



## NEW JERSEY SUPREME COURT.

WLADISLAW PONIATOWSKI,  
Plaintiff and Respondent,

vs.

JOSHUA GRIFFITHS AND BRONIS-  
LAUS CINKOWSKI,  
Defendants and Appellants.

ACTION AT LAW.

GROUNDS OF  
APPEAL.

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The appellant, James Griffiths, states the following grounds of appeal:

1. The Court, against objection made on behalf of Mr. Griffiths, admitted in evidence statements which may have influenced the jury in bringing in a verdict against Mr. Griffiths notwithstanding the fact that such statements were made by Mr. Cinkowski not in the presence of Mr. Griffiths.

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2. The Court, against objection made on behalf of Mr. Griffiths, permitted counsel for the plaintiff to read in evidence a statement made by Mr. Cinkowski before a committee of the Camden Bar Association, and this notwithstanding the fact that such statement was not made in the presence of Mr. Griffiths.

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3. The Court, against objection made on behalf of Mr. Griffiths and without any memorandum or note thereof in writing signed by Mr. Griffiths or by any person thereunto by him awfully authorized, admitted oral evidence from which the jury were permitted to conclude not only that a contract had been made for or in respect of an interest in or concerning lands but also that Mr. Griffiths had made a representation guarantee or assurance.

4. The Court overruled the following question to the witness, Ludwig Grabowski:

“Ques. Was the house half done when Mr. Poniatowski first told you that he knew he was building on Szwak’s lot and he intended to sue Griffiths and Cinkowski?”

5. The Court denied a motion for non-suit made on behalf of Mr. Griffiths.

6. The Court denied the motion to direct a verdict 10 made on behalf of Mr. Griffiths.

7. The Court refused to charge this defendant’s first request.

8. The Court refused to charge this defendant’s third request.

9. The Court refused to charge this defendant’s sixth request.

10. The Court refused to charge this defendant’s ninth request. 20

11. The Court, in dealing with the fourth request, denied the first part thereof by this statement:

“If he knew it, gentlemen, that he was getting that before he began his construction, that would follow.”

12. The Court, instead of the sixth request, charged:

“Well, I will say this in answer to that request, that the law imposes upon the plaintiff the burden 30 of establishing his case by a preponderance of the proofs; when the entire proofs are presented to you, the plaintiff to succeed must have them preponderate in favor of the propositions that he lays down, that are necessary for his recovery. The rule which applies in the criminal court has no application in the civil courts; there a verdict to be rendered against a defendant of guilty must exclude all reasonable

doubt of his guilt. In this court the preponderating proofs are the test."

13. The Court, although charging the eighth request, permitted the jury to guess that upon a settlement between the plaintiff and Mr. Reader, his trustee, the plaintiff could lawfully be required to pay Mr. Reader for an unencumbered title more than the plaintiff should in equity pay for the lot.

10 14. The Court, although charging the eighth request, permitted the jury to try an equity case and this without having either the proper parties or the proper evidence before the Court.

15. The jury were permitted to and did find a joint verdict against the two defendants.

16. A joint judgment was entered against the defendants.

FRENCH & RICHARDS,  
Attorneys for Joshua Griffiths.

20 Service acknowledged.

WESCOTT & WEAVER,  
Attorneys for Plaintiff.

NEW JERSEY SUPREME COURT.

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| WŁADISŁAW PONIATOWSKI,       | } |                   |    |
| Plaintiff,                   |   |                   |    |
| vs.                          |   |                   |    |
| JOSHUA GRIFFITHS AND BRONIS- |   | ACTION AT LAW.    |    |
| LAUS CINKOWSKI,              | } | NOTICE OF APPEAL. | 10 |
| Defendants.                  |   |                   |    |

*To Messrs. Wescott & Weaver, Attorneys of Plaintiff:*

Take notice that the defendant, Bronislaus Cinkowski, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

ALBERT S. WOODRUFF, 20  
Attorney for Appellant.

Service acknowledged February 8, 1917.

Filed February 10, 1917.

## NEW JERSEY SUPREME COURT.

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| WLADISLAW PONIATOWSKI,<br><br>Plaintiff and Respondent,<br><br>vs.<br><br><b>10</b> JOSHUA GRIFFITHS AND BRONIS-<br><br>LAUS CINKOWSKI,<br><br>Defendants and Appellants. | } | ACTION AT LAW.<br><br>GROUNDS OF<br><br>APPEAL. |
|---|---|---|

The appellant, Bronislaus Cinkowski, states the following grounds of appeal:

**20** 1. The Court overruled the following question to the witness, Ludwig Grabowski:

“Ques. Was the house half done when Mr. Poniatowski first told you that he knew he was building on Szwak’s lot and he intended to sue Griffiths and Cinkowski?”

2. The Court denied a motion for non-suit made on behalf of Mr. Cinkowski.

**30** 3. The Court denied the motion to direct a verdict made on behalf of Mr. Cinkowski.

4. The jury were permitted to and did find a joint verdict against the two defendants.

5. A joint judgment was entered against the defendants.

ALBERT S. WOODRUFF,  
Attorney for Bronislaus Cinkowski.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

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| WLADISLAW PONIATOWSKI,<br>vs.<br>JOSHUA GRIFFITHS AND BRONIS-<br>LAUS CINKOWSKI. | } | ACTION AT LAW.<br>JUDGMENT<br>RECORD.<br>ON POSTEA. | 10 |
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WESCOTT & WEAVER,  
Attorneys.

Joshua Griffiths and Bronislaus Cinkowski, the defend-  
ants in this cause, were summoned to answer unto Wlad-  
islaw Poniatowski, the plaintiff therein, in an action-at-  
law upon the following complaint:

(Summons Issued January 15, 1916.) 20

Wladislaw Poniatowski, of 1171 Pear Street, Cam-  
den, N. J., says:

1. That on or about March 1st, 1912, he was a car-  
penter and builder and owned and occupied the land and  
premises at his present address, consisting of a single  
brick dwelling, so constructed as to permit of a similar  
or twin dwelling being erected and attached to its east-  
erly wall; that he then desired so to erect such a twin  
dwelling and thereupon applied to defendants, who were  
and are real estate agents, and, after explaining that he  
was unfamiliar with such transactions and could not read  
the English language, agreed with them to purchase the  
lot immediately to the east of his said premises, to wit,  
No. 1173 Pear Street, for the sum of \$325.00. 30

2. That it became the duty of defendants, upon entering into said agreement with plaintiff, to use diligence and care in the purchase and transfer of said 1173 Pear Street, and to act wholly in plaintiff's interest in the matter.

3. That on March 11th, 1912, according to said agreement, he paid defendants said sum of \$325.00, and received from them a deed which they carelessly and negligently assured plaintiff was a deed to said lot 1173 Pear Street, although in fact, it was not.

10 4. That, relying on the assurance of defendants, he thereupon obtained through defendants a mortgage loan of \$2,000 on his present land and premises, and by means thereof erected at 1173 Pear Street the dwelling there at present situate; installed a tenant therein and collected rent until ejected therefrom by the true owner.

20 5. Plaintiff has entirely lost the value of his labor and materials consumed in the erection of said twin dwelling; has lost the rents and profits he would have derived therefrom; has suffered and will suffer the burden of said mortgage on his present land and premises and has been put to great expense, loss of time and of opportunity to profit in his trade and business, all as the direct consequence of the conduct of defendants as aforesaid.

Plaintiff demands \$5,000 damages.

WESCOTT AND WEAVER,

(Filed Aug. 11, 1916). Attorneys for Plaintiff.

30 Defendant Joshua Griffiths, residing in Merchantville, New Jersey, answering separately, says that:

1. He denies the first paragraph.
2. He denies the second paragraph.
3. He denies the third paragraph.
4. He denies the fourth paragraph.
5. He denies the fifth paragraph.

The plaintiff could not speak or understand English and this defendant could not speak or understand Polish, the language of the plaintiff, and neither saw the other and neither had any conversation with the other in connection with the transaction alleged in the complaint.

The defendant, Mr. Cinkowski, came to this defendant and said the plaintiff lived at 1171 Pear Street, and wanted to buy the lot adjoining. He did not indicate to this defendant in which direction. This defendant got the map, saw that 1171 Pear Street was lot 43 and that lot 41 adjoined it, and then told Mr. Cinkowski that Coady & Cheesman Company owned lot 41, and this defendant would try to buy it. Accordingly this defendant negotiated a sale of lot 41 from Coady & Cheesman Company to the plaintiff, the purchase price being \$325, of which \$300 went to Coady & Cheesman Company and the commission of \$25 was divided between this defendant and Mr. Cinkowski. Lot 41 was reasonably worth the full price of \$325, and a good title thereto was made to the plaintiff. Afterwards the plaintiff purchased for \$400 lot 39 adjoining lot 41, and built upon lots 41 and 39 a row of three houses.

After the plaintiff had built and completed a house upon lot 45, this defendant learned for the first time that plaintiff claimed to have wanted lot 45, and claimed to have thought that the lot so conveyed to plaintiff by Coady & Cheesman Company was lot 45. This defendant says that if there was any mistake or misunderstanding, this defendant was not a party to it, had no knowledge of it and fully believed that the plaintiff in taking title to lot 41 was getting exactly what he, the plaintiff, wanted.

On October 17, 1913, the plaintiff filed in the Court of Chancery of New Jersey a bill for relief against Anthony Szwak, Aniela Szwak his wife, Lawrence B. Reader and Bessie M. Reader, his wife. In his bill of complaint the plaintiff, among other things, admits that before building the house on lot 45, he made inquiries as

to the ownership of lot 45 and was informed that it was owned by Anthony Szwak, and further states that he saw Anthony Szwak and inquired whether Anthony Szwak owned lot No. 45, and if so, whether he would sell it to the plaintiff and that Anthony Szwak stated that he was the owner, but refused to enter into any negotiations for the sale of it to the plaintiff. The plaintiff in said bill claims to have been thereafter deceived by the defendants to said bill, or some of them, and to have acquired equitable rights in the property. The prayer of said bill is as follows:

10 "That the value of said lot No. 45, in the condition in which it was at the time your orator first began, in mistake as aforesaid, to build thereupon, may be ascertained, fixed and determined by this Honorable Court, and that the fair and reasonable value of the dwelling house so as aforesaid, erected by mistake by your orator upon said lot No. 45 may be ascertained, fixed and determined by this Honorable Court; and that the said defendant hereinafter named, or some one or more of them, may be decreed at their option, or at the option of some one or more of them, to pay to your orator, within such time as this may by its decree made in this cause limit and direct, the fair and reasonable value of the dwelling house erected as aforesaid by your orator, or that the said defendants, or some one or more of them, may be decreed to convey to your orator by a good and sufficient deed of conveyance in the law and within such time as this Court may by its decree made in this cause limit and direct,

20 the aforesaid tract or lot of land and premises, with the dwelling house so as aforesaid erected thereon by your orator, clear of the lien and encumbrance at the mortgage so as aforesaid made and executed thereon to the said Bradford L. Williams, upon the payment by your orator of the fair and reasonable value of said lot or parcel of land in the condition in which it was at the time your orator began the erection of the dwelling house aforesaid thereupon; and that if by reason of the terms

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of said mortgage the principal thereof shall not then be due and payable, and the said mortgagee or his assignee, in case "he shall then have assigned said mortgage, be unwilling to accept payment thereof in advance of the time fixed by said mortgage for such payment, that then and in such case, if the said defendants, or some one or more of them, shall have elected as aforesaid, to convey said lot of land and the dwelling house thereon erected to your orator as aforesaid, the said defendants, or some one or more of them, shall be decreed to pay to your orator the principal sum of said mortgage, with all arrearages of interest thereon, together with such interest thereon as may thereafter accrue and become due up to the time when said mortgage shall, by its terms, become due and payable and that if the said defendants, or some one or more of them, shall not exercise the aforesaid option by notifying the solicitors of the complaint, in writing, within such time as this Court may limit and direct, that then and in such case, the said defendants, or some one or more of them, may be decreed to pay forthwith to your orator the fair value of the said dwelling house, as ascertained, fixed and determined by this Honorable Court, and that failing therein, the amount so ascertained, fixed and determined as representing the fair value of said dwelling house shall be decreed a lien generally upon all the property of the said defendants, and that execution or other appropriate process may issue out of this Court to enforce the payment thereof, and to compel obedience to such decree, and that your orator may have such further and other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience."

After the filing of said bill the defendants thereto were brought into court and a notice of lis pendens against lot 45 was filed in the office of the Register of Deeds of Camden county. The Chancery suit is still pending, but no trial has been had of the issues raised therein.

This defendant is informed and believes and therefore

alleges, that while the plaintiff was at work upon the foundations upon lot 45, and before any building had been erected thereon the plaintiff was informed that Anthony Szwak and not the plaintiff owned lot 45.

FRENCH & RICHARDS,  
Attorneys for Defendant.

(Filed Jan. 27, 1916).

JOSHUA GRIFFITHS.

- 10 1. Plaintiff denies the second paragraph of the answer of Joshua Griffith.
2. He denies the third paragraph of said answer.
3. He denies the fourth paragraph of said answer.
4. He admits the fifth paragraph of said answer.
5. He admits the sixth paragraph of said answer.
6. He denies the allegation in the seventh and last paragraph of said answer.

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WESCOTT & WEAVER,

(Filed Aug. 14, 1916). Attorneys for Plaintiff.

This case was tried before Judge Frank T. Lloyd with a jury at the Camden Circuit, on December 28th, 1916.

The jury rendered a general verdict against the defendants and in favor of the plaintiff for fifteen hundred and fifty dollars (\$1,550.)

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|----|---------------|------------|
| 30 | Damages ..... | \$1,550 00 |
|    | Costs .....   | 50 22      |
|    |               | <hr/>      |
|    |               | \$1,660 22 |

Whereupon it is adjudged that the plaintiff recover of the defendants, the sum of fifteen hundred and fifty dollars damages, and his costs, which are taxed at the sum of fifty dollars and twenty-two cents, making in the

whole the sum of sixteen hundred dollars and twenty-two cents.

Judgment entered December 30, 1916.

WM. S. GUMMERE,  
C. J.

I. WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office. 10

In testimony whereof I have set my hand and seal of said Court at Trenton, this ninth day of February, A. D., nineteen hundred and seventeen.

[SEAL]

WM. C. GEBHARDT,  
Clerk.

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in the world. I don't know how many years he has been in this country, but he is foreigner, and speaks only tolerably well, in English, and very rapidly. Some of his witnesses will have to be interpreted. Poniatoski is a carpenter, and in March of 1912 he lived at 1171 Pear street, Camden, that has another name now. Poniatoski owned his house, and earned it, and paid for it, and lived in it with his family. Alongside of him on his left hand, as he stands in his door facing the street, is a vacant lot. It was a lot where there was a party wall; on the other side of the house was a lot; between his house and that lot was an alleyway several feet wide. Poniatoski wanted to get the lot on his left and put a building, twin houses, a house similar to his own, on it. He went to see a man named Szwak about getting that lot. Szwak told him he did not know anything about the lot. He was anxious to get the lot and build the twin house. He went to the defendant, Cinkowski, who is a real estate agent in the city of Camden, and told him he wanted the lot, told him what he wanted. Cinkowski, like Griffiths, the other defendant in the case, is in the real estate business. They buy and sell real estate. They went to his house, that is, the defendants did, and stood upon Poniatoski's porch and talked about getting this lot for him, and he pointed out to them, in the presence of his wife, the lot he wanted, and told them why he wanted it, pointing to the party wall. He did not want the lot on the other side of the alley. They said they would get him the lot. Poniatoski could not read or write. Being an honest man, he trusted other people. These two men, Cinkowski and Griffiths, said they would get the lot for him. They got his lot and told him that it would cost, I think, \$325 or \$350. They told him that it was to secure this lot, and he paid the money for it. Then he got a mortgage, I think, of \$2,000, on his own house, in order to raise the money to build this twin house. He went to work to build his house on the lot. He put a tenant in that new house that he had built

next to his own house. He collected a little rent from the tenant. One day, to his amazement, he got a notice to the effect that he would have to get out of the house. He was struck with consternation. He went to a man named Reader and retained him to look into the matter for him and protect him. Mr. Reader went to see Griffiths and Cinkowski, and told them that they were mistaken, that they were in the wrong lot. They said no, they could not be mistaken. They went to work to investigate. Cinkowski and Griffiths, the real estate men, then went to investigate, and when they had investigated they found that they had made a mistake. Instead of getting Poniatowski the lot he wanted they had got the lot on the other side of the alley, and he had paid for that lot. He was in a bad pickle. Well, they had great times. Poniatowski was working for some company at that time, the name of the company I forget, but the president of the company was a gentleman named Case, a legislator of this county. He thought Case would treat him better than Reader had. He told Reader so, and took the case out of Reader's hand and put it in Case's to protect him. To him it was a serious matter. He was not only losing his own home, by mortgage, but the house he had built, too. Well, arguments and things went on between these lawyers and it ended this way: finally Reader's wife got this property and Szwak got the one they had, and they put Poniatowski's tenant out of the house and took possession of the house. There are the circumstances of the incident. Well, it turned out in the course of time that Poniatowski consulted me about it, and I brought suit against these two real estate agents for making that mistake. Real estate agents must use intelligence and care in transacting business in their hands. They cannot be careless. They must use intelligence and care. They made a serious mistake. After they found that this mistake was made, Griffiths and Cinkowski, they tried to fix it up with Szwak. They offered to give him, I think, \$500 in the first place.

Then Griffiths and Cinkowski, after they had made this mistake, tried a number of ways to get it rectified. I think they tried to trade the lots. Poniowski's lot was on the wrong side. He tried to get these people to trade, but they would not trade. Then they tried to buy the lot, and I think offered him \$500. Then they got higher and higher, and he was pretty nearly crazy. Then they offered him \$1,000. Reader, in the meantime, got to representing Szwak, and when he got there he kept raising the ante. He got it up to \$1,500. The result was that Szwak got the whole business. This suit is brought to make these real estate men to pay these damages which Poniowski sustained. They can have their remedy against Reader; he will have to dance further on. To begin with, we are going to hold these men responsible for their lack of care in the transaction of this particular business. If you think they are, too, I will ask you to find a verdict for Poniowski for \$2,000, the amount which he put in the new house. Also, he helped to build the new house. That means loss of his time in addition to the direct loss on the house.

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Mr. Richards opens for the defendant:

*Gentlemen of the jury:*

I represent Joshua Griffiths, one of the defendants, and Mr. Woodruff here represents Mr. Cinkowski. Mr. Poniowski, the plaintiff, owned and lived on Lot No. 43, on the north side of Pear Street, in the City of Cam- 30  
den, and there was a vacant lot on either side of him. Mr. Szwak owned No. 45, on the one side, and Coady & Cheeseman Company owned No. 41, on the other side. Mr. Poniowsky then saw Mr. Cinkowski, who could speak both Polish and English, and thereupon Mr. Cinkowski went over to see Mr. Griffiths. He told Mr. Griffiths where Poniowski lived and that Poniowski

wanted to buy the lot adjoining it. Whatever else Mr. Cinkowski may have had in his mind to say, he never indicated to Mr. Griffiths that Mr. Poniatowski had any preference as to which side—which of the lots he would have. Mr. Griffiths took out his book and looked it up. He found Poniatowski's lot to be No. 43. He said, "Yes, this lot No. 41 is adjoining it and is owned by Coady & Cheesman, and I think I can get it for you; I will try." Mr. Griffiths started in to try to get Lot No. 41 from Coady & Cheesman. He succeeded, and Coady & Cheesman, conveyed Lot No. 41 to Poniatowski, and Mr. Griffiths charged for the services the sum of \$12.50, which was paid by Coady & Cheesman; he did not charge Poniatowski anything. Poniatowski knew that Mr. Szwak owned Lot No. 45. He had tried several times to buy it from him. They could both speak Polish, and they could understand each other in Polish. Mr. Poniatowski also knew when he got the deed for Lot No. 41 that he was not dealing with Mr. Szwak, but with Coady & Cheesman Company. He afterwards built on that lot. In the meantime, however, for some reason we cannot explain, Mr. Poniatowski started to build on Mr. Szwak's lot. He had not much more than commenced when he was informed that he was on the wrong lot, and that he must get off, or proceed at his peril. From time to time he was informed that he was on the wrong lot. He proceeded, finished the house, and went to see Mr. Reader. He showed Mr. Reader the deed and papers, and Mr. Reader, with this information, went to see Mr. Szwak and bought the Szwak lot and holds it to-day as the trustee for Mr. Poniatowski. Mr. Griffiths never knew or understood that Mr. Poniatowski was building on the wrong lot until the house was completed.

The Court: Did you say the plaintiff holds the title now to the lot on which the house was built?

Mr. Richards: He holds it, yes.

The Court: Did he make a tender of the lot?

Mr. Richards: Mr. Griffiths never knew that Poniatowski was building on the wrong lot until the house was completed. He tried to see if he couldn't get Poniatowski out of the hole. Mr. Reader has refused to surrender the title. A bill has been brought against him to make him do that. When we have convinced the jury we will ask for a verdict. 10

The Court: You say a bill has been brought against Reader?

Mr. Richards: Yes, by the plaintiff, Poniatowski.

The Court: Why should not that be determined first; damages resulting from what you did not get? It would be different if you were permanently and definitely kept out. You have sued for a specific performance. 20

Mr. Wescott: Mr. Carr filed a bill and it is against Mr. Reader and Mr. Szwak, the two real estate men. For some reason Mr. Carr found that he could not prove his case on account of the loss of going witnesses. The case was never tried, and never will be tried.

The Court: Is it abandoned?

