

INDEX.

	PAGE
Complaint	1
Answer	6
Replication	7
Testimony	8
Final Decree.....	68
Amended Notice of Appeal.....	71
Petition of Appeal.....	72

TESTIMONY.

WITNESSES FOR COMPLAINANT.

Charles Casper,	
Direct	9
Cross	16
Arthur T. McMichael,	
Direct	29
Cross	30
Oscar Ricklefsen,	
Direct	36
Cross	38
Re-direct	39
Steven Boyce,	
Direct	40
Cross	41

WITNESSES FOR DEFENDANT.

	PAGE
Joseph Gadek,	
Direct	43
Cross	45
Thomas L. Hanson,	
Direct	47
Louis P. Booz,	
Direct	49
Cross	52

EXHIBITS.

	<i>Admitted at Folio</i>	<i>Printed at Page</i>
C-1-A.—Contract, Dated May 8th, 1931, between Helen Gadek and Joseph Gadek, her hus- band, and Charles Casper....	8	53
C-1.—Deed from Helen Gadek and Joseph Gadek, her husband, to Charles Casper, Dated May 8th, 1931.....	8	60
C-2.—Bill of Thomas L. Hanson.....	21	65
C-3.—Survey	30	66

Complaint.

In Chancery of New Jersey

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

The complainant Charles Casper, of the Township of Marlboro, Monmouth County, New Jersey, respectfully shows unto your Honor: 10

1. On the 8th day of May, 1931, complainant entered into a contract with the defendants Helen Gadek and Joseph Gadek, for the purchase of some property owned by the defendants, situated in the Township of Marlboro, Monmouth County, New Jersey, for the sum of Four Thousand (\$4,000.00) Dollars, and paid the sum of Two Hundred (\$200.00) Dollars cash, as a deposit, upon the execution of said contract, which said sum he paid to the defendant Joseph Gadek, he being the defendant through whom the negotiations for the purchase of said farm were had, and agreed to pay the balance of Thirty-eight Hundred (\$3,800.00) Dollars in cash, upon the delivery of deed for said farm premises, which are described as follows: 20

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Marlboro, in the County of Monmouth and State of New Jersey. 30

BEING on the northerly side of the highway that leads from Englishtown to Middletown Point, beginning at a stone standing on the northerly side of the aforesaid highway, it being the most southeasterly corner of late Wm. Way's lands, thence running as the needle of Leonard Walling's com- 40

Complaint.

pass pointed in the month of September 1836, first (1) south fifty-eight degrees and thirty-nine minutes west four chains; (2) north fifteen degrees and twenty-five minutes west four chains and thirty-five links; (3) south seventy-four degrees west twelve chains to a stake standing on the east side of the meadow ditch; (4) north sixty-eight degrees west six chains and eighty-one links to a stake standing on a ditch bank by the side of the pine stump; (5) north twenty-five degrees and forty minutes west eight chains and seventeen links to a stake the northerest corner of said now or late Way's land; (6) north fifty-six degrees and forty-eight minutes east nineteen chains and seventy links; (7) south twenty-five degrees and forty minutes east twenty-one chains and sixty-one links to where it began, containing thirty acres, be the same more or less.

2. Thereupon, and on the 18th day of May, 1931, defendants Helen Gadek and Joseph Gadek, by warranty deed of that date, conveyed the aforesaid premises to the complainant, and the complainant paid the balance of Thirty-eight Hundred (\$3,800.00) Dollars in cash, which was due upon said contract of purchase.

3. Complainant purchased said premises for the purpose of conducting a poultry farm thereon and making it his home; and before entering into the contract for the purchase thereof, he was taken to the premises by the defendant Joseph Gadek and shown the boundaries thereof, and especially and specifically did the said defendant Joseph Gadek falsely represent to complainant that the said premises had a frontage on the highway of approximately two hundred (200') feet. Said defendant at the same time pointing out to

Complaint.

the complainant the frontage of the said premises on the highway, and also pointed out to him certain posts and fences of adjoining premises as being the boundaries between which the defendants' aforesaid premises were situated.

4. Complainant relying upon the said representations and assurances of the defendant Joseph Gadek, that the said premises had a frontage on the highway of approximately two hundred (200') feet, and being shown the boundaries thereof thereupon entered into the contract aforesaid, for the purchase of the said premises, and took title thereto as aforementioned, and paid the purchase price thereof. 10

5. After the complainant took title to the said premises he moved thereon with his belongings for the purpose of making it his home and to engage in poultry raising. 20

6. While moving in one day he met the owner of the farm premises adjoining the aforesaid property which he had purchased from the defendants, and while in conversation with him was advised that the premises which he (complainant) has purchased had no frontage on the highway, and that the complainant was trespassing on the lands of this adjoining owner while carrying his (complainant's) belongings to his said premises, purchased from the defendants as aforesaid. 30

7. Complainant thereupon went to the office of Larson and Fox, licensed civil engineers of the State of New Jersey, and was advised after an inspection of his deed that the aforesaid premises, purchased by him from the defendants, had no frontage on the highway. 40

Complaint.

8. Complainant thereupon advised the defendants that they had misrepresented to him the premises which he had purchased and asked for a return of his purchase money and agreed to reconvey the aforesaid premises to the defendants, which they refused to do.

10

9. All of the dealings leading up to and culminating in the purchase of the aforesaid premises were had with the defendant Joseph Gadek, who was acting in the negotiations for himself and for the defendant Helen Gadek, his wife.

20

10. Complainant is a middle aged man, having formerly been a tool maker and forced to give up his employment because of failing eyesight. He had no knowledge of, nor had he ever engaged in any business dealings, particularly any dealings with reference to the purchase of real estate; and the Four Thousand (\$4,000.00) Dollars with which he purchased the premises of the defendants was all the money he had, having saved it over a long period of years.

30

11. Complainant charges that the defendants Joseph Gadek and his wife, Helen Gadek, by her husband, Joseph Gadek, her agent, induced the complainant to purchase the aforesaid premises by the fraudulent representations made by the defendant Joseph Gadek, as aforesaid, concerning the boundaries and the frontage of the said farm premises on the highway; and that if complainant had known that the said premises did not contain any frontage whatsoever on the highway that he would not have purchased the said premises.

40

12. Complainant hereby tenders himself ready and willing to reconvey the said premises to the defendants upon the repayment by the defend-

Complaint.

ants to him of the purchase price thereof, namely, the sum of Four Thousand (\$4,000.00) Dollars.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That the defendants may answer this bill of complaint and each statement therein made. 10

2. That the aforementioned contract of May 8th and the deed of May 18th may be rescinded and cancelled, and that the defendants be compelled to return to the complainant the sum of Four Thousand (\$4,000.00) Dollars, representing the purchase price of said premises upon the complainant's reconveyance of said premises to them.

3. That complainant may have such other and further relief as may be equitable and just. 20

4. That a writ of subpoena may issue commanding said defendants Helen Gadek and Joseph Gadek to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

SMITH & SCHWARTZ,
Solicitors of Complainant.

JOSEPH B. SCHWARTZ, 30
Of Counsel.

Answer.

IN CHANCERY OF NEW JERSEY

10	Between CHARLES CASPER, Complainant, <i>and</i> HELEN GADEK and JOSEPH GADEK, Defendants.	} On Bill, &c. } Answer.
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20 The defendants, Helen Gadek and Joseph Gadek, residing in the City of Perth Amboy, County of Meddlesex and State of New Jersey, answering the complaint herein say:

1. They admit paragraph one, except the allegation that negotiations for the purchase of said farm were had through Joseph Gadek, which allegations the defendants deny.
2. They admit paragraph two.
3. They deny paragraph three. In further answering the allegations therein contained, defendants state that the greater portion of the farm was enclosed by a fence which indicated the proper boundaries.
- 30 4. They deny paragraph four.
5. They deny paragraph five.
6. Defendants have not sufficient knowledge or information to form a belief as to paragraph six and leave the complainant to his proof.
- 40 7. Defendants have not sufficient knowledge or information to form a belief as to paragraph seven and leave the complainant to his proof.

Replication.

8. They deny paragraph eight.

9. They deny paragraph nine.

10. Defendants have not sufficient knowledge or information to form a belief as to paragraph ten and leave the complainant to his proof.

11. They deny paragraph eleven.

10

12. They deny paragraph twelve, and further answering the allegations contained in paragraph twelve, they say that the complainant is unable to reconvey the premises in the manner that said premises were conveyed to him because said premises had been damaged and destroyed in great part by the complainant.

DAVID T. WILENTZ,
Solicitor for Defendants.

20

Replication.

IN CHANCERY OF NEW JERSEY

Between

CHARLES CASPER,
Complainant,

and

HELEN GADEK and JOSEPH GADEK,
Defendants.

On Bill, &c.
Replication.

30

Complainant joins issue on the answer of the defendants.

SMITH & SCHWARTZ,
Solicitors of Complainant.

40

Testimony.

IN CHANCERY OF NEW JERSEY

10	Between	}
	CHARLES CASPER,	
	Complainant,	
	<i>and</i>	
	HELEN GADEK and JOSEPH GADEK,	}
	Defendants.	

20 Transcript of stenographer's notes of proceedings in the above entitled cause before the Honorable Maja Leon Berry, Vice Chancellor, at the Chancery Chambers, Long Branch, New Jersey, on Thursday, January 7, 1932, at 11:30 A. M.

Appearances:

JOSEPH E. SCHWARTZ, Esq., Solicitor for Complainant.

30 DAVID T. WILENTZ, Esq., Solicitor for Defendant, by DAVID I. STEPACOFF, Esq.

Mr. Schwartz: I offer in evidence the contract and deed.

(Marked Exhibit C-1.)

Charles Casper, Complainant—Direct.

CHARLES CASPER, the complainant, called as a witness in his own behalf, being first duly sworn according to law on his oath testified as follows:

Direct examination by Mr. Schwartz:

Q. You are the complainant in this case? A. 10
Yes, sir.

Q. Do you know Mr. Gadek? A. Yes, sir.

Q. Is he the man you bought this farm from?
A. Yes, sir.

Q. Before you purchased this farm from Mr. Gadek will you tell us whether or not you had any conversation with him concerning the farm? A. I had a conversation with the real estate agent first; after that I was introduced to Mr. Gadek; he came up and showed us the whole place. 20

Q. Where was that? A. At the farm.

Q. What did Gadek say to you, what did he show you? A. He told me, also the real estate agent, regarding the location of the place and everything; described it to us.

Q. What did he tell you? A. He says there is 38 acres of ground, he says, all the way around.

Q. Yes. A. And he says the frontage runs from that point on that fence over to the other point.

Q. He described the frontage to you by indicating on the fence? A. Yes, and also described it to the real estate agent. 30

Q. Did he tell you approximately how much the frontage was? A. We figured about 200 feet.

Q. Not what you figured, what did he tell you?

The Court: What do you mean by "we figured"?

Witness: That is what he says, about 200 feet. 40

Charles Casper, Complainant—Direct.

Q. And he pointed the fence out to you? A.
From post to post, fence to fence.

The Court: Were there posts erected on
the property?

10 Witness: Yes, sir, on the property, from
this point to this point (indicating).

Q. That was the highway? A. Yes.

Q. And the fence ran from one post to the
other post? A. Yes.

Q. Now, of course, you entered into the pur-
chase of this property and you moved onto the
farm? A. Yes, sir.

20 Q. When did you first learn, Mr. Casper, at
all about the frontage on this highway? A. I
was going to have a five room house on it what
is there when Mr. Boyce, the next door neighbor,
came to me and said "You cannot do that." I
said, "What"? and he said, "That property be-
longs to me."

30 Q. What did you do then? A. I went down to
the lawyer, I did not get my deed yet, and I waited
about two or three months for the deed; during
that time I notified Gadek over the telephone in
the lawyer's office, but he would not answer me at
all; I told him I wanted my money back, the place
was misrepresented; I also telephoned again to
him from the office.

The Court: You say you did not get your
deed?

Witness: Yes, sir.

The Court: Had you paid the money?

Witness: I paid the money at the time
I bought the property.

40 The Court: Had you paid the money at
the time you found out that the property
had no frontage?

Charles Casper, Complainant—Direct.

Witness: Yes, cash money.

The Court: When did you pay the money?

Witness: The 18th of May, 1931, when the deed was supposed to be signed up.

The Court: Wasn't the deed delivered on that day?

Witness: No, that was the day we settled in the lawyer's office. 10

The Court: Who got the deed?

Witness: I got the deed around August.

The Court: Well, the deed was executed evidently on the 18th of May, who had the deed in the meantime?

Witness: Well, the way the lawyer told me, it was up to New Brunswick all the while.

The Court: It had been sent up there for recording? 20

Witness: Yes.

Q. It was in the possession of the lawyer who passed title on that deed? A. Yes.

Q. When you got the deed where did you go?

A. When I looked at the deed I said to Hanson, "There is no frontage" so the first thing I did, I went down to Leonard Fox's surveying place and told him to look up this place, and he looked and said there was no frontage on it. 30

The Court: Strike out what he said.

Q. As a result of what you learned there what did you do? A. I went back to Lawyer Hanson about the proposition, and he said the best thing to do is to see Gadek.

Q. That was after you had asked Gadek for the return of your money? A. Yes, sure. 40

Charles Casper, Complainant—Direct.

