \$83,000, to be paid in the manner therein prescribed.

The contract provided that the conveyance should be by deed of warranty, free from all encumbrance excepting certain then existing mortgages, on or before June 14th, 1926. The title was to be good and

marketable and such as would be insured by a reputable title company. Time was of the essence of the agreement. It was later agreed that settlement should be made at the office of the Chelsea Title & Guaranty Company, and the title should be insured by that company.

On the day fixed for settlement, the parties appeared; the complainants presented and tendered a deed; the defendant declared himself prepared to make settlement, but insisted that the title was not such as the contract called for. Objections are made
10 by the defendant as follows:

1. That the deed tendered was a special warranty, and not one of general warranty.

2. That the Chelsea Title and Guaranty Company was not at that time prepared to insure the title.

3. That the Pennsylvania Railroad Company had
20 a right of way over a portion of the premises.

4. That the public had right of way over certain streets or roads upon said premises.

5. That the Delaware & Atlantic Telephone and Telegraph Company had certain rights to maintain poles, wires, &c., over parts of said premises.

6. An item upon the settlement sheet concerning an interest as trustee of Stephen Colwell, which be-
30 came vested in one Abraham Browning, by a declaration of trust dated April 27th, 1866.

The 1st objection, had it been made at the time of the proposed settlement, could have been readily corrected. This objection does not appear to be discussed by either brief, and is apparently not relied upon.

The 2nd objection, that the title company was not at that date prepared to make settlement, may be considered later.

The 3rd and 4th objections were disposed of at the time of the hearing. The Court announced that an examination of the agreement and the map accompanying it, evidenced clearly that the purchase was to be made subject to these rights.

10 The agreement in terms describes the beginning point as, "at the point of intersection of the center line of Camden and Atlantic Railroad, now the West Jersey and Seashore Railroad (usually known as the Pennsylvania Railroad), "with the center line of Center Street," and the map delineates certain other streets and highways.

20 It is true that had there been no physical indications on the ground, of any such streets, the fact that the purchaser before making his contract for a title that would be good and marketable, free from all encumbrance (excepting certain mortgages) saw a map thereof showing a paper street, does not constitute a waiver of objections to the title because of the public servitude created by the dedication of the street. *Simpson v. Klipstein*, 89 N. J. Eq. 543.

The 5th objection is the right of way of the Delaware and Atlantic Telephone Company.

30 The existence of an easement upon premises conveyed is a breach of a covenant against encumbrances. *Propper v. Colson*, 86 N. J. Eq. 399.

Under a contract to convey real estate "by a good and marketable title free and clear of all encumbrances," the vendor is bound to have and tender a title free from encumbrances. *Simpson v. Klipstein*, *supra*.

The word "marketable" means salable; "encum-

brance" means a right to, or an interest in, an estate to the diminution of its value. *Bier v. Walbaum*, 4 Adv. Rep. 251.

I am not inclined to view with great seriousness the exception on the title sheet of the interest, if any, of Abraham Browning in the tract. It is admitted that no such interest exists, and the title company thereafter promptly removed it as an exception.

The complainants contend that the rescission by 10 Taylor on the day set for final settlement was not in good faith. They insist that by the placing of "For Sale" signs upon the premises by Taylor & Soloff, the admitted agents of the defendant; and that manifestly defendant never intended to urge the existence of the poles as a barrier to his performing the contract. Further, that he, the defendant, was under a high obligation to give timely notice to the complainants of any serious exception appearing upon the certificate in order to give com- 20 plainant a fair opportunity to have it removed.

The title, on the day set for settlement, was such as would be insured by the title company, excepting the rights of way, and the rights of the telephone company to maintain poles and wires.

Counsel for the complainants says: "at most they (the poles) are only an incumbrance, and there should be a decree to compel performance, subject to an abatement."

This could not be done. It is not similar to a 30 condition where a mortgage is past due and payable, and the money therefor could be retained or paid into court.

It follows, therefore, that the bill must be dismissed. The complainants were unable upon the day fixed for final settlement to give a good and marketable title, free from all encumbrances, except the mortgages.

FINAL DECREE.

(Filed Jan. 22, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between

HARRY GARBER, *et al.*,
Complainants,

and

JACOB STERN,
Defendant.On Bill, &c.
Decree.

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This cause coming on to be heard in the presence of Cole & Cole, Esquires, solicitors of complainants, and Thompson & Hanstein, Esquires, solicitors of defendant, Jacob Stern.

And the Court having examined the pleadings and taken proof orally in open court, and having heard and considered the arguments of counsel; and

30 The Court being satisfied that on the 14th day of April, 1926, complainants and the defendant entered into an agreement wherein the complainants agreed to sell and the defendant agreed to buy certain premises described therein, for the sum of \$83,000 to be paid in the manner therein described, which contract provided that the conveyance should be by deed of warranty, free from all encumbrances, except certain then existing mortgages, on or before June 14th, 1926, title was to be good and mar-

ketable and such as would be insured by a reputable title company. Time was of the essence of the agreement; and

The Court having found that the parties to said agreement agreed that settlement should be made at the office of the Chelsea Title and Guaranty Company, and that the title should be insured by that company, and on the day fixed for settlement the parties appeared and the complainants presented and tendered a deed, and the defendant declared himself prepared to make settlement, but understood that the title was not such as the contract called for; and 10

The Court being of the opinion that, upon the day fixed for final settlement, the complainants were unable to give a good and marketable title free from all encumbrances, except the mortgages;

It is, thereupon, on this 22 day of January, 1927, ordered, adjudged and decreed that the complainant's bill be dismissed; 20

It is further ordered that the complainants pay to the defendant the costs of this suit to be taxed, which is hereby allowed to said defendant, and that in default of the payment of said taxed costs within 30 days after service upon said complainants, or their solicitors, of a true, but uncertified, copy of this decree and of said taxed costs, execution issued against the goods and chattels, lands, tenements, hereditaments and real estate of the complainants to make said costs, according to the practice of this Court. 30

E. R. WALKER,
C.

Respectfully advised.