Mr. Wescott: I suppose so. The witnesses who knew the circumstances have departed this country. There has been an effort made to locate them, but the last that was heard of them they were in Detroit. The equity suit will not, in all probability, ever be tried. In the meantime, I want to hold these real estate agents responsible. 30

The Court: Take the matter of damages. If the equity case results in a recovery, any injury the plain-

tiff sustained would be temporary. If, on the other hand, it resulted in a failure it would be a total loss of the property. Of course, if that case is definitely abandoned, it is a different matter.

Mr. Wescott: I presume it is. I will never try this equity suit.

The Court: Who filed the bill in equity?

10 Mr. Wescott: Mr. Carr.

The Court: Is he going on with it?

Mr. Wescott: No, he has abandoned the case, and quit it. There is nobody who has charge of the case for the plaintiff, as far as I know. If the plaintiff succeeds in this case he will be advised by his present counsel to have nothing to do with the equity suit.

20 Mr. Richards: It seems to me that the defendants should be protected there. The pleadings admit that the suit is still pending; but the pleadings do not admit that Judge Wescott is the attorney of record. He did not prosecute there.

The Court: Is it possible for you to use the same defense that could be used against Mr. Reader?

30 Mr. Richards: It seems to me that whatever happens the plaintiff should not be entitled to recover twice; he should not be entitled to recover at all.

The Court: Are you prepared to show that he is the trustee for the plaintiff? The mere fact that an attorney took title to a property, having once been attorney for the man who owned it first, is nothing.

Mr. Richards: If a man came to me and disclosed to me confidential information that showed that there was a chance to buy a piece of land, and I bought it for him, the law would say that I am the trustee for the man. It would be a constructive trust. That is a matter we should not really have to try out in this case. It should be disposed of first in the other suit, where the Court of Chancery, having a wider machinery, would have a better chance to bring out all the facts in this case. We should not be required in this case to try that issue.

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Mr. Wescott: If what I am advised is true, these real estate agents committed a negligent blunder for which they should be held reponsible. For the first time, now, they are brought in court to answer for that mistake.

The Court: What about this alleged trusteeship? That can only be definitely determined by the Court of Chancery.

Mr. Wescott: That is a mere declaration of counsel. 20

The Court: Well, gentlemen, if this matter is one that can be presented here, I will hear it. If it can be developed in this case as a matter of evidence that the plaintiff is not losing his property, but is merely mistaken in it, it would be proper to be heard here. If it develops that it can be determined only in the Court of Chancery, I will arrest the progress of this trial until that is done, and something definite is determined by that Court.

Mr. Woodruff: Gentlemen of the jury, there is not very much which I can add to what Mr. Richards has said. The two defendants stand on the same facts. Mr. Poniatowski came to Mr. Cinkowski, the real estate agent, and told him that he desired to buy this lot. Mr. Cinkowski, knowing that Mr. Griffiths had charge of the lots in this section, went to him and asked him if he had charge 30

of the lots adjoining Poniatowski's. He was told to wait, and Mr. Griffiths got out his plans and looked it up, and he said, "Yes, I can sell it for \$325." The rest of the circumstances are as he told you. He did not tell you, however, that at the conclusion of the matter Mr. Cinkowski got the same commission that Mr. Griffiths got. They were paid \$25, and they each got \$12.50 for selling the property.

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WLADISLAW PONIATOWSKI, sworn.

By Mr. Wescott:

Ques. Mr. Poniatowski, you are the gentleman who brought this suit, are you not?

Ans. Yes, sir.

Ques. How old a man are you?

Ans. Forty.

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Ques. How long have you been in this country?

Ans. The first time I am in this country twenty-one years. I am now in this country the second time.

Ques. You have been here twenty-one years the second time?

Ans. The first time I came—the second time came twenty-one years.

By the Court:

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Ques. How many years altogether?

Ans. Twenty-one years.

By Mr. Wescott:

Ques. How old were you when you came to this country the first time?

Ans. I cannot remember exactly. I was around sixteen, somewhere.

Ques. How many years did you stay here the first time?

Ans. I cannot say, because I cannot remember.

By Mr. Wescott:

Ques. How many years the first time?

Ans. Ten years, around.

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By Mr. Wescott:

Ques. Then you went back where?

Ans. To Poland, to serve in the army.

Ques. How long did you serve in the army?

Ans. Not quite four years; then I came here again.

Ques. Are you married?

Ans. Yes, sir.

Ques. Have you any children?

Ans. Yes, sir.

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Ques. How many?

Ans. One.

Ques. In March of 1912 where did you live?

Ans. 1171 Whitman avenue.

Ques. What was that street called then?

Ans. It used to be called Pear street.

Ques. Did you own the house you lived in there?

Ans. Yes, sir.

Ques. Was that house clear?

Ans. Not now.

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Ques. Was it then?

Ans. Yes.

Ques. Did you occupy it with your wife and child?

Ans. Yes.

Ques. They lived there with you?

Ans. Yes, sir.

Ques. What is your business?

Ans. I am a carpenter.

Ques. Were you a carpenter in your country?

Ans. I am a carpenter in this country; in that country I was a cabinet maker.

Ques. When you came here you learned to be a carpenter?

Ans. Yes; it is different work, though.

Ques. Can you read and write English?

Ans. No, sir.

10 Ques. After you lived in this house, down to some time in 1912, did you get a notion that you wanted to build another house?

Ans. Yes, sir.

Ques. Where did you want to build the other house?

Ans. On the left side of where my house now is.

Ques. On the left side of where your house was?

Ans. Yes.

Ques. On the right hand side was there a party wall?

Ans. No, sir; an alley.

Ques. How wide is that alley?

20 Ans. About four feet.

Ques. When you made up your mind that you wanted to build a house, was it another house like the one you live in that you wanted to build?

Ans. The same size, sixteen feet, and a four foot alley.

Ques. When you proposed to build that house did you know anything about who owned the lot?

Ans. No, sir. I was not smart enough to find out.

Ques. You say you weren't smart enough?

30 Ans. No, I wasn't smart like I am now.

Ques. Mr. Poniatowski, you talk very rapidly, and we cannot understand you. Did you see anybody about the lot?

Ans. Well, I don't know who I saw at that time.

Ques. Who did you see?

Ans. Well, the first time—

Ques. Who did you see about this lot; who was the first man?

Ans. The first thing I went to see Szwak.

Ques. Who is Szwak?

Ans. Szwak, he built—

Ques. What is his business?

Ans. He is a tailor.

Ques. How did you happen to know Szwak?

Ans. I heard from friends that he was the man who owned that section, these lots. It was on one side three lots, and on the other side four.

10

Ques. When you heard that you went to him?

Ans. Yes, sir.

Ques. What did you learn from him?

Ans. The first time I asked him about the price only. He gave me the prices, but I didn't say anything more; I went home. After that I said, "What is the use of asking the price?" I go second time, and find out if he owned the lot.

Ques. What did you find out?

Ans. He told me, he said, "I don't know." I asked if he owned that place and he said, "I don't know, I own somewhere around there, but I don't know myself."

20

Ques. That is what you found out?

Ans. Yes, sir.

Ques. That he didn't know whether he owned the lot or not?

Ans. Yes.

Ques. Who was the next person you saw?

Ans. Then I went to Mr. Cinkowski.

Ques. One of the defendants?

30

Ans. Yes.

Ques. Where did he live?

Ans. He used to have an office in Hallinger's.

Ques. What is his business?

Ans. Real estate and interpreter.

Ques. What did you say to Cinkowski when you went to see him?

Mr. Richards: I object to that unless it is first shown that Mr. Griffiths was present.

The Court: The objection is overruled, because Mr. Cinkowski is one of the defendants.

Ques. What did you say to Mr. Cinkowski?

Ans. I said, "Mr. Cinkowski, can you tell me who owns the lot?" that is what I said. He said, "Yes, of course I can." He says, "I will see Mr. Griffiths and  
10 come around to your house."

Ques. Did he and Mr. Griffiths ever come to your house?

Ans. Yes, Mr. Griffiths and Mr. Cinkowski came after about a week to my lot.

Ques. This Mr. Griffiths you have referred to, is he the other defendant?

Ans. Yes.

Ques. Did Mr. Cinkowski come to your house?

Ans. Yes.

20 Ques. What time after this interview was it?

Ans. Around a week, or something like that.

Ques. Who was there when they came?

Ans. Only my wife and me.

Ques. Where were you when you were talking to them?

Ans. We said only a few words inside, and then went out on the porch. Me and my wife and them, all four, went out on the front porch.

Ques. What did you go on the porch for?

30 Ans. I pointed out to them the lot that I wanted, from the porch.

Ques. Which lot did you point to?

Ans. The lefthand side of the party wall.

Ques. What did you say?

Mr. Richards: I object to this attempt by oral evidence to show a contract for the sale of land, and to this attempt to hold Mr. Griffiths responsible.

(Objection overruled; exception for defendant).

Ques. Will you state, as far as you can remember, what was said between you and Mr. Cinkowski and Mr. Griffiths there on your porch?

Ans. I said, "Mr. Griffiths and Mr. Cinkowski," I said it to both of them, "here is the lot I want; can you sell me the lot?" They said, "Yes, for \$325, or something like that." Then I said, "Maybe I might buy that from you. You be careful, for if you don't be careful you might put me in wrong sometimes." They said, "Never mind. 10 We are real estates, and if we do anything wrong we are responsible." I said, "All right, go ahead."

Ques. What else was said? Was any agreement made about taking the lot?

Ans. We turned then and went into the house again, and I said, "Mr. Griffiths and Mr. Cinkowski, make me a mortgage for my own house."

Ques. Your house is clear?

Ans. It was clear then. I said, "Make me a mortgage for the new house at the same time." I said, "Then I 20 pay you for that and start to build the house."

Ques. Did they say they would do it?

Ans. Yes, sir.

Ques. Did you have to pay anything?

Ans. They came around to my house after that and brought an application for a mortgage, and brought a deed.

Ques. They brought an application for a mortgage?

Ans. Yes.

Ques. Who brought it? 30

Ans. Mr. Griffiths and Mr. Cinkowski. They made me and my wife sign the application for a mortgage. I was on the deed, my name. I asked them for the deed, and they said, "No, sir, because you have not paid anything for it yet."

Ques. You asked them to give you the deed?

Ans. Yes. They said, "It is all right; we have the deed; there is no danger, you go ahead and start building the house; the mortgage is ready, and we will put the deed in the Register of Deeds' office, and you can come and get the deed when you get the money."

Ques. Did you start to build the house?

Ans. I laid out the ground and very shortly after that they wanted me to come to the Security Trust Company building; that is where Mr. Borton's office is.

Ques. Who was there?

10 Ans. I was, Mr. Cinkowski and Mr. Borton.

Ques. Did they mention a mortgage or deed?

Ans. Yes; they talked about some kind of things like that, and then they took me into the bank, and we went into a side room and they drew the money, and took some out. I didn't understand what they talked. The rest of the money they placed again in the bank, and gave me a check book. They said to me that whenever I wanted money I could just draw it out.

Ques. And a mortgage was on the house?

20 Ans. Yes.

Ques. How much was the mortgage on the house?

Ans. Fifteen hundred.

Ques. Fifteen hundred dollars?

Ans. Yes.

Ques. I thought it was two thousand dollars?

Ans. No; fifteen hundred dollars.

By the Court:

30 Ques. Was this deed put on record?

Ans. I don't know.

By Mr. Wescott:

Ques. Do you know what happened to the deed after that?

Ans. No; I just looked at it and saw my name on it, and I laid it on the desk. I know my name when I see it.

Ques. What desk did you lay it on?

Ans. The desk in my own house.

By the Court :

Ques. Did you get a deed at Mr. Borton's office?

Ans. I paid him for the deed at the Security Trust Company. They gave me the deed, and I paid the money.

Ques. You made the mortgage?

Ans. Yes, sir.

10

Ques. You got the money on that?

Ans. Yes, sir.

By Mr. Wescott :

Ques. What did you do with the money you got on the mortgage?

Ans. They placed it in the bank. I started on the building and drew out what I wanted.

Ques. Did you use up all of it in the building?

20

Ans. Yes; then lost all my money.

Ques. How much did the building cost you?

Ans. I cannot tell you, sir, exactly. It has been past three or four years.

By the Court :

Ques. About how much?

Ans. Something like \$2,000.

Ques. About \$2,000?

30

Ans. Yes, sir.

By Mr. Wescott :

Ques. When did you begin to build, do you recall?

Ans. April the 11th, 1912. That was the exact time.

Ques. How long did it take you to build it?

Ans. Well, I—

Ques. About how long?

Ans. I have a record of this (witness refers to paper).

To July the 12th.

Ques. You finished it in July?

Ans. Yes, July the 12th.

Ques. After you finished the house what did you do with the house?

Ans. I put up a sign "For Rent."

Ques. Did you put a tenant in it?

10 Ans. Yes; the tenant started on July the 20th.

Ques. How long did that tenant stay there in the house?

Ans. To October the 20th; that is what I said to myself, there was a mistake.

By the Court:

Ques. A mistake here?

Ans. Yes.

20 Ques. October of the same year, 1912?

Ans. Yes, sir.

By Mr. Wescott:

Ques. You said until October the 20th, until you discovered your mistake?

Ans. Yes.

Ques. When did you discover your mistake?

30 Ans. I guess Mr. Griffiths had just made the application for laying asphalt in the street, and we all signed our names, for some people wasn't satisfied with the asphalt.

By the Court:

Ques. How did you come to discover you were in the wrong lot?

Ans. Some people ain't satisfied. Some want just anything in front of their house. When I came home that night my wife handed me the receipts for my own house and the other house. When I threw my eyes on it, the other house, there was a different name of the papers. I said, "What is that for?"

Ques. Then what did you do?

Ans. Then I took it up right quick to Mr. Szwak's. Then I said to him, the first thing, "What did you do on my property?" He laughed, and said, "I guess you got in on my land."

10

Ques. Didn't you have a further talk with Mr. Szwak?

Ans. No, sir.

Ques. Then what did you do?

Ans. I turned around again and got out, and went to see Mr. Budney.

Ques. You went to Mr. Budney after you had talked to Mr. Szwak?

Ans. Yes, the next day.

Ques. Then what did you find out there?

Ans. I asked him, "Mr. Budney, can you give me a good lawyer to handle this?"

20

Ques. Well, how soon after that did you see either Mr. Griffiths or Mr. Cinkowski?

Ans. Before this I saw him. The first I saw was Cinkowski.

Ques. The first thing you saw this notice in your house?

Ans. I saw Mr. Szwak, after that I went to Mr. Cinkowski, and after Mr. Cinkowski I went to see Mr. Budney. I went to Mr. Cinkowski and I said, "Cinkowski, what have you people done with me, put me in wrong?" Mr. Cinkowski said, "I didn't know you would be in wrong." He said that he would try to help me out, try to straighten it up. I said, "All right," and went home. Well, I let it go for about two months, I guess, and then I saw Mr. Cinkowski twice on the street, and I asked him how things were to be straightened up. He always gave

30

me promises and nothing more, so I went to see Mr. Budney.

Ques. When did you see Mr. Griffiths?

Ans. I did not see Mr. Griffiths. I did not talk to Mr. Griffiths about it.

Ques. After that was there a suit brought against you?

Ans. Yes. I asked Mr. Budney—

Ques. Was there a suit brought against you?

Ans. Yes.

Ques. Did you lose the house?

10 Ans. Yes.

Ques. And thereafter they put your tenant out of the house?

Ans. Yes.

By the Court:

Ques. Did you lose the house and the land?

Ans. Yes, sir.

20 Ques. Somebody took possession from you?

Ans. Yes, sir.

By Mr. Wescott:

Ques. Now, did you see Mr. Griffiths or Mr. Cinkowski after you lost your house?

Ans. Yes, I saw them three times, something like that. I gave them over two months' time to straighten that up.

30 Ques. What did you say to them, when you talked to them, and what did they say to you?

Ans. Every time I spoke to them they gave me promises and they said, "All right, all right."

Ques. All right, what?

Ans. They would fix it up.

Ques. Did they fix it up?

Ans. No, sir.

Ques. Did they say anything to you about fixing it up?

Ans. No, sir.

Ques. Did you offer to pay anything?

Ans. Yes, sir.

Ques. Who did you offer to pay anything to?

Ans. I had a witness there, but he is not here now. He and I went to Szwak's again, and we straightened this up.

Ques. What did you offer to pay to fix this up?

Ans. I offered \$700, and afterward \$800 to Mr. Szwak.

10

Ques. To whom?

Ans. To Mr. Szwak.

Ques. Did you tell Mr. Cinkowski and Mr. Griffiths that you would pay that?

Ans. No, sir.

Ques. Do you know whether or not Mr. Cinkowski or Mr. Griffiths tried to fix it up?

Ans. No, sir; they kept me in promises, but I don't know what they did.

Ques. How many days did you work on this house yourself? 20

Ans. From April the 11th (witness looks at papers) to July the 12th.

Ques. What was your time worth, your work worth, per day?

Ans. My work, \$3.50 is my wages.

Ques. How long a day?

Ans. That is for a eight hour day, eight hours a day.

Ques. Is the mortgage you put up on the house still there? 30

Ans. Yes, sir.

Ques. Did you say anything to Mr. Cinkowski or to Mr. Griffiths about the mistake they had made or did they say anything to you about a mistake?

Ans. No, sir.

Cross examination.

By Mr. Richards :

Ques. Mr. Poniatowski, when did you first see Anthony Szwak about buying his Lot No. 45

Ans. I cannot tell you the exact time.

Ques. About when?

Ans. I must have been February.

10

Ques. Of what year?

Ans. January or February.

Ques. Of what year?

Ans. The same year, 1912.

Ques. You and Mr. Szwak each talked Polish and understood each other?

Ans. Yes, sir.

Ques. He told you he owned it, didn't he?

Ans. No.

Ques. You saw him more than once, didn't you?

20

Ans. Twice.

Ques. How long was this before you began to build on Szwak's lot?

Ans. How long after what?

Ques. After you saw him?

Ans. I started to build on April 11th, and I saw them around February; something like that.

Ques. You saw him more than once, didn't you?

Ans. Twice.

30

Ques. When you got the deed for lot No. 41 you knew you were not getting it from Mr. Szwak, didn't you?

Ans. When they gave me the deed?

Ques. Yes.

Ans. No, sir.

Ques. You didn't know?

Ans. No.

Ques. You saw and knew it was a deed from Coady & Cheesman, didn't you?

Ans. No, sir; I can read only my own name.

Ques. You have never heard of Coady & Cheesman Company up until that time?

Ans. No, sir. They did not live in Camden. That is why I did not know them.

Ques. Didn't you give testimony once before in which you said you knew you were getting this deed from Coady & Cheesman Company?

Ans. For what?

Ques. For lot No. 41?

Ans. No, sir.

10

Ques. When you got this deed for lot No. 41 didn't you think you could trade that lot, No. 41, with Szwak for his lot? Wasn't that part of the scheme?

Ans. I didn't know anything about it.

Ques. Wasn't that your thought?

Ans. I did not say—

Ques. That was in the scheme, though, wasn't it?

Ans. No, sir.

Ques. Lot No. 39 adjoins lot No. 41?

Ans. I don't know anything about that.

20

Ques. From whom did you get lot No. 39, adjoining lot No. 41?

The Court: Is that the lot in question?

Mr. Richards: It joins the Cheesman lot.

Ques. You bought the lot adjoining the Coady & Cheesman lot, didn't you?

Ans. No, sir; I bought a lot opposite of my party wall.

30

Ques. You bought lot No. 39, didn't you, from somebody?

Ans. I don't remember the number, because the time I bought the lots Mr. Griffiths—

Ques. Didn't you buy lots from Grabowski?

Ans. Yes, sir.

Ques. You bought two lots, side by side, didn't you?

Ans. Yes.

Ques. How much did you pay for a lot?

Ans. \$400.

Ques. You then built a row of three houses on the Coady & Cheesman lot and on the Grabowski lots?

Ans. Yes, sir.

Ques. When did you begin to build on the Szwak lot?

Ans. April 11th, 1912.

Ques. Wasn't it your thought that when you bought the Grabowski lot, as well as the Coady & Cheesman lot, that you would have the same to trade Szwak with?

10 Ans. No, sir.

Ques. Wasn't that your thought?

Ans. No, sir.

Ques. Did you have a survey made of the lot when you got it?

Ans. No, sir.

Ques. Why didn't you?

Ans. No use. If you put up a house and a party wall and keep an alley there, and somebody comes in and takes it, you are as good as nothing.

20 Ques. You say you began work on the house on the Szwak lot in April?

Ans. April 11th.

Ques. Now, after you began work on that weren't you warned from time to time that you were on the wrong lot?

Ans. I don't know anything about it.

Ques. Just answer the question; whether or not you were warned that you were on the wrong lot? Didn't people come and warn you?

30 Ans. No, sir.

Ques. Didn't Anthony Szwak warn you that you were on his lot?

Ans. No, sir.

Ques. Mr. Grabowski warned you that you were on the wrong lot, didn't he?

Ans. No, sir.

Ques. Didn't Mr. Joseph Chimnitski warn you?

Ans. No, sir.

Ques. Didn't anybody ever warn you at all during the progress of that work?

Ans. No, sir.

Ques. You hadn't the slightest idea that you were building on the wrong lot?

Ans. No, sir.

Ques. Didn't you tell Mr. Grabowski, when he warned you that you were building on the wrong lot—

(Objected to by counsel for plaintiff.)

10

Ques. Didn't you tell him that you would go ahead with it and then sue Mr. Cinkowski and Mr. Griffiths?

Ans. I don't know anything about it.

Ques. What do you mean?

Ans. Nobody told me anything.

Ques. You did not tell Mr. Grabowski that you were—

Ans. No, sir.

Ques. You never mentioned about suing, to anyone?