Examination by the Court:

Q. When did you ask Gadek for the return of the money; when was it you told him? A. That was around July.

10 Q. How soon after you found out the frontage was not there? A. That was, I would say, about when I came down from the farm, it was around that time when I notified Gadek.

Q. How long after you found out there was no frontage on it, a day, a week, a month or a year? A. Five or six weeks, something like that.

20 Q. Why didn't you tell him immediately? A. I did not have the deed yet, I could not make any complaint until I had the deed, then I would be glad to talk; I even told Mr. Steve Boyce.

Q. How long after you had the survey made? A. Let me see, I think about a month or so, I don't know.

Mr. Schwartz: I think the Vice Chancellor means how long after you learned from Leonard Fox about this did you ask him to return the money.

Mr. Stepacoff: There is no evidence a survey was made.

30 The Court: I think it was stated in the opening, you had a survey made?

Witness: I had a survey made.

Q. When did you have the survey made? A. Lately, I think about a month or so ago.

40 Mr. Schwartz: We have had a survey made; we had a survey made after the complaint was filed; but he first learned from Leonard Fox that there was no frontage on the highway.

Charles Casper, Complainant—Direct.

Q. When did you learn that? A. I learned that when I got the deed.

Q. When did you get the deed? A. Around, as I say, the latter part of August.

Q. 1930? A. 1931.

Q. Then how soon after you got the deed did you tell Gadek that you wanted your money back? 10

A. Oh, I notified him as soon as possible, when I was up in the lawyer's office.

Q. How soon was that? A. It was the same week.

Further direct examination by Mr. Schwartz:

Q. Now, Mr. Casper, is this property in the same condition now as when you had purchased it? A. I spent about three or four hundred dollars on the place. 20

Q. What did you do? A. I had two men working up there, one cleaned it and I had another one clean the whole place, roof and everything.

Q. What kind of work was done? A. I put a new roof on the poultry house, chicken house, I also had the place painted up.

Q. You say you had two men working for you? A. I had two men working. 30

Examination by the Court:

Q. How much did you spend on paint? A. I spent about, I figure around about \$35, \$40.

Q. How much did you spend for repairs and alterations? A. That all together, with their salary too?

Q. Yes, if they are the men who did the work? A. Yes, they did the work, roofing and everything, figured around \$300, \$300 to \$400 altogether. 40

Charles Casper, Complainant—Direct.

Q. I know, but there is a difference, there is \$100 difference between \$300 and \$400, have you got any record of the amount that you paid? A. No, I have not; I did not keep any of the receipts.

10 Q. How much did you pay these men a day or a week? A. Oh, I had them down there for two months, one of them the other fellow a month or so.

Q. How much did you pay them? A. I had one party working there I gave \$15 a month, that was through Gadeks, he recommending him to me, he was down and out.

Q. \$15 a month for one month or two months? A. Two months, that was \$30.

20 Q. The other man, how long did you have him there? A. I had him there three weeks.

Q. How much did you pay him? A. I gave him \$10 a week.

Q. That is \$30 more, that is \$60, how much material did you buy and where did you buy it? A. I bought the roof down here in Perth Amboy.

Q. For how much? A. That cost me. I could not tell you exactly, but I figure the rolls cost me—I had 24 rolls, I think it cost me \$44, and then I paid \$25 for a barrel of tar I needed on the roof.

30 Q. That is \$69, plus \$60, that is \$129, what else did you spend? A. I bought quite a lot of tools there too.

Q. Tools for what? A. For fixing up the place, shovels, rakes, hoes, etc.

Q. You got those yet? A. I have got those yet.

Q. Never mind those, did you spend any more money for the house? A. I was going to have the whole place, the inside of the poultry house, I was going to have that kalsomined, I had eight
40 buckets of kalsomine.

Charles Casper, Complainant—Direct.

Q. For how much? A. I think I paid \$12.80.

Q. \$12.80 more, that is \$141.80, now that we have got up to, now what else did you spend? A. (No answer.)

Q. All right, \$141.80.

Mr. Schwartz: I think your Honor left out \$35 for the paint, that makes it \$141 plus \$35. 10

Q. Did you make any repairs inside the house? A. I fixed them all up.

Q. How about board for these men? A. I paid for that.

Q. How much did you figure on this board for these men? A. I would not figure on that.

Q. That is \$176.80? A. Then I had the place plowed up, I had Mr. Boyce do the work for me, I had the whole frontage fixed up. 20

Q. Did you raise any corn? A. Yes, I raised corn, had Mr. Boyce there, he plowed up all the place.

Q. You had the benefit of the corn you raised? A. I did not touch it at all; I left it the way it was.

Q. When did you plant the corn? A. I planted the corn, when we started it was around August.

Q. Before you found out about the— A. Yes.

Q. How much did that cost you? A. Oh, I would not figure that cost a couple of dollars, maybe. 30

Q. Did you live in the house? A. I had what I called a shack, a little, small place, you know, what you call a shack.

Q. I mean, you lived on the premises? A. Yes, sure.

Q. How much do you figure that was worth? A. What I shall figure how much it was worth?

Q. Yes, for rent, suppose you had to rent a place, you lived in it, how much was it worth? A. I think about \$5 a month. 40

Charles Casper, Complainant—Cross.

Q. How many months did you live there? A. I lived there until I found out about the deed——

Q. How many months was that, two, three or four? A. Three months.

Q. \$15 off \$176.80, that is \$161.80, now, all right, anything else?

10

Mr. Schwartz: That is all we have.

Cross-examination by Mr. Stepacoff:

Q. You say you asked for the return of your money in July?

The Court: He did not say that; he said in August, about a week after he found out.

20

Q. Some time in August, is that right? A. Yes, when I found it out.

Q. Did you know at any time before August that there was no frontage on the property? A. Well, I will tell you how it was, the only time I realized that there was no frontage was when I had the talk with Mr. Boyce.

Q. When was that? A. That was around July or so.

30

Q. In July some time you had this talk with Mr. Boyce? A. Yes, sir.

Q. And waited until August— A. I had to wait until August, I was compelled to wait before I started anything.

Q. Tell the Court why you had to wait until August? A. I had no deed.

Q. What did the deed show you? A. It showed me nothing.

Q. Why did you have to wait for the deed?

40

The Court: He wanted to show it to the surveyor.

Charles Casper, Complainant—Cross.

A. I wanted to show it to the surveyor.

Q. Now you don't know whether or not from an examination of the deed you can tell whether or not this property is on the highway?

The Court: He could not; I cannot. Nobody but a surveyor could.

Mr. Stepacoff: I doubt very much whether a surveyor could, if your Honor please.

The Court: I will take the surveyor's word against mine.

Witness: We have the whole thing; we have maps here.

Q. You say you had the agent talk to you? A. Yes, sir, he recommended me to Mr. Gadek.

Q. He recommended you? A. Yes, sir.

Q. Who is this agent? A. Mr. Ricklefsen.

Q. Now, when you went to your attorney with the case, when he first learned of it, did you tell him there was an agent in the case? A. I will tell you, the attorney—

Q. Mr. Schwartz, did you tell him? A. I tell you, I thought you meant about the other party.

Q. Did you understand that question? A. I thought you were talking about Gadek's lawyer; that is the man he recommended me to.

Q. I mean your lawyer? A. The first lawyer?

Q. No, Mr. Schwartz, did you tell him about the agent? A. Sure, I told him about the agent.

Q. Did you tell him the negotiations were had with this agent or did you tell him the negotiations were had with Mr. Gadek? A. I had the deal with both of them.

Q. You told that to Mr. Schwartz? A. Yes, sure.

Q. You are sure about that? A. Positive.

10

20

30

40

Charles Casper, Complainant—Cross.

Q. Did the agent tell you there was 200 feet on the highway, on this road? A. Gadek and I were there when the agent took me there, when Gadek was there and the agent, and said there it is, from post to post, and Gadek the same way.

10 The Court: That is your answer, they both said it.

Q. Did the agent say 200 feet was frontage; did he say that part? A. That is what Gadek said.

Q. I am not asking you what Gadek said; did the agent say that? A. The agent did not say anything about frontage at all; he said it ran from post to post, and Gadek said, "Yes, 200 feet."

20 Q. Did the agent hear that? A. He must have heard it.

Q. Was it in your presence? A. We were all together.

Q. So that there is no doubt about that? When was this survey made that you are talking about?

A. I figure around a month ago, I don't know, I could not tell you, I did not ask that.

Q. Well, you had the survey made? A. I had the survey made when they started it.

30 Q. Well, when did you order it? A. Well, before the thing really started, that survey I notified my counsellor here about that proposition.

Q. I know all about that. A. When they finished it, I could not tell you.

40 The Court: Let's not waste any time over this question of survey, it already appears here, either through a statement of the witness or counsel, that the survey was not made until after the suit was begun, but the suit was begun on the strength of advice from the surveyor im-

Charles Casper, Complainant—Cross.

mediately after he got his deed showing that there was no frontage on the road. The survey evidently was made to substantiate the advice of the surveyor.

Mr. Stepacoff: I want to know who made it.

The Court: This firm of Leonard & Fox. 10

Mr. Schwartz: They did not make the survey; we had another firm of surveyors make the survey.

The Court: Who made it?

Mr. Schwartz: Mr. McMichael, the City Surveyor.

The Court: Is he here?

Mr. Schwartz: Yes.

The Court: He made it, all right, when? 20

Witness: I don't know.

Q. When you were on this property did you see Mr. Boyce's property fenced off in any way?

A. Yes, sir.

Q. Was it fenced in? A. Yes, sure.

Q. Boyce's was? A. Yes.

Q. Where was that property with reference to the Gadek property? A. It was behind the Guggenheimer property; here was the Guggenheimer property and here was Steve Boyce's property, and I was between it. 30

Q. Also a fence on Mr. Boyce's property? A. All the way down.

Q. Did this Boyce fence cover any property Mr. Gadek owns? A. It was fenced all the way around.

Q. I just asked you whether or not Boyce's property was fenced in? A. Yes, sure it was fenced in.

Q. Which was Boyce's property? A. Where the posts were on the outside. 40

Charles Casper, Complainant—Cross.

Q. Do you know how large Boyce's property is?

A. Yes, sure.

Q. Where is Boyce's property? A. Get the map and you can easily find out; I cannot tell you, I am not a surveyor; how can I tell anything like that?

10 Q. In other words, you don't know where Boyce's property is? A. Boyce's property?

Q. Yes. A. Why certainly.

Q. If you know, tell us. A. It is on the map.

Q. I don't care about the map.

20 The Court: Why here it is, this man is not a surveyor, he has got a map here, if you want to see where the property is, let's see the map. You can find out. This man is not a surveyor; he only knows where the other property is by what somebody else has told him.

Mr. Stepacoff: We will have an engineer here to testify about that.

The Court: Here (referring to map) is Boyce's property.

Q. Now then you had a contract drawn up for the sale of the property, didn't you, Mr. Casper?

30 The Court: Here it is.

Q. Is this the contract? A. Yes.

Q. Who was your attorney in drawing up this contract? A. I had Gadek's friend, Gadek's lawyer; I wanted to have my own lawyer; I wanted to take it to the Guaranty Title & Trust Company, but Gadek says to me, "It is nothing, come up to my lawyer."

40 Q. He took you to Mr. Hanson? A. Hanson, yes. I listened to him, of course, like everything else; I believed every word of his statement, his

Charles Casper, Complainant—Cross.

whole story about it. I went up, and I paid this here lawyer also for a search of the property, to see that everything was in A-1 order.

Q. What lawyer was that? A. Hanson.

Q. What did Hanson tell you? A. I did not get that \$100 back again, you can put that down on the bill.

10

The Court: Did you pay \$100 for a search?

Witness: Why, certainly.

Mr. Schwartz: \$116.

The Court: Show it to him, see if that is the bill he paid.

Mr. Schwartz: Is this the bill you paid Mr. Hanson?

Witness: Yes.

Mr. Schwartz: I offer that bill in evidence.

20

(Bill marked Exhibit C-2.)

Q. Were you satisfied with Mr. Hanson's services? A. No, sir, I was not.

The Court: I don't think it makes any difference whether he was satisfied or not.

Q. What did Mr. Hanson represent to you as being the instrument that you signed? A. He told me everything was in first-class order.

30

Mr. Schwartz: I think the agreement speaks for itself.

Q. Did you state anything to Mr. Hanson about any frontage?

Mr. Schwartz: I object to that, whether he told Mr. Hanson anything about it.

The Court: The question is all right.

40

Charles Casper, Complainant—Cross.

A. I asked Mr. Hanson to look out for my benefit and I paid him.

Q. Did you tell him anything about frontage?

A. I knew nothing about that, what did I know about buying property, this was my first experience. I know more about it now, you bet.

10 Q. But if you were supposed to get so many feet frontage did you tell your lawyer, Mr. Hanson, that you were supposed to get 200 feet? A. Well, Gadek told me everything was in the deed.

Q. Mr. Hanson tell you that? A. No, Gadek told me that. Hanson just said you sign your name here; sign your name there. I said, "Is everything in first-class order?" and he said, "Everything is in A-1 shape."

20 Q. Did you know Mr. Hanson? A. I know him well.

Q. Is he here in court? A. I don't know.

Q. If you know him well, where is he?

30 The Court: Don't try to be smart, the contract speaks for itself. I see nothing the matter with the contract. It does not make any difference whether Mr. Hanson represented him, or whether he knew there was 100 feet on the highway or 200 feet or whether there was not any. I will ask you if you can tell from that description whether this property has a frontage of a foot, or a hundred feet or two hundred feet on the highway?