R. H. INGERSOLL,
V. C.

NOTICE OF APPEAL.

(Filed Jan. 28, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between HARRY GARBER, <i>et al.</i> , <i>Complainants,</i> and JACOB STERN, <i>Defendant.</i>	}	On Bill, &c. Notice of Appeal.
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To Thompson & Hanstein, Esqs., Solicitors of Defendant:

The complainants hereby appeal from the final decree made in the above entitled cause on the 22nd day of January, 1927, by his Honor, Robert H. Ingersoll, Vice-Chancellor, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

30

Dated January 25, 1927.

COLE & COLE,
*Solicitors for and of Counsel
with Complainants.*

I conceive there is good cause for appeal in the above entitled cause.

C. L. COLE,
Of Counsel with Complainants.

[ENDORSED]

Service acknowledged this 26 day of 10
Jan. 1927.

Thompson & Hanstein,
Solicitors for Defendant.

20

30

PETITION OF APPEAL.

(Filed Jan. 28, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

Between HARRY GARBER, <i>et al.</i> , <i>Complainants-</i> <i>Appellants,</i> and JACOB STERN, <i>Defendant-</i> <i>Respondent.</i>	}	On Appeal from Chancery. Petition of Appeal.
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To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Harry Garber and Lena Garber, his wife, Harry Latt and Jennie Latt, his wife, the appellants in the above entitled cause, respectfully show that:

30

Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey (advised by his Honor Vice-Chancellor Ingersoll), bearing date the 22nd day of January, 1927, in a certain cause in said Court of Chancery

wherein the said Harry Garber and Lena Garber, his wife, Harry Latt and Jennie Latt, his wife, were complainants and the said Jacob Stern was defendant, and from the whole and every part thereof. Petitioners appeal from said decree upon the ground that the same is erroneous in that it denied the relief prayed by complainants and dismissed their bill when it should have decreed specific performance.

10

Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

COLE & COLE,
Solicitors for and of Counsel
with Appellants.

[ENDORSED]

20

Service acknowledged this 26th day of Jan. 1927.

Thompson & Hanstein,
Solicitors for Respondent.

30

ANSWER TO PETITION OF APPEAL.

(Filed Jan. 28, 1927.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	HARRY GARBER, <i>et al.</i> , Complainants- Appellants,	}	On Appeal.
	v.		Answer to Petition of
	JACOB STERN, Defendant- Respondent.)		Appeal.

20 The answer of the above named respondent to the petition of appeal of the above named appellants. This respondent, Jacob Stern, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says that admits that a decree was on the 22nd day of January, 1927, made and entered in the Court of Chancery in the cause for the purpose mentioned in the 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 he prays that the same may be affirmed with costs to be adjudged to this respondent.

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel
with Defendant-Respondent.*

EXHIBIT D3.
9/12/26L.

CHELSEA TITLE AND GUARANTY COMPANY
CHELSEA NATIONAL BANK BUILDING
Atlantic City, N. J.

May 28, 1926

Pursuant to application No. 9378 the "Chelsea Title and Guaranty Company" will, upon the surrender of this certificate, the payment of the premium and expenses, and the production and record of the papers, hereinafter called for, insure Jacob Stern or nominee as owner in fee of premises situate in the Township of Mullica, Atlantic County, New Jersey, more particularly described in schedule hereto annexed to the amount of Dollars, against all liens or defects in title, except the following, which may now exist, and will be made exceptions in the policy unless removed, viz: 10

NOTE—No liability assumed after this date; if settlement is postponed search should be continued.

Where insurance is under a mortgage, the production and approval of the bond and mortgage will be required before issuing policy.

It will not be guaranteed that there are any buildings or improvements on the land intended to be insured.

This Company will not assume any responsibility for unpaid gas, electric light, sewer or other corporation claims NOT LIENS; nor for the proper execution of papers until approved by it; nor will it perform the work required for the removal of any proper exception. Counsel should be employed where legal services are required. All papers should be submitted for approval BEFORE settlement day. 30

1. Tenure of present occupants.
2. Rights of way, not of record.
3. Any variation in location of lines, or dimensions, encroachments, objections or easements, which an accurate survey, showing all physical conditions, including ways, buildings, fences and windows, would disclose, or which are visible or are known to the Insured.
4. Loss or damage by reason of mechanics' lien claims not filed or of record at this date.
5. Taxes, water rents and municipal claims for the year 1926. Amount \$255.20.
6. Liability of premises for municipal improvements, such as grading, curbing, guttering, paving, sidewalks, sewers, water pipe, etc., constructed or being constructed, but not assessed.
7. Subject to rights of Delaware & Atlantic Telegraph & Telephone Company to construct and operate lines, erect poles, etc., as granted by Annie M. Coughlin to said Company, September 15, 1916, Deed book 577, page 42.
8. Subject to rights of the public in all Streets, Avenues or Roads running through or abutting premises in question.
9. Except right of way of Camden & Atlantic Railroad, now the West Jersey & Seashore Railroad.
10. The interest as Trustee of Stephen Colwell which became vested in Abraham Browning through Declaration of Trust dated April 27, 1866 and recorded in Deed book 28, page 481, still remains outstanding in said Browning or his successor in trust.
11. Subject to terms of Agreement of Sale made by Harry Garber and wife and Harry Latt and wife with Jacob Stern

12. Mortgages:

Harry Garber	}	Dated April 28, 1926
to		Recorded May 3, 1926
James Ruberton, Jr., and	}	Secures \$30,000 in 2
Rose Ruberton, his wife		years @ 6%

Subject to terms thereof.