Ans. No, sir; because I didn't do it.

20

Ques. Do you know Mr. Grabowski?

Ans. Yes, I knew him.

Ques. Didn't Mr. Grabowski try to purchase the lot for you?

Ans. No, sir.

Ques. I thought you said you were a carpenter and that you did some work there yourself?

Ans. Yes, I did some work there myself.

Ques. Now, when was it that you saw Mr. Lawrence Reader and got him to look after this for you?

30

(Objected to by counsel for plaintiff as immaterial).

(Objection overruled; exception for plaintiff).

The Court: I think it may throw some light on the subject.

Ques. Answer that question now; when did you get Mr. Reader to look after this for you?

Ans. I cannot tell you. After I discovered he was—

Ques. How long after the house was completed?

Ans. About September, somewhere.

Ques. You saw him in September?

Ans. Yes, sir.

By the Court:

10 Ques. September of the same year?

Ans. Yes, sir.

Ques. I thought you said you did not know until the first of October when the tenant went out and the notices were given that there was any trouble about it.

Ans. I got mixed up. I could not keep any record. I got it marked on the paper.

Ques. Let us look at the paper; we want it right.

20 (Witness hands paper to Court).

Ans. It was some time after October, the time I went to Mr. Reader.

By Mr. Richards:

Ques. He is the attorney?

Ans. Yes, sir.

Ques. You showed Mr. Reader the deed?

30 Ans. Yes, sir.

Ques. You gave him your papers?

Ans. Yes, sir.

Ques. You told him all you knew about it?

Ans. Yes, sir.

Ques. Now, do you know whether or not Mr. Reader thereupon, as your attorney, wrote a letter to Mr. Cinkowski threatening suit?

Ans. I don't know about that.

Ques. Having learned that, about that transaction, didn't Mr. Reader obtain from Mr. Szwak a deed for the property upon which you had built?

Ans. I don't know about that. I don't know what Mr. Reader did with Mr. Szwak.

The Court: That is not proper cross examination. The cross examination must be limited to the direct examination, even with the plaintiff or parties.

Ques. Having learned all about the transaction, as your attorney, didn't Mr. Reader obtain a deed from Szwak for the property? 10

Ans. I don't know.

Ques. Haven't you brought suit against Reader to compel him to convey the property to you?

Ans. No, sir.

Ques. To give you the property

Ans. No, sir.

The Court: That is not cross-examination. 20

Mr. Richards: This is the plaintiff himself.

The Court: That makes no difference.

Mr. Richards: This is only a very wide cross-examination of the plaintiff.

The Court: Have you anything to affect his statement of damages? If that is the purpose of it, I will admit it, of course. 30

Mr. Richards: He said he lost his house.

The Court: If it is to meet that question, it is competent.

Ques. Didn't you employ Wilson & Carr to file a bill in the Court of Chancery to Compel Mr. Reader to give you this property?

Ans. Yes, I hired Mr. Wilson and Mr. Carr, but they would not do it.

Mr. Richards: That is in the pleadings and it is admitted that such a suit was brought and still pending.

10 Ques. Now, I think you said your tenant was put out of the house.

Ans. Yes, sir.

Ques. Didn't you promise Mr. Cinkowski that you would bring to him any papers that were served on you?

Ans. No, sir.

Ques. When the papers were served on you did you then notify Mr. Cinkowski and Mr. Griffiths that the suit had been then brought against you?

Ans. No, sir.

20 Ques. You permitted judgment to go against you by default?

Ans. Some kind of judgment, but I don't know anything about it.

Ques. Judgment by default, because you didn't put up any defence?

Ans. Mr. Kates was my lawyer, and he didn't put up any defence.

Ques. You didn't notify either Mr. Griffiths or Mr. Cinkowski?

30 Ans. I did not know what a subpoena meant, I had not been in this country long enough.

Ques. It is true, is it not, that you did not notify them?

Ans. I did not know anything about the suit.

Ques. Answer this question now; you did not notify them, isn't that true?

Ans. Yes, that is true.

Ques. You did not defend?

Ans. How am I to defend?

Ques. I am not asking you how. You did not defend, did you?

Ans. No, sir.

By the Court:

Ques. Who is this suit by? Who brought this suit?

Ans. Mr. Reader. He put the people out.

The Court: Is the witness right; that Mr. Reader brought the suit to eject him? 10

Mr. Woodruff: I think that is right.

The Court: That does not enter here at all.

Mr. Richards. I don't know why.

The Court: The witness is stating his damages. Is it true that he lost his property and was ejected from it by a stranger? 20

Mr. Richards: The fact that the people he was trying to hold for his damages were not notified of this suit, and that the suit was allowed to go by default does not bear on that at all. Was it his right to let the thing go by default without letting these people know anything about it?

Mr. Wescott: The witness has already said that he did not know anything about it. How could he then let the people know? 30

By Mr. Woodruff:

Ques. Mr. Poniatowski, the first time that you went to see Mr. Szwak he did not tell you that he owned the lot, did he?

Ans. No, sir.

Ques. He told you, didn't he, that he owned a lot somewhere in that section; isn't that right?

Ans. Yes, sir.

Ques. And then, the second time you went to see him, did he tell you then that he owned the lot?

Ans. The first time I asked him only the price. The second time I asked him if he knew the lot. I asked him if I could get the lot. He said, "I don't know if you can get that. I don't know myself. Where is it?"

10 Ques. Is that the only time you went to talk to him about it?

Ans. That is the only time.

Ques. Did you make other inquiries of other people to find out who owned the lot?

Ans. No; only Cinkowski.

Ques. Who sent you to Mr. Szwak?

Ans. I heard from people there, I forget the name now, they told me that a Mr. Szwak owned the lot there, and I said that I would go and see Mr. Szwak.

20 Ques. Don't you know the name of the person who sent you to Mr. Szwak?

Ans. No, sir.

Ques. Are you sure it was not Mr. Bodenski?

Ans. Yes, sir.

Ques. When you saw Mr. Cinkowski did you tell him you had been to see Mr. Szwak twice, to see the Szwaks twice?

Ans. Yes; I guess I did.

30 Ques. You guess so; do you remember whether or not you did?

Ans. I cannot remember. I am sure I saw Mr. Szwak, but I could not get any satisfaction from him, and I went to see Mr. Cinkowski to find out because they were real estates.

Ques. When you went to see Mr. Cinkowski did you tell him that you had been to see Mr. Szwak?

Ans. Yes; and I asked him who owned the lot.

Ques. Did you go on and tell him that you thought the Szwaks owned it, that they owned some lots there?

Ans. No, sir.

Ques. When you went to Mr. Cinkowski's office later on did you tell him which lot you wanted?

Ans. I told him the lot next to my party wall, that way (indicating).

Ques. And did you tell him that he would have to come to the house to see it?

Ans. Yes, sir.

Ques. At that time the number of the house was not 10 decided?

Ans. Not by number; it was a lot on the side (indicating).

Ques. They saw the lot?

Ans. Yes, sir.

Ques. Did you tell him in his office that he owned the number he wanted?

Ans. No, sir.

Ques. You never told Mr. Cinkowski?

Ans. No, sir.

20

Ques. You never told Mr. Griffiths?

Ans. No, sir.

Ques. When did you get the deed?

Ans. I think it was in March.

Ques. You think it was in March?

Ans. Yes; but I cannot remember.

Ques. Have you got the deed with you?

Ans. Mr. Wescott has it.

Ques. You don't remember when you got it?

Ans. No; we drew the mortgage and I paid for the 30 commission for selling the lots and they handed me the deed.

Ques. You say you started to work on April the 11th?

Ans. April the 11th.

Ques. You are sure about that, are you?

Ans. Yes, sir.

Ques. Is this the deed they gave you?

(Witness is handed a paper which he examines.)

Ans. Yes. That is my name on it; that is mine. I know it is mine; it has my name on it.

Ques. That is the deed they gave you?

Ans. Yes; because it has got my name on it; that is how I know.

Ques. Did you work on the house as carpenter?

Ans. Yes, sir.

Ques. Did you work all the time?

10 Ans. Not all the time. Sometimes we ran short of stuff, and I had no work for a day or two, I had a day or two off.

Ques. Did you give all your working time to the house?

Ans. Yes, sir.

Ques. During the time that you were building you did not work anywhere else?

Ans. No.

Ques. Didn't you work for Mr. Kates?

Ans. Mr. Kates and Mr. Holloway.

20 Ques. How much?

Ans. I don't know.

Ques. Did you keep account of how much time you worked on the house?

Ans. No, sir.

Ques. How much you worked for the other people?

Ans. No, sir; because I did not know how much I worked there.

Ques. Did you keep account of how much the house cost you; how much the bills were?

30 Ans. Yes; I got bills, but all got in the rush because the lawyers handled the bills and lost them.

Ques. You haven't got them now?

Ans. I guess some Mr. Wescott has.

Ques. Have you any account that shows that your house cost \$2,000?

Ans. Something like that, counting my time.

Ques. Have you got an account to show that?

Ans. That is my commission and all.

By the Court:

Ques Did you build one or three houses?

Ans. Just one.

Ques. When did you build the other two?

Ans. I only built the one.

Ques. I thought you said you were going to build three?

Ans. One.

10

By Mr. Woodruff:

Ques. The house that you say cost you \$2,000 cost \$2,-  
325, with the lot?

Ans. That is counting everything.

Ques. Didn't you offer to sell it for \$1,850 and give  
\$50 commission?

Ans. No, sir.

Ques. Didn't you tell Mr. Cinkowski that?

20

Ans. No, sir.

Ques. How much did you rent it for?

Ans. Fifteen dollars a month.

By Mr. Wescott:

Ques. You have spoken about building three other  
houses. Do you remember speaking about that?

Ans. Yes, sir.

Ques. When did you build these houses?

30

Ans. Three houses?

Ques. Yes.

Ans. Last summer.

Ques. Last summer?

Ans. Yes, sir.

Ques. That was in 1915?

Ans. Yes, sir.

Ques. You said something about paying commission; paying these gentlemen commission. Do you remember how much the commission was?

Ans. Yes; I did pay the commission.

Ques. How much commission did you pay?

Ans. Something like—they charged me \$2.50. They took the money themselves out of the \$1,300 and placed the rest in the bank.

Ques. Do you remember getting an envelope with these bills in it and giving it to my son here?

10 Ans. Yes; I gave him some.

Ques. Is that the envelope (exhibiting envelope to witness)?

Ans. Yes, sir.

Ques. What were these bills in that envelope, as you understood them?

Ans. I do not remember.

Ques. What was it your understanding that these bills related to? What were they for?

Ans. For building material.

20 Ques. Were they put in this building?

Ans. Yes, sir.

(Mr. Wescott offers the bills in evidence. They are marked for identification "Exhibit B.")

By Mr. Woodruff:

Ques. Mr. Poniatowski, when you went to Mr. Szwak's the second time didn't Mrs. Szwak go to another part of the house and get a plan and some blue prints—

30 Ans. That is why I asked—

Ques. She didn't show you the plan?

Ans. No.

Ques. Did not show you the deed?

Ans. No.

Ques. Didn't point out the lot and tell you that that was the lot she owned, that that was the lot, and that she owned it?

Ans. No, sir; I never saw these people around the house at all.

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MRS. JADWIGA PONIATOWSKI, SWORN.

By Mr. Wescott:

Ques. Have you ever been in court before?

Ans. No, sir.

Ques. Are you the wife of Mr. Poniatowski, the man 10  
who just left the witness stand?

Ans. Yes, sir.

Ques. Do you know Mr. Griffiths and Mr. Cinkowski?

Ans. Yes, sir.

Ques. Did you see them at your house some time in  
1912 with your husband?

Ans. Yes, sir.

Ques. What happened there?

Ans. I cannot speak much.

Ques. Tell us what happened there? 20

Ans. I cannot tell you anything much; I cannot speak  
enough English.

(Interpreter sworn; examination continued through  
interpreter.)

Ques. When was it that Mr. Griffiths and Mr. Cinkowski were at your house, if you remember?

Ans. It was in March, but I don't know what date.

Ques. Was there anything said about your husband 30  
buying a lot?

Ans. One time Mr. Cinkowski and Mr. Griffiths came around and they were talking about a house and lots and they stepped out on the porch and Mr. Poniatowski told Mr. Griffiths that he wanted to buy a lot on the left-hand side and build a house. Mr. Griffiths said "Yes" he would sell the lot for \$325.

Ques. Did you see your husband point this lot out to the two men?

Ans. Yes, sir; he pointed on the left-hand side, to where he wanted to build the house. There was an empty lot on the left-hand side.

Ques. Was there a party wall there?

Ans. Yes, sir.

Ques. Did they say whether or not they would get him the lot?

10 Ans. Mr. Griffiths said he would sell the lot to him.

Cross examination.

By Mr. Richards:

Ques. When Mr. Griffiths and Mr. Cinkowski came there wasn't it in reference to the mortgage on the house? Were you there when they came?

20 Ans. I don't know what they came for. I only know that they came and talked about—they wanted to buy a lot.

Ques. Where?

Ans. Beside the lot.

Ques. The lot had been bought already, before that?

Ans. They were going to buy it, but it wasn't bought then.

30 Mr. Wescott: On the 24th of November, 1913, there was evidence taken before the Grievance Committee of the Bar Association of this County concerning Mr. Reader's relation to this transaction, and at that time the plaintiff, Mr. Poniatowski, and the two defendants, were sworn and examined. My friends on the other side have agreed that the evidence I hold in my hand was the evidence taken on that occasion and is a correct transcript thereof, as Mr. Berry would have to be called in to prove it. I am going, subject to objection, to read portions of that testimony as admissions or state-

ments made by the defendants; their testimony relative to this matter.

Mr. Richards: I object to the testimony being read, because it was not taken in the presence of our clients.

The Court: I understand it is your clients' testimony.

Mr. Richards: Whatever they are going to read, we have had no chance to cross-examine. It seems to me it can be of no value, being testimony of a previous suit. That cannot be offered in this fashion. 10

The Court: I understand that this is a stenographic report of the proceedings.

Mr. Richards: We admit that Mr. Berry would testify that he took the testimony and took it truly, but it cannot be offered on that.

The Court: Is the objection to the manner of producing it or to the statements contained in the paper? 20

Mr. Richards: The objection is this: We agree that Mr. Berry took the testimony, and it is correct. We do not agree to its being admitted, because, first, the witnesses should be here to testify.

The Court: Any statement made by the parties might help the Court. A mere admission that that was their testimony would never be of help to the Court. Is the objection to the substance or the manner? 30

Mr. Richards: We admit that Mr. Berry took the testimony and that he would swear it was correctly taken, but we object—

The Court: Would you admit that he would so testify as to what counsel is going to read?

Mr. Richards: I would admit that this is true.

The Court: Do you admit that if Mr. Berry was here he would testify as counsel is going to read?

Mr. Richards: He would testify that he took the testimony and that it is correctly taken.

The Court: Is there any objection except that it is incompetent?

10

Mr. Richards: We agree that the testimony has been proven by Mr. Berry so far as he could testify, that is, as to his taking it and its being correct. We object beyond that—

The Court: I suppose that a waiver of the presence of Mr. Berry here gives counsel the right to prove that these men said certain things at that time. You may read the testimony. (Exception for the defendant).

20

Mr. Richards: The objection is to the relevancy. The objection is to the competency and relevancy of the statements and to the production in this fashion, without having first called the matter to the attention of the witnesses and learning whether or not they deny it as the truth.

Mr. Wescott: Here is the testimony. (Mr. Wescott holds up the testimony, and reads as follows:) “Joshua Griffiths, being duly sworn according to law, testified as follows: By Mr. Starr: Q. Won't you state what your connection with this matter was from the first? A. Well, Mr. Cinkowski asked me if the lot could be bought next to Poniatowski. I told him there certainly was a lot there that could be bought. It was idle. He wanted to know who owned it. I said 'Coady & Cheesman.' He asked me if I would write to them about it. I wrote to

30

them and they said they would sell it. The lot next to Poniatowski was sold to him; he got a mortgage to cover the house he was going to build next to it; he built the house. After the house was built some time afterwards, Mr. Cinkowski came to me and said he understood the man had got the wrong lot. The lot he built on belonged to somebody else. I said 'I couldn't see that that could be possible; that he was sold the lot next to him.' I went and looked at my books and I saw that he had bought from Coady & Cheesman Lot No.—I don't know the number exactly, but he had gone to the east side of his own house instead of to the west side. Q. That is, he built on the east side? A. He built on the east side instead of the west side. He bought the lot on the west side. I don't think there was any mistake made about where the lot was located. He took it for granted it was on the east side, when it ought to have been on the west side. Q. After the mistake was discovered what did you do to rectify it, if anything? A. Well, Mr. Cinkowski, because he could talk Polish and I couldn't, was asked to go and see if we couldn't in some way arrange with the owner so that it could be corrected. I said, 'If it is at all possible I would do whatever I could to correct it.' That is all I know. Q. Did you have any talk with Mr. Reader in connection with the matter? A. Mr. Reader spoke to me one day. He said he was going to, I think, hold Coady & Cheesman responsible. I met him on the street and I told him I didn't think Coady & Cheesman were responsible in any way at all; they hadn't even seen the man; that if anybody had seen both Cinkowski and Poniatowski it was me. Q. Did he say who he represented at that time? Who did Mr. Reader represent? A. I think he represented Mr. Poniatowski. Q. What, if you can recall, was the exact conversation between Mr. Reader and yourself? A. That is the only thing I can remember. Q. That he, Reader, was going to hold Coady & Cheesman responsible for the trouble? A. Yes. Q. That is about all that was said? A. That is all. Q. You

understood from that that he was then representing Poniatowski? A. Yes, sir. Q. Did Poniatowski come to see you before he got his deed from Coady & Cheesman? A. No, Cinkowski acted almost altogether. Q. You didn't personally come in contact with Poniatowski at all until after the deed was made, or about the time the deed was made? A. Well, I guess that is right. Q. Since that conversation with Mr. Reader did you talk with him again? A. No, I don't think I ever spoke to him again about it. I don't remember. Q. But at the time you got  
10 the impression that he was representing Mr. Poniatowski? A. Yes, I was under that impression. It has been some time ago. Poniatowski seems to have had several people representing him, but at that time Mr. Reader was representing Poniatowski. Q. When did you first know there was any trouble? A. Well, I think it must have been 5 or 6 months after he built. Q. Who first disclosed to you that there was any trouble with reference to the house? A. Cinkowski."

20 BRONISLAUS CINKOWSKI, being duly sworn according to law, testified as follows: "By Mr. Starr: Q. The Committee of the Bar Association are investigating the complaint lodged against Lawrence B. Reader, with reference to the complications about the conveyance of a property to Poniatowski, and we have you here to give us what information you can, so that we can get an intelligent idea of what was going on. Do you know Poniatowski? A. Yes. Q. How long have you known him? A. I have known him for four years. Q. Did  
30 you have anything to do with relation to his buying a lot adjoining his home where he lives? A. I did. Q. What was the first thing you knew about it? A. After he had completed his house on the first lot that he had purchased in that section he came to me and wanted to know whether or not the lot adjoining his property was for sale. I told him I didn't know, but I would see. I then went to the City Engineer's office and looked up

his records, and his records disclosed that the lot was held in the Home Builders' Company. I then went to Mr. Griffiths and asked him who owned the lot adjoining Poniatowski's on Pear street, and if it was for sale. Mr. Griffiths looked up his book, pulled out his book and looked it over, and he said, 'Yes, Coady & Cheesman owns the lot. I will write to them and find out whether or not they will sell it.' I said, 'All right.' Very shortly afterwards I saw Mr. Griffiths again, and he told me that he had communicated with Coady & Cheesman, and that Coady & Cheesman were willing to sell their lot for \$325. I said, 'All right.' I said, 'I will see Mr. Poniatowski and tell him.' I saw Mr. Poniatowski a day or two afterwards and I told him that the lot was for sale, and the price of it was \$325. He said, 'All right; I will take the lot.' The next day or so afterwards I saw Mr. Griffiths at the Court House—he was coming through the Court House as I was walking in there, and I told him Poniatowski was willing to buy the lot, and if he wanted a deposit I would give it to him. Poniatowski told me that if they wanted a deposit, he didn't have the money; I should pay the deposit and he would return it to me. I then gave Mr. Griffiths a check for \$25, which he sent to Coady & Cheesman—I think he did. I don't know what he done with the check. Nevertheless, he got a check for \$25 from me and consummated the deal, and Poniatowski then didn't have enough money to carry that through, so he wanted a mortgage on his property. I told Mr. Griffiths he wanted a mortgage on his property, and Mr. Griffiths said he would see whether or not he could find it. After a few days he wrote me a letter telling me that he had found a person that would take a mortgage for three years at 5 and ½ per cent., and he mentioned Mr. Borton. I said, 'Very well.' So he prepared the application for a mortgage and sent the application down and I had Poniatowski and his wife execute the application and sent it back to Mr. Griffiths. Subsequently a bond and mortgage was drawn up; Mr. Grif-

fiths came down and examined the property, and some time after that the settlement took place in Mr. Borton's office. After the mortgage was settled up we went to the Security Trust Company, where Mr. Poniatowski deposited his check, and of course paid for the lot. Then nothing more was done. The deed was taken to the Register of Deeds' office and put on record, and everything went well for I guess four or five months, when Mr. Poniatowski came to me and said, 'What have you fellows been doing to me?' I said, 'What do you  
10 mean?' He said, 'You sold me a lot that you have no right to sell.' I said, 'I don't think that could have happened.' I said, 'Mr. Griffiths knows that ground like he knows his own home. It isn't possible he would make a mistake,' and Poniatowski seemed to be satisfied for a little while. Eventually he came back the same way again. He came to me again and he said he is pretty sure it is true. I told Mr. Poniatowski I didn't believe it, but I would see. I went to the Register of Deeds' office and examined the records and found Mr. Ponia-  
20 towski had bought and paid for lot 41 instead of lot 45. I immediately went to Mr. Griffiths' office and I said, 'Mr. Griffiths, there is a mistake in that Poniatowski's lot.' He took out his books and examined them, and he said, 'Let us go up to the Register of Deeds' office and see whether it is so.' So we went up there and found as I said, that he had paid for lot 41 instead of lot 43, which is on the west, and Mr. Poniatowski wanted the lot on the east. Q. He had a deed for the lot on the west? A. Yes. Q. And he had built on the lot on  
30 the east? A. Yes. Q. Did Poniatowski indicate to you when he first spoke to you which lot he wanted to buy? A. He didn't indicate, but he told me, and I knew the property as well as, I think, he does. Q. Then you understood he was getting the east lot? A. Yes, and so did Mr. Griffiths. We were under the impression that he was purchasing lot 45, or the lot on the east of his property. Q. Then what did you do after that? A.