Mr. Stepacoff: No, I cannot tell.

40 The Court: Of course you cannot, but you can tell, this description says, here is what the description says, and it is very important in this contract: "All that certain lot, tract or parcel of land," etc., "being on the northerly side of the highway

Charles Casper, Complainant—Cross.

that leads from Englishtown to Middletown Point.” Now what does that mean to anybody who understands the English language? It simply means that it is fronting on the highway, does it not?

Mr. Stepacoff: Not necessarily.

The Court: That is my construction of what it means anyway. Then it says: “Beginning at a stone”. That means it begins at a certain point on the highway. Now from that description anybody has the right to infer that the property he is buying is on the highway. That is what the man was buying. 10

Mr. Stepacoff: Yes, and, if your Honor please, may I construe the instrument with your Honor? It says, “beginning on the northerly side of the highway that leads” from one certain place to another place. 20

The Court: It does not say “beginning”, it says, “being” on it, “being on the northerly side of the highway that leads from Englishtown to Middletown”; then it goes on to say the material point I think we are interested in, “beginning at a stone standing on the northerly side of the aforesaid highway.” Then it goes on by metes and bounds according to the magnetic needle directions. Can you tell by reading these magnetic needle directions whether the property fronted on the highway or whether it did not? 30

Mr. Stepacoff: No, your Honor.

The Court: He had a right to assume that he was buying property on the highway; that it had something more than a point on the highway. 40

Charles Casper, Complainant—Cross.

Mr. Stepacoff: That is the question at issue.

The Court: All right, I will decide that right now. He had a right to assume that the agreement gave him the right to property fronting on the highway.

10 Mr. Stepacoff: I take an exception to your Honor's ruling.

The Court: You do not need an exception in this court.

20 Mr. Stepacoff: It seems to me the agreement speaks for itself. If we are going into this parol evidence to vary the instrument. The instrument itself does not declare that it is a piece of property fronting on the highway. It simply says, "on the highway, at a point on the northerly side thereof."

The Court: You may take your own construction. Proceed with your cross-examination.

30 Q. At any time outside of this conversation you had with Mr. Gadek was there anything ever said about frontage on the highway being 200 feet, in the presence of anybody? A. Talked to the agent there.

Q. Besides the agent was any mention made by anybody? A. Not as I know of.

Q. But Mr. Hanson put into the deed just what was in the contract, didn't he? A. What do you mean by that?

Q. I mean, everything that was in the contract Mr. Hanson put into the deed?

40 The Court: The description in that deed is just the same as that in the contract.

Charles Casper, Complainant—Cross.

Mr. Stepacoff: I would like to know, if your Honor please, I think it is important, for this man thinks that Mr. Hanson did something that was not right.

The Court: He has not said so. That is not the issue. The issue is whether there was a misrepresentation here on the part of the vendor of this property. 10

Witness: The whole thing was misrepresented. The man had not even paid the taxes.

Q. Did Mr. Hanson misrepresent to you——

Mr. Schwartz: I object to that.

The Court: That is not in issue.

Mr. Stepacoff: All right. 20

Q. You don't know for how long Mr. Gadek had been using this piece of property that allegedly is on Mr. Boyce's land, do you? A. I don't know.

Q. Now when Mr. Gadek and the agent told you that the property was from post to post, that does not mean necessarily that it is on the road, does it? A. When he pointed to me, "it is bounded" he said, "From Guggenheimer's to Steve Boyce's property; I got the whole frontage here, that all belongs to it; it runs from post to post, from Guggenheimer's fence to Steve Boyce's fence." 30

Q. In other words, he merely told you from what side to what side the property ran, is that right? A. Yes.

Q. How much did he say was on the highway, did he tell you anything about that? A. He said to me it is 200 feet. I even told him, "kind of narrow place" and he said, "it is plenty wide enough, 200 feet," I said, "all right." 40

Charles Casper, Complainant—Cross.

Q. You were satisfied and believed him? A. Yes.

Q. You say you planted some corn in August, is that right? A. What?

Q. You planted corn in August?

10 The Court: He is not claiming anything for it.

Mr. Stepacoff: That is not the purpose of the question.

Q. You planted corn in August? A. Painted?

Q. Planted? A. Yes, in August, sure.

Q. About what time in August? A. July, I think it was; I am not sure, July or August, I am not sure, I never kept track of that.

20 Q. For how long did you take care of that corn that you planted? A. What has the corn got to do with it?

Q. Just answer the question? A. I left it there the time I went away.

Q. When was that? A. Regarding the corn—we planted the corn—let me see——

Mr. Stepacoff: I think I am entitled to a responsive answer.

30 The Court: He is trying to give you the date.

A. I could not tell you really, July or August. Mr. Steve Boyce could tell you that better than I. Better ask Mr. Steve Boyce; there is the man that can give you that information about the property.

Q. About when did you leave the property? A. I left it around August, I guess, July or August, the latter part of July.

40 Q. In July? A. Yes, the latter part of July, whatever it was, I never kept any books on that;

Charles Casper, Complainant—Cross.

I never bothered any more after I heard this, to fix everything up then I seen how things were and L said that is the best thing——

Q. Mr. Gadek also sold you a horse? A. I said Mr. Gadek ought to have gone to prison for five years the way he handled that horse.

10

The Court: Did he sell you a horse?

Witness: The horse went with the farm.

Q. Did you sell the horse? A. It cost me \$75 for feed and everything, quite some for feed and fixing him up.

Q. What did you do for \$75 to fix up? A. The horse was lame, the horse had a nail up in his foot. I wonder, if it had not been for Mr. Steve Boyce the horse would have died.

20

The Court: Did you sell the horse?

Witness: I sold the horse.

Q. How much did you get for it? A. I got \$30 for him.

Q. You are \$45 out on that? A. You ought to have seen the horse.

The Court: There is no point in it at all. You did not make any money on the horse?

Witness: No.

30

Q. You had an electric plant there? A. It is up there yet.

Q. That thing was fixed by you too, was it not? A. That was fixed, yes.

Q. Do you have parts on your property now or where is it now, where are the parts to it? A. I did not have it in running order.

Q. You had to have it repaired, didn't you? A. Yes, I had a man come up, Gadek recommended me to a man.

40

Charles Casper, Complainant—Cross.

Q. What did you do with the electric machine?

A. You will have to go see that man Gadek, there.

Q. I am asking you what happened to the electric machine, so far as you know, did you give it away to be repaired? A. Yes.

10 Q. Do you have any idea of the value of that electric machine? A. Do I know the value of it?

Q. Yes. A. No, I don't.

Q. You don't know the value of it? A. No.

Q. Now, did you ever get the parts back from the repair man? A. I don't know, I could not tell you that.

Q. You sent it away to be repaired? A. Yes.

Q. You don't know whether you got them back?

A. I went away that time, when he came he took it away.

20 Q. In other words, you never got the parts back, is that it? A. I never took the parts, you better ask the electrician or Gadek there.

Q. You ordered the electrician to take the parts out? A. I told him to fix the machine, that is all I told him.

Q. Yes, and he took some parts away, isn't that true? A. He took the front part away.

Q. Now, has the front part been replaced, do you know? A. What's that?

30 Q. Has the front part been replaced? A. It has been replaced?

Q. Has it been replaced? A. It has not been—well, I could not tell you nothing about that, I notified the party, I even sent Mr. Boyce up there to tell the man to put it back.

Q. Now there is also an incubator on this piece of property? A. Yes, that is in first-class order.

Q. That cost about \$400? A. Yes.

40 Q. What happened to that? A. They are up there yet, ain't they?

Arthur T. McMichael, for Complainant—Direct.

Q. I am asking you what happened to it? A. It was in first-class order when I went away. I had Mr. Steve Boyce taking care of the place. Nothing happened to it when I went away.

10

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

Direct examination by Mr. Schwartz:

Q. What is your profession, Mr. McMichael? A. Civil engineer and land surveyor.

Q. And have been for how long? A. 20 years.

Q. Where do you practice? A. South Amboy, New Jersey. 20

Q. Did you, at my request, make a survey of this property that Mr. Casper purchased? A. I made more of an investigation than I did a survey; I made a superficial survey.

Q. Is that it there; you started to make a survey or an investigation, as you say? A. Yes, sir.

Q. And will you turn to the survey that you made?

Mr. Stepacoff: If your Honor please, he does not say that he made a survey. 30

The Court: Proceed.

A. I made a partial survey; I did not survey the entire property.

Q. What do you call that (pointing to paper)?

A. It is a survey, I should say I made a plot of the deeds, of the joint deeds.

Q. As a result of the plot that you made and this sketch you have before you, can you tell us whether or not from the description of this deed 40

Arthur T. McMichael, for Complainant—Cross.

from Helen Gadek and Joseph Gadek to Charles Casper, whether or not there is any frontage on the highway from Englishtown leading to Middletown Point? A. There is not.

10 Q. Just tell us how the description runs? A. The beginning of the description says: "Beginning at a point on the northerly side of" this particular road, and thence by metes and bounds. First, as I said, this metes and bounds description did not have the location of the road as it existed today, so I suspected that the property did not front on the road, so I inquired from the adjoining property, I borrowed their deeds and read their deeds and found that there was a certain portion of the deed called for a small piece of land between them and the road.

20 Q. Who does that small piece belong to? A. Boyce.

Q. Steve Boyce? A. Steven Boyce.

Q. Now, as I understand you then, this piece of property which was conveyed to Mr. Casper by this Gadek deed has no frontage whatsoever on this highway? A. It has just this corner.

Q. Just the point where it begins? A. That is all.

30 Mr. Schwartz: I offer that map in evidence.

(Marked Exhibit C-3.)

Cross-examination by Mr. Stepacoff:

Q. How long have you been in the engineering business? A. Twenty years.

40 Q. I will ask you whether or not you made a survey of this property, front and everything? A. I made it, you might say it was more of a plot, an investigation.

Arthur T. McMichael, for Complainant—Cross.

Q. You did not have your instruments for a regular survey? A. Yes, we had, I was trying to find the beginning point, but I could not locate that stone.

Q. What instrument did you need to locate the stone? A. Surveying, mostly.

Q. You did not have your transit? A. I could not set the transit until I found it; could not find it. 10

Q. Did you have your instruments there to survey it? A. Yes.

Q. What do you mean by a survey, you said you did not make a survey, you made a plot? A. What do I mean by a survey, a survey is usually where you run the lines by some instrument and go entirely around the property.

Q. You did not do that? A. No, not entirely around. 20

Q. You simply plotted it from the deed? A. Yes.

The Court: You plotted it and what?

Witness: We plotted it, made an investigation on the ground, to see if the road, for instance, would correspond to this south 52, 39 west; to see whether the direction of the road as it would be today would correspond with that particular course. The deed is not clear whether that course is on the road or not. I found that the road did not correspond in direction to the course called for in the deed. 30

Q. But you say the deed is not clear as to direction? A. No, it is not clear whether or not this is the road. It says "beginning at a point" etc., and then gives certain courses; it does not say along the road, it simply says, "beginning" and then "south 52 degrees west", it does not say whether it is on the road or not. 40

Arthur T. McMichael, for Complainant—Cross.

The Court: What you mean by your determination whether it was on the road, is that you could check by the direction of the road.

10 Witness: Yes, I went further than that, because if there was a doubt about it, the next step would be to find out if anybody else had a deed for it, and the neighbors said yes, that they owned it, they produced their deeds or certified copies, and a certain portion of their deed did call for that triangular—

Q. You say a portion of the neighbor's property did not go all the way across the front?

20 The Court: He did not say any such a thing.

A. Yes, it goes all the way across the front.

Q. But reading the deed alone, you cannot tell whether this property fronts on any highway?

A. No, I could not tell; it is not quite clear.

Q. You say you had to know something about this road? A. I wanted to see whether the physical location of the road corresponded to the same direction, course, called for by the deed.

30 Q. Does the physical contour of the road correspond with the first course of the deed that you have just referred to? A. No.

Q. It does not? A. You are referring to the Gadek-Casper deed?

Q. Yes. A. No, it does not.

Q. Why do you say that it does not do that?
A. I took the magnetic bearing of the road and I put the instrument on it there; took the magnetic bearing of the road and it did not correspond with the magnetic bearing, making the

40

Arthur T. McMichael, for Complainant—Cross.

proper calculations by the deed, it did not correspond with the direction of the road.

Q. What instrument did you have to make these calculations? A. I had a regular transit, surveyor's transit.

Q. Did you have a transit? A. Yes.

Q. What do you mean by a survey? A. That is what is customarily used in these days. In the old days we simply had a compass.

Q. Does that constitute a survey? A. A Compass survey, yes.

The Court: Please do not waste time on such an examination as that. If you have anything to show, any testimony to show that this man is incorrect in his conclusions from the investigation he made, why put it on. I shall accept his statement as a verity unless you have something to contradict it. He says there is no frontage of this property on the highway.

Q. Will you say there is no frontage at all on the highway? A. The property simply corners on the highway; that is all.

Q. Is there any entrance there? A. Yes.

Q. There is an entrance? A. Yes.

Q. That permits you to go back? A. Yes.

The Court: Permits the road to go back?

Witness: There is an iron gate there.