13. An affidavit should be produced showing the following Judgments and Recognizances are not against our William G. Coughlin former owner of premises in question, viz:

	Judgment.	10
North Jersey Quarry Co.	}	N. J. Supreme Court
		Entered March 11, 1915
vs.		
W. J. Coughlin	}	Damages \$2257.58
		Costs 36.78
		2294.36

	Judgment	20
Alfred W. Booth & Bro.,	}	N. J. Supreme Court
		Docketed from Hudson County
vs.		January 28, 1926
William Coughlin et al	}	Damages \$850.02
		Costs 47.12
		897.14

William F. Burns, Prin.,	}	U. S. District Court	30
William Coughlin, Surety		Recognizance #10239	
to		Entered July 10, 1923	
United States		Amount \$1000.	

Same to same } U. S. District Court
 Recognizance #10261
 Entered July 12, 1923
 Amount \$1000.

14. Production and recording of deed from Harry Garber and wife and Harry Latt and wife to the insured.

Wm. M. Wallace

10 ALL THAT LOT, TRACT or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Mullica in the county of Atlantic and State of New Jersey and lying between Second Street and Seventh Street (or Hammonton Avenue) and North of the Camden and Atlantic Railroad, now known as the West Jersey and Seashore Railroad and as also shown on plan of lots in Division H—East Hammonton, Atlantic County, New Jersey. Said lands to be more particularly bounded and described as follows:

20 BEGINNING at the point of intersection of the center line of Camden and Atlantic Railroad, now the West Jersey and Seashore Railroad with the center line of Second Street and extending thence

- (1) In a Northeastwardly direction, in and along the center line of said Second Street, Six Hundred (600) feet more or less to the center line of the State Highway (or White Horse Pike or Agazziz Street) thence
- 30 (2) In and along the center line of the road as aforesaid and in a Northwestwardly direction, Four Thousand (4,000) feet more or less to a point of the center line of Seventh Street (Hammonton Avenue) thence
- (3) In a Southwestwardly direction in and along the said center line of the said Seventh Street (Hammonton Avenue) Six Hundred (600) feet,

more or less to the center line of the said Railroad; thence

- (4) Along the said center line of the said Railroad in a Southeastwardly direction, Four Thousand (4,000) feet, more or less to the point of beginning.

It is hereby agreed and understood that the following lots as shown on the plan of lots above referred to, are excepted from the above described lands: 10

- Block #3 —Lots #13-14-15-16 and 17
- Block #5 —Lots #13-14-15-16 and 17
- Block #6 —Lots #10-11-12-13-14-15-16-17-18-19 and 20
- Block #12—Lots #11-12-13-14-15-16-17-18-19
- Block #13—Lots #1-2-3 and 17
- Block #14—Lots #1-2-4-12-17-26-28 and 29
- Block #15—Lots #1-3-4-5-6-7-13-14-15-16-17-23-25-26-27-28 and 29
- Block #16—Lot #1 20

EXHIBIT D9.

Anna M. Coughlin } Agreement
 (land-owner) widow, } Date—September 15, 1916
 and } Ack—October 11, 1916
 Delaware and Atlan- } Rec—April 26, 1917
 tic Telegraph and } Book 577, page 42 &c. 30
 Telephone Company } Cons—\$75.00

Party of the first part received \$75.00 for which she hereby grants to party of the second part, its successors and assigns, the right, privilege and authority to construct, reconstruct, operate and main-

tain its telephone and telegraph lines and appliances, including poles, anchors, brace-poles, cross-arms, cables and wires, on, over, and along the highway known as White Horse Pike, abutting my property in Mullica Township, Atlantic County, New Jersey, between the land now or late of the Magnolia Park Association and the land now or late of James Gwyn, and the further right to permit others to use the said lines and appliances; and the right to cut
10 down from time to time all trees between the curb line and the property line, except trees expressly planted or used for shade trees, so long as said land remains covered by underbrush and trees. When said land is improved so that the hazard from fire is removed, then the right hereby conveyed to so cut the trees is terminated.