Then Mr. Griffiths said to me, 'Well, it is true.' Now he says, 'Of course Poniatowski wasn't at fault.' He said, 'We got to get this thing straightened out.' I said, 'What is the best thing to do?' 'Well,' he said, 'purchase the lot, or bring them to me, or do something.' He said, 'You know those people down there; you know their language; you can do more with them than I can.' He said, 'You go down and see them.' I said, 'All right.' Well, I went back and told Mr. Poniatowski that it was true that he had built on a lot that he had no deed for, on the lot on the east, and evidently Mr. Poniatowski immediately went to Mr. Reader, because before I had time to go and see Mr. Szwak I received a letter from Mr. Reader. Q. Have you got that letter here? A. Yes. Q. Let me see it. (Letter produced.) Q. This is the letter you say that you received? A. Yes, sir. (The letter reads as follows): 'LAWRENCE B. READER, Counsellor at Law, 207 Market street, Camden, New Jersey. November 7, 1912. Mr. Bronislaus Cinkowski, Hallinger Building, Camden, New Jersey. Dear Sir: I represent Mr. Wladislaw Poniatowski, to whom you endeavored to sell a lot on Pear street. I understand from my client that at the time he desired to purchase this lot, you represented to him that you were the agent for the owner, and that you were present, and he pointed out to you the particular lot which he desired to purchase. It appears that with your permission he then proceeded to erect a dwelling house, and some time later a deed, executed by Coady & Cheesman, was received by him, from you, which he understood was a deed for this particular lot. Since the house has been erected he has discovered that you were not the agent for the owner of that lot, and that the deed which you gave him was for some other property. If you can do anything to adjust this matter I will be glad to hear from you, otherwise I will be obliged to carry out the instructions of my client and proceed against you. Yours very truly, (Signed) Lawrence B. Reader.' Q. Tell us what happened after that in

regular sequence. A. I then went to the Szwaks and had a talk with them. I met Mrs. Szwak and her husband at their home. I told them a mistake had been made. Q. How did you learn; from what source did you learn that Szwak owned the lot that this man built on? A. Mr. Poniatowski told me it was Szwak's. Q.

Go ahead. A. Then later on, after I talked with Mr. Griffiths. Mr. Griffiths examined his records, and he found that Szwak owned the lot. Then I went to the Szwak's and told them a mistake had been made, and of

- 10 course it wasn't Mr. Poniatowski's fault, and we were willing to do anything that was fair to get the matter straightened out. I told them that we would give the lot that he had and some money, \$100 or \$200, if they were satisfied to take that, and they said, 'No, they didn't want that lot, because the brother-in-law owned the lot adjoining theirs, and they wanted to build together.' Then I said, 'Well, we will let you have that lot and the lot adjoining that one, which would make two better lots than what you have there.' They said no.
- 20 Well I said, 'Will you sell the lot?' Well they said, 'We don't know whether we can sell it or not. How much would you give for it?' 'Well,' I said, 'the lot is worth about \$325 or \$350. You paid \$200. Of course you had it for a couple of years, and I think if you can get \$500 or \$550 you would be well paid for the lot.' They said, 'No, you better go and see Mr. Reader. Mr. Reader represents us.' I said, 'Mr. Reader don't represent you, he represents Poniatowski.' They said, 'No, Reader represents us.' So then I
- 30 saw Mr. Reader. I went down to his office and had a talk with him. He said they wanted \$1,000. I said 'My God, that isn't fair to ask \$1,000 for a lot that is only worth \$325.' I said, 'Be reasonable.' By Mr. Archer: Q. You say he said he wanted \$1,000, or who wanted \$1,000? A. The words he used were, 'We want \$1,000. Q. Then talking as though he represented Szwak? A. Yes. Then we didn't talk any further on the matter. Several days

afterwards I met Mr. Reader again in the West Jersey Title & Guaranty Company, and I said 'Are you willing to do anything as far as getting this thing settled up?' Well, he said '\$1,000.' I said, 'Lawrence, you know that isn't fair, \$1,000.' I said, 'You can get a reasonable fee out of this to get it straightened up with them.' I said, 'They are willing to give \$600 or \$650.' I said 'You can't ask \$1,000.' I said, 'You want to get down and pick up this money where there is an honest mistake.' He laughed over it. I said, 'It isn't a laughing matter, because you are not going to keep this lot. The 10  
thing will be litigated to the highest court.' I didn't see anything more that I could do. He went about his business. Then I saw Mr. Poniatowski after that and I told him we couldn't get the matter settled up. They wouldn't sell, or trade or do anything. By Mr. Starr:  
Q. Did you call Reader's attention to the fact that Mr. Poniatowski had retained him, or had seen him, or employed him, and ask him whether or not he was employed by Poniatowski? A. Yes, I did. We spoke about that on the first occasion. Q. what was the conversation about 20  
that? A. I said, 'got your letter where you state you represented Poniatowski.' Well he said, 'I did represent Poniatowski.' He said, 'I represent the Szwaks now.'  
Q. Then he had changed his position from the time you received the letter until the time you saw him? A. Yes, sir. Q. At that time he had discontinued his connection with Poniatowski and represented the Szwaks? A. Yes, sir. Q. Do you remember the date when you first saw him? That letter is dated November 7th. A. I don't believe it was over a week's time after that. Time 30  
enough for me to go down and see the Szwaks and have a talk with Poniatowski, and go back to Mr. Reader's office. Then I told Mr. Poniatowski that we couldn't get the matter straightened up; that we had tried every way we could think of, and the best thing he could do was to wait, but if anything turned up to let me know

so as we could get the proper legal talent to represent him. I told him it was no trifling matter. I then had a letter from—well, Mr. Poniatowski was working at that time for Mr. Kates, and he said that he had placed the matter in Mr. Kates' hands. I said, 'All right, if you have placed it in the hands of Mr. Kates I suppose he will take care of it.' I received a letter from Mr. Kates and I went to see him. Q. Have you got that letter here?

A. Yes. Q. Let me see it. (Letter produced, as follows):  
10 'Law offices, John B. Kates, No. 432 Market Street, Camden, N. J., November 20, 1912. Mr. Bronislaw Cinkowski, Broadway & Kaighn Avenue, Camden, N. J. Dear Sir: Will you kindly advise me of what you have done relative to straightening out the matter of the lot on Pear street, which was the subject of our conversation recently. I am endeavoring to avoid the parties owning the lot from bringing suit against my client, and am depending on you to help me out. Kindly take it up at once. Respectfully yours, John B. Kates.' Q. Go ahead.

A. I went to see Mr. Kates and had a talk with him. I  
20 told him what I had tried to do. Well, he said, 'Why don't you go down and see the Polish priest. He might have some influence over these people. He might be able to get this matter straightened out.' I said 'I don't like to go and see the priest in a matter of this kind. If the worst came to the worst I would do it, but for some reason or another I hesitated about doing it. I thought it was a legal matter and not a church matter. Well, I didn't do anything for some short time. Then I got a letter from Mr. Kates again. Q. Have you that? A.

30 Yes. (Witness produces letter, as follows): 'Law offices, John B. Kates, No. 432 Market street, Camden, N. J., December 16, 1912. Mr. Bronislaw Cinkowski, Broadway & Kaighn avenue, Camden, N. J. Dear Sir: I have not heard from you in regard to the lot on Pear street, concerning which I have already written you. I must have an answer from you by to-morrow morning; otherwise the parties will institute proceedings. Re-

spectfully yours, John B. Kates.' Q. Go ahead. A. After I received that letter I went to see Mr. Kates again. He was away and I think he told Mr. Harding to take care of his interest if anything could be done. I went up and had a talk with Mr. Harding. Mr. Harding said the best thing to do is to get the matter settled up. I said, 'Yes, that is what we want to do; get it settled up.' Mr. Harding suggested that I give him \$700. I said 'that is a little too much.' I said 'If they get \$600 or \$650 I think they will be well paid.' Well, Mr. Harding didn't seem to be able to do anything. I thought he might probably. I wouldn't say that for a certainty, but I thought he might probably pay \$700. Mr. Poniatowski was willing to contribute something towards getting this matter settled up. But I didn't hear from him after that." 10

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LEVI D. FARNHAM, SWORN.

By Mr. Wescott:

20

Ques. What is your name?

Ans. Levi D. Farnham.

Ques. You live in Camden, and have offices here?

Ans. Yes, sir.

Ques. What is your business?

Ans. City Engineer.

Ques. Do you know Mr. Griffiths?

Ans. Yes, sir.

Ques. And Mr. Cinkowski?

30

Ans. Yes, sir.

Ques. Have you an office in Camden?

Ans. Yes, sir.

Ques. Your office is where?

Ans. No. 1 in City Hall.

Ques. Do you remember, quite a while ago, seeing these two defendants around City Hall?

Ans. Yes, sir.

Ques. What were they there for?

Ans. They examined the plans and books and then stepped over to the door and had quite a conversation in regard to a lot, and they seemed to be arguing with each other. One said, "That is the lot, I suppose, you wanted." The other said, "That is not the lot I mean." That is the day is asked Mr. Griffiths if they had settled the matter up. He said, "No, that was not done."

10 Cross examination.

By Mr. Woodruff:

Ques. You saw Mr. Griffiths and Mr. Cinkowski?

Ans. Yes, sir.

Ques. They came in your office together?

Ans. Yes, sir.

Ques. Mr. Cinkowski was saying that that was the lot, and Mr. Griffiths said that it was not, that he thought it was not?

20 Ans. I did not know what the trouble was. I had seen Mr. Cinkowski a couple of weeks before, but I did not know what it was about.

Ques. Wasn't Mr. Cinkowski insisting that he had given Mr. Griffiths the right property, and didn't he say, "No."

Ans. They got tangled up on the maps, and both thought they were securing the right lots.

Ques. When was that, Mr. Farnham?

30 Ans. It was some time after Mr. Kates was in the case, because Mr. Poniatowski told me that he had engaged Mr. Kates.

Ques. Do you remember what they were in the office for?

Ans. They came in to look at the plan book, but I do not know what it was they looked up.

Ques. You could not fix that date for me correctly, could you?

Ans. It was after I had the interview with Mr. Cinkowski.

Ques. Then he told you—

Ans. He asked me who was a good attorney. I suggested the names of several attorneys. Then he told me that he had lost his house.

Ques. Had suit for ejectment been brought then?

Ans. No, Mr. Grabowski still held to his lot.

By the Court:

10

Ques. What lot is that?

Ans. It is the second lot, about 39, upon the west. I suggested to Mr. Poniatowski that he, with the aid of Mr. Griffiths and his attorney, that they buy the two lots on the west and try to trade that with a cash bonus for the Szwak lot, the lot on the west. It seemed to me that if these two attorneys were themselves interested in it they could get together and make it right before anything further was done.

Ques. The house was then built?

20

Ans. It had been built. Mr. Poniatowski knew that the party wall on his left was his limit.

By Mr. Richards:

Ques. Did I understand you to say that Mr. Griffiths insisted at the interview that the Coady & Cheesman lot was the one he was to secure, and that he had done it?

Ans. The only thing I can recall was that one man said that that is the one, and the other said, "No, it is not, this is the lot you should have gotten." 30

Ques. Mr. Griffiths was maintaining that he had not made a mistake?

Ans. I cannot say that.

Plaintiff rests.

Mr. Richards: I have a motion for a non-suit. On behalf of Mr. Griffiths I move for a non-suit upon these grounds: The plaintiff has failed to establish by proof of any kind the case made in the complaint. The complaint declares upon a contract for or in respect of an interest in or concerning lands and there is no proof of any agreement or memorandum or note thereof in writing signed by the parties to be charged therewith or by some other person thereunto by him lawfully authorized.

10 There is no proof of any representation or guarantee or assurance in writing either that the lot conveyed by Coady & Cheesman Company to the plaintiff would be or was anything other than lot 41 or that it would be or was located elsewhere than where it is or that the plaintiff, by reason of that conveyance could safely build anywhere except on lot 41. There is no proof, and it is not pretended, that the plaintiff did not get his money's worth from the defendants. The plaintiff bought lot 39 and built a row of houses on lot 39 and 41, and thereby accepted the benefits of the transaction complained of,

20 waived any cause of complaint he may have had and cannot now be heard to complain of the transaction or dispute the validity of the bargain thus accepted, ratified and acquiesced in. Furthermore, it is admitted by the pleadings that before the plaintiff built on lot 45 he inquired and as a result learned and knew that lot 45 was owned by Anthony Szwak, that before he built he likewise saw and talked with Anthony Szwak himself and tried to negotiate for the lot, and as a consequence

30 the plaintiff has a chancery suit pending against Szwak and those claiming under Szwak in which chancery suit the plaintiff claims equitable rights in lot 45. He thus concedes that he built on lot 45 with his eyes open, knowing who owned the land, and did not build there because of any misrepresentations on part of Mr. Griffiths. Finally, it already appears that this Court has not the machinery to do full and complete justice in this case, the parties are not before the court, and the issues

are already before the Court of Chancery, or some new sufficient issues should be raised before the Court of Chancery and there tried out.

(Denial for the motion for non-suit, and exception).

Mr. Woodruff then, on behalf of Mr. Cinkowski, moved for a non-suit upon the same grounds.

(Motion denied and exception noted).

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CAMDEN, NEW JERSEY, December 27, 1916.

Trial of this matter was resumed at 10.30 o'clock A. M., on the above date, pursuant to adjournment, in the presence of counsel for the respective parties.

JOSHUA GRIFFITHS, SWORN.

By Mr. Richards:

20

Ques. Mr. Griffiths, you are one of the defendants in this case?

Ans. Yes.

Ques. Will you please state how you came to have any dealings with Mr. Poniatowski, the plaintiff?

Ans. Well, some time ago Mr. Cinkowski came to me and told me that Mr. Poniatowski wanted to buy a lot on Pear street, opposite the Whitman Park, and he wanted to know whether any of the lots were available for sale, and he told me he wanted to buy a lot next to Poniatowski's house. I told him there was a lot for sale or I thought could be bought, for Coady & Cheesman owned it. He told me he wanted to find out if it could be sold and the price. I wrote Coady & Cheesman and they answered they would sell it for \$325, and after some negotiations it was purchased, and Mr. Cinkowski furnished

30

\$25 as the amount of money to be paid down, and the deed was made out and the lot was transferred to Poniatowski for \$325.

Ques. How much commission did you get out of it?

Ans. \$25 was the price; Mr. Coady & Cheesman sold the lot for \$300, and whatever was obtained above it was to be the commission, and the commission was \$25.

Ques. And that was divided between you and Mr. Cinkowski?

Ans. Mr. Cinkowski and I divided the \$25.

10 Ques. So you got \$12.50?

Ans. Yes.

Ques. Now, did you hear Mrs. Poniatowski on the stand in this case insist that she could not understand English, and required an interpreter?

Ans. Yes, I heard that.

Ques. Do you speak Polish?

Ans. No.

20 Ques. Did you ever have ny conversation with Mrs. Poniatowski as to where this lot was that her husband was buying from you?

Ans. None whatever.

Ques. Could Mr. Poniatowski at the time of this transaction understand or speak English as well as he can now?

Ans. Well, he always spoke broken English, and it was always a difficulty to make him understand or understand him, and most of the conversation was assisted or interpreted by Mr. Cinkowski.

30 Ques. It has been stated that you and Mr. Cinkowski went to Poniatowski's house—about how long was that after you had negotiated for the sale of the Coady & Cheesman lot?

Ans. Well, my recollection is it must have been a month or more.

Ques. Had you seen Poniatowski before that time?

Ans. I have no recollection of having seen him before that time.

Ques. Why did you go to his house?

Ans. Well, he wanted a mortgage on his own house in order to get funds to build a new house, and I obtained the funds for him and got a mortgage placed. I went there for him to sign an application for the mortgage.

Ques. Now, was or was not the subject of your thought and consideration at that time the sufficiency of the property in which Poniatowski lived for the mortgage that he required?

Ans. Sufficiency? I don't understand that.

10

(Question repeated.)

Ans. Yes; I supposed he was borrowing sufficient money to build his house; that is what I understood.

Ques. You were looking over the house while you were there, weren't you?

Ans. Yes.

Ques. In which he lived?

Ans. Yes.

Ques. To see whether it was sufficient for the mortgage? 20

Ans. Yes.

Ques. Was the new lot to be included in the mortgage?

Ans. No.

Ques. Was there any occasion at that time to discuss the location of the Coady & Cheesman lot since the negotiations for the lot had been already concluded?

Ans. None whatever.

Ques. Did you show or attempt to show to Poniatowski or to Mrs. Poniatowski the location of the Coady & Cheesman lot? 30

Ans. No.

Ques. Had you any reason whatever to believe that Poniatowski would not buy other lots in the neighborhood to build on them, as he afterward did?

Ans. None whatever, because he had already bought some lots.

Ques. Did he buy Lot 39 through you?

Ans. No.

Ques. Did he buy 1234 Pear street from you?

Ans. No.

By the Court:

10 Ques. Mr. Griffiths, do I understand you to mean that you did not know at all that he wanted the lot on the east side of him?

Ans. No.

By Mr. Richards:

Ques. At the time you went down there to see if his house would stand the mortgage he wanted, would it have surprised you if you had been told that Poniatowski had already bought the Szwak lot?

20 (Objected to.)

The Court: Well, we won't go into his surprises

Ques. Now, in connection with the mortgage on his other property, there were some expenses that Mr. Poniatowski had to pay, weren't there, searches, etc.?

Ans. Oh, of course.

30 Ques. When did you first learn that Poniatowski was building or had built on the Szwak lot, claiming that he thought it was the Cody & Cheesman lot?

Ans. Well, certainly five or six months after he had purchased the property.

Ques. Did Mr. Lawrence Reader as attorney for Poniatowski see you about it?

Ans. Yes.

Ques. Were you present when either Mr. Cinkowski or Mr. Poniatowski testified before the Bar Committee?

Ans. No.

Cross examination.

By Mr. Wescott:

Ques. What was said by Poniatowski when you went to his house?

Ans. Well, I don't remember what was said; I went there for the business of—

10

Ques. Pardon me; what did you say to him?

Ans. I don't know that I have any recollection of saying anything, except in connection with the mortgage.

Ques. All right; then you did talk to him about the mortgage?

Ans. Without doubt; that is what I went there for.

Ques. Well, did you talk to him about the mortgage?

Ans. Yes, in connection with—

Ques. Was his wife present?

Ans. I don't remember that; I don't think she was. 20

Ques. Well, he understood you, did he?

Ans. He understood what?

Ques. He understood you when you talked to him?

Ans. I think he did; Mr. Cinkowski was with me and he assisted.

Ques. That is all, sir.

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Mr. Richards: Mr. Wescott read from Mr. Cinkowski's testimony before the Bar Committee part of his testimony; I also would like to read part. 30

Mr. Wescott: Wait a minute; what for?

Mr. Richards: I suppose for the same purpose you read it, for the enlightenment of the Court and jury.

Mr. Wescott: Well, I object, if that is all there is to it.

The Court: It is not admissible on that theory, Mr. Richards; if there is anything—

Mr. Richards: I think the whole of the testimony is entitled to come in.

10 The Court: Oh, no, it is only that part which is explanatory; a man cannot make declarations in his favor, but his declarations are admissible against him, if relevant; but to be admissible for him they must be in some way explanatory or qualifying of what he has already said.

Mr. Richards: I am not offering testimony that I think is self-serving for Mr. Cinkowski; I don't represent Mr. Cinkowski.

20

The Court: Well, anything that Cinkowski said in that deposition or in that statement that explains or qualifies the statement already read, is admissible, but beyond that it is not.

Mr. Wescott: Wait; I object to that. He can go on the stand and explain what he said. I think there is a little miscomprehension about the situation. This evidence that I read was in the way of admission on the part of these defendants. Now, they can go on the stand and explain, but can they explain by repeating what they said?

30

The Court: Well, if you will analyze it you will see that they can. This paper was read in lieu of Mr. Berry's sworn testimony, as though he were here in court testifying. It would have been entirely competent if Mr.

Berry had said something for counsel upon the other side to say, "Didn't he say at the same time so and so?" which may have had a bearing upon what he then said. That having been dispensed with and the paper used instead of Mr. Berry as a witness, counsel has a right to produce whatever was said at that time as explanatory. In other words, the force of what he then said is to be taken in its entirety and not with excerpts.