Q. How wide is that gate? A. I don't know.

Q. Approximately? A. I don't know; I did not measure it; there is an iron gate there, a fence running along the road.

The Court: There is a fence running along the road, you say?

Arthur T. McMichael, for Complainant—Cross.

Witness: Yes, there is a post and mesh fence runs along the road.

The Court: How long is that fence?

Witness: It runs a long ways down, I think, to a pig pen and then runs the other way to cross the Guggenheimer property.

10 The Court: A fence all of the same character?

Witness: On the other side it is more dilapidated, just posted up.

The Court: What I am interested in knowing is whether there is a fence along here (indicating).

Witness: Not on this line, there is not.

The Court: No fence there?

20 Witness: On the line between Boyce and Casper there is nothing here, but alongside of the road which would be, there is a fence there.

The Court: There is a fence there; is it over to here (indicating)?

30 Witness: Yes, sir. The Boyce deed runs, this particular portion, runs along here; then comes out 2301 chains, which is about fifteen hundred and a fraction feet, at the middle of the road and then follows along the road, which almost exactly fits the road.

The Court: But the important part is, there is a fence from there to here (indicating).

Witness: It is along the road.

The Court: All right.

Q. Now can you tell us how many feet there exists between the fence and the north side of the Middletown Road? A. Englishtown?

Arthur T. McMichael, for Complainant—Cross.

Q. Middletown Road; tell the court how many feet exists between fences? A. You are pointing to the property line there now.

Q. Wherever is the fence at the edge of the Boyce property? A. Along the road, it is not the edge, because the Boyce property runs to the middle of the road.

10

Q. But on the extreme right hand side of this Gadek property there is a fence, is that right? A. Yes.

Q. Which separates the Boyce property and the Gadek property? A. No.

Q. There is not? A. No fence running alongside of the road, the particular property that belongs to Boyce.

Q. But Boyce also has a fence on his side of the road there between his property and Mr. Gadek's property? A. He has a Climax fence.

20

Q. And where does that fence go? A. It runs down to a pig pen, some buildings down there, and then turns along here (indicating).

The Court: Is there a fence down here (indicating)?

Witness: No, sir.

Q. Is there any fence along here anyway? A. Yes, sir.

30

Q. Where is the fence? A. I don't know.

The Court: There is no fence here (indicating).

Witness: No, there is no fence on this line here (indicating).

The Court: I am not talking about that line; I am talking about down here.

Witness: I don't think so; there is on this (indicating) a little further down.

40

Oscar Ricklefsen, for Complainant—Direct.

The Court: Is there a fence there (indicating)?

Witness: I don't remember whether there is or not.

10 Q. You don't know anything about the fence then? A. I am interested in the fence along the road; I know about that one.

RECESS FOR LUNCH.

AFTER RECESS.

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

Direct examination by Mr. Schwartz:

Q. What is your business, Mr. Ricklefsen? A. Real estate and insurance.

Q. And are you the agent who negotiated the sale of this Gadek property to Mr. Casper? A. I am.

Q. Were you present at the——

30 Mr. Stepacoff: I intended to call this agent as our witness.

The Court: You can use him as your witness if you want to.

Mr. Stepacoff: In the bill of complaint he inferred the negotiations were had directly with the defendant.

The Court: Won't you please wait until the proper time comes for an objection.

40 Q. Mr. Ricklefsen, were you present at the Gadek property before Mr. Casper entered into the contract for the purchase? A. I was.

Oscar Ricklefsen, for Complainant—Direct.

Q. Who was there at the time? A. Mr. Gadek, Mr. Casper and myself.

Q. At that time will you tell us the conversation that took place between Mr. Casper, and Mr. Gadek, in Mr. Casper's presence concerning the property he was to buy? A. We got Mr. Gadek up there to show him the lines of the property he was purchasing. 10

Q. What did he show him and what did he tell him? A. He walked around the boundary, showed him the posts in front, showed him three different monuments, trees, etc.

Q. Where are those posts in front? A. In front of the property, and on each side.

Q. What distance would you say these posts were apart? A. I never measured the property, I would say roughly 150 feet, possibly more. 20

Q. Mr. Gadek showed that as the frontage on the highway to Mr. Casper?

Mr. Stepacoff: I object; the witness has testified from post to post; not a thing said about frontage on the highway.

The Court: Tell us what was said.

Witness: Mr. Gadek designated around the fence line; that was the front of the property. 30

Q. Where does that property front on the fence? A. It sets in a little, there is a gate at the entrance large enough to drive an automobile through.

Q. At any time while you were present did Mr. Gadek say anything to Mr. Casper concerning the distance of the frontage on the highway? A. Not that I recall.

Q. You do not recall that? A. No. 40

Oscar Ricklefsen, for Complainant—Cross.

10 Q. I show you this map, Mr. Ricklefsen, which has been introduced in evidence, will you tell us, if you can, from this map, this dotted or broken line represents the road, this red line Mr. Boyce's property and this property here (indicating) is the Gadek property, can you tell us from looking at this map approximately where those posts were and the fence was?

Mr. Stepacoff: I object.

Witness: Is this colored spot the property in the front, that joins on the road there?

20 Q. This is the fence line here (indicating) went over here. We are talking about the fence along the road, that fronted on the road, can you tell us where the posts were? A. The posts all around here, that is one here and the other one (indicating).

Q. Do you know approximately how far in from the road those posts were? A. The road makes a turn and runs back to the further end of the property; it might set a little further back than at the beginning point; this is practically the road (indicating).

30

Cross-examination by Mr. Stepacoff:

Q. Mr. Ricklefsen, will you kindly make an "R" at the two points of the posts, representing the Guggenheimer posts and the Boyce posts? A. I don't know who the adjoining property owner was, but this is one point designated (indicating).

Q. Put an "R" here and another "R" at the other one. A. (Does so.)

40 Q. There is a fence connecting those two points?
A. Yes.

Oscar Ricklefsen, for Complainant—Re-direct.

Q. And fence posts too? A. There is some kind of a fence there.

Q. Now the distance between those fences in front and the road, in between that distance mark an "R" there, this distance here (indicating). A. I never measured that, it is just because the bank there is down there.

10

Q. There is a bank in front of this fence extending quite a distance to the road? A. I never measured it; but there is a bank there.

Q. In your presence did Mr. Gadek ever represent to this man that there was 200 feet frontage on this highway or this road? A. That I don't recall, we had Mr. Gadek up there to show Mr. Casper his lines.

Q. Did you hear anything said about frontage on any highway? A. It is a gravel road, it is not a highway really.

20

Q. This is not a highway? A. It is a gravel road.

The Court: Do you distinguish between a highway and a road?

Witness: The highway is supposed to be an improved highway.

Q. Leave out the highway; was it represented there was any frontage on the road? A. I took it to be to those post lines.

30

Q. Nothing said about any frontage on the road? A. No, except that I assumed that was it.

Re-direct examination by Mr. Schwartz:

Q. Mr. Ricklefsen, when you just said "I assumed that was it" what did you mean by that? A. Within the fence boundaries.

Q. And that it was on the highway?

40

Steven Boyce, for Complainant—Direct.

Mr. Stepacoff: I object.

The Court: You need not go any further;
I am satisfied.

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

Direct examination by Mr. Schwartz:

Q. Mr. Boyce, you are the man that owns this
property just next to the Gadek—or what used
to be—the Gadek farm? A. Yes, sir.

20 Q. Were you present at any time when Mr.
Casper and Mr. Gadek were there at the prop-
erty? A. Were there together?

Q. Yes. A. No.

Q. Well, were you present when Mr. Gadek
was there one day? A. Gadek has been there
two or three times; but not recently.

Q. Tell us what Gadek did and what you told
him? A. When he was there the last time?

Q. Yes. A. He came there and ordered a lot
of fixing——

30 Q. Concerning the frontage, I mean, of this
property on the highway, never mind the fixing?

Mr. Stepacoff: I object, if your Honor
please, unless it was in the presence of
this defendant.

The Court: That is who he is talking
about, your man.

Mr. Stepacoff: And in the presence of
the complainant also.

The Court: Objection overruled.

40 A. In the first place, Mr. Gadek set the posts, my
wife went out and spoke to him about that, and

Steven Boyce, for Complainant—Cross.

he said "let me go on" and I said, "Yes" and then he came and consulted with me afterwards and he said he was buying it. That is all I ever said. I did not give up possession, we both used the one gateway.

Q. What did he say he wanted to buy? A. The property. 10

Q. Which property was that? A. That little piece I claimed to own.

Q. Well, did you own it? A. They tell me so.

Mr. Stepacoff: He does not know.

The Court: When was this you had the talk with Gadek about the posts?

Witness: The first year he came up there; two or three years ago.

The Court: Before last May? 20

Witness: Yes, we all used it, I never gave up possession, we carted water in backwards and forwards.

The Court: Did you tell him you owned that property where he put the posts?

Witness: Yes, sir.

Q. What did he say? A. He said he would buy it.

Q. He never bought it? A. No, never said nothing more. 30

Cross-examination by Mr. Stepacoff:

Q. Just how much of the property do you claim is Mr. Gadek's land, Mr. Boyce, if you know? A. I don't know no more than the surveyor, I never seen that before.

Q. You said a little piece a little while ago; you told Mr. Gadek that little piece in front? A. There is a little piece comes out a sharp corner 40

Steven Boyce, for Complainant—Cross.

at his gate, that lower corner, it takes in more, comes up to a point, they told me, the people I bought it, that comes up on the lower side next to the house and runs out to a sharp point to his gate.

10 Q. Suppose you take a look at this, Mr. Boyce, this is your property line, this is your fence, and from that fence, from the point on that fence this way, that is, toward Mr. Gadek's property, how much land is yours? A. From that fence.

Q. From the point in that fence, if there is any of it yours? A. (No answer.)

Q. If you don't know, say so. A. I don't know any more than what they told me. They told me that they had an old barn up there, told Mr. Gadek and told his man, they had a barn up there.

20 Q. How long have you owned this property? A. Nineteen or twenty years.

The Court: How long did you say you had owned it?

Witness: Nineteen or twenty years.

Q. How long has Mr. Gadek owned this property, if you know? A. I don't know.

30 The Court: The important point is that it was over two years ago or about two years ago that he had this conversation with Gadek.

Q. Do you remember having a conversation with Mr. Casper also about the boundary lines of the property? A. Well, the man that worked for him used to work for Mr. Gadek, and I told him, told Charley—

40 Q. When was that, do you remember? A. It was along, I think in June or July, I won't say which, but I think it was in June.

Joseph Gadek, Defendant—Direct.

Q. How much of this piece of property which you claim is yours is worth, how much would you be willing to sell it for? A. There is a bit of it also that runs out to a sharp point on the other end.

Q. How much is that worth, how much would you sell it for? 10

Mr. Schwartz: I object.

The Court: Objection sustained.

A. I cannot sell it until I find out whether I own it or not.

Mr. Schwartz: You loaned your deed that you have for the property to Mr. McMichael the engineer that came to your home? 20

Witness: I did.

Mr. Schwartz: Complainant rests.

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

Direct examination by Mr. Stepacoff:

Q. Mr. Gadek, you had some conversation with Mr. Casper with reference to the sale of your property? A. Yes, sir. 30

Q. And did you at any time represent to him in any shape, way, manner or form or any way, that you owned 200 feet on any front road? A. No, sir.

Q. Did you say anything about front? A. No, sir.

Q. Did he ask you about any front roads? A. He did not. 40

Joseph Gadek, Defendant—Direct.

Q. Did you ever have your property surveyed?

A. I did not.

Q. When you bought the property you did not have it surveyed? A. No.

Q. Well, what happened with reference to the sale of this property, suppose you tell the court?

10 A. Mr. Casper came to me through the agent—

Q. You mean the agent, Mr. Ricklefsen? A. Yes, they called me up and I went up to his office, he brought me to the farm, Mr. Casper was there. There was a fence, I showed him the fence, Guggenheimer's fence and Steve Boyce's fence.

Q. Those are the fences on the side of your property? A. Yes, but I did not tell him anything about how much frontage I owned.

20 Q. Did you tell him how much back you owned?

A. On the back I showed him the 30 acres, more or less.

Q. 30 acres, more or less, but in the back was there any points you showed him what you owned?

A. There was no points on the back, an old farm fence that led from Boyce's piece, no points.

Q. No points, only posts and a fence? A. An old fence around the back.

Q. Did he ask you anything about frontage?

A. No, sir.

30 Q. You are sure about that? A. I am sure.

Q. When you called at Mr. Hanson's office did Mr. Casper say anything about any fence? A. Did not say anything.

Q. When you called at Mr. Hanson's office did Mr. Hanson draw any contract for you? A. Mr. Hanson was not present at the office.

Q. Who was there? A. A bookkeeper called Mr. Karkus, who drew the contract.

Q. He drew the contract? A. Yes.

40 Q. At that time was anything said about any frontage in particular? A. No.

Joseph Gadek, Defendant—Cross.

Q. Later you had the closing of the title, is that right? A. After.

Q. After the contract was drawn you had the deed given later on? A. Yes, the deed was issued about two weeks later.

Q. Who prepared the deed, if you know? A. Mr. Hanson.

10

Q. At the time of the closing of the title did this man say anything about frontage or anything of that sort? A. No, sir.

Q. You are positive about that? A. Yes, sir.

Q. In your presence and in the presence of Mr. Ricklefsen did you ever represent that you owned any particular front on the road or highway? A. No, sir.