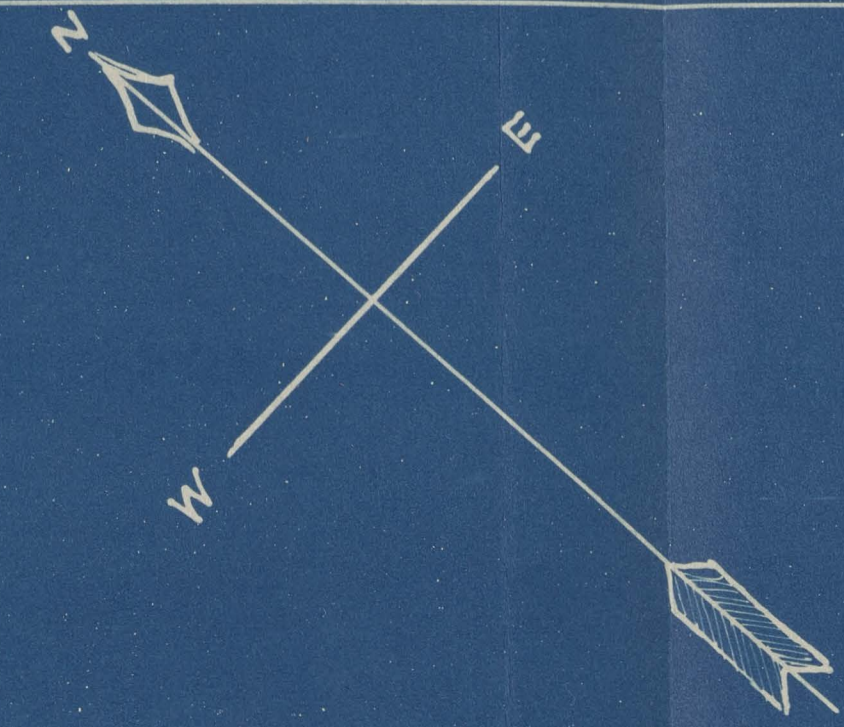
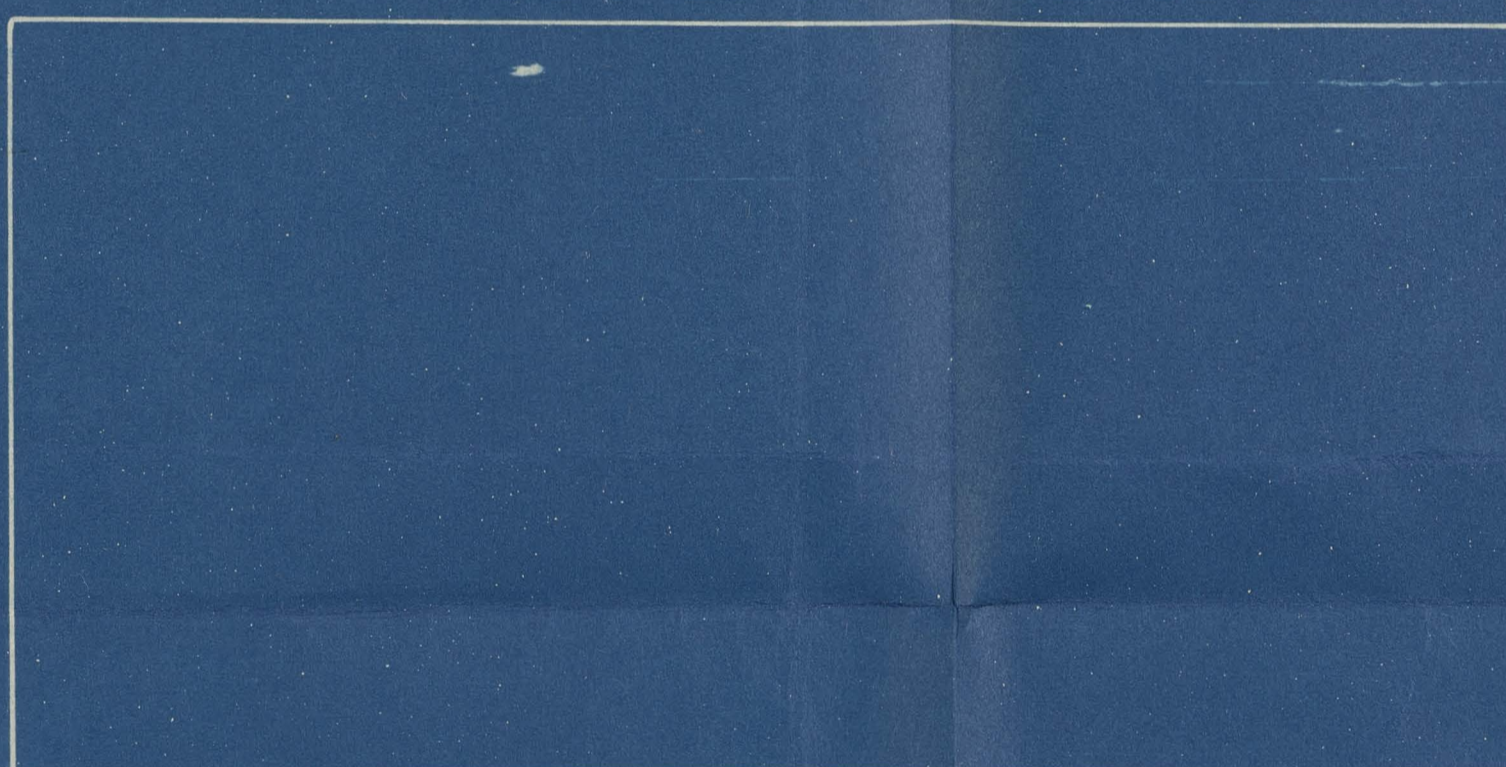
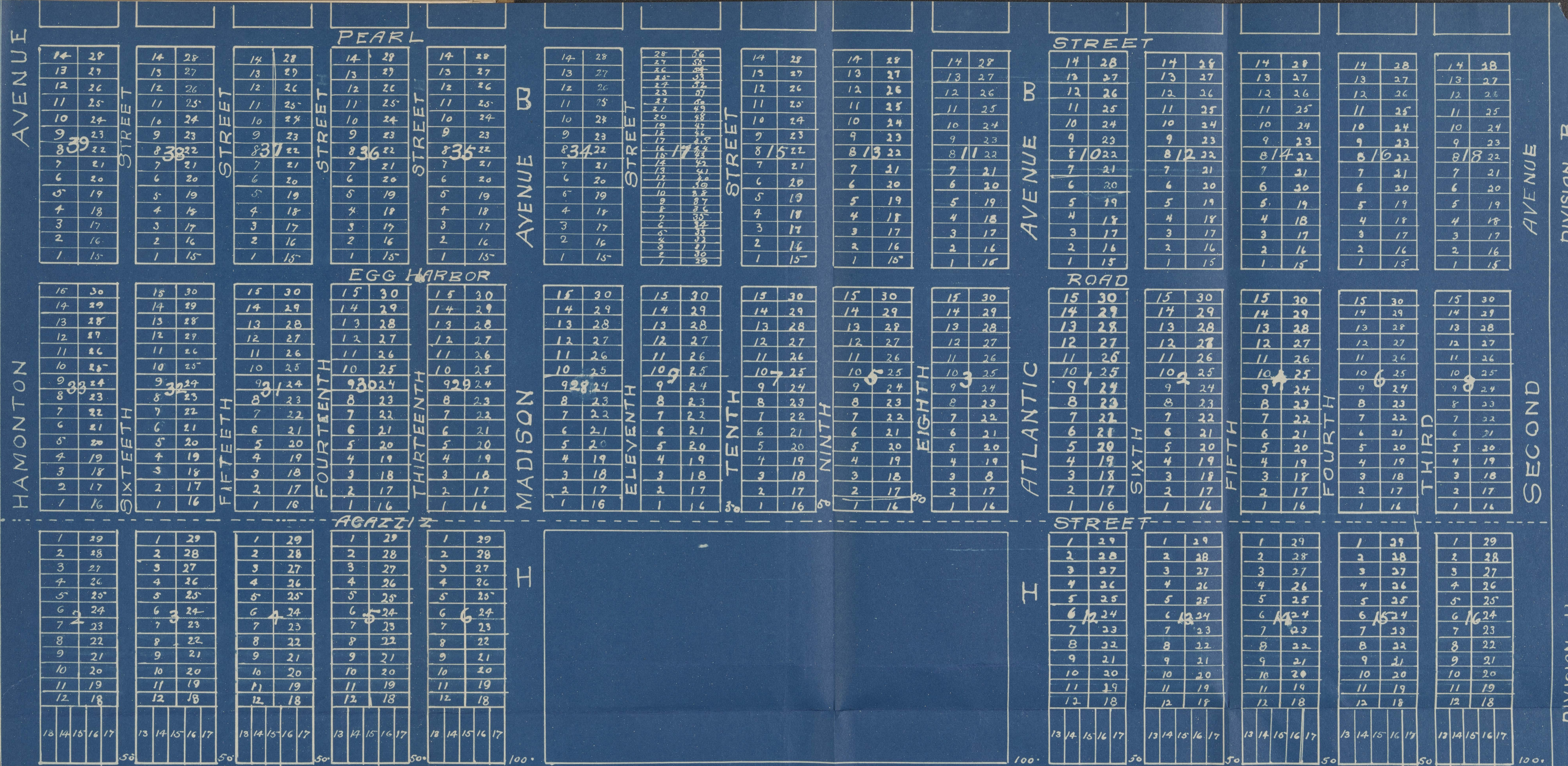
Said poles shall be located north of and adjacent to the north curb line of the highway now or later to be laid out, of the White Horse Pike, and clearing
20 the streets running in a general northwardly direction and intersecting the said White Horse Pike. No wires or cables to be lower than 20' above the grade of streets.