Mr. Wescott: Perhaps your Honor don't quite understand. Suppose I call Mr. Berry and ask if Mr. Griffiths said a certain thing at a certain time and a certain place, which would be an admission against him, and the thing ended there, then Mr. Griffiths would have to go on the witness stand and explain, if he wanted to, his admissions made against him by Mr. Berry. 10

The Court: No, suppose he has already made them in the same paper, the same testimony. I think, Judge, it is the rule that where a paper or testimony given upon a previous occasion is introduced, that anything that is then said by way of explanation—It is precisely like a letter that one introduces as an admission; counsel very often read extracts from a letter, and it is always permissible for the other side to read any explanatory statements in the same paper. 20

Mr. Wescott: Well, if your Honor takes that view, all right.

The Court: I will rule it so and note an exception for you, so if I am wrong you will have the benefit of it. 30

Mr. Wescott: All right, it must be explanatory of anything—

The Court: Yes, it must be something that bears upon what he then said.

Mr. Richards: (Reading). This is Mr. Cinkowski testifying: "Q. What was the first thing you knew about it? A.—"

Mr. Wescott: I object to that; it is not explanatory. The witness has already testified when he first knew about it.

10 The Court: Yes; and still if that is part of his direct examination or the direct examination concerning his testimony, I think any qualifying statement he made would have to come in.

Mr. Wescott: Is this a qualifying statement?

The Court: Well, I don't know; I rather assume it is, if he has said in direct examination when he first knew of it and he made some other statements in it.

20 Mr. Wescott: This is the very first question that was put to him here on the witness stand, exactly the same question which he answered.

The Court: Of course, it is going to be very difficult for me to rule on this, because I don't have the notes of it, nor did I carry the whole conversation or whole testimony in my mind. I have the drift of it, of course.

Mr. Wescott: Well, go on.

30 Mr. Richards: "A. After he had completed his house on the first lot that he had purchased in that section he came to me and wanted to know whether or not the lot adjoining his property was for sale. I told him that I did not know, but I would see. I then went to the City Engineer's office and looked up his records, and his records disclosed that the lot was held in the Home Builders' Company. I then went to Mr. Griffiths and asked him

who owned the lot adjoining Poniatowski's on Pear street and if it was for sale. Mr. Griffiths looked up his book—pulled out his book, looked it over and he said, 'Yes, Coady & Cheesman owns the lot; I will write to them and find out whether or not they will sell it.' I said, 'All right.' Very shortly afterward I saw Mr. Griffiths again and he told me he had communicated with Coady and Cheesman and Coady & Cheesman were willing to sell their lot for \$325. I said, 'All right, I will see Mr. Poniatowski and tell him.' I saw Mr. Poniatowski a day or two afterward and told him the lot was for sale, the price of it was \$325. He said, 'All right, I will take the lot.' The next day or so afterward I saw Mr. Griffiths at the Court House; he was coming through the Court House as I was walking in there, and I told him Poniatowski was willing to buy the lot, and if he wanted a deposit I would give it to him." 10

The Court: Wasn't that all read, Mr. Richards?

Mr. Richards: I didn't catch all of that if Judge Westcott read it. 20

The Court: I think I recollect that part of it.

Mr. Richards: "Q. How did you learn, from what source did you learn that Szwak owned the lot that this man built on? A. Mr. Poniatowski told me it was Szwak's." Now, that is the testimony of Mr. Cinkowski before the Bar Committee. Now, without reading it, as the jury has already heard it, I call attention to— 30

The Court: No.

Mr. Richards: I call attention to—

The Court: No, Mr. Richards, this is not argument; it is not time to present the matter to the jury. Go on with your testimony.

Mr. Richards: I think that under the cases I must make this formal offer to get it upon the record.

The Court: Well, I haven't ruled anything out; go on with your testimony.

10 Mr. Richards: I call attention to and rely upon Judge Wescott's admission in his opening that Mr. Reader purchased the Szwak lot and took title there in his own or in his wife's name. I also call attention to the formal admission in the pleadings in the present suit, an admission that the suit—

The Court: Just a moment, Mr. Richards; there is no motion before me on which to call my attention to anything. Let's get through with the testimony in the case before this.

20 Mr. Richards: If the Court please, I am not asking for a motion; the cases seem to be to the effect that if you want something that appears on the record, that is, appears in the pleadings upon the record, you should call attention to it, and I am merely trying to bring myself within that rule.

The Court: Well, if Judge Wescott's opening was taken down by counsel you have the benefit of it; if it was not taken down, then it must be in some—

30 Mr. Richards: I have passed that now; I call attention to the formal admission in the pleadings in the present suit, the admission that the suit brought by Poniatowski against the Readers to compel a surrender of the title to the Szwak lot is still pending; also to this further admission in the pleadings in the present suit; in his bill of complaint the plaintiff, among other things, admits that before building a house on Lot 45—

Mr. Wescott: This I object to, if the Court please.

The Court: I think, Mr. Richards, it would be very much better to produce that after you get through with your testimony; then I can deal with the whole case. Are you through with the testimony?

Mr. Richards: I have reached the end until my further witnesses can come.

The Court: I see; all right, then.

10

Mr. Richards: Shall I proceed?

The Court: You can call my attention to anything you think— Now, what is this motion?

Mr. Richards: This is not a motion.

The Court: Then you see there is nothing before me, Mr. Richards; I can't sit here, you know, and simply listen to statements of counsel.

20

Mr. Richards: Well, if the Court will, without my calling the Court's attention to it, consider that the complaint, answer and replication are before the jury—

The Court: What you want to remind me of is that it has appeared in the case that Mr. Reader bought this property after he ceased to be attorney for the plaintiff.

Mr. Richards: I was about to read the admission appearing—the statement appearing in the answer; that is admitted by the replication.

30

The Court: Well, suppose you let Mr. Woodruff go on with his side and wait until he gets through.

Mr. Richards: All right, I will do that.

BRONISLAUS CINKOWSKI, SWORN.

By Mr. Woodruff:

Ques. Mr. Cinkowski, what is your business?

Ans. Real estate and insurance, interpreting.

Ques. Where is your place of business with regards to real estate and insurance—what part of the city?

Ans. At the present time, 1219 Mt. Ephraim avenue.

10 Ques. Where was it at the time you first became acquainted with Mr. Poniatowski?

Ans. 935 Kaighn Avenue.

Ques. How did you first come to meet Mr. Poniatowski with regard to this Pear Street property?

Ans. At that time my office was in the Hallinger building at Broadway and Kaighn Avenue. Mr. Poniatowski is a carpenter, and I had a partition removed in the room that I rented.

20 The Court: Well, come down strictly to this.

The Witness: I had Mr. Poniatowski do it, and after the work was done he came to be paid for the work, and he—

Ques. And was that the time he mentioned to you first about the lot?

Ans. Yes.

Ques. Or desiring to purchase the lot?

30

Ans. Yes.

Ques. What did he say at that time?

Ans. He said he would like to purchase the lot adjoining his property, and wanted to know if I could find out who owned it.

Ques. Is that all he said with regard to it?

Ans. That is all that I can remember.

Ques. Did he make you any statement at that time that he had made any efforts to buy the lot?

Ans. He did not.

Ques. Did he identify the lot, further than saying the one adjoining him?

Ans. He did not.

Ques. Now, what did you do after he had told you that he was desirous of buying the lot adjoining him?

Ans. A day or two afterward I stopped into the engineer's office and looked for lots adjoining his property, knowing the property, because I drew the deed for the property, and my recollection is that I found that the lot appeared in the name of the Home Builders' Company. 10

Ques. That is, which lot, or both lots?

Ans. I think it was both of them.

Ques. On both sides it was in the name of the Home Builders' Company?

Ans. I think so.

Ques. Now, what connection has Mr. Griffiths with the Home Builders' Company?

Ans. He is secretary of the Home Builders' Company. 20

Ques. And handles the sale of real estate for them, does he?

Ans. He does.

Ques. Now, in connection with that information obtained from the Engineer's Office, did you go to see Mr. Griffiths?

Ans. I did.

Ques. What did you tell Mr. Griffiths?

Ans. I told Mr. Griffiths that Mr. Poniatowski wanted to buy the lot adjoining his property, and asked him if he would find out whether it was for sale. 30

Ques. What did Mr. Griffiths say?

Ans. Mr. Griffiths examined his book and told me Cody & Cheesman owned the lot, and then I asked him if he would write them and ask if they would sell it and how much they would sell it for. He told me that he would.

Ques. Now, when did Mr. Griffiths and Mr. Poniatowski get in touch with each other

Ans. Well, it was quite sometime after that, because Mr. Poniatowski asked me to pay Mr. Griffiths a deposit and said he needed money to build the property and pay for the lot, and wanted to know if I could find a mortgage for him, and I told Mr. Griffiths about it and Mr. Griffiths said he would look around and see if he could not find someone to take a mortgage on the house that Mr. Poniatowski had built.

10 Ques. That was 1171 Pear, was it?

Ans. Yes.

Ques. Now, did Mr. Griffiths raise the mortgage for him on 1171?

Ans. He did.

Ques. And did you and Mr. Griffiths go down there with regard to that mortgage?

Ans. We did.

Ques. From the time Mr. Poniatowski came to your office at Broadway and Kaighn Avenue up until the time you and Mr. Griffiths went down to 1171 Pear Street about the mortgage, had you been to the property with Mr. Poniatowski?

Ans. I was not.

Ques. Now, what was the real purpose of your and Mr. Griffith's visit to 1171 Pear Street at that time?

Ans. To have the application for the loan signed, and also to determine whether or not the property upon which he wanted a loan was completed.

30 Ques. Now, was the loan signed?

Ans. Yes.

Ques. The application for the loan signed?

Ans. Yes.

Ques. Who did you see there at that time?

Ans. Mr. Poniatowski and—I don't know whether Mrs. Poniatowski was there or no—they weren't living there then, the house was not entirely completed; they weren't living there, and I wouldn't be quite certain whether Mrs. Poniatowski was there or not.

Ques. 1171 had not been completed then?

Ans. Not entirely.

Ques. Now, was there anything said except about the mortgage at that conversation with Mr. Poniatowski?

Ans. No, sir.

Ques. Was your attention called to the lots on either side?

Ans. No.

Ques. Was any lot pointed out by either you or Mr. Poniatowski or Mr. Griffiths as the lot which was to be conveyed to him from Coady & Cheesman?

10

Ans. No, sir.

Ques. Now, were you present at the time settlement was made on the mortgage and a deed for the lot given?

Ans. I was.

Ques. Where was that settlement had?

Ans. At Mr. Borton's office.

Ques. Did you have anything to do with the placing of the mortgage other than introducing the proposition to Mr. Griffiths?

Ans. I did not.

20

Ques. Had you gotten any commission or did you get at the time of the settlement any commission for the transfer of the deed for this one lot?

Ans. Yes, we did.

Ques. How much commission did you get out of that?

Ans. \$12.50.

Ques. The same that Mr. Griffiths had gotten out of it?

Ans. I presume so.

Ques. Did you get any further commissions for the placing of this mortgage yourself?

30

Ans. I did not.

Ques. Did you get any further commission or fees out of the matter?

Ans. No, sir.

Ques. Now, at the time of the settlement in Mr. Borton's office, what was said by Mr. Poniatowski or by you or by Mr. Griffiths as to the lot which was being conveyed, if anything?

Ans. Nothing that I can recall.

Ques. Was the deed turned over to Mr. Poniatowski?

Ans. Not in Mr. Borton's office.

Ques. Where was that turned over to him?

Ans. In the office of the Security Trust Company.

Ques. Had you been in Mr. Borton's office first?

Ans. Yes; after Mr. Poniatowski got his check, he came to pay for the lot and we took a walk as far as the Security Trust Company, and he made a deposit there and drew a check.

10 Ques. And that is where the deed was turned over to him, was it?

Ans. Yes.

Ques. Do you remember who attended to the recording of the deed?

Ans. I do not; I think Mr. Poniatowski did; I think Mr. Griffiths handed it to him in the Security Trust Company's office and told him how and where to record it.

Ques. Do you know whether Mr. Poniatowski could read English at that time?

20 Ans. Yes, sir.

Ques. Could he or could he not?

Ans. He could.

Ques. How did you come to know that he could read English?

Ans. I had considerable dealings with Mr. Poniatowski.

Ques. Had you spoken to him in English as well as in Polish?

30 Ans. I had. One particular incident that convinced me that he could read was that he invented a device for cutting cheese and secured a patent on it, and he came to me and wanted to know if there were any such devices on the market, and I told him that the best way to ascertain that would be to examine the patent record. He and I went to the Public Library here in Camden and started to examine the Patent Office Record, and while I would examine one volume Mr. Poniatowski would examine the

other, and he would find the particular device he was looking for in every volume he picked up.

Ques. Was that before this transaction with regard to the Pear street lots?

Ans. Yes; that was two or three years before.

Ques. During that transaction did you see him examine any papers or read them?

Ans. Yes; he examined the papers pretty carefully.

Ques. When the deed was handed to him did he examine that?

Ans. He did. 10

Ques. Now, what date was it that the deed was delivered to him, Mr. Cinkowski?

Ans. I couldn't tell that offhand, unless the deed would show it, but the deed was dated the day it was delivered.

Ques. It was dated the day it was delivered?

Ans. Yes.

Ques. Had he started to build on the lot adjoining at that time or don't you know about that?

Ans. I don't know; I wasn't there.

Ques. Now, when next did you have any information with regard to the Pear street lot, that there had been a mistake? 20

Ans. Sometime in the fall of that year.

Ques. How was the information conveyed to you?

Ans. Mr. Poniatowski came to me—he met me on the street and said, "Say, what did you fellows do to me?" I said, "What do you mean?" "Why," he said, "you sold me the wrong lot." I said, "I don't want to believe that; Mr. Griffiths certainly knew what he was selling you; he knows the place," I said, "he is a careful man; I don't think he would make any mistake." "Well," he said, "somebody has been telling me that you sold me the wrong lot." "Well," I said, "they are mistaken, I believe." And upon that he walked away and said, "All right." 30

Ques. Did you look into the matter at that time?

Ans. No, I did not; I didn't think—

Ques. Did he come to you again

Ans. Yes, he did about a week or two after that, told me again there must have been a mistake made. I said, "Well, I don't think it is so, but I will look it up." I came up to the Register of Deeds' Office and examined the records and found that he had received a deed for Lot 41, then I looked up the plan of the Home Builders' Company, and found that he had built on Lot 45. I went to Mr. Griffiths' office and told him that Poniatowski built on the wrong lot, as I put it, and Mr. Griffiths, 10 he said, "What do you mean?" "Why," I said, "he built on 45 and he should have built on 41." Mr. Griffiths looked at his book and said, "Coady & Cheesman own 41." "Well," I said, "let's go up to the Register's Office and see." He and I came up from his office, immediately went to the Register's Office and found he had received a deed for 41. Mr. Griffiths said to me, "What lot did he build on?" I said, "He has built on 45." "Well," he says, "it is not our fault, but," he says, "it is a shame; we will see if we can't get this thing 20 straightened out."

Ques. What did you do, Mr. Cinkowski, about straightening it out as best you could?

Ans. Mr. Griffiths suggested to me that I go down there and see the Szwaks first. I immediately went down to see the Szwaks, went down there that evening and met Mr. and Mrs. Szwak and explained the situation to them, told them evidently there was a mistake made and tried to reason with them, told them that the lot had cost 30 them \$200, and if they got \$500 or \$600 out of the thing that they would be amply paid. They then told me that Poniatowski had annoyed them considerably, and that they had told him that they had owned the lot and pointed out their lot on the Home Builders' plan to him, showed him their deed, and that in spite of that he told them he was going to get that lot whether they sold it to him or not, and at first they were inclined to talk to me. After a while they says, "No, Mr. Reader repre-

sents us and you go and see Mr. Reader." At that time I had already received a letter from Mr. Reader. I told them that Mr. Reader represented the other side.

Ques. Pardon me just a minute; up until that time when the Szwaks told you, did you know that Mr. Poniatowski had ever had any dealings with the Szwaks in regard to the lot

Ans. I did not.

Ques. Did he ever tell you at any time during the negotiations or at the conclusion of the negotiations that he had talked with the Szwaks and had some information about their owning the lot? 10

Ans. No, sir; he did not.

Ques. You say you had had a letter from Mr. Reader at that time?

Ans. Yes.

Ques. Saying that he represented whom?

Ans. That he represented Mr. Poniatowski.

Ques. And you told the Szwaks that, did you?

Ans. I did.

Ques. Now, what further did you do in order to straighten out the matter as best you could? 20

Ans. I then went to see Mr. Reader and he told me that he represented the Szwaks. Well, then, I asked him to make some proposition, and Mr. Reader told me that Szwaks wanted a thousand dollars. I told him we didn't think we were legally responsible and the property was not worth that much and didn't think we could pay that much. Then I saw—I think I went down to see the Szwaks again. They said no, the best thing I could do was to talk to Reader. I didn't see Mr. Reader until I met him in the West Jersey—he came in the place, the Title Company, and I was in there; I stopped him and asked him if we could not settle the thing up, and Mr. Reader said the Szwaks wanted a thousand dollars. I told him that that was too much, that we couldn't pay that, eventually the courts would compel them to sell that 30

lot if the courts found out a mistake was made, and that if they would settle for \$600 or \$650, Mr. Reader would amply be paid for his service and they would be satisfied, because at that time, I thought the Szwaks, if they got \$500, would have been satisfied; they didn't seem to me as though they were so anxious about the money as they were mad at Mr. Poniatowski, or angry at Mr. Poniatowski.

Ques. Were you able to settle the matter on that basis with Mr. Reader?

10 Ans. No, I was not.

Ques. And was the matter ever adjusted with Mr. Reader or with the Szwaks

Ans. Not to my knowledge.

Ques. Now, Mr. Cinkowski, have you also been building down in that section where this building was put up on the wrong lot?

Ans. Yes, sir.

Ques. To what extent have you built down there?

20 Ans. Oh, about eight or nine properties down there.

Ques. Have you also put through settlements for Polish people who have had similar houses built?

Ans. Very many.

Ques. Over how many years?

Ans. Eleven years.

Ques. Now, after you found that the house had been erected on this lot which was not his, did you examine the house?

Ans. I did.

30 Ques. What was that house worth or what would it cost to build?

Ans. At that time a house like that could be built for \$1,200 at the most, be built for less, taking the party wall, and of course, there were some second-handed materials in the house. It should be built for less than that at that time; materials were not as high as they are today, nor labor was not as high.

Ques. Was there any difference, Mr. Cinkowski, in the value of the two lots on the right or left hand side of 1171 Pear Street?

Ans. Of the lots?

Ques. The lots themselves.

Ans. Not the market value.

Ques. That is what I meant, the market value.

Ans. No, they were identically the same.

Ques. The only peculiar value would be that one had this party wall?

10

Ans. Yes.

Ques. Making a peculiar value to him?

Ans. Yes.

Ques. Otherwise the lots were practically the same value

Ans. Exactly.

Cross examination.

By Mr. Wescott:

20

Ques. It would cost less to build a house where there is a party wall than it does where there isn't a party wall, doesn't it?

Ans. Yes.

Ques. You knew that?

Ans. When—when did I know that?

Ques. Well, how long have you known that fact?

Ans. Since I have been in the Real Estate & Insurance business.

30

Ques. How long have you been in the Real Estate & Insurance business?

Ans. About eleven years.

Ques. You have known that fact for eleven years?

Ans. Yes, sir.

Ques. And you knew Poniatowski how long?

Ans. I guess I have known Poniatowski for eight or nine years.

Ques. One of these lots was desirable over the other in the point of expense from the fact that one of them involved a party wall and the other didn't?

Ans. Yes, sir.

Ques. How long had you known this property there that Poniatowski built his house on in which he lived?

Ans. How long had I known it?

Ques. Yes.

Ans. I knew the lot from the time that Mr. Poniatowski sold his property at 1234 Pear street.

10 Ques. And how long did you know the house in which he lived, he and his wife and child?

Ans. No. 1171?

Ques. I don't know what the number is, the house in which he lived—you knew where he lived?

Ans. I knew the house from the time Mr. Griffiths and I went there in regard to that mortgage.

Ques. You never saw it before?

20 Ans. Not that house. Oh, I might have seen it, but I never paid any attention to it any more than I did to any other house that was built in this location.

Ques. You knew that Poniatowski lived there, didn't you?

Ans. I knew that Poniatowski owned that lot, because—

Ques. Didn't you know he lived in that house?

Ans. Yes, I did, after Mr. Griffiths and I were there, because he told me he was going to move.

Ques. And not before?

Ans. No, I did not.

30 Ques. You did not know that he owned it before?

Ans. I did know that he owned the lot and was building on the lot, because, as I told you before—

Ques. How long had he built the house there before you and Mr. Griffiths made your visit there about the mortgage?

Ans. I don't know; I can't tell you that.

Ques. Now, give us a good idea—give us a good square judgment.

Ans. I couldn't say whether it was a day or whether it was a year, I don't know.

Ques. Or ten years?

Ans. I know it wasn't ten years, because I say I drew the deed for the lot.

Ques. Well, you drew the deed, didn't you?

Ans. Yes, for the lot where he built his house, I did.

Ques. Well, you knew it then, didn't you?

Ans. I knew that he owned a lot on Pear street on the north side, and he owned the Sobato lot—I knew that.

Ques. That is all you did know, although you drew the deed? 10

Ans. That is all I knew; I didn't know when he commenced, when he was building, until—

Ques. After you drew the deed you lost all interest in the situation entirely, never knew a thing about it afterward?

Ans. I don't believe that I even gave it a thought until Mr. Poniatowski mentioned it himself at my office.

Ques. Then why did you give it a thought?

Ans. Because Mr. Poniatowski asked me. 20

Ques. He asked you to give it a thought?

Ans. He asked me to find the lot adjoining his property or find the owner of the lot adjoining his property.

Ques. Of course, you were surprised when Mr. Poniatowski came to you? Well, let me withdraw that question. From the time that you negotiated, the purchase of this lot—what was the number of it, the wrong lot, the number of it?