20

Cross-examination by Mr. Schwartz:

Q. Mr. Gadek, you recall, of course, do you not, when you went to this property of yours with Mr. Ricklefsen and Mr. Casper? A. Yes, sir.

Q. You recall also that you showed him where your property was and showed him the boundaries of it? A. I showed him my property between the two fences, but I did not show him—

Q. You showed him the two posts? A. Between the two fences.

30

Q. There is a post on the corner right where the fence starts? A. I don't know.

Q. What would you say was the distance between those two fences that you showed him? A. I could not tell you; I had no survey.

Q. Is it over 100 feet, if you know? A. I don't know.

Q. At any rate, you showed him the fence on the front of the property, did you not? A. Yes, sir.

40

Joseph Gadek, Defendant—Cross.

Q. Didn't Mr. Casper ask you where the front boundary of your property was? A. He did not.

Q. Did you show it to him? A. I did not, I showed him inside there between the two fences, how much was on the front.

10 Q. Inside the fences? A. The front, I know I did not show him anything.

Q. You told him inside the fences was your property? A. Yes, sir.

Q. You did not tell him the property outside the fence was yours? A. Outside the fences, between the two fences, how much I owned on the highway I did not tell nothing to Mr. Casper.

20 Q. Didn't Mr. Casper ask you where the frontage was on the highway of the property he was buying? A. He did not.

Q. He did not ask you? A. No.

Q. You did not show him? A. I showed him one thing, inside.

Q. Do you know Mr. Boyce? A. Yes.

Q. How long have you known him? A. Five years.

Q. Do you recall when you wanted to put a fence up on the front of that property, a fence on the highway? A. He did not say anything.

30 Q. Do you recall when you wanted to put up the fence? A. No, I don't.

Q. Did you ever put up the fence? A. I just put up a fence to keep my flock off the road.

Q. You did put up a fence? A. A wire fence, temporarily.

Q. Didn't Mr. Boyce tell you to put the fence up on your property and that was not your property? A. No, sir.

Q. He did not tell you that? A. Never.

Thomas L. Hanson, for Defendant—Direct.

THOMAS L. HANSON, called as a witness in behalf of the defendant, being first duly sworn according to law on his oath testified as follows:

Direct examination by Mr. Stepacoff:

Q. You are a practicing counsellor at law of the State of New Jersey? A. I am. 10

Q. And have been for how many years? A. Since 1916.

Q. You have also been an engineer? A. Yes.

Q. Civil engineer? A. That is right.

Q. Duly licensed? A. No, it was before they had any law requiring licenses.

Q. How long have you been an engineer? A. I graduated from Rutgers in 1910 and practiced engineering until 1915. 20

Q. Do you recall, Mr. Hanson, the time of the closing of the title with reference to the parties Casper and Gadek, relate to the court just what happened? A. I recall at the time of the closing; the contract was prepared in my office, but it was not prepared by me.

Q. It was under your supervision? A. No, I had nothing to do with the preparation of the contract. I was away that day; it provided for closing within ten days, and I think one or two days before the time set for the closing Mr. Casper either came to my office or called up to see whether I would be ready, and I told him I would be. Mr. and Mrs. Gadek and Mr. Casper came to my office on the day of the closing. I advised Mr. Casper that the title was all right, but I wanted to straighten out a question of whether or not some judgments were against previous grantors of the property; I had just received my complete search from Freehold the day before. They were in my office for about an hour while I was calling up 30 40

Thomas L. Hanson, for Defendant—Direct.

several lawyers in Monmouth County to check up whether or not the judgments affected the property in question. I found out they did not, I told Mr. Casper the title was alright and turned over the check to Mr. and Mrs. Gadek, I think for \$3,800. He wanted a receipt for the deed and I told him I would have to send it to Freehold and after it was returned he could get it with whatever papers he was entitled to. I also had Mrs. Gadek execute an affidavit of title.

Q. Was any mention ever made about a survey?

A. I had said something to Mr. Casper the first time, as to whether he was having a survey made.

Q. What did he say? A. He told me he was not.

Q. Now then, Mr. Hanson, as a civil engineer and as an attorney, this first phrase in this contract, "being on the northerly side of the highway that leads from Englishtown to Middeltown Point, beginning at a stone standing on the northerly side of the aforesaid highway" etc., does that necessarily mean to you that this property fronts on the highway? A. Well, I never interpreted it that way. I always assumed that was to show the location of the property, a more specific location to be set out by metes and bounds.

Q. Now, from an examination of this contract, and from the deed, which has the same description, will you say as an engineer and as an attorney, that you can tell that this property fronts on any highway, if you need any map you may have it? A. Not from the description, I would not say there was a definite frontage on the highway.

Mr. Schwartz: You mean, Mr. Hanson, that you cannot tell?

The Court: Why waste any time?

Louis P. Booz, for Defendant—Direct.

LOUIS P. BOOZ, a witness called in behalf of the defendant, being first duly sworn according to law on his oath testified as follows:

Direct examination by Mr. Stepacoff:

Q. What is your occupation? A. Civil engineer and surveyor. 10

Q. Where do you survey and practice? A. Perth Amboy.

Q. What position do you hold in the City of Perth Amboy, if any? A. City Engineer.

Q. Been civil engineer for how long? A. Twenty-four years.

Q. Mr. Booz, did you have occasion to visit the property mentioned in this deed? A. I did.

Q. From the description given in that deed and contract, which are similar, can you tell whether or not this property fronts on any highway? A. Outside of the beginning point, you could not tell. 20

Q. You cannot tell? A. No, sir.

Q. Nor where the fence is which goes—where the front fence is which connects the two side fences, there is a strip of land from the front fence to the edge of the road, is that true? A. There is a sort of high terrace or bluff there.

Q. And about how wide would you say that strip of land is? A. It has an average width of approximately 15 feet, I should judge, without measuring it. 30

Q. In other words, this front fence separates the parcel of land from the road, and the distance between the edge of the road and the front fence is 15 feet? A. Yes, from the traveled road to the fence.

The Court: Where is the fence, up on top of the bluff? 40

Louis P. Booz, for Defendant—Direct.

Witness: Up on top of the bluff.

The Court: Near the edge of the bluff?

Witness: No, back about 15 feet.

10 Q. Describe to the court just what type of road this is, if it is a road, just what is it, is it an improved highway, macadam or what?

The Court: A public road?

Witness: Public road, unimproved, just a dirt road.

Q. About how wide would you say it was? A. The traveled part, just about wide enough for two cars.

20 Q. Mr. Booz, if you had the two descriptions of the adjoining lands, namely, Mr. Boyce's land and a description of Mr. Gadek's property, from those two descriptions alone could you determine whether or not this property fronts on any highway? A. You could not tell, no, you would have to have the property bordering on the east, or on the opposite road and you would also have to have the return of the road, to show the depth of it.

30 Q. In other words, you would have to have knowledge of the road itself in order to tell whether or not this property which they maintain is supposed to front on the highway, actually does front on the highway, is that true? A. Yes.

Q. That would necessitate a survey? A. It would to be at all accurate, because there may be a surplus, maybe the width of the road may be taken out of some of these properties.

Q. Then again some of the property may front on the road, is that true? A. Yes, that is true.

40 Q. You did not make any survey of the road? A. I did not.

Louis P. Booz, for Defendant—Direct.

Q. You merely took a plotting of it? A. I plotted it, I made a personal visit to the property, even then I did not have all the conditions along the road front.

Q. You took the first point in the deed, did you not, as the beginning? A. I began my plotting from the beginning point, yes.

10

Q. And that point is referred to in the contract as follows: "being on the northerly side of the highway that leads from Englishtown to Middletown Point, beginning at a stone standing on the northerly side of the aforesaid highway, it being the most southeasterly corner of the late William West's lands; thence running as the needle of Leonard", etc., "pointed in the month of September, 1836, first south 52 degrees 39 minutes west four chains". You examined that first point, did you not? A. Yes, I did.

20

Q. That point is indicated where on this map? A. On the lower right hand corner, it is indicated on Mr. McMichael's map as a stone at the southeast corner mentioned in the deed of the late William West's lands.

Q. At that point is there an entrance? A. There is a gateway there, yes.

Q. About how wide would you say that entrance is? A. About 12 feet wide.

30

Q. That leads directly into the farm lands of Mr. Gadek? A. Yes, it does.

Q. Standing at that point in the road, with a cursory examination of the deed, the contour of the deed by degrees and minutes, apparently does that road run in front of the property? A. Why, taking my plotting and correlating it with the land lines, one would first suppose that property did front on the road.

40

Louis P. Booz, for Defendant—Cross.

Q. And it followed the description in this deed?

A. That short angle apparently followed it.

Cross-examination by Mr. Schwartz:

10 Q. At any rate, from your investigation of this, you did not find any frontage on the highway, did you, in this Gadek deed? A. Only the width of the gate, that is all.

Q. Of course, you don't know whether that was the highway you saw, so you don't know whether that was Gadek's property? A. No.

Q. You did not get Mr. Boyce's deed, either, did you, to plot out this property? A. No.

20 The Court: There is no question in my mind but what this contract was induced by fraudulent representations to the effect that this property had a frontage on the highway as indicated by the fence line which has been referred to. Mr. Gadek knew that was untrue because Mr. Boyce had already previously pointed out to him that he owned the property in front bordering on the highway. That representation, therefore, was not only equitably fraudulent, but it was actually fraudulent. I think under the circumstances, the complainant is entitled to a
30 decree of rescission, and he is also entitled to recover the expense that he has been put to for the repairs of the property and for examination of the title, all of which have been specifically set out. I think the figures are \$161.80 plus \$116 for title search. There is no evidence respecting the value of the occupation of the lands except that of Mr. Casper himself who fixed it at \$5 a
40 month, and that amount has already been

Exhibit C-1-A.

deducted from the expenditures which he placed on the property. Complainant may take a decree.

Mr. Schwartz: How will we dispose of the matter, make a reconveyance to Gadek?

The Court: You can give him a reconveyance any time you are ready. When you present the form of decree I will fix the time within which the reconveyance is to be made and the money paid over to your client. 10

Exhibit C-1-A.

Contract, Dated May 8th, 1931, Between Helen Gadek and Joseph Gadek, Her Husband, and Charles Casper. 20

THIS AGREEMENT made the Eighth day of May, in the year of our Lord One Thousand Nine Hundred and Thirty-one.

BETWEEN HELEN GADEK and JOSEPH GADEK, her husband, of the City of Perth Amboy in the County of Middlesex and State of New Jersey party of the first part; 30

AND CHARLES CASPER of the City of New York in the County of New York and State of New York party of second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Four thousand (\$4,000.) 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 40

Exhibit C-1-A.

10 said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free of all encumbrances on or before the Twenty-second day of May next ensuing the date hereof, ALL that certain lot tract, or parcel, of land and premises, hereinafter particularly described situate, lying and being in the Township of Marlboro in the County of Monmouth and State of New Jersey.

20 Being on the northerly side of the highway that leads from Englishtown to Middeltown Point, Beginning at a stone standing on the northerly side of the aforesaid highway, it being the most southeasterly corner of late Wm. Way's lands, thence running as the needle of Leonard Walling's compass pointed in the month of September 1836, first (1) south fifty-eight degrees and thirty-nine minutes west four chains, (2) north fifteen degrees and twenty-five minutes west four chains and thirty-five links; (3) South seventy-four degrees west twelve chains to a stake standing on the east side of the meadow ditch; (4) north sixty-eight degrees west six chains and 30 eighty-one links to a stake standing on a ditch bank by the side of the pine stump; (5) north twenty-five degrees and forty minutes west eight chains and seventeen links to a stake the northermost corner of said now or late Way's land; (6) north fifty-six degrees and forty-eight minutes east nineteen chains and seventy links; (7) south twenty-five degrees and forty minutes east twenty-one chains and sixty-one links to where it began, containing thirty acres, be the same more 40 or less.

Exhibit C-1-A.

AND the said party of the second part for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that he the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Four thousand (\$4,000.) Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: 10

On Execution of this agreement for which this is also a receipt.....	\$ 200.00	
On delivery of deed, cash.....	3,800.00	
Total.....	\$4,000.00	20

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

AND 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 Twenty-second day of May next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use. 30

AND IT IS FURTHER AGREED, by the parties hereto, that the said deed of Warranty shall be delivered and received at office of Thomas L. Hanson, 214 Smith Street, Perth Amboy, N. J. between the 40

Exhibit C-1-A.

hours of ten o'clock in the forenoon and five o'clock in the afternoon on the said Twenty-second day of May next ensuing the date hereof.

10 The rents of said premises, insurance premiums, water rents, taxes and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

Gas and electric fixtures, gas stoves, hot water heaters and chandeliers, carpets, linoleum, mats and matting in halls, screens, shades, awnings, ash cans, heating apparatus, if any, and all other personal property appurtenant to or used in the operation of said premises is represented to be owned by seller and is included in this sale.

20 The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part.

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

30 It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as enforced by the State Board of Tenement House Supervision, to be shown by the report of the department or board enforcing the same where such ordinances, regulations and said act apply.

40 It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any proceedings

Exhibit C-1-A.

or any Act for the Sale of Land for nonpayment of the municipal taxes or assessments, or by adverse possession.

The premises above described are sold subject to restrictions appearing of record, and zoning ordinances, if any.