The telephone Company shall pay \$1.00 each for all poles, in excess of 50 erected under this grant.

Not more than 3 storm-guys shall be erected along my property, each of said storm-guys to consist of 2 anchors and 1 brace-pole; said storm-guys to be
30 removed at any time upon request of myself, my executors or assigns.

DIVISION H

DIVISION B
AVENUE



PLAN OF LOTS
 IN DIVISIONS H, B, A & C
EAST HAMMONTON
 NEW - JERSEY
F. T. PERONE CO AGENTS
 ATLANTIC CITY, N.J.
 SCALE 200 FEET TO THE INCH

PHILADELPHIA & ATLANTIC NARROW GAUGE RAILWAY

New Jersey Court of Errors and Appeals

Between
HARRY GARBER, *et al.*,
Complainants-Appellants,
and
JACOB STERN,
Defendant-Respondent.

ON APPEAL FROM CHANCERY.

APPELLANTS' BRIEF.

STATEMENT.

Vendor's bill to compel specific performance of agreement concerning real estate. Decree of dismissal from which complainants appeal. Agreement provides:

"That they, the said parties of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by deed of general warranty free from all encumbrances except as hereinafter mentioned, on or before the fourteenth day of June, 1926, all that * * * and as also shown on plan of lots * * * *which*

plan or map is attached hereto and is to be considered a part hereof.

Settlement to be made at the offices of the Land Title and Guaranty Company, New Jersey, of Camden, New Jersey, or any other reputable title company in the State of New Jersey, on or before the fourteenth day of June, 1926. Title to be good and marketable *and such as will be insured by the title company or companies as above stated.*"

Respondent claimed that the title company would not insure and that the premises were not free of encumbrance. The decree finds that the appellants could not grant a marketable title free from encumbrance. This is broader than the Court's conclusion and at variance therewith. At page 163 the opinion reads:

"The title on the day set for settlement, was such as would be insured by the title company, excepting the right of way, and the rights of the telephone company to maintain poles and wires."

By the plain language of the opinion the bill was dismissed solely because of the existence of the telephone poles of D. & A. T. & T. Co. comprising its main line from Philadelphia to Atlantic City.

ARGUMENT.

The opinion states six objections to the title proffered by appellants (p. 161).

The first is dismissed upon the ground that it was not made at the time set for settlement, it could have

been removed at that time and it was not discussed in the brief and was therefore deemed to be waived.

The second: That the Chelsea Title and Guaranty Company was not at that time prepared to insure the title, was not true in fact.

The third: "That the Pennsylvania Railroad Company had a right of way over a portion of the premises," was disposed of adversely to respondent at the hearing, because the map accompanying the agreement and made a part thereof, shows the existence of the right of way. The same applies to the fourth objection.