Ans. I did not know at the time, but I found out afterward that it was forty-five. 30

Ques. You talked about a number—what number did you give here on the witness stand? Well, if you don't know the number—I thought you did, from what you said; you were speaking of No. 41 and No. 45 here several times.

Ans. That was very firmly impressed on my mind after the mistake was discovered.

Ques. Well, it is firmly impressed on your mind now?

Ans. Yes, it is.

Ques. When you drew the deed for Poniatowski's house in which he lived with his family, did you know the number of the lot?

Ans. I paid no attention to it.

Ques. Did you know No. 41 or 45 at that time?

Ans. I believe I must have known at the time, because I took the Sobato deed and drew the Poniatowski deed from that deed, and I believe that they recite the number.

10 Ques. Now, when did you first learn the difference between 41 and 45?

Ans. After Mr. Poniatowski told me he had built on the wrong lot.

Ques. And before that you never knew anything about it?

Ans. I didn't know the difference between the numbers; I did not know whether 41 was on the east and 45 on the west or vice versa.

20 Ques. Precisely; when Poniatowski came to you and told you he had built on the wrong lot, notwithstanding his mastery of English and all that, that you say he had, you were a little surprised, weren't you?

Ans. I was.

Ques. And you immediately undertook to look into the thing?

Ans. I got hold of the Home Builders'—

Ques. No; but you immediately undertook to look into it, didn't you?

Ans. Not the first time he came to me.

30 Ques. Well, he told you twice, did he?

Ans. A week afterward.

Ques. Before you would look into it? Now, if you did not look into it the first time he told you, what made you look into it the second time he told you?

Ans. I thought probably a mistake had been made.

Ques. What?

Ans. I thought probably a mistake had been made.

Ques. And you said it wasn't his fault?

Ans. Whose fault?

Ques. Poniatowski's.

Ans. When did I say that?

Ques. Well, didn't you say so?

Ans. At first I thought it wasn't his fault; I changed my mind afterward.

Ques. Oh, when he thought it was your fault you changed your mind and thought it was his fault, is that correct?

Ans. I decided it was his fault after the investigation. 10

Ques. Oh, then you did not know it was his fault until after you investigated it?

Ans. Yes, sir.

Ques. Now, when you found out it was his fault, did you stop your efforts to settle with the Szwaks?

Ans. I don't think I would have proceeded if Mr. Griffiths hadn't suggested it, because in the corridor, the moment we came out of the Register's office, I told Mr. Griffiths that we were not legally responsible and we should not pay anything in the matter. 20

Ques. Now, when did you make up your mind you were not legally responsible?

Ans. Immediately upon the examination of the Register of Deeds' records.

Ques. And before that you did not know whether you were legally responsible or not—is that correct?

Ans. I didn't go into that matter; I didn't give it a thought.

Ques. And why did you examine the records? 30

Ans. Because I done considerable business among the Polish people, and I knew a thing like that would spread and it would hurt my reputation among them, even though it was someone else's fault.

Ques. That is the reason you examined the records?

Ans. Yes.

Ques. After you examined the records you reached the conclusion you were not legally responsible, you and Griffiths?

Ans. We both came to that conclusion.

Ques. After you examined the records?

Ans. Yes.

Ques. And not before you examined the records?

Ans. Well, it happened so quickly that we didn't have much time to think, because after I went to his office we came right up to the Register's Office and he then said it was his fault.

Ques. As I understand it, you went to the Szwaks and tried to settle?

10 Ans. I did.

Ques. And you offered them how much?

Ans. Well, I didn't make no offer that you might say wasn't subject to change, but my purpose was—

Ques. Well, how much did you name?

Ans. I said \$500, \$550; I thought maybe they would say, "Give us \$600."

Ques. Then if they had said \$600 you would have settled, wouldn't you?

20 Ans. I would have consulted Mr. Griffiths and if he would have been willing to make a settlement on that basis, I think we would have settled.

Ques. Notwithstanding you were not responsible?

Ans. Well, there was a reason for that.

Ques. A charitable reason, wasn't it?

Ans. In a way, and in another way it was not a charitable reason.

Ques. Now, who was going to pay the money if they had accepted \$550?

30 Ans. Mr. Griffiths and I was going to take the Cody & Cheesman lot.

Ques. No, but which was going to pay the money?

Ans. Mr. Griffiths and I, and we were going to take the Cody & Cheesman lot and build on it and sell the property, and nobody would have lost anything.

Ques. Then Mr. Cinkowski wasn't to pay it—Mr. Poniatowski, I mean—wasn't to have paid it?

Ans. Well, we didn't expect him to pay it at that time.

Ques. You say now that he can read English, do you?

Ans. I know he can.

Ques. And you know it, as I understand it, for two reasons; first, it grew out of some patent device that he got up?

Ans. Yes.

Ques. And the second grew out of the fact that he had the deed—

Ans. I have often seen him write and read beside that. I have seen him sit on his porch and read the Post Telegram at nights. 10

Ques. All right; have you got any writings that he wrote

Ans. In his own handwriting?

Ques. Yes.

Ans. I haven't, but I have seen a half dozen receipts you produced here on last Wednesday.

Ques. You know he can write his own name, don't you?

Ans. Yes, sir.

Ques. What was this patent device that he— 20

Ans. I know of two different patents that he had.

Ques. What was the one you are speaking of?

Ans. One was for a cheese cutter and the other one was for a mine cage.

Ques. And you went with him where?

Ans. To the Public Library.

Ques. Now, why did you go there?

Ans. To show him where to find the Patent Record, the Patent Office Record. 30

Ques. Well, did you show him?

Ans. I showed him, yes, sir.

Ques. And where is this library?

Ans. On Broadway.

Ques. Then after you showed him what did you do?

Ans. I would examine one volume and he would examine the other for that particular device.

Ques. Where did he get the volume he examined?

Ans. From the shelf.

Ques. Yes.

Ans. When I would get them I would take one, he would take the next one and I would take the next one, and so on.

Ques. Now, what was in that volume?

Ans. Records of different patents that were granted for different devices.

10 Ques. Any pictures in them?

Ans. Yes, drawings of the patent.

Ques. Drawings of the patents?

Ans. Yes.

Ques. And he could do that, couldn't he?

Ans. What, drawings?

Ques. Yes.

Ans. I have seen some drawings that he made, and they were very good ones.

Ques. Yes, a good mechanic; he can tell a drawing when he sees one?

20 Ans. He can tell a drawing when he sees one, and he can make a drawing.

Ques. Did you see what drawings he was examining in this volume?

Ans. At that time?

Ques. Yes.

Ans. It was drawings for the cheese cutting devices.

Ques. Was he examining the drawings or reading the print?

30 Ans. He was reading the print.

Ques. Reading the print and not examining the drawings—that is, from your observation of the situation?

Ans. I wouldn't say that he wasn't examining the drawings, because you couldn't help examine the drawings, because the drawings and specifications sometimes would appear on the same page or on the opposite page or on the next page.

Ques. Exactly, but you noticed he read the specifications carefully, didn't you?

Ans. Well, he would look over them.

Ques. He looked over them—did he read them?

Ans. He wouldn't read them aloud, certainly not. It would take him some time to examine it.

Ques. Fine print, was it?

Ans. Yes.

Ques. And you saw him read the fine print?

Ans. Yes.

Ques. Now, how do you know he did that? 10

Ans. Well, I can't help but think that when he would sit there—

Ques. Well, you may think it; how do you know it?

Ans. Well, he would first look up the index and find out the page. My God, from that I could easily tell he knew how to read.

Ques. He first looked up the index, did he?

Ans. Yes.

Ques. Did you look up any index?

Ans. I certainly did. 20

Ques. Did you show him the index he looked up?

Ans. I showed him how to start, yes.

Ques. And after you showed him how to start he looked up the index?

Ans. Yes.

Ques. Was the index in numbers?

Ans. Gave you the volume and page.

Ques. Well, what, Roman numerals?

Ans. I will not answer that at this time, Judge; I don't know. 30

Ques. Well, were they figures?

Ans. I can't say whether they were figures or Roman numerals or whether they were just written out in regular English; I can't remember.

Ques. I guess they were in English, weren't they, written out, "Volume Twenty-five," weren't they?

Ans. No, numbered.

Ques. Numbered?

Ans. Numbered; the index would give you the name and number of the patent; the device, and the year it was patented.

Ques. How many volumes did you examine?

Ans. We went through them all.

Ques. How many?

Ans. Well, I don't know; I suppose there was seventy or eighty.

Ques. How long—when did you go there?

10 Ans. Went there one evening.

Ques. What time in the evening.

Ans. Very early, some time after six o'clock.

Ques. And how long did you stay?

Ans. Until they closed up.

Ques. When do they close up?

Ans. I don't remember the hour.

Ques. Well, about?

Ans. I guess eight or nine o'clock, anyhow.

20 Ques. 'Then between six and nine o'clock you went through the seventy volumes, you and he together?

Ans. Yes.

Ques. What was your object in going through so many volumes—to find out whether he could read?

Ans. No; to ascertain whether or not there was a device like his or similar to his on the market or a patent had been granted for it.

Ques. How many pages in one of these volumes?

30 Ans. Some of them may have five or six hundred; some of them maybe run into two thousand pages; it depends on the volume. Now, I think it is two books in one volume.

Ques. Two thousand pages to the volume?

Ans. The older the record, the smaller the volume.

Ques. Well, about how many pages in the smallest volume?

Ans. I couldn't tell; they may run from five, six, to seven hundred.

Ques. And the larger volume had several thousand pages?

Ans. Yes.

Ques. And in that time you and he together examined them all?

Ans. I wouldn't say that we examined them all; we examined sufficient to—

Ques. Did he read the whole seventy volumes in that time?

Ans. He could read some if he did.

Ques. Well, is he a very fast reader?

10

Ans. Well, he could examine them almost as fast as I could.

Ques. That means he is a very fast reader?

Ans. I don't consider myself a very fast reader.

Ques. Well, he could beat you hollow reading?

Ans. He could beat me reading?

Ques. Yes.

Ans. I don't think so.

The Court: Judge, haven't you exhausted this end of 20 the examination?

Mr. Wescott: Oh, I guess so.

Ques. When you gave him the deed did he read it in your presence?

Ans. He examined it; I don't believe that he read the whole deed through, but we were sitting at the table, Mr. Griffiths took the deed and handed it to him and he opened the deed up, looked it over and folded it up and put 30 it among the rest of his papers.

Ques. And from that you say he read it?

Ans. He examined it.

Ques. What do you mean by examined it?

Ans. Well, he read it; when you say "read," I understand to read the whole deed from the beginning to the end. I don't know whether he read the whole deed or

not; I know that he looked at it, examined it for a considerable time.

By Mr. Woodruff:

Ques. Mr. Cinkowski, was it necessary to examine every page of these volumes?

Ans. No.

Ques. What was the extent of the examination of an individual volume?

10 Ans. The index gives you the page and volume; all you do is to pick up the volume, refer to the page, the drawings and specifications are there, and, of course, sometimes the drawing will show the device completely; other times you have got to read the specifications in order to ascertain that.

Ques. Did you find cheese cutters in every volume?

Ans. Yes, sir.

Ques. Were they very numerous?

20 Ans. Would we find cheese cutters in every volume? I won't say that; I don't know; sometimes there might be a year would go by that nobody had got a patent on a cheese cutting device.

By Mr. Wescott:

Ques. Just one word; you said, if I understood you, that Mr. Poniatowski should have built on No. 41 and instead he built on No. 45; you said that in your chief examination?

30 Ans. I think I was a little confused about that, I went to Mr. Griffiths and said he had built on the wrong lot, and he said, "How is that?"

Ques. Didn't you say to the jury—

Ans. I did say that, but I say, I might have been confused in stating those numbers of the property.

Ques. Didn't you say he should have built on 41?

Ans. Yes; because he had a deed for the lot 41.

Ques. And instead of that he built on 45?

Ans. Yes, sir.

Ques. Is that correct?

Ans. Yes.

LUDWIG GRABOWSKI, SWORN.

By Mr. Woodruff:

Ques. What is your business? 10

Ans. Contractor and builder.

Ques. How long have you been in that business in this city?

Ans. For myself about four or five years.

Ques. Speak so these jurymen can all hear you.

Ans. About five or six years.

Ques. You are Polish, are you?

Ans. Yes.

Ques. Do you speak Polish?

Ans. Yes. 20

Ques. Did you know Mr. Poniatowski when he built his house at 1171 Pear street?

Ans. Well, yes, I know that is Mr. Poniatowski.

The Court: Did you know him, the question is, when he built the house?

The Witness: Yes.

Ques. Did you do some work on 1171 Pear street? 30

Ans. Yes.

Ques. What work did you do there?

Ans. I lay bricks for him.

Ques. And when was that house finished, do you know?

Ans. Which one, the house he lives?

Ques. Yes, when was that finished?

Ans. His own house, you mean? What house do you mean, his own house?

Ques. The house in which he lives, his own house.

Ans. I think it was about five years, something like that.

Ques. I will get at it in another way. How soon after he finished the house in which he afterward lived did he begin to build next door to it?

Ans. Oh, about a year.

10 The Court: I understood that this was 41 and 45; that would make this intervening house 43.

Mr. Richards: That was the lot number, but he was speaking of the house number.

The Court: That was the lot number on the plan?

Mr. Woodruff: Yes; the house was numbered differently.

20 Ques. Now, a year afterward he began to do some work on the lot next to him, did he?

Ans. Yes.

Ques. Did you do some work for him?

Ans. Laid bricks for him.

Ques. When did he first tell you he wanted to build a house on that side?

Ans. Well, it would be about April or March, and I met Mr. Poniatowski on his porch—I bring him a new spade for some Polish—

30 (Objected to.)

Ques. Now, Mr. Poniatowski told you, did he, that he wanted to build a house next to him?

Ans. Well, no, I told Mr. Poniatowski, I say, "Why don't you buy this house next to you, to give me a job; I will lay the bricks for you?" I told him that, because the brick for the party wall fall down.

The Court: Just stop when you have answered the question; don't go any further unless you are asked.

Ques. Did he ask you to do anything for him after that?

Ans. Poniatowski, he said, "Find out who is the owner of this lot."

By the Court:

Ques. Who said that?

10

Ans. Mr. Poniatowski.

Ques. Said for you to find out?

Ans. Yes.

By Mr. Woodruff:

Ques. Did you try to find out?

Ans. I told him I will.

Ques. And who did you find owned it?

Ans. I go to Mr. Griffiths' office, about the next day I 20  
go to Mr. Griffiths' office and I ask Mr. Griffiths, I said,  
"What is the lots between them property, Mr. Poniatow-  
ski—

Mr. Wescott: I object to this.

Ques. Well, did you find out who owned that lot?

Ans. Yes, that is, Mr. Griffiths—

Ques. Who is it who owned it?

Ans. The Szwaks.

30

Ques. Now, did you go to the Szwaks?

Ans. I said to Mr. Griffiths, "Give me address where  
that woman live."

The Court: Just a minute; did you go to the Szwaks?

The Witness: Yes.

Ques. Did you talk to the Szwaks about it?

Ans. Yes; I talked to him.

Ques. Now, you talked to him, you say, yourself?

Ans. Yes.

Ques. Did you try to buy the lot?

Ans. Then I tried to buy the lot for Mr. Poniatowski.

Ques. Did the Szwaks sell it?

Ans. Szwak said, "I don't know if I sell it or not."

Ques. Did you tell that to Mr. Poniatowski?

10 Ans. I go to Mr. Poniatowski; I give him' address where that owner lives, and told Mr. Poniatowski to go to that owner.

Ques. Did you tell Mr. Poniatowski when you gave him the address that you had been there?

Ans. Yes, I told him.

Ques. He went there, did he?

Ans. Yes.

Ques. Did he talk with him?

20 Ans. The next day I go to Mr. Poniatowski and ask him, "What have you done for that owner?"

Ques. Did he tell you?

Ans. He says, "He wants too high a price."

Ques. He wanted too high a price?

Ans. Yes.

Ques. Afterward did you start to do some work there for Mr. Poniatowski on that lot?

30 Ans. Afterward, that is about a week, maybe two—I can't say for sure, Mr. Poniatowski with me again says, "Mr. Grabowski, that lot belongs not to Szwak, but to somebody else."

Ques. Well, did you start to build on that lot?

Ans. Mr. Poniatowski started to build but I don't remember which month.

Ques. But you were working for him, were you, when he started to build?

Ans. Yes, I laid brick.

Ques. Now, did you have any conversation with him while you were laying the bricks of the foundation with regard to who owned the lot?

Ans. No.

Ques. You did not talk to him about that?

Ans. No.

Ques. Did you talk to him about it again while you were building—while you were working there?

Ans. No.

Ques. Didn't talk to Mr. Poniatowski again? 10

Ans. No.

Ques. When did you talk to him again about it?

Ans. After the house is done.

Ques. After the house is done?

Ans. Yes.

Ques. How much work did you do in the house yourself?

Ans. I do just brick work, the stone work.

Ques. Both the brick and stone work?

Ans. Stone and brick. 20

Ques. Now, while you were doing that work did you see the Szwaks any more or ask about whether they owned the lot or not?

Ans. No, just only the one time.

Ques. While you were working there, you did not talk to Mr. Poniatowski about it?

Ans. No.

Ques. Now, after the house was completed, finished, did you go to the Szwaks or tell Mr. Poniatowski to go to the Szwaks? 30

Ans. No, Mr. Poniatowski met me on the street and said, "I have built the house on the wrong lots."

Ques. What else did he say?

Ans. I say, "Mr. Poniatowski, keep you quiet; you go to Mr. Szwak and buy the lots and don't say nothing to nobody, because he don't know you built the house on that lot." Mr. Poniatowski says, "I no go; I no tell Mr.

Szwak I build a house on his lot, afterward I go to sue Cinkowski and Griffiths." That is what he says.

Ques. Now, after he had finished the house, did he talk to you about selling it?

Ans. Yes.

Ques. What did he say to you about that?

Ans. He says, "Mr. Grabowski, give me some customer; I sell that house for \$1,850, and I give you \$50 commission," is what he says, and I talk about it in the kitchen of that house.

10 Ques. Have you built many houses like that?

Ans. Oh, I built a lot of houses, yes.

Ques. Was \$1,850 a fair or reasonable figure for that property?

Ans. Well, that is; you don't make much, you know, money, a little profit.

The Court: I don't understand what you mean.

20 The Witness: You no can make much profit, you know.

By the Court:

Ques. Well, is that a fair price for it, is the question?

Ans. Yes, that is a fair price.

Ques. Does that include the house or the lot only?

Ans. All complete.

By Mr. Woodruff:

30 Ques. How much could the house have been built for on that lot at that time?

Ans. At that time you can build a house like that for about \$1,400.

Ques. You could have built it for \$1,400?

Ans. Yes, without the party wall.

Ques. How much cheaper could you have built it with that party wall which was there?

Ans. Oh, well, I say without the party wall, with three walls, \$1,400; the party wall is worth about \$75.

Ques. The party wall would be worth about \$75?

Ans. Yes.

Ques. How long had you known Mr. Poniatowski before that?

Ans. Oh, as long as I come here in this country.

Ques. And how long have you been in this country?

Ans. Eleven years.

Ques. Do you know whether Mr. Poniatowski talks any other language than Polish? 10

Ans. Oh, he can speak Russian.

Ques. He talks Russian?

Ans. Yes.

Ques. What else does he talk?

Ans. Polish.

Ques. Does he speak English?

Ans. Oh, yes, he speak very good English; he read it, because I know he has all the time English paper; he don't read much Polish paper, because he can speak better English and read English, like me. 20

Ques. You have seen him read the English paper, have you?

Ans. Oh, yes.

Ques. Have you seen him read any other English documents or papers?

Ans. I see him with a newspaper, you know; I don't know what kind of paper; it is newspapers he reads in English.

Ques. Have you ever had any dealings with him where he wrote out receipts? 30

Ans. No, he just pays me and I give him a receipt myself.

Ques. In your own handwriting?

Ans. Yes.

Ques. Did you ever see him write receipts himself?

Ans. No.

Ques. Did you ever see him look at any receipts, read them?

Ans. Oh, yes, I give him my receipt and he read them.

Ques. Did you ever see him read any other deeds or contracts or papers of that kind?

Ans. No.

Ques. You never saw him?

Ans. No.

10 Cross examination.

By Mr. Wescott:

Ques. He can read English a little?

Ans. Yes, I think he can read English very good.

Ques. And when he writes a receipt, when you saw him write a receipt, did he ask you how to write it?

Ans. I don't know what you mean.

Ques. Did you ever help him write receipts?

20 Ans. No, I wrote the receipt myself for him.

Ques. For him?

Ans. Yes; he paid me money for the work and I wrote the receipt myself and gave him the receipt, signed it.

Ques. You give him a receipt?

Ans. Yes.

Ques. He knows figures in English, don't he?

Ans. Oh, yes.

Ques. He can read a little by hard work, can't he? Did you ever hear him read a newspaper?

30 Ans. Yes.

Ques. In English?

Ans. In English, yes.

Ques. Where?

Ans. At that time I lay in the second house brick.

Ques. What newspaper was it?

Ans. I don't remember what newspaper.

Ques. What was he reading to you?

Ans. Reading at that time for the weather, you know—sometimes it comes rain, you know, getting better weather; he was at that time on the porch.

Ques. Does he know the difference between clear and cloudy weather when he sees it written?

Ans. I don't remember; I can't say for sure.

Ques. Well, he is learning English all the time, isn't he—an ambitious man, a man that works hard?

Ans. Oh, yes, he has worked hard; he is a good man, I can say that.