If at any time before the delivery of the deed the premises or any part thereof shall be or shall have been affected by any assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

AND it is hereby agreed by and between the parties hereto that in case any street improvements are made, or have been made, upon which the property mentioned herein is located, up to the time of the delivery of deed, but not assessed, such assessment shall be borne by the party of the first part their heirs, executors, administrators and assigns.

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

10

20

30

40

Exhibit C-1-A.

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

10

HELEN GADEK L. S.
JOSEPH GADEK L. S.
CHARLES CASPER L. S.

Signed, Sealed and Delivered }
in the presence of }

LOEUSH KARKUS

20

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

WITNESS
of

hand and seal this day
A. D. 19

30

STATE OF NEW JERSEY }
COUNTY OF MIDDLESEX } ss.

40

BE IT REMEMBERED That on this Eighth day of May in the year of Our Lord One Thousand Nine Hundred and Thirty-one, before me the subscriber, a Notary Public N J personally appeared Helen Gadek and Joseph Gadek, her husband, who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the

Exhibit C-1-A.

same as their voluntary act and deed, for the
uses and purposes therein expressed.

LOEUSH KARKUS
Notary Public N J

In consideration of (\$) 10
dollars to in hand paid
hereby assign to
this contract and all rights thereunder.

WITNESS our hands and seals this
day of A. D. 19

(ENDORSEMENT)

CONTRACT 20
FOR SALE OF PROPERTY

HELEN GADEK and JOSEPH GADEK, her husband,
TO
CHARLES CASPER

Dated May 8, 1931

THOMAS L. HANSON
Counsellor-at-Law
214 Smith Street
Perth Amboy, N. J.
Telephone 1761

30

40

Exhibit C-1.

**Deed from Helen Gadek and Joseph Gadek,
Her Husband, to Charles Casper,
Dated May 18th, 1931.**

10 THIS INDENTURE made the 18th day of May, in
the year of Our Lord One Thousand Nine Hun-
dred and Thirty-one between Helen Gadek and
Joseph Gadek, her husband, of the City of Perth
Amboy, in the County of Middlesex and State of
New Jersey, party of the first part; and Charles
Casper of 148 East 18th Street, of the City of
New York, in the County of New York and State
of New York, party of the second part:

20 WITNESSETH, that the said party of the first
part, for and in consideration of the sum of one
or more dollars, lawful money of the United States
of America, to them in hand well and truly paid
by the said party of the second part, at or before
the sealing and delivery of these presents, the re-
ceipt whereof is hereby acknowledged, and the said
party of the first part being therewith fully satis-
fied, contented and paid, have given, granted, bar-
gained, sold, aliened, released, enfeoffed, conveyed
and confirmed, and by these presents do give,
30 grant, bargain, sell, alien, release, enfeoff, convey
and confirm unto the said party of the second part,
and to his heirs and assigns, forever, ALL that
certain tract or parcel of land and premises, here-
inafter particularly described, situate, lying and
being in the Township of Marlboro, in the County
of Monmouth and State of New Jersey.

40 Being on the northerly side of the highway that
leads from Englishtown to Middletown Point,
beginning at a stone standing on the northerly
side of the aforesaid highway, it being the most

Exhibit C-1.

southeasterly corner of late Wm. Way's lands, thence running as the needle of Leonard Walling's compass pointed in the month of September, 1836, first (1) south fifty-eight degrees and thirty-nine minutes west four chains, (2) north fifteen degrees and twenty-five minutes west four chains and thirty-five links; (3) south seventy-four degrees west twelve chains to a stake standing on the east side of the meadow ditch; (4) north sixty-eight degrees west six chains and eighty-one links to a stake standing on a ditch bank by the side of the pine stump; (5) north twenty-five degrees and forty minutes west eight chains and seventeen links to a stake the northerest corner of said now or late Way's land; (6) north fifty-six degrees and forty-eight minutes east nineteen chains and seventy links; (7) south twenty-five degrees and forty minutes east twenty-one chains and sixty-one links to where it began, TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof, and of every part and parcel thereof; ALSO all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof.

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

Exhibit C-1.

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

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

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

40 AND the said party of the first part, their heirs and assigns shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns,

Exhibit C-1.

make, do, and execute, or cause or procure to be made, done and executed, all and every such further or other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting the premises hereby intended to be granted to the party of the second part, his heirs and assigns forever, as shall be reasonably required. 10

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

HELEN GADEK (L. S.)
JOSEPH GADEK (L. S.)

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

THOMAS L. HANSON

(Endorsement.)

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss.: 30

BE IT REMEMBERED, that on this 18th day of May, in the year of our Lord One Thousand Nine Hundred and thirty-one, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Helen Gadek and Joseph Gadek, her husband, who, I am satisfied, are the grantors mentioned in the within Instrument to whom I first made known the contents thereof, and there- 40

Exhibit C-1.

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

THOMAS L. HANSON,
M. C. C. of N. J.

10

DEED.

HELEN GADEK, *et vir*, to CHARLES CASPER

Dated May 18th, 1931.

20 Received in the Clerk's Office of the County
of Monmouth, on the 9th day of June A. D., 1931,
at 9 o'clock in the forenoon and recorded in Book
1561 of Deeds for said County, on page 128, &c.

JOSEPH McDERMOTT,
Clerk.

Record and return to

THOMAS L. HANSON,

214 Smith Street,

30

Perth Amboy, N. J.

40

Exhibit C-2.**Bill of Thomas L. Hanson.**

THOMAS L. HANSON
 Counsellor-at-Law
 214 Smith St.
 Perth Amboy, N. J.

10

 Phone 1761

May 18, 1931.

Mr. Charles Casper

to

Thomas L. Hanson, Dr.

20

To examination of title and preparation	
of abstract	\$75.00
To services re: closing of title.....	15.00
To one-half drawing of contract.....	7.50
To Supreme & U. S. District Court	
searches	12.50
To tax search	2.00
To recording deed	4.00

Total	\$116.00	30
Less: Received on account.....	25.00	

Balance due	91.00
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Paid in full.

THOS. L. HANSON

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Exhibit C-3.

Survey.

(Opposite) 

SURVEY
(UNCOMPLETED)
SHOWING PLOTTINGS OF DEEDS OF
CHARLES CASPER & STEPHEN BOYCE

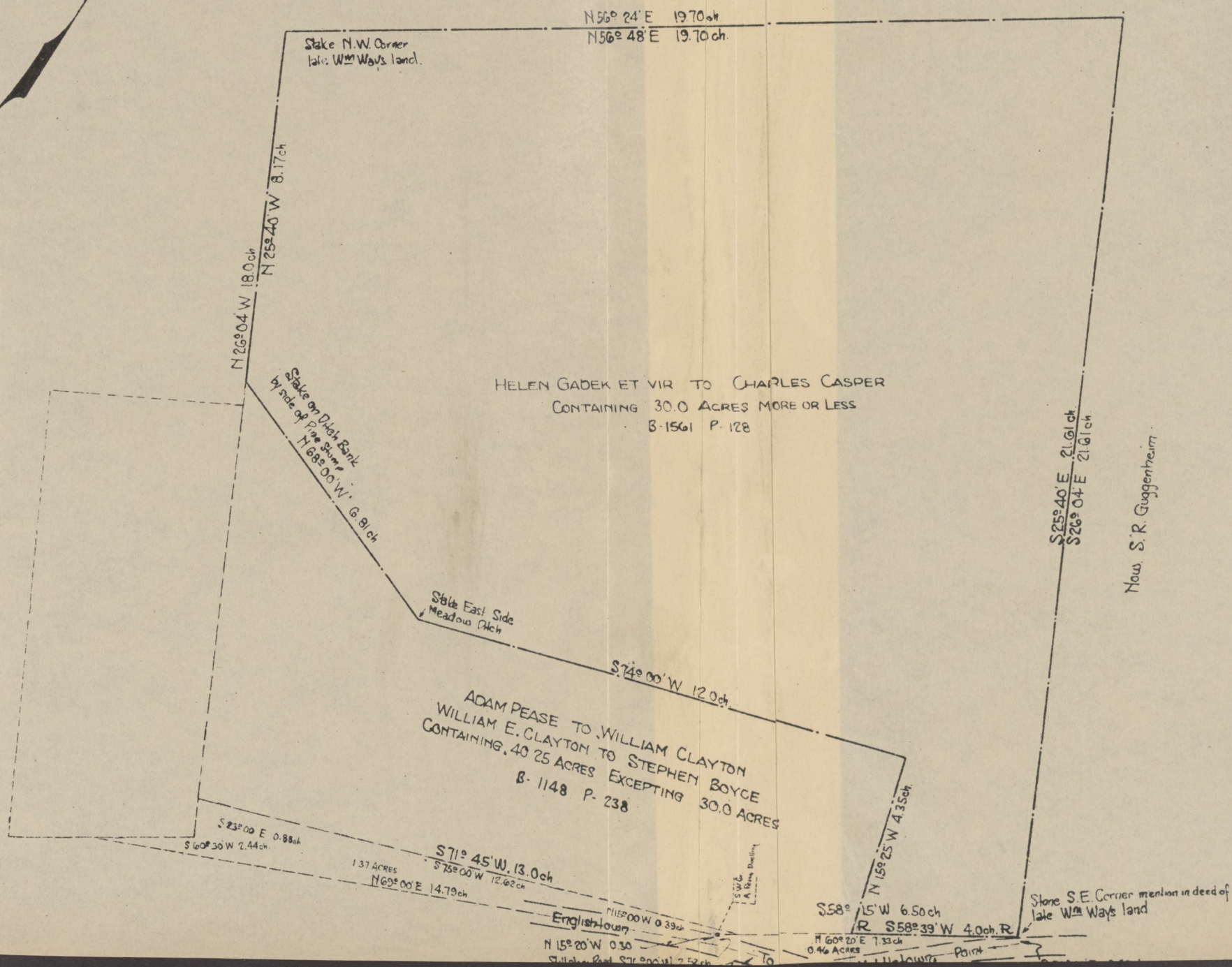
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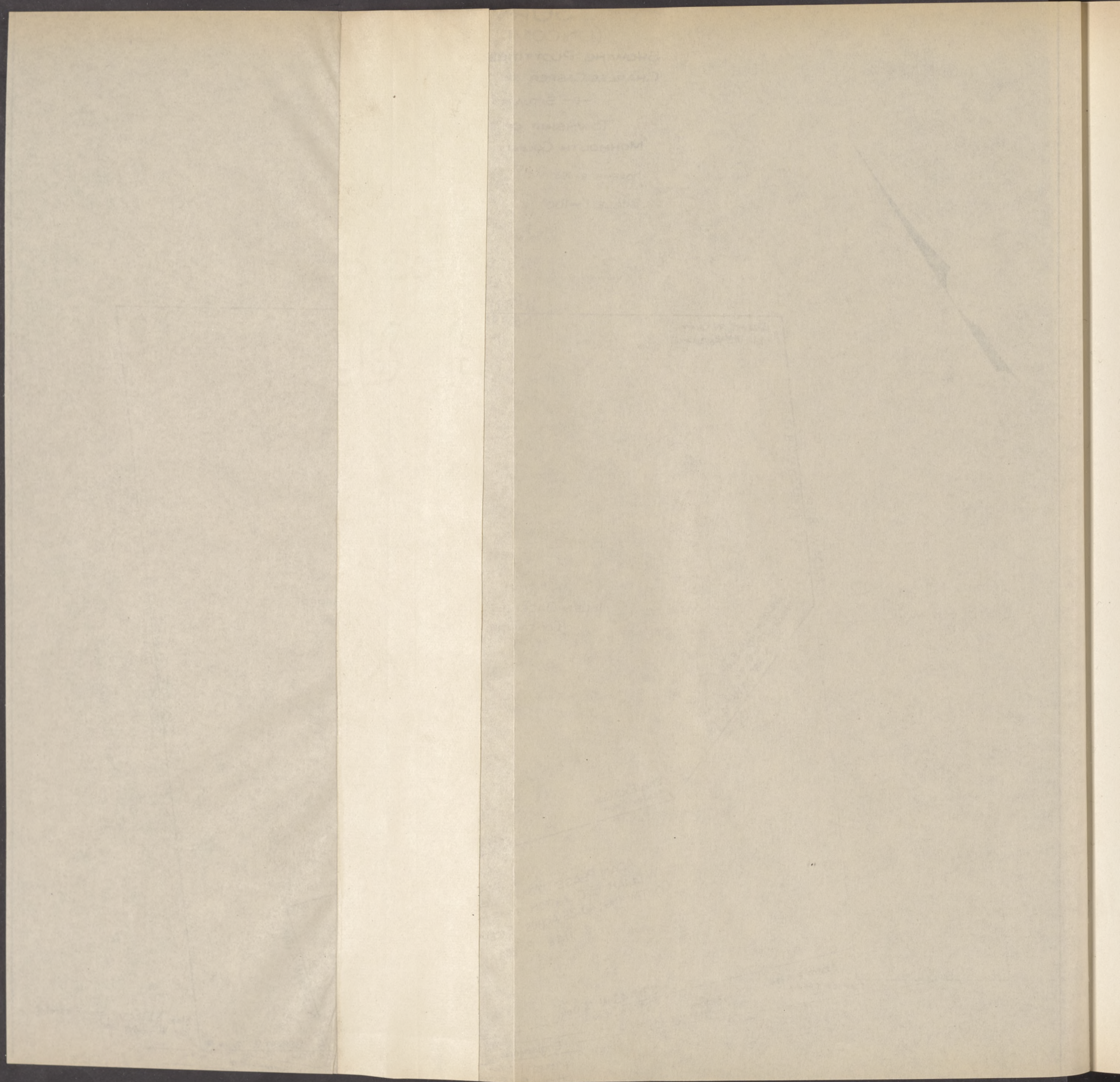
TOWNSHIP OF MARLBORO
MONMOUTH COUNTY, NEW JERSEY

NOVEMBER 1931

SCALE 1"=100'

DRAWN BY:—
MICHAEL & WILBER
CIVIL ENGINEERS
P.O. BLDG SO. AMBOY, N.J.