Passing the fifth objection for a moment.

The sixth objection concerns a supposed interest outstanding in Abraham Browning as trustee. It was a dry trust and no mention was made of it by The Land Title and Trust Company and it had agreed to insure without excepting the interest. The Chelsea Company finally eliminated it, admitting its error. The Vice-Chancellor disposes of it (p. 163) as follows:

"I am not inclined to view with great seriousness the exception in the title sheet of the interest, if any, of Abraham Browning in the tract. It is admitted that no such interest exists, and the title company thereafter promptly removed it as an exception."

This brings us to the remaining objection, to wit, the poles which the Vice-Chancellor adjudged were an encumbrance and prevented performance by appellants.

The description (p. 4) calls for, "Six hundred feet more or less to the center line of the State Highway" (or White Horse Pike or Agazziz Street). The poles are along the highway and have been there for years

(pp. 38-39). Respondent's agents, Taylor & Soloff, were upon the premises before and after the execution of the agreement and it should be found as a fact that they knew of the existence of the poles (pp. 38-77).

It may be that this Court will feel impelled to say that the presence of the poles was a sufficient legal excuse to justify respondent's refusal to accept title, but manifestly it was not his reason for doing so. The record demonstrates that he agreed to buy, as a pure speculation, and when he found he could not "make a quick turn," he sought any technical ground of escape from his obligation. By the terms of the agreement (p. 8) respondent was permitted to enter into possession only after settlement. In fact he entered into possession shortly after the agreement was signed (p. 65), placed "For Sale" signs upon the premises (which were unimproved) to the number of six, and some as late as July 13th (p. 24), weeks after he repudiated his agreement (p. 65) and were there at the time of the hearing. See photographs.

Taylor & Soloff were agents of respondent to sell the lands for him (pp. 93-94) and they built and maintained the signs for the benefit of respondent (p. 64). The settlement certificate of Land Title and Guaranty Company made no reference to the interest of Abraham Browning, it did refer to the rights of the telephone company (p. 136). It was procured by appellant on March 4th and Soloff was so notified (pp. 18-19). No objection was offered until two days before date fixed for settlement when Taylor said, "we don't care for the poles" (p. 21).

Taylor's action in refusing title for the reasons alleged was insincere and transparent.

He was familiar with the Chelsea Title settlement certificate when he appeared for settlement (p. 89)

and had all necessary papers executed by Stern and was prepared to pay, &c. (p. 92). But notwithstanding the agreement made the map a part of it, and notwithstanding the map delineated the railroad Taylor had determined when he entered the title office that he would not perform until the company would insure free of the rights of the railroad (p. 96):

"Q. You don't know now whether, if there had been nothing on the settlement certificate except the right of way of the Camden and Atlantic Railroad Company, whether or not you would have rescinded the contract?

A. I don't know.

Q. What is your best judgment now, looking backward, if that had been all there was in it, would you have rescinded it?

A. I can't say what I might have done.

Q. Did that make a serious impression on your mind, the right of way of the Camden and Atlantic Railroad?

A. Yes.

Q. You were going to insist on that occasion, were you not, that unless that exception was removed you would not take this title?

A. I was. I was going to insist on a good and marketable title."

This was a display of bad faith.

The tract of land is 600 feet on Second Street and runs between the centre line of Camden and Atlantic Railroad to the State Highway (White Horse Pike) a distance of 4000 feet.

From all of the foregoing, and other evidence not alluded to, we contend that the objection to the encumbrance of the poles was not in good faith and that there was both waiver and estoppel.

Early in March, if not before, respondent knew of the poles and must be charged with knowledge that the encumbrance could not be removed. He should have immediately notified appellants that they could not perform, and that he would not buy with the poles existing. To the contrary he emphasized this indifference to the presence of the poles by taking possession through the erection and maintenance of "For Sale" signs, some erected after the attempted rescission and continued at least to the date of trial. The Vice-Chancellor gave no consideration to this phase of the case, which we think caused him to fall into error. The single ground upon which he rested his decree cannot be justified.

It is respectfully submitted that the decree should be reversed, and a decree entered compelling specific performance.

COLE & COLE,
*Solicitors and of Counsel
with Appellants.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

HARRY GARBER, *et al.*,
Complainants-Appellants,
v.
JACOB STERN,
Defendant-Respondent.

ON APPEAL.

BRIEF OF DEFENDANT-RESPONDENT.

The complainants brought their suit for the specific performance of the contract in question, alleging that they were, at the time fixed for settlement, ready, willing and able to perform. The contract provided that the complainants were to convey to the defendant the premises in question by (1) deed of general warranty, (2) free from all encumbrance, (3) with a title that would be good and marketable and such as would be insured by the Chelsea Title & Guaranty Company. Time was of the essence of the contract.

The parties appeared at the Chelsea Title & Guaranty Company, which was the title company agreed upon by the parties, on the day fixed for settlement,

and the complainants then offered the deed which was marked in evidence, and the defendant declared himself ready to make settlement, if the complainants would give such title as the contract called for.

The Court found that the complainants were not able to give a good and marketable title clear of all encumbrance by reason of the existence of telegraph poles erected by virtue of Exhibit D9, and dismissed the bill.

It is submitted that the learned Vice-Chancellor was entirely justified in finding that the existence of telegraph poles on the premises in question was an encumbrance, and was, therefore, justified in dismissing the bill. However, there are various other reasons why the bill should have been dismissed, and in order that this entire case may be properly before the Court we will undertake to argue each of the propositions, which we contend justify the entry of the decree that was allowed.