Ques. Like you and other people who come to this country, he is trying to learn our language? 10

By the Court:

Ques. Did you ever see him or hear him read any writing?

Ans. I no see him write, you know.

Ques. Did you ever see him read any writing—not printed, but writing? 20

Ans. No, just my receipt I give him, that is all.

Ques. Well, did he read that, or don't you know?

Ans. He look at it and says, "That is all right."

By Mr. Wescott:

Ques. Is there anything the matter between you and Poniatowski—you don't like him very much, do you?

Ans. Well, Mr. Poniatowski is good as anybody else; everybody is good to me. 30

Ques. You wanted to work for him on some houses he had built and he wouldn't have you?

Ans. No, Mr. Poniatowski has got the first house and I have my job on the second house; he gave me a job; I know it all the time, he comes to me.

Ques. Poniatowski has built three houses, hasn't he?

Ans. Yes, he has built—

Ques. And he wouldn't let you work for him and you got mad, didn't you?

Ans. I no ask him for work.

Ques. You didn't work on these three houses?

Ans. Because he no comes to me, no give me the job; I didn't ask him, because I have got plenty of work all the time.

Ques. You didn't want to work for him?

10 Ans. No, he no ask me; I no go figure on the work; he no comes to me and asks me about a job and I no give him figure, that is all.

By Mr. Richards:

Ques. Was the house half done when Mr. Poniatowski first told you that he knew he was building on Szwak's lot and he intended to sue Griffiths and Cinkowski?

(Objected to).

20 Ans. No, that is—

Mr. Wescott: Wait; I object to the question.

The Court: Well, I don't know; they are both defendants.

Mr. Wescott: I know; but I object to the form of the question.

30 The Court: I supposed that was it; I don't see any other objection. They are both defendants, and I don't know how far that gives the right of cross-examination. Probably it doesn't, Mr. Richards.

Mr. Richards: You Honor will allow me an exception?

The Court: Yes, you can reframe your question and put it in without leading.

Mr. Richards: No, I haven't any other question than that.

The Court: Well, I will say to you I will permit that question to be asked in a non-leading form.

10

JOHN HARRIS, sworn.

By Mr. Woodruff:

Ques. Mr. Harris, have you known Mr. Poniatowski?

Ans. Yes.

Ques. When did you first come to know him and how?

Ans. He was sent to me by Mr. Ratcliffe, Clifford Ratcliffe.

20

Ques. A builder?

Ans. Yes.

Ques. Do you remember when that was?

Ans. Prior to any suit that had been commenced; a suit was threatened, but none had been commenced.

Ques. And after the house had been built on the wrong lot or was building?

Ans. After completion.

Ques. After completion?

Ans. Yes.

30

Ques. Did you talk with Mr. Poniatowski?

Ans. Yes.

Ques. What did he say to you about what had happened to your lot or with regard to the lot?

Ans. He first came in and said Mr. Ratcliffe had sent him to see me. I was doing some work for Mr. Ratcliffe and he told me that he had built on the wrong lot, and

that he had supposed that he was on the lot that he bought from the Home Builders' people or Coady & Cheesman, and in the course of the hour's conversation with him I asked him when he first learned that he had built on the wrong lot. He said someone told him soon after he had the foundation in or while he was putting on the first floor joists, and I asked him why he did not then investigate it. He said that he had bought it through Cinkowski and Griffiths and he thought if he was on the wrong lot he could sue them.

10

Ques. Now, did he come back and see you again, Mr. Harris, afterward?

Ans. I told him I would see Mr. Reader, who was threatening some trouble.

Ques. That you would see Mr. Reader?

Ans. Yes; see what I could do for him. I saw Mr. Reader; Mr. Reader said they wanted a thousand dollars. He came back and I told him that. He said he already knew that. I said, "I can't do anything for you."

20

He wanted me to recommend him to a lawyer. I said, "No, I couldn't recommend you to any lawyer," because if he had known at the time the foundations were up and the first floor joists were on and then went on, he went on at his peril.

Ques. Do you remember, Mr. Harris, whether he had any attorney to represent him in the matter the first time he came to see you?

30

Ans. He told me, I think, he had been to some other attorney; then afterward I learned he had gone to Judge Starr.

Ques. Now, the second time he came did he tell you that he had had an attorney, and he already knew that Mr. Reader wanted a thousand dollars or his clients did?

Ans. I didn't ask him whether he had gone to anybody else or not; I just told him I couldn't do anything for him, he would have to get somebody else for him.

Cross-examination.

By Mr. Wescott:

Ques. Did he give you any money?

Ans. No; I did it as a friend of Mr. Ratcliffe's.

Ques. Mr. Harris, you are a member of the Bar, aren't you?

Ans. Not at that time I wasn't.

Ques. Oh, you were not a member of the Bar?

Ans. No.

10

Ques. Then he didn't come to you as a lawyer?

Ans. No; just as a friend of Mr. Ratcliffe's.

Ques. Well, you are a member of the Bar now?

Ans. Yes, sir.

Ques. And you have no hesitancy in disclosing this confidential statement by this man?

Ans. I did not consider it a confidential statement at all; I talked to Mr. Ratcliffe about it, told him afterward what he had told me. If my recollection is correct Ratcliffe first spoke to me about it.

20

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LAWRENCE B. READER, ESQ., SWORN.

By Mr. Woodruff:

Ques. Mr. Reader, you are a member of the Bar?

Ans. I am.

30

Ques. Do you know Mr. Poniatowski?

Ans. I do.

Ques. Do you know the Szwaks?

Ans. Yes.

Ques. When did you first know about the mistake that had been made with regard to these lots or that there was some trouble there?

Ans. When Mr. Poniatowski first came to see me—I don't recall just when it was.

Ques. What was the purpose of Mr. Poniatowski's first visit to you?

The Court: Just a moment; do you think this is proper?

10 Mr. Woodruff: Well, I will get down to the real point that I have called Mr. Reader for.

The Court: I mean, do you think it is proper to ask a fellow member of the Bar to disclose his private communications with his clients?

Mr. Woodruff: I was only leading up to something else. I will ask the question I have in mind.

20 Ques. Now, Mr. Reader, after different negotiations were had, after those negotiations were had, the title finally rested in your wife, didn't it?

Ans. Yes, it did.

Ques. And did you endeavor to fix up the entire matter with Judge Wescott?

Ans. Oh, yes.

Ques. And what did you do in order to adjust the entire matter?

Ans. At the suggestion of Ralph Wescott, Mr. Miller and I—

30 The Court: Wasn't all this the making of an adjustment?

The Witness: Yes.

Mr. Woodruff: Judge Wescott, if your Honor please, stated in court here the other day that if a tender of the deed of this lot was made that this case would immediate-

ly be discontinued, that he would have no purpose in suing these defendants here if a tender of the deed was made.

Ques. What did you do, Mr. Reader?

The Court: That is simply a question of practical moment at the time and now, of course. I do not like this thing of bringing members of the Bar in to disclose their private relations when it is plainly an effort of the members of the Bar to adjust differences. 10

Mr. Woodruff: It would seem to me that it would be very proper for the matter to go to the jury.

The Court: If he will say now he holds this deed for the plaintiff—

Mr. Woodruff: Yes, he will present the deed to Judge Wescott and will now offer it. 20

The Court: Well, you offer it to him; that is the milk in the cocoanut.

Ques. You have the deed, Mr. Reader, in your possession?

Ans. I have the deed, yes. That was the second time the deed was ever offered. I offered it first to Mr. Harvey Car at his suggestion.

Ques. Is this the deed of the lot on which Mr. Poniatowski built? 30

Ans. Yes, it is.

Ques. When was it signed, the day it has written in here, on the 5th of June, 1914?

The Court: Is the property clear?

The Witness: No; there is a mortgage there of \$1,000 which was placed by Szwak.

The Court: How does that help the plaintiff?

Mr. Woodruff: Did your Honor ask me a question?

The Court: Yes; I supposed it was a tender of the deed in mitigation of damages?

Mr. Woodruff: Yes.

The Court: With a mortgage against the property of \$1,000?

10

Mr. Woodruff: That is true, on which the consideration went to the Szwaks for their lot.

Mr. Wescott: \$1,000 for their lot?

The Court: I suppose it is admissible under the new statute on the question of damages, if the damages are ascertainable at the date of trial.

20 Ques. Now, Mr. Reader, you say you did tender this deed?

Ans. Yes.

Ques. And you now tender it to them if they will accept it, do you?

Ans. Yes, that is, in consideration, of course that the Chancery proceedings be dismissed.

Mr. Woodruff: I ask that that be marked Exhibit D1.

30 Ques. Has the Chancery suit been discontinued up to this time, Mr. Reader?

Ans. No.

Cross-examination.

By Mr. Wescott:

Ques. Now, Mr. Reader, you say you came to see me about this deed?

Ans. Yes.

Ques. Where?

Ans. At your office.

Ques. When?

Ans. Mr. Griffiths, Mr. Cinkowski, Mr. Miller and myself met you at your office.

Ques. And you say you offered this deed?

Ans. We told you that we were willing—

Ques. No, wait; you say you offered that deed there, did you?

Ans. We had the deed with us; yes, sir. 10

Ques. And showed it to me, did you?

Ans. Yes, sir.

Ques. How much mortgage is there on this property?

Ans. \$1,000.

Ques. Who holds it?

Ans. A man by the name of Williams.

Ques. Where does he live?

Ans. Bareford L. Williams; he lives in Philadelphia.

Ques. When did he get the mortgage?

Ans. After the Sheriff put the Szwaks in possession. 20

Ques. Who was Williams' adviser?

Ans. You mean as to whether or not the mortgage was—

Ques. Who was Williams' adviser?

Ans. I don't know.

Ques. Did you have anything to do with Williams?

Ans. No; Mr. Woodruff, I believe, was Mr. Williams' attorney.

Ques. Did you know that Williams was going to take 30 the mortgage?

Ans. I knew that application had been made to him; yes.

Ques. Through whom?

Ans. Through Mr. Woodruff.

Ques. The gentleman here trying the case?

Ans. Yes.

Ques. When did Williams get this mortgage, do you know?

Ans. Prior to the execution of that deed.

Ques. How long prior to the execution of this deed? This deed seems to have been executed—

Ans. That deed was executed after the Sheriff had put the Szwaks in possession of the property.

Ques. Who was the Szwaks attorney?

Ans. I was.

10 Ques. This seems to have been acknowledged the 5th day of June, 1914. How long before that was it that Williams got this mortgage?

Ans. Well, I would have to look up the records to see when the deed was executed.

Ques. Now, it was fourteen months before you and your wife executed this deed, wasn't it, that Williams got that mortgage?

Ans. Oh, yes; and further; after—

Ques. Now, it was fourteen months before, wasn't it?

20 Ans. Yes; well, I wouldn't say "yes," because I don't know; I haven't got the dates, probably you have there, but the mortgage—

Ques. Well, it was about fourteen months before, wasn't it, that Williams got the mortgage?

Ans. Well, whatever the records will show; it was sometime prior.

Ques. Well, was it about fourteen months?

Ans. It was sometime prior to the execution of that. I wouldn't say positively without seeing the records.

30 Ques. Well, was it about fourteen months prior to that?

Ans. I wouldn't say without seeing the records. It was sometime prior, but I can't be definite on it.

Ques. Did Williams know that Poniatowski had built on the wrong lot?

Ans. I don't think so.

Ques. Well, you knew it, didn't you?

Ans. Yes.

Ques. Did Mr. Woodruff know it?

Ans. I don't think so.

Ques. You don't think Woodruff knew it?

Ans. No.

Ques. You didn't tell him? You didn't tell either Woodruff or Williams?

Ans. Szwak placed the mortgage; I didn't.

Ques. No, pardon me; you didn't tell Mr. Woodruff or Williams that Poniatowski had built on the wrong lot? 10

Ans. I don't recall whether I did or not.

Ques. You can't recall that?

Ans. I can't recall that.

Ques. Now, you were the lawyer who put Poniatowski out of that house, weren't you?

Ans. Yes.

Ques. And how did your wife happen to get a deed to it?

Ans. Well, I had the deed made to her. 20

Ques. Why?

Ans. For no particular reason, to put some property in her name, that was all.

Ques. Well, why—why did you want to get this title in your wife's name?

Ans. So that she would have some property in her name.

Ques. Was that compensation for your services for turning Poniatowski out? 30

Ans. That was all I could get.

Ques. That was all you could get?

Ans. I couldn't get any more.

Ques. Is that all you did get?

Ans. That is all I did get.

Ques. And Williams got a thousand dollars?

Ans. No, Szwak got the thousand.

Ques. Oh, Szwak got the thousand, eh? Well, all right, he got a thousand from Williams?

Ans. Yes.

Ques. Szwak put the thousand dollar into his pocket?

Ans. Yes.

Ques. And how much was the house worth over a thousand dollars?

Ans. Well, I judge \$1,400 or \$1,500 the property is worth, about \$500 equity there.

Ques. About \$500 equity?

10 Ans. Yes.

Ques. And that your wife got?

Ans. No, we got a deed for it subject to the mortgage.

Ques. Very well, she got the equity, didn't she?

Ans. Yes.

Ques. And that is all you could get for these services that you performed?

Ans. That is all I could get; I couldn't get a fee from Szwak at all; that is all he would give me.

20 Ques. What did you do for Szwak beside turning Poniatowski out by a suit in ejectment?

Ans. I paid the expenses of the ejectment suit.

Ques. Very well; they were what?

Ans. I don't recall now.

Ques. \$15 or \$20?

Ans. Somewhere around there.

Ques. Or less; probably something less than that?

Ans. In that neighborhood, probably.

30 Ques. And therefore, by turning Poniatowski out of this house, which was a mere formal matter, wasn't it—there couldn't have been any defence—

Ans. We had several conferences about it.

Ques. You knew there was no defence that could be offered by Poniatowski, didn't you?

Ans. I didn't know.

Ques. No, as a lawyer, you knew he couldn't possibly hold that house against your ejectment suit, don't you?

Ans. I think that is right, yes.

Ques. Well, you knew it, didn't you?

Ans. Yes.

Ques. And you knew therefore that you were undertaking a merely perfunctory job in which you paid just a few dollars—have you paid the costs?

Ans. Yes, I have.

Ques. Well, you paid a few dollars costs out of your own pocket, and for that perfunctory service all you got was \$500?

10

Ans. No, that is not the story.

Ques. Isn't that the story?

Ans. That is not the story.

Ques. Wait a minute; haven't you said that you couldn't get anything out of Szwak?

Ans. That is all I could get for my services.

Ques. And all you could get was to take title to this property in your wife's name?

Ans. That is all.

Ques. The equity was \$500, about?

20

Ans. Yes.

Ques. So that the conclusion of the whole matter was this by you and Szwak; Szwak got a thousand dollars cash and for the expenditure of a mere perfunctory service and a few dollars you got the balance, \$500, by having the title put in your wife's name, and Poniatowski got nothing?

Ans. My services were not only perfunctory; I had several conferences with Szwak and his attorney.

Ques. Very well, you had some conferences with Szwak and your attorneys?

30

Ans. Yes.

Ques. About this thing?

Ans. Yes, before we ever started suit; tried to get them together.

Ques. Why did you want to have conference with somebody else about a thing as simple as this?

Ans. To get them together, to adjust the matter.

Ques. Who did you see to get an adjustment?

Ans. Why, Mr. Harding came down representing John Kates, and I think we had two conferences with him, and Poniatowski came in several times.

Ques. Yes; so for those interviews you got your fee up to \$500?

Ans. No, I didn't figure the fee at \$500; I took a deed because that is all I could get.

10 Ques. Well, that was a pretty good job, wasn't it, \$500 for two or three interviews? How much more do you think your services was worth?

Ans. I didn't figure on any more.

Ques. But anyhow, it comes out that your wife has got the title?

Ans. Yes; she has the title.

Ques. Now, you offer us this deed on condition that we pay the \$1,000 mortgage?

Ans. Well, I will give a deed for whatever interest I had in the property.

20 Ques. But you knew that if we accepted this deed and discharged this gentleman—

Ans. I don't ask you to discharge—

Ques. Or discharged you, rather, in the equity suit—you say you furnish it on condition that we discharged you in the equity suit—you know that Poniatowski would have to pay the thousand dollars, don't you?

Ans. I expect he would.

Ques. Principal and interest?

Ans. Yes.

30 Ques. So for this little chicanery you want to make the thing equitable and just by getting out of it yourself, getting your wife out of it and making Poniatowski pay a thousand dollars, principal and interest?

Ans. I did that at the suggestion of Mr. Harvey Carr, who was then attorney for Mr. Poniatowski. That was their proposition of settlement to me and I accepted it.

Ques. Is Williams willing to give up this thousand dollars?

Ans. I don't know.

Ques. You haven't seen him?

Ans. I am not acquainted with Mr. Williams at all.

Ques. Well, have you conferred with Mr. Williams' attorney about it to see if he can give up the thousand dollars?

Ans. No; there was no reason why I should; I didn't get the thousand.

Ques. Now, the thing amounts to this: that you want 10  
to get from under and let that thousand dollar load come  
down on Poniatowski's head—that is the purpose of  
your present move?

Ans. I don't see that the load of one thousand dollars  
should come on my head.

Ques. No; but it would come on his head—that is of  
no consequence to you, so you get out?

Ans. That is up to him; I have nothing to do with it.

Ques. Well, your purpose in making this move is to  
get out of a nasty scrape, isn't it? 20

Ans. I don't consider it a nasty scrape as far as I am  
concerned.

Ques. Well, you will probably find out whether it is or  
not.

Ans. Well, I may.

By Mr. Woodruff:

Ques. Mr. Reader, what did you mean by the expres-  
sion, that that is all you could get? 30

Ans. After the suit was over and I suggested a fee to  
Szwak, he said he didn't have no money, and he said  
all he wanted was a thousand dollars out of it, so I said,  
"Well, where do I come in?" He says, I don't care; I  
get my thousand dollars on it." I couldn't handle him.

Ques. He wouldn't either give you cash or give you  
any other security?

Ans. He wouldn't give me anything else; he wanted me to give him a thousand dollars for a deed. I said, "Where would I get the thousand dollars?"

By the Court:

Ques. How is that?

Ans. Szwak, after the matter was over, wanted me to pay him a thousand dollars and take a deed for the property.

10 Ques. You mean, give him a thousand dollars for the property?

Ans. No.

Ques. Well, there was already a mortgage of two thousand dollars, wasn't there?

20 Ans. No; the mortgage was placed before; he deeded the property to me after he placed the mortgage. Szwak wanted me to pay him a thousand dollars and take a deed for the property, and then he got his thousand, he placed the mortgage there, then gave me the deed subject to the mortgage.

By Mr. Woodruff:

Ques. Now, Mr. Reader, the interest is paid up on that mortgage, is it?

Ans. I think it is up to the last interest payment; there is a paving claim and two years' taxes against it.

30 By the Court:

Ques. What do they amount to?

Ans. Why, the paving claim I think is fifty-some dollars and the taxes, I forget just what they are, but I imagine they are in the neighborhood of \$30 for each year; that would be about sixty dollars. There is a hundred and some dollars, I imagine, in municipal claims against it.

By Mr. Wescott:

Ques. That wouldn't lighten Poniatowski's load very much, would it?

Ans. No, it would add to it.

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The Court: Mr. Woodruff, do you think that is a tender in any sense? You see, it is conditional.

10

Mr. Woodruff: It is the best I could do; of course, we are not in any position to make a tender.

The Court: I know, but Mr. Reader ought to make it straight; it is no good in its present shape.

Mr. Woodruff: You mean without any condition of discontinuing the other suit?

The Court: Yes; it seems to me if he does that it will detract that much from it. (To Judge Wescott). I was saying to counsel that in the present form this tender is without avail, because it is conditional.

20

Mr. Wescott: I won't accept it anyhow; my understanding was that the mortgage would be cancelled, of course.

The Court: Well, of course, that is so, but it would have an effect on the damages of the plaintiff.

30

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LAWRENCE B. READER, recalled.

The Witness: I will tender the deed as it is without any reference to discontinuing the Chancery proceeding.

The Court: Is this property clear otherwise? I suppose those charges are charges against the property regardless of the owner?

Mr. Woodruff: Oh, yes.

Mr. Reader: Yes.

10 The Court: Those taxes and the other items, but who has had the benefit of the property in the meantime?

The Witness: I have been getting the rents and paying the interest on the mortgage. The property has been vacant a number of times and in each instance there was a lot of repairing to be done, that we had to have done, so that the rent has just about taken care of the interest.

20 The Court: Is it intended to offer this property subject to the thousand dollars only?

Mr. Woodruff: Yes.

The Witness: Well, the paving claim is an improvement to the property.

30 The Court: Yes, I know, but that would be chargeable—if the man who has got the benefit of it in the meantime does not pay it, that is depriving the plaintiff of the use of the property, so that is as broad as it is long. (To Mr. Wescott): Well, Judge Wescott, do you want any time to examine this title? I think this is a defence pro tanto; I think the remaining question, if the title is good, and if the defendants are tendering you a title clear of everything except the thousand dollars, that that limits the plaintiff's damages to a thousand.

Mr. Woodruff: Yes, sir; less the value of the lot which they did get and on which they built.

The Court: Yes, you see, under the law it is the duty of a party who is injured whenever it is in his power to minimize the damages that come to him.

Mr. Wescott: But how is he going to minimize these damages? Here is a property that he hasn't had the use of. The last gentleman who stated anything whatever about it says it is out of repair. 10

The Court: Well, all that is a matter that can be shown.

Mr. Wescott: He says so. The property may be worth nothing like what it was when Poniatowski built it; you know, properties deteriorate very rapidly, and to say now he has got to take this property under those circumstances, is, I think, a little wrong. 20

The Court: The question, of course, is what is his actual loss.