Final Decree.

IN CHANCERY OF NEW JERSEY

87/9

Between

CHARLES CASPER,
Complainant,*and*HELEN GADEK and JOSEPH GADEK,
Defendants.On Bill, &c.
Final Decree.

This cause coming on to be heard in the presence of Smith and Schwartz, Esqs., solicitors of the complainant, Joseph B. Schwartz, Esq., present, and David T. Wilentz, Esq., solicitor of the defendants, David I. Stepacoff, Esq., present, at the Chancery Chambers, in the City of Long Branch, on the seventh day of January, 1932;

And the court having read and considered the pleadings, and having taken testimony orally and in open court, and having heard and considered the arguments of counsel thereon, and being satisfied that the defendants induced the complainants, by fraudulent representations, to enter into the contract for the purchase of said premises, which contract is dated May 8th, 1931, and the deed to said premises dated May 18th, 1931, said fraudulent representations made concerning the frontage of said premises on the highway, and which said premises are described as follows:

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the Township of Marlboro, in the County of Monmouth and State of New Jersey.

BEING on the northerly side of the highway that leads from Englishtown to Middletown

Final Decree.

Point, beginning at a stone standing on the northerly side of the aforesaid highway, it being the most southeasterly corner of late Wm. Way's lands, thence running as the needle of Leonard Walling's compass pointed in the month of September 1836, first (1) south fifty-eight degrees and thirty-nine minutes west four chains; (2) north fifteen degrees and twenty five minutes west four chains and thirty five links; (3) south seventy four degrees west twelve chains to a stake standing on the east side of the meadow ditch; (4) north sixty eight degrees west six chains and eighty one links to a stake standing on a ditch bank by the side of the pine stump; (5) north twenty five degrees and forty minutes west eight chains and seventeen links to a stake the northerest corner of said now or late Way's land; (6) north fifty six degrees and forty eight minutes east nineteen chains and seventy links; (7) south twenty five degrees and forty minutes east twenty one chains and sixty one links to where it began, containing thirty acres, be the same more or less.

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It is therefore, on this seventh day of January, 1932, ORDERED, ADJUDGED AND DECREED that the aforesaid contract of May 8th, 1931, and the aforesaid deed of May 18th, 1931, be and the same are hereby rescinded and cancelled.

30

And it is further ORDERED, ADJUDGED AND DECREED that the said defendants pay to the complainant the sum of Four Thousand (\$4,000.00) Dollars, representing the purchase price of said premises, together with interest on said sum from the 18th day of May, 1931, until the date of payment, upon a reconveyance by the complainant to the defend-

40

Final Decree.

ants of the lands set forth in the bill of complaint by deed of bargain and sale.

10 It is further ORDERED, ADJUDGED AND DECREED that the defendants further pay unto the complainant the sum of One Hundred Sixteen (\$116.00) Dollars paid by the complainant for search fees and examination of title of said premises, and also the sum of One Hundred Seventy Six Dollars and Eighty Cents (\$176.80) for moneys expended by the complainant for repairs of said premises, upon which the defendants are entitled to a credit of Fifteen (\$15.00) Dollars for use and occupation of said premises by the complainant, leaving a balance of One Hundred Sixty One Dollars and Eighty Cents (\$161.80) due to 20 the complainant for repairs, or a total of Two Hundred Seventy Seven Dollars and Eighty Cents (\$277.80) for repairs and search fees.

And it is further ORDERED that the aforesaid sums due from the defendants to the complainant and the deed of reconveyance from the complainant to the defendants shall be exchanged within thirty days from the date of this decree, at a place to be selected by the solicitors for the respective parties.

30 And it is further ORDERED, ADJUDGED AND DECREED that the defendants pay unto Smith and Schwartz, Esys., solicitors of the complainant, the sum of Three Hundred Dollars as counsel fee, besides costs of suit to be taxed.

Respectfully advised

MAJA LEON BERRY

E. R. WALKER,

V. C.

C.

A true copy.

40 SMITH & SCHWARTZ,
Solrs. of Complainant.

Amended Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

87/9.

Between

CHARLES CASPER,
Complainant,*and*HELEN GADEK and JOSEPH GADEK,
Defendants.On Bill, &c.
Amended Notice
of Appeal.

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The defendants, Helen Gadek and Joseph Gadek, hereby appeal from the final decree made in the above entitled cause on the 7th day of January, 1932, by the Chancellor, Edwin Robert Walker, on the advice of Maja Leon Berry, Vice Chancellor, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

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Dated: February 26th, 1932.

DAVID T. WILENTZ,
Solicitor for and of Counsel with
Defendants.

30

I conceive there is good cause for appeal in the above entitled cause.

DAVID T. WILENTZ,
Of Counsel with Defendants.

Service of a copy of the within Amended Notice of Appeal is hereby acknowledged this 26th day of February, 1932.

SMITH & SCHWARTZ,
Solicitors for Complainant.

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Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

CHARLES CASPER,
Complainant-Appellee,

vs.

HELEN GADEK and JOSEPH GADEK,
Defendants-Appellants.

On Appeal from
the Court of
Chancery.

Petition of
Appeal.

*To the Honorable the Court of Errors and Appeals
in the Last Resort in All Causes:*

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The petition of Helen Gadek and Joseph Gadek,
the appellants in the above entitled cause, respect-
fully shows that:

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1. 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, on the advice of the Hon-
orable Maja Leon Berry, bearing date January
7th, 1932, in a certain cause in said Court of
Chancery wherein the said Charles Casper was
complainant and the said Helen Gadek and Joseph
Gadek were defendants, in this respect, to wit,
that the said decree adjudges that the defendants
induced the complainant, by fraudulent represen-
tations, to enter into a contract for the purchase
of premises and that the fraudulent representa-
tions were made concerning the frontage of the
premises on a highway, and, therefore, the con-
tract of purchase, dated May 8th, 1931, and the
deed, dated May 18th, 1931, are to be rescinded

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Petition of Appeal.

and cancelled and the defendants are to pay to the complainant the sum of \$4,000.00, representing the purchase price of the premises, together with interest plus search fees.

And petitioners appeal from the decree advised by the Vice Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that:

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1. Said decree is not warranted by the evidence, since no evidence of fraud on the part of the defendants was proven at the hearing.

2. The *quantum* of proof required in cases of fraud was not adduced by the complainants.

3. The contract of sale was incorrectly interpreted by the learned court in that the court decided that the contract of sale in question gave the purchaser a right to assume that the property in question fronted on the highway.

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Petitioners therefore pray that the said decree of the said Chancellor, advised by the Vice Chancellor, may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this court shall seem proper.

DAVID T. WILENTZ,
Solicitor for and of Counsel with
Appellants.

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Service of a copy of the within Petition of Appeal is hereby acknowledged this 1st day of March, 1932.

SMITH & SCHWARTZ,
Attorneys for Complainant-Appellee.

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New Jersey Court of Errors and Appeals

Between

CHARLES CASPER,
Complainant-Appellee,

and

HELEN GADEK and JOSEPH GADEK,
Defendants-Appellants.

Final Decree.

On Appeal
from Court
of Chancery.

BRIEF OF DEFENDANTS-APPELLANTS.

Statement.

This action was brought by the complainant, Charles Casper, against the defendants, Helen Gadek and Joseph Gadek, on the basis of an alleged misrepresentation by the defendant, Joseph Gadek, that the farm sold by the defendants to the complainant, in the Township of Marlboro, Monmouth County, New Jersey, had a frontage on a highway of approximately 200 feet (State of Case, p. 2, l. 3 to p. 3, l. 10).

The complainant sought to have the contract of sale, dated May 8th, 1931, and the deed, dated May 18th, 1931, rescinded and cancelled respectively and prayed for the return to the complainant of the sum of \$4,000.00 representing the purchase price (State of Case, p. 5, ll. 11 to 19).

The learned Vice-Chancellor, before whom the cause was heard in open court, granted a decree in accordance with the prayer of the bill (State of Case, p. 68, l. 1 to p. 70, l. 36), finding "this contract was induced by fraudulent representations

to the effect that this property had a frontage on the highway * * *'' (State of Case, p. 52, ll. 18 to 21) and that the representation "was not only equitably fraudulent, but it was actually fraudulent * * *'' (State of Case, p. 52, ll. 27 to 30).

The defendants appeal from the decree entered on the advice of the Vice-Chancellor for the following reasons:

1. The decree is not warranted by the evidence, since no evidence of fraud on the part of the defendants was proven at the hearing.
2. The *quantum* of proof required in cases of fraud was not adduced by the complainant.
3. The contract of sale was incorrectly interpreted by the learned Court, in that the Court decided that the contract of sale in question gave the purchaser a right to assume that the property in question fronted on the highway.

The defendants-appellants will consider the first and second reasons together in one point, and will then argue the third reason.

POINT ONE.

The decree is not warranted by the evidence since no evidence of fraud on the part of the defendants was proven and the *quantum* of proof necessary to show fraud was not adduced by the complainant.

The alleged misrepresentation in question centers about the failure of the farm, conveyed by defendants to complainant, to front on the highway (see Complaint, State of Case, p. 2, l. 30 to p. 3, l. 10).

The property in question is bounded on the east by property owned by one S. R. Guggenheim, and

on the west and southwest by property of Stephen Boyce (State of Case, p. 67).

The southerly or front part of the property is the side about which the present controversy arose.

The southerly part of the farm was bounded by a fence which connected two posts. The posts represented the sides of the adjacent owners, Guggenheim and Boyce. The initial "R" on the uncompleted survey introduced by the complainant indicates the posts (State of Case, p. 38, ll. 31 to 39; see also State of Case, p. 67). There is a fence connecting these posts (State of Case, p. 38, ll. 39 to 40). There is a gateway on the southeasterly side of the farm owned by Mrs. Gadek and conveyed to complainant, which actually fronts on the Englishtown-Middletown highway about 12 feet in width (State of Case, p. 51, l. 27 to p. 52, l. 12; also State of Case, p. 30, ll. 23 to 26).

Between this fence and the Englishtown-Middletown Road in question, there is a strip of land with an average width of 15 feet (State of Case, p. 49, ll. 24 to 39; see also State of Case, p. 39, ll. 5 to 12).

It is elementary that there can be no fraud, legal or equitable, without a misrepresentation of a fact, 26 C. J. 1065. An examination of the complainant's own case will disclose that there is not a scintilla of evidence indicating a misrepresentation by the defendants to the effect that the farm in question fronted wholly on the highway.

When complainant's own counsel examined the complainant as to what transpired before the purchase, the complainant stated that the frontage was *pointed* out to him by the defendant, Joseph Gadek, indicating the fence which ran from post to post, the exact testimony being as follows: (State of Case, p. 9, l. 15 to p. 10, l. 5).

“Q. Before you purchased this farm from Mr. Gadek will you tell us whether or not you had any conversation with him concerning the farm? A. I had a conversation with the real estate agent first; after that I was introduced to Mr. Gadek; he came up and showed us the whole place.

Q. Where was that? A. At the farm.

Q. What did Gadek say to you, what did he show you? A. He told me, also the real estate agent, regarding the location of the place and everything; described it to us.

Q. What did he tell you? A. He says there is 38 acres of ground, he says, all the way around.

Q. Yes. A. And he says the frontage runs from that point on that fence over to the other point.

Q. He described the frontage to you by indicating on the fence? A. Yes, and also described it to the real estate agent.

Q. Did he tell you approximately how much the frontage was? A. We figured about 200 feet.

Q. Not what you figured, what did he tell you?

The Court: What do you mean by “we figured”?

Witness: That is what he says, about 200 feet.

Q. And he pointed the fence out to you? A. *From post to post, fence to fence.*”

From this testimony, it is obvious that there was no misrepresentation that the farm *fronted on the highway*, because there was not one single solitary word mentioned by the vendor about a *highway*, the only description was that the frontage was from post to post. Neither the Gadeks, the defendants (State of Case, p. 44, ll. 1 to 7), nor Mr. Casper, the complainant (State of Case, p. 48, ll. 14 to 18), had a survey before title passed to Mr. Casper, and it may very well be that Mr.

Casper *assumed* that the fence bordered wholly on the highway, which indeed he did (State of Case, p. 10, l. 11), but surely, his erroneous assumption is not tantamount to a misrepresentation by the defendant, Joseph Gadek; it is nowhere alleged that that which was actually pointed out to Mr. Casper by Mr. Gadek was not in fact Mr. Gadek's.

But, even if it is *assumed* for the purpose of argument only, that there was a fraudulent misrepresentation, as was claimed by the complainant, it is evident from the complainant's own testimony that he was not led into making the contract for the purchase of the farm by reason thereof. On Casper's examination, counsel for the defendants sought to adduce the truth as to whether there was a misrepresentation and consequently, the complainant was asked whether he informed his attorney at the time that the contract for sale was prepared, that he was to get a certain frontage on the highway, the exact questions being: (State of Case, p. 21, l. 37 to p. 22, l. 5).