The deed offered in evidence as being the deed tendered is Exhibit C9 on page 154. This deed is a special warranty deed. The testimony as to the tender of that deed is on page 83. The Court found in respect to the deed as follows:

“The first objection, had it been raised at the time of the proposed settlement, could have been readily corrected. This objection does not appear to be discussed by either brief, and is apparently not relied upon.”

It is submitted that this was the deed tendered, and that it would not have been possible, at the time of settlement, to have tendered a different deed, for although Mr. Latt and Mr. Garber were at the title company, Mrs. Latt and Mrs. Garber were at their residences; although a witness testified that they were prepared to come to the settlement.

“Q. Mr. Perone, you took those acknowledgments where?

A. Two of them at the title company.

Q. What two at the title company?

A. Well, Mr. Latt and Mr. Garber.

Q. Mr. Latt and Mr. Garber at the title company and where did you take Mrs. Latt and Mrs. Garber?

A. At their residence.

Q. They were not at the settlement?

A. They were prepared to come at the settlement.” (S. C., 84.)

In regard to whether or not this objection was argued, reference is made to the very first page of the respondent's brief filed with the Vice-Chancellor, which, although not a part of the printed record, should be considered by this Court for the purpose of determining whether or not the point was raised.

The title was to be free from all encumbrance. The existence of the right in the Delaware and Atlantic Telephone and Telegraph Company to maintain and erect poles is, by virtue of a recorded agreement, marked Exhibit D9. This clearly constituted an encumbrance.

“The right of an owner of an estate to erect and maintain, or to cause to be erected and maintained, a line of telephone poles over an estate of another for the benefit of the former, is an easement.”

Yeager v. Tuning, 86 Northeastern 657; 19 L. R. A. (n. s.) 700.

“The general doctrine of the law is that an easement upon the premises conveyed is a breach of the covenant against encumbrances.”

Propper v. Colson, 86 Equity 399 at 401.

As the Vice-Chancellor well said:

“The existence of an easement upon premises conveyed is a breach of a covenant against encumbrances. *Propper v. Colson*, 86 N. J. Eq. 399.

Under a contract to convey real estate ‘by a good and marketable title free and clear of all encumbrances,’ the vendor is bound to have and tender a title free from encumbrances. *Simpson v. Klipstein*, 89 N. J. Eq. 543.” (S. C., 162.)

The right of the railroad, while not considered by the learned Vice-Chancellor, was certainly an encumbrance upon the title.

The rights of Abraham Browning, as trustee, as shown on the settlement certificate might very well affect the marketability of the title. However, it might be that the trusteeship there created was purely a naked trust, and if such was the case, of course, it would not affect the marketability.

In addition to the above, the contract provided that the title would be such as would be insured by the Chelsea Title and Guaranty Company. The Vice-Chancellor found as follows:

“The title, on the day set for settlement, was such as would be insured by the title company, excepting the rights of way, and the rights of the telephone company to maintain poles and wires.” (S. C., 163.)

In addition to the exceptions referred to by the Vice-Chancellor the title company would only insure on the day in question subject to the rights of Abraham Browning, as trustee, for Stephen Colwell.

The settlement certificate had been made by a man by the name of Wallace, who had been engaged es-

pecially to search this title, and to issue a settlement certificate for it, which settlement certificate was issued as the act of the Chelsea Title & Guaranty Company.

“Q. Mr. Lambert, there isn’t any doubt that an application was made to the Chelsea Title Company for the examination of this title?

A. That is true.

Q. And what did the title company do with regard to examining or having this title examined?

A. We let the title out on a special contract to a man by the name of William H. Wallace of Newark.

Q. Who has an office in the Chelsea Bank Building?

A. He has an office in the Chelsea Bank.

Q. And you engaged him to search this title for you?

A. Yes, sir.

Q. Engaged him to issue a settlement certificate for you?

A. To run the exceptions for us subject to our approval, yes, sir.

Q. And when a settlement certificate was issued that was the act of the Chelsea Title Company, I presume?

A. Yes, that is ordinarily true.

Q. And the settlement certificate that the Chelsea Title Company issued on this title to Taylor and Soloff is this settlement certificate marked D2 for identification and bearing Chelsea Title Company application number 9378, is it not?

A. Yes, sir.

Q. And that is the settlement certificate your company issued?

A. Yes, sir.

Q. For this settlement to be held on the fourteenth of June?

A. That is right.

Q. Your company was unwilling, was it not, on the fourteenth of June to insure this title clear of all encumbrance?

A. Impliedly was by the—well, not impliedly was, absolutely was, yes, and still are in accordance with the terms of the agreement.

Q. On the fourteenth of June your company was unwilling to issue a policy of insurance on this title unless it included among other exceptions the Browning deed? Isn't that true?

A. Well, that is only impliedly so. We had accepted the settlement certificate of Mr. Wallace and no question had been raised officially to the title company asking us to remove it.

Q. Wasn't Mr. Wallace the one whom you had authorized the doing of the work in connection with this?

A. Yes.

Q. You relied on his work?

A. We relied on his work.

Q. Anything that he did in regard to this title was all right with the title company, was it not?

A. So far as putting exceptions on were concerned but no authority to remove them.

Q. So that the settlement certificate as issued shows the exceptions your company considered to be against the title on that date?

A. That is right." (S. C., 80, 81 and 82.)

The settlement certificate as issued showed the right of Abraham Browning as an exception. Subsequently, and on July 5th of the same year, the Company determined that the Browning interest did not affect the title.

"Q. Can you tell us about when it was that you came to the conclusion that it would be all right to insure that deed?