Mr. Wescott: Yes, he has lost the whole thing.

The Court: Up to date it is true he has; but my inclination is to hold that the damages that he suffers are to be taken in their entirety, taking the whole situation as it presents itself to-day. It is precisely the same as if a person were injured and it should suddenly develop in the case that the injuries are not serious. 30

Mr. Wescott: Well, that is true, but there is a property that is encumbered; it has been neglected.

The Court: I think you may show all that; I think you may show its depreciation by reason of the want of

care in the interim; I think that is all a matter of proper proof, but I do not think you can ignore this offer as an element of damages, and indeed, I do not see that it is not equity as well as legal justice.

Mr. Wescott: I will ask to have a little time to investigate the question of the condition of that property. Go on with the case.

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10 ANIELA SZWAK, sworn.

By Mr. Woodruff:

Ques. Mrs. Szwak, do you know Mr. Poniatowski?

Ans. Yes, sir.

Ques. When did you first know him?

Ans. When I first know him? The first time I know him he came to ask for the lot, if we can sell the lot.

20 Ques. Which lot was it he wanted to buy?

Ans. The one on his side, along his house side.

Ques. Which side of his house, Mrs. Szwak?

By the Court:

Ques. Do you know the number of the house or the number of the lot?

Ans. No. 45.

30 By Mr. Woodruff:

Ques. He wanted to buy Lot No. 45?

Ans. He wanted to buy it.

Ques. Did you own it when he came there to you?

Ans. We owned it.

Ques. Was your husband living then?

Ans. My husband was living then.

Ques. He is dead now?

Ans. He is dead now.

Ques. Was your husband there too, when he came the first time?

Ans. Yes, he was.

Ques. Did Mr. Grabowski come to see you, too

Ans. Before that he was the first one.

Ques. He was the first one to see you?

Ans. The first.

Ques. After Mr. Grabowski came and wanted to buy the lot then Mr. Poniatoski himself came, did he? 10

Ans. Yes.

Ques. Did he see both you and your husband together?

Ans. He saw both of us.

Ques. What was it he asked you?

Ans. He asked us if we sell the lot, that he need that lot, because he got a wall of soft brick and could pay for that lot, he must get that lot.

Ques. Did you tell him you owned it?

Ans. Yes, I told him many times. 20

Ques. Did you have the deeds there?

Ans. I had the deeds there, but I didn't show him the deed. I only show him the mark of the lot and number on it.

By the Court:

Ques. On the plan, you mean?

Ans. Yes, the plan.

By Mr. Woodruff: 30

Ques. Was it the plan of the Home Builders' Company?

Ans. Yes.

Ques. One of their printed plans?

Ans. Yes.

Ques. And you showed him that, did you?

Ans. I showed him that.

Ques. Did that have lot numbers on it?

Ans. Yes.

Ques. Did he pick out the lot which was his or the lot on which was his house?

Ans. Yes.

Ques. He pointed out Lot No. 45, which was the one he wanted, did he?

Ans. Yes.

10 Ques. And you told him you owned that lot?

Ans. We told him we owned that lot.

Ques. Did you tell him whether or not you would sell it?

Ans. No, I told him I wouldn't sell it, because I got a letter that my sister that was to build a house, my sister, that one, well—

Ques. You and your sister bought 45 and 47, did you—your sister had 47?

20 Ans. Yes.

Ques. And you had 45?

Ans. Yes.

Ques. And you were going to build together so as to use one wall, is that right?

Ans. Yes.

Ques. That is what you told him?

Ans. That is what I told him.

Ques. Did you tell him you wouldn't sell because of that?

30 Ans. Yes, because.

Ques. Did he come back again?

Ans. He come again it might be five or six times.

Ques. He was there five or six times, was he?

Ans. Five or six times.

Ques. Did he offer you any price for the lot?

Ans. \$275 he offered to us.

Ques. Was that all he ever offered?

Ans. That was all.

Ques. \$275?

Ans. \$275.

Ques. Did you ever tell him that you might sell or would sell?

Ans. No, I did not.

Ques. You always told him you would not sell?

Ans. Would not sell.

Ques. Now, did you know that he started to build there?

Ans. No, sir. 10

Ques. You did not know it?

Ans. No.

Ques. Did you know it while he was building there?

Ans. No, sir.

Ques. Did he come back to you after he had started to build?

Ans. No, sir.

Ques. When was it that he came back to see you again?

Ans. He came the last time and told us he got his house on our lot, and he got some bill with him to pay for something, and he says, "I don't know what is the matter with those people; they sent their bill in your name, and I got my—I built the house on that lot and I own the lot, and you received the bill to pay." 20

Ques. Did he offer to buy the lot off of you then?

Ans. No, sir.

Ques. He didn't offer to buy it then?

Ans. No, sir.

Ques. Did he talk to you about it, what he was going to do there? 30

Ans. He talked to my husband, said to my husband he ought to sign his name, because he get somebody to buy the house, my husband should sign his name and he got nothing to do.

Ques. You mean that he didn't have any interest in the property—do you mean that your husband should sign his name that he had nothing to do with it?

Ans. Yes.

By the Court:

Ques. The property was yours, was it?

Ans. Yes; the lot was mine.

Ques. In your name?

Ans. In my husband's name.

By Mr. Woodruff:

10

Ques. Now, was that right, did he ask your husband to sign because he said your husband didn't have anything to do with the lot?

Ans. Yes; he asked my husband maybe three or four times to do that.

Ques. To sign a paper?

Ans. To sign a paper.

20

Ques. Mrs. Szwak, were there other people there in your house when Mr. Poniatowski came these three or four times and wanted to buy the property and you told him you owned it?

Ans. Ignacy Foremny, but he isn't here; he is dead.

Ques. When did he die?

Ans. May, the same year.

Ques. Was John Jolinek in your house, too?

Ans. No, he wan't; he was outside.

Ques. Outside of the house?

Ans. Yes.

30

Ques. Did he hear what Mr. Poniatowski said?

Ans. He heard something.

Ques. And he is dead, too?

Ans. He is dead, too.

Ques. And your husband?

Ans. And my husband is dead.

Ques. Now, Mrs. Szwak, when you told him that you would not sell him the lot, did he say anything else about getting the property, how he was going to get it?

Ans. \$2,100 he wants for it.

Ques. Well, was that after the house was built?

Ans. After the house was built.

Ques. I mean, first, when he was first there, those five or six times he wanted to buy the lot and you wouldn't sell it to him, you told him you owned it?

The Court: I did not understand that; I understood her to say that he came first to see them about buying the lot and then Grabowski came.

10

The Witness: Grabowski was first.

By the Court:

Ques. Grabowski was first?

Ans. Yes.

Ques. And he came second?

Ans. Yes.

Ques. Did he come any more times before he built the house? 20

Ans. He was four or five times, somewhere.

Ques. Before he built the house?

Ans. Yes.

The Court: All right; I misunderstood it.

By Mr. Woodruff:

Ques. When he came these four or five times and you told him you wouldn't sell him the lot, did he say how he was going to get it? 30

Ans. He say he must get it, had to get it; he say he have to have it and he try that long until he get it. He says he have to have it because he got a soft wall, soft brick, that is not good enough for the outside.

By the Court:

Ques. You mean in the party wall?

Ans. Yes.

Ques. Well, he hadn't then built his house?

Ans. I don't know.

Cross-examination.

By Mr. Wescott:

10 Ques. Now, Mrs. Szwak, let me ask you a question; Mr. Poniatowski came to you and said he wanted to get Lot 45, didn't he?

Ans. Yes, sir.

Ques. Now, that is the lot where his wall runs up against his wall, isn't it?

Ans. Yes.

Ques. Lot 45—that is the one he wanted to get he told you, and that is the only one he wanted to get, and you told him you couldn't let him have it?

20 Ans. No, sir.

Ques. Then how long after that was it that he came to you and said that he had built on the wrong lot?

Ans. How long?

Ques. Yes.

Ans. About six, seven months.

Ques. Then he found out he hadn't got 45—after he built the other house he found out he hadn't got Lot 45, didn't he?

Ans. Yes; he got 45.

30 Ques. He got Lot 45?

Ans. He got Lot 45.

Ques. Was that the party wall, Lot 45?

Ans. Yes; that is the party wall; that is my husband's.

By the Court:

Ques. Well, Madam, you don't mean he got your lot?

Ans. He didn't get my lot.

Ques. You mean when you made your deed—

Ans. When I made the deed seven years before?

Ques. That is all right; you don't mean that when he built the house he had your lot?

Ans. No, sir; no, not that.

Ques. He got it afterward, you say?

Ans. Afterward.

Mr. Woodruff: I am through.

The Court: Are you through, Mr. Richards? 10

Mr. Richards: I am through unless your Honor thinks it is proper to read that in the record, that part of the pleadings.

The Court: What is the answer to the pleadings, any?

Mr. Richards: It is admitted in reply.

The Court: Well, read it; I suppose the whole pleadings go out, though, Mr. Richards. 20

Mr. Richards: Well, if your Honor takes that view—

The Court: I think the whole pleadings necessarily go out with the jury; they must know that to know what they are trying. Anything further, Judge Wescott?

Defendants rest.

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PLAINTIFF'S REBUTTAL.

30

WLADISLAW PONIATOWSKI, recalled.

By Mr. Wescott:

Ques. Mr. Poniatowski, how much can you read English?

Ans. Very near nothing.

Ques. Do you write sometimes?

Ans. Why, I write in my language.

Ques. Well, you can write your name in English, can you?

Ans. Yes; there is no difference in that.

Ques. Is there any difference in writing your name between English and Polish?

Ans. No, sir.

Ques. Both the same?

10

Ans. Yes.

Ques. Now, when you write a receipt, do you have to have anybody to help you?

Ans. Yes, sir.

Ques. Who helps you?

Ans. Well, that man ain't here now; he is in Detroit.

Ques. Well, after he went away, did you get another man to help you when you write receipts?

Ans. Well, just now, I have got the other lady around me.

20

Ques. You have got what?

Ans. I have got a lady neighbor.

Ques. She helps you write your receipts

Ans. Oh, yes; sometime I got Polish-English book; if I don't know some kind of name I find that name.

Ques. Oh, you get your words out of the Polish-English Dictionary?

Ans. That is what I do.

Ques. Cinkowski says that he saw you read this deed you got—did you read the deed?

30

Ans. They handed it to me and never tell me nothing, and I put my deed in the pocket and we all three went home.

Ques. Did you read it?

Ans. No, sir; just only looked at my name on it.

Ques. Cinkowski further says that you went with him or he went with you once down to the Library here?

Ans. Yes, sir; I did.

Ques. And you examined a great many volumes there—did you read any English then?

Ans. No, sir; that is the reason I took him for it; I look on the drawings and he read it.

Ques. You could read the drawings, understand them?

Ans. Certainly.

Ques. But you took Cinkowski to read English for you, is that correct?

Ans. Yes, sir.

10

Ques. John Harris says that you told him that after you had laid the foundations and built up to the first floor you found you were on the wrong lot?

Ans. No, sir; if I find that I stop.

Ques. And that he told you he couldn't help you because that was a fact?

Ans. No, sir; I was to Mr. Harris after the house was built?

Ques. What?

Ans. I was to Mr. Harris away after the house had been discovered by me.

20

Ques. You went to Mr. Harris when?

Ans. The time the house was discovered by me.

Ques. When you discovered you had built on the wrong lot?

Ans. Yes.

By the Court:

Ques. What condition was the house in then? Was the house built or half built then?

30

Ans. It was completed, people living in it and I discovered it myself then and turned around to look for some lawyers; that is the reason I was there.

Ques. Did you know that you were building on the Szwak lot when you had the foundations laid and the first floor joists up

Ans. No, sir; nobody would take any risk in building a house on somebody else's ground.

Ques. On some other man's lot, eh?

Ans. Yes, sir.

Ques. You know Mrs. Szwak, this lady that was here?

Ans. Well, I didn't know her before.

Ques. How many times did you see her if you saw her at all?

Ans. It was twice, that is what I told you before.

10 Ques. You saw her twice?

Ans. Yes.

Ques. Did you send anybody to see her for you—send Grabowski to see her?

Ans. No, sir; because I can do myself that much.

Ques. After you had found out that you couldn't get the lot, you didn't think it was worth while to send somebody else?

Ans. Certainly, after I didn't find out right from Mr. Szwak, then I go to Mr. Cinkowski to find out for me, because he was in the real estate business.

20 Ques. When you went to see this lady did you talk about the numbers of these lots to her?

Ans. No, sir; I never buy numbers that time, for only I ask for lots.

Ques. What?

Ans. I never ask nobody for the number; we didn't know nothing about lot numbers at that time.

Ques. You didn't know the numbers at that time?

Ans. No, sir.

30 Ques. You just asked for the lot?

Ans. Yes.

Ques. Did you tell her which lot you wanted?

Ans. Yes.

Ques. Which lot did you tell her you wanted?

Ans. I told her I need the lot adjoining my party wall, but she didn't give me no satisfaction, just said, "We have ground around that section, we don't know ourselves."

Mr. Wescott: I want to inform myself a little, if I can, about the condition of this property and see what evidence I ought to put in on that subject.

The Court: Well, I think that is proper, and I am not sure that the other side have gone as far as they ought. I think they are obliged to show, if they are trying to reduce these damages to the minimum, by some very substantial evidence that this lot is clear, except for the thousand dollars and the other charges.

10

Mr. Wescott: Well, that is my own view of it, that the evidence ought to be conclusive on that subject.

Mr. Woodruff: My thought on that was that in the present form of the proof it was sufficient unless it was challenged that these statements were not correct.

The court: Well, Mr. Woodruff, counsel comes in and says that is all he knows against the lot; he does not purport to have made any examination, at least there is no testimony that any search has been made in examination of the records at all.

20

Mr. Woodruff: No, but, if the Court please, the lot was transferred at his suggestion to his wife, and has been held there ever since.

The Court: I know, but there is no statute of limitations to save charges there.

30

Mr. Woodruff: Of course, that is true, but unless his statements are challenged, it seems to me it is sufficient.

The Court: You see, this is all a matter of evidence. It will leave an opening for argument to the jury in the absence of more substantial proof that nobody knows what there is about this lot in this tender.

Mr. Woodruff: Then when the question of the present condition of the house is covered by evidence, I will also present someone who has made an examination of the title to the lot.

The Court: Very well; I will hold this case then, until to-morrow.

Mr. Woodruff: I want to ask a few questions of this witness.

10

The Court: Very well, finish the witness.

Cross examination.

By Mr. Woodruff:

Ques. Now, Mr. Poniatowski, when they gave you the deed, you put it with your other papers and brought it here to this building, didn't you?

20

Ans. What building?

Ques. This building.

Ans. The Court House?

Ques. Yes.

Ans. Mr. Wescott got it.

Ques. Mr. Wescott has your deed?

Ans. Yes, at the time I employed Mr. Wescott—

Ques. I don't mean for this case; the day they gave it to you at the bank, didn't you bring it on up here and give it down into another office here to be recorded?

30

Ans. They did for me.

Ques. Who did that?

Ans. Mr. Griffiths and Mr. Cinkowski.

Ques. Did you hand them back your deed after they gave it to you and you put it in your pocket

Ans. No, they wouldn't let me have that deed because they say I didn't pay them the money for it.

Ques. You told me you just took it and put it with your papers; how did it get away from your papers again?

Ans. The first time they show me this and wouldn't give me that deed because the money wasn't paid for it.

Ques. I understand that; then afterward you went to the bank, didn't you?

Ans. Yes.

Ques. They gave you the deed?

Ans. Yes.

Ques. And you put it with your other papers?

Ans. Yes.

10

Ques. Didn't you bring it on up to the Court House here yourself and put it in the Recorders' Office?

Ans. No, sir; I didn't do nothing at the Court House then.

Ques. Just kept the deed in your papers?

Ans. Yes.

Ques. When did you put it on record?

Ans. They did it for me.

Ques. Did you give it back to them?

Ans. No, the first time they wouldn't give me no deed because I didn't pay them the money for it, and just as soon as he got the mortgage ready, then that time they put the deed in the office.

20

Ques. Had it been recorded before you went to the bank?

Ans. Yes. It was recorded.

Ques. It was recorded when you were at the bank?

Ans. Yes.

Ques. When they gave it to you had it already been recorded?

30

Ans. Yes, because I paid them the money.

Ques. You paid them the money at the bank and they gave you the deed?

Ans. Yes.

Ques. They never had it back after that, did they?

Ans. No; it was no use.

Ques. Now, you hadn't started to build the day you were in the bank, had you?

Ans. Well, this way I started to build; I—

Ques. Answer me; you hadn't started at all the day you were in the bank?

Ans. Oh, I had put just a few holes\* in the party wall and laid out the ground, something like that.

Ques. But you hadn't started to dig any foundation?

Ans. No.

10 Ques. How many days after you got your deed and took it home with you before you started to dig the foundation?

Ans. I don't understand you.

Ques. How many days after the day you got your deed at the bank and took it home with you before you started to dig your foundation?

Ans. Right the next day; as soon as I got the deed I started to dig; the ground was laid out.

Ques. How long have you taken the "Post Telegram"?

20 Ans. What is that "Post Telegram"?

Ques. "Camden Post Telegram", a newspaper.

Ans. About—I don't know nothing about the "Post Telegram".

Ques. Oh, you don't know anything about it? What did you mean when you just answered me about the time you started to build your property?

Ans. I says as soon as they handed the deed to me I started to build the house.

30 Ques. No; when I asked you when you started to take the "Post Telegram", what did you mean by when you first started to build your property?

Ans. I ain't got nothing to do with the "Post Telegram"; I can't read.

Ques. Do you take the "Post Telegram"?

Ans. No.

Ques. Do you take an English paper?

Ans. I take a Polish paper.

Ques. Did you ever take it?

Ans. No, sir.

Ques. Did you ever read it?

Ans. No, sir.

Ques. Did you ever hold it in your hand on your porch and read it?

Ans. No, sir.

Ques. Mr. Grabowski never saw you hold it and read it?

Ans. No, sir.

Ques. Now, what did you do when you were down there at the Library? 10

Ans. I didn't do anything, just looked at the drawings.

Ques. Did you look in the index to find the drawings?

Ans. No, sir; he looked for me, Mr. Cinkowski.

Ques. How did you find them?

Ans. Mr. Cinkowski looked for me.

Ques. You only looked at the ones Mr. Cinkowski found for you?

Ans. Yes, I looked at the drawings.

Ques. You only looked at the drawings? You know numbers, don't you? 20

Ans. Oh, anybody can see numbers.

Ques. You know what they mean when you see them?

Ans. I don't know what they mean.

Ques. Didn't you know what it meant when Mrs. Szwak showed you a plan and pointed out the number of the lot?

Ans. She didn't show me no plan, that is the reason I asked her for some kind of document, but she never showed me. 30

Ques. She never showed you any plan?

Ans. No.

Ques. If she had showed you a plan you would have known the lot numbers, wouldn't you?

Ans. I maybe might have found out some, because some kind of marks must be there.

Ques. You can tell the numbers if you see them, 45 and 43 and 41, can't you?

Ans. Yes.

Ques. Now, do you know what lot number the house was on which you were building your home?

Ans. Mine?

Ques. Do you know what lot number that was?

Ans. No, sir; I asked only for a lot, but we never bother with the numbers.

Ques. You don't know yet?

10 Ans. Nobody told me about the number lot and I never bother with them.

Ques. You don't know yet what number that lot is?

Ans. Well, I couldn't keep everything in my mind.

Ques. At the time you got your deed at the bank, did you look at the deed and see what number was in there?

Ans. No, sir.

Ques. Now, you knew figures; why didn't you look to see the number of the house or the number of the lot?

20 Ans. That is what I say, I don't know just if them numbers now does mean anything or not; that is the reason I didn't bother with the deed numbers.

Ques. After you got home the next day and had the deed there while you were building the property, did you ever look at your deed to see what property it was?

Ans. No, sir; no use to look; I couldn't read.

Ques. Didn't you ask anybody?

Ans. No, sir; I trust the real estate, because they do straight work.

30 Ques. Now, you went back to the Library a good many times without Mr. Cinkowski, didn't you?

Ans. No, sir.

Ques. Weren't you ever there alone?

Ans. No, sir.

Ques. Never?

Ans. Never, certainly not.

Ques. You wrote letters and arranged for these patents yourself without Mr. Cinkowski's help, did you?

Ans. That gentleman there read all the letters for me; he can prove he read the letters for me.

Ques. He read the letters for you—who wrote them to the Department when you were getting the patent?

Ans. My neighbor lady, she do that for me.

Ques. She wrote them for you?

Ans. Yes; this gentleman done a few, too.

Ques. Did you get your patents in the name of Joseph Smith?

Ans. Yes, sir; because when I first came in this country I held myself under a different name, because I am 10  
an army man and that time there was a job where—

Ques. You went by the name of Joseph Smith then?

Ans. Yes.

Ques. And that is the name you got he patents under?

Ans. Yes.

Ques. And you got a good many letters about these patents and wrote a good many letters, didn't you?

Ans. Well, not very much.

Ques. How many patents did you get?

Ans. Two. 20

Ques. Did you have somebody read every letter and write every letter you had about these patents?

Ans. Certainly, if I can read one I can read all, but if I can't read one of them—

Ques. Now, you said to Judge Wescott that after you found out your mistake you then went and looked for some lawyers—is that right? Was Mr. Harris the first one you went to see?

Ans. No; Mr. Reader was the first.

Ques. Then you went to Mr. Harris after that, did 30  
you?

Ans. Yes; I guess Mr. Kates was up there with Mr. Reader.

Ques. Now, as a result of your going to those lawyers, wasn't an offer made to you that you would be conveyed