"Q. Did you state anything to Mr. Hanson about any frontage?

Mr. Schwartz: I object to that, whether he told Mr. Hanson anything about it.

The Court: The question is all right.

A. I asked Mr. Hanson to look out for my benefit and I paid him.

Q. Did you tell him anything about frontage?"

The significant answer to this question being (State of Case, p. 22, ll. 5 to 10):

"A. *I knew nothing about that*, what did I know about buying property, this was my first experience. I know more about it now, you bet."

It is quite clear, therefore, from the aforementioned testimony, that there was not only an utter absence of a misrepresentation, but also a total failure to prove a *reliance* by the complainant on the misrepresentation, which is essential to make out a case of fraud. The case, therefore, falls within the doctrine laid down in *Lembeck vs. Gerken*, 86 N. J. L. 111.

The complainant called his agent, Oscar Ricklefsen, evidently to prove a misrepresentation and again the testimony was completely in favor of the defendants. It was admitted by the complainant that whatever representations were made by the defendant, Joseph Gadek, were made in the presence of Mr. Ricklefsen (State of Case, p. 18, ll. 1 to 22). Mr. Ricklefsen, too, testified that Mr. Gadek designated the posts in front and the fence as the front of the property, pointing out the posts in front (State of Case, p. 37, ll. 12 to 30).

Counsel for the complainant on the direct examination of Mr. Ricklefsen, his own witness, sought to determine whether there was a misrepresentation to the effect that the property fronted on the highway and it is significant that this only witness, outside of the parties themselves, testified that he did not recall anything said by Mr. Gadek concerning the frontage on the highway; the exact testimony is as follows (State of Case, p. 37, ll. 35 to 40).

“Q. Leave out the highway; was it represented there was any frontage on the road?

A. I took it to be to those post lines.

Q. Nothing said about any *frontage on the road*? A. No, except that I *assumed* that was it.”

With such testimony in the complainant's own case and with the absolute denial by the defendant, Joseph Gadek, that he represented the prop-

erty as fronting on the highway (State of Case, p. 43, ll. 33 to 40), it is shown beyond a reasonable doubt that there was no misrepresentation so as to charge the defendants with fraud; unless we are to permit an *assumption* by a purchaser that property, which he is about to buy, the boundaries of which he is expressly shown, and which sets back from a highway an average distance of 15 feet, actually fronts on a highway.

The learned Vice-Chancellor, in deciding the case, stated: "There is no question in my mind but what this contract was induced by fraud and representations to the effect that this property had a frontage on the highway as indicated by the fence line which has been referred to. Mr. Gadek knew that was untrue because Mr. Boyce had already previously pointed out to him that he owned the property in front, bordering on the highway. That representation, therefore, was not only equitably fraudulent but it was actually fraudulent" (State of Case, p. 52, ll. 18 to 30). The testimony presented on behalf of the complainant shows that there was some dispute as to a small piece of property contiguous to the Gadek property on the south side (State of Case, p. 40, l. 40, to p. 41, l. 14) and which small piece of property fronted on the road. Just how much belonged to Boyce was characterized by Mr. Boyce as follows (State of Case, p. 41, ll. 10 to 12):

"Q. Which property was that? A. That *little piece* I claimed to own."

At the time the controversy over this little piece of land arose, Mr. Boyce did not know whether he owned the same (State of Case, p. 43, ll. 14 to 16). But, whatever controversy might have arisen with reference to this property, it was not shown by the complainant that that which was actually pointed out to Mr. Casper by the defendant,

Joseph Gadek, was not in fact Mr. Gadek's. The defendant admits that there was a strip of land averaging 15 feet in width from the fence line of his property to the road. Whoever owned this property, the defendant was not concerned about nor does the ownership of that property become an issue in this cause since the property for which the parties bargained was expressly pointed out to the purchaser as seen from testimony hereinabove quoted (State of Case, p. 10, ll. 1 to 5).

The law of New Jersey is well settled that fraud can never be assumed in a transaction and the evidence of the fraud must be clear and positive. *Firemen's Fund Insurance Company vs. Nicholson*, 103 N. J. Eq. 32; and where a transaction is capable of two constructions, one that comports with honesty and one with dishonesty, the former should be adopted by the courts, *Babirecki vs. Virgil*, 98 N. J. Eq. 118, and *Gray vs. Folwell*, 57 N. J. Eq. 446.

It is respectfully submitted that the transaction in question does not even give rise to two constructions. It is clear and evident that the purchaser was shown expressly and exactly what he was buying, and he received just what he was shown and the *quantum* of proof necessary in cases of fraud is entirely lacking.

POINT TWO.

The contract of sale was incorrectly interpreted by the learned Vice-Chancellor.

The learned Court decided that the contract of sale in question (State of Case, p. 53) gave the purchaser a right to assume that the property in question fronted on the highway (State of Case, p. 24, ll. 5 to 9).

It will be noted that at the outset of the case the learned Vice-Chancellor admitted that he could not tell from an examination of the deed (which has the same description as the contract) (State of Case, p. 54, ll. 16 to 40, and p. 60, l. 37, to p. 61, l. 22), whether the property fronted on the highway, and stated that a surveyor could, the exact testimony being (State of Case, p. 17, ll. 4 to 11):

“Q. Now, you don’t know whether or not, from an examination of the deed, you can tell whether or not this property is on the highway?

The Court: He could not; *I cannot*. Nobody but a surveyor could.”

The complainant’s own surveyor testified that he could not tell from an examination of the deed whether the property fronted on the highway, the actual testimony in this regard being (State of Case, p. 31, ll. 35 to 40):

“Q. But you say the deed is not clear as to direction? A. No, it is not clear whether or not this is the road. It says ‘beginning at a point’ etc., and then gives certain courses; it *does not say along the road*, it simply says, ‘Beginning’ and then ‘south 52 degrees west’, it *does not say whether it is on the road or not*.”

And further (State of Case, p. 32, ll. 24 to 27):

“Q. *But reading the deed alone, you cannot tell whether this property fronts on any highway?* A. No, I could not tell; it is not quite clear.”

This testimony is entirely in accord with the testimony produced by the defendants’ witnesses, Thomas L. Hanson, an engineer and an attorney (State of Case, p. 47, ll. 10 to 11, and l. 14) and Louis P. Booz, an engineer (State of Case, p. 49,

l. 10). These witnesses testified also that from an examination of the contract and the deed, which had the same description, they could not tell whether the property described therein fronted on the highway or not, Mr. Hanson testifying as follows (State of Case, p. 48, ll. 18 to 37):

“Q. Now then, Mr. Hanson, as a civil engineer and as an attorney, this first phrase in this contract, ‘being on the northerly side of the highway that leads from Englishtown to Middletown Point, beginning at a stone standing on the northerly side of the aforesaid highway’ etc., does that necessarily mean to you that this property fronts on the highway? A. Well, I never interpreted it that way. I always assumed that was to show the location of the property, a more specific location to be set out by metes and bounds.

Q. Now, from an examination of this contract, and from the deed, which has the same description, will you say as an engineer and as an attorney, that you can tell that this property fronts on any highway, if you need any map you may have it? A. Not from the description, I would not say there was a definite frontage on the highway.”

Mr. Louis P. Booz testified as follows (State of Case, p. 49, ll. 20 to 25):

“Q. From the description given in that deed and contract, which are similar, can you tell whether or not this property fronts on any highway? A. Outside of the beginning point, you could not tell.

Q. You cannot tell? A. No, sir.”

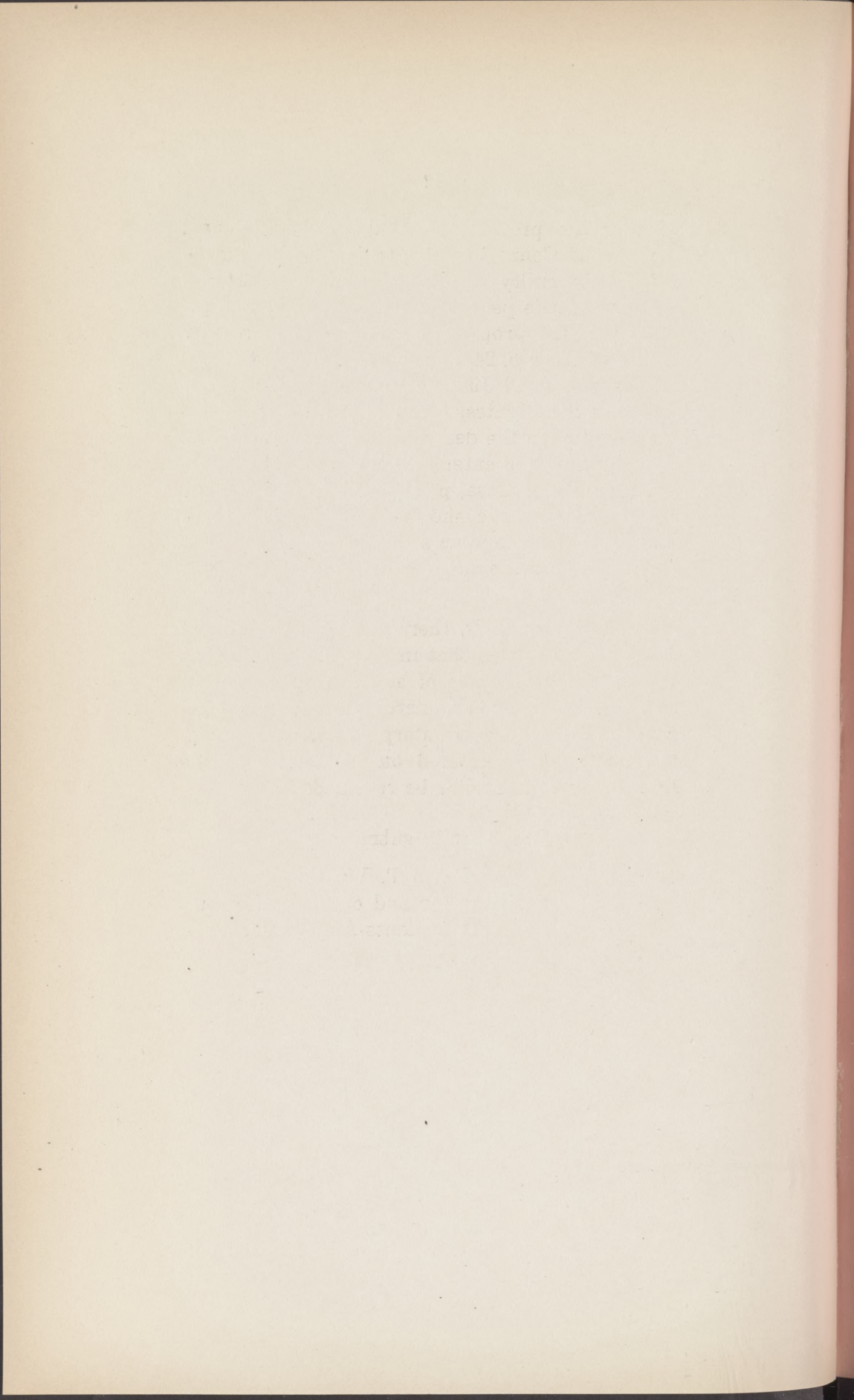
Notwithstanding all the testimony in the case being to the effect that one could not tell from an examination of the deed or contract whether the property described therein fronted on the highway, and also after stating that he was unable to determine from an examination of the deed

whether the property fronted on the highway, the learned Court, in order to justify finding the defendants guilty of fraud, concluded that the contract of sale permitted the complainant to *assume* that the property fronted on the highway (State of Case, p. 24, ll. 5 to 9). Notwithstanding the learned Trial Judge's conclusion, it was not shown in the slightest manner that the complainant relied upon the description in the contract as an inducement to enter into the contract of purchase (State of Case, p. 21, l. 37, to p. 22, l. 10) and as hereinabove shown in Point One, there must be a reliance upon a fact before a charge of fraud can be made out.

In conclusion, it is, therefore, with the utmost deference submitted that in view of the fact that there was no evidence of any misrepresentation and no reliance upon a misrepresentation and because of the improper interpretation of the contract, the decree entered on the advice of the learned Vice-Chancellor be reversed.

Respectfully submitted,

DAVID T. WILENTZ,
Solicitor for and of Counsel with
Defendants-Appellants.



INDEX

	PAGE
Notice of Appeal	1
Grounds of Appeal	2
Complaint (Bankers Indemnity)	4
Answer (Bankers Indemnity)	7
Reply (Bankers Indemnity)	10
Discontinuance (Bankers Indemnity)	11
Complaint (Schmidt <i>et al.</i>)	12
Answer (Schmidt <i>et al.</i>)	16
Reply (Schmidt <i>et al.</i>)	17
Order of Discontinuance (Schmidt <i>et al.</i>)	18
Order Placing Cause on "Commercial Cal-endar"	19
Argument	21
Verdict	22
Reason for Nonsuit	30
Reason for Judgment	100
Standard of Porter, J.	101

TESTIMONY FOR PLAINTIFF

David Meyer:

Direct	24
Cross	25

TESTIMONY FOR DEFENDANT

Charles M. Schmidt:

Direct	31
Cross	44
Rebuttal	55