A. I believe we got a decision from our solicitor on July 5th."

The effort at settlement under the agreement in question took place on June 14th, several weeks prior. So it is quite apparent that on the day in question the Title Company considered the Browning deed to be an exception, and in addition to the finding of the Court, that the title company would only insure subject to the exception of the rights of way, and the rights of the telephone company, it would also have been proper for him to have found that the title company would have an additional exception in the way of the Browning deed.

The parties had contracted with the distinct agreement that the title was to be such as would be insured by a certain classification of title companies, and agreed between themselves that the Chelsea Title and Guaranty Company should be the title company to insure. The Chelsea Title Company refused to insure the property as being clear. The defendant was not obliged to take a title that would be subject to exceptions in a title policy, nor would he be required to take any title unless it would be absolutely insured by the Chelsea Title Company. It is immaterial whether or not the Chelsea Title Company subsequently determined to remove the Browning deed as an exception, inasmuch as on the day in question it would only issue its policy subject to the rights under that Browning deed. This was not in accordance with the contract, and whether the title company was right or wrong so long as it was acting in good faith, there could be no question of the right of the defen-

dant to insist upon a clear title policy. This right to insist upon the title policy has been decided by the Court favorable to our contention, in the case of *Love v. Fetters*, 98 N. J. L. 784.

Appellants' counsel's brief undertakes to argue that the respondent entered into possession before the time of settlement, and bases his allegation in that respect upon the fact that a real estate firm, Taylor & Soloff, who were merely the agents for the respondent in an effort to sell the property, caused certain signs to be erected upon the property. These signs were merely "for sale" signs, and bore the name of Taylor & Soloff. A photographic copy offered in evidence, but not printed with the state of the case, shows that said signs make no reference to the respondent in any way whatsoever.

Appellant's brief also refers to the fact that one of these signs was erected considerably after the date of the attempted settlement. Such an allegation should not have been made without a recital of the attendant circumstances. Mr. Taylor, of the real estate firm of Taylor & Soloff, whose signs were on the premises, testified that within a couple of days after the contract of sale had been entered into, he instructed a sign man to put up all the signs that were erected on the premises; that all the signs that were erected on the property were ordered at the same time, and the reason that one of the signs was erected after the time of the attempted settlement was because the sign man was not able to erect it any sooner.

“Q. Are you of Taylor and Soloff?

A. I am.

Q. Are your signs on some part of this land?

A. They are.

Q. Who caused them to be put there?

A. We did.

Q. By that you mean Taylor and Soloff?

A. Taylor and Soloff.

Q. How many signs are there?

A. Six—five—two doubles and one single.

Q. When were they put there?

A. They were placed there about ten days or fifteen days after the agreements were signed.

Q. Wasn't one of those signs placed there as late as July thirteenth?

A. Yes, I beg pardon; one of them wasn't finished at that time, it was a large sign.

Q. I ask you wasn't one of them put there as late as July thirteenth?

A. I don't know the exact date but I know it was put there later.

Q. After June fourteenth, wasn't it?

A. I think so.

Q. You caused that to be done, didn't you?

A. We did.

Q. Still there, isn't it?

A. I think so.

Q. Can you identify that one of the photographs that was put there after the date of the rescission?

A. These are the signs.

Q. Which one is it, I mean?

A. This is the sign that was put there later.

Q. That is Exhibit C6, that he refers to. For whom were you trying to sell this land under these signs?

A. Jacob Stern.

Q. The defendant in this case?

A. Yes.

Q. Had authority from him to sell it?

A. Yes, sir.

Q. And acting under that you put the signs up?

A. That is right.

Cross-examination.

By Mr. Hanstein:

Q. Did Mr. Stern have any interest in the business of Taylor and Soloff?

A. No.

Q. When you say you were trying to sell this land for Mr. Stern in what way were you acting?

A. As his broker.

Q. Did you personally put up these signs?

A. No, Franklin Brothers put up those signs.

Q. When did you instruct them to put them up?

A. About five days after the agreement was signed, or two days.

Q. When did you instruct them to put up this sign that was erected on the fourteenth of July?

A. At the same time we gave the order for all of the signs at the same time.

Q. When did you tell him to put them up?

A. As soon as he could get them finished.

Q. When did you find out that he erected a sign on the fourteenth of July?

A. Well, we didn't know exactly what day that big sign was put up there but we know that it wasn't put up when the rest of them were placed.

Q. Was it in fact erected subsequent to the date of settlement, the date fixed for settlement?

A. I am not sure about that. I think so.

Q. You think it was?

A. I think so.

Q. Had you between the intended date of settlement and the time of the erection of that sign, given any instructions to Franklin in regard to the sign?

A. No.

Q. Did you know he was going to put it up?

A. We did.

Q. Didn't you know that he had rescinded this contract on the fourteenth of June?

cancel the order for the sign, that big sign was a thirty-foot sign and we had to take it anyhow.

A. We couldn't rescind, we did—we couldn't we had given the order for all of the signs at the same time and on account of his being so busy he couldn't get the large sign at the same time he did the smaller ones.

Q. Was anything done by Taylor and Soloff subsequent to the date of the intended settlement with relation to the signs towards directing their erection?

A. No.

Q. This large sign was put up purely as a part of the original contract?

A. That is right." (S. C., 63-64-65 and 66.)

It is quite obvious from the above excerpt from the testimony that the erection of the signs did not constitute possession in the first place, and in the second place, whatever it did represent it did not represent any action on the part of the respondent.

It is contended that the entire burden of showing performance was on the appellants. They had to show a performance on the day fixed for settlement. They did not offer a general warranty deed; their land was encumbered; the title company would not insure it. The decree of the Vice-Chancellor dismissing the bill was justified by the facts and the law of the case, and the decree should be affirmed.

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel
with Defendant-Respondent.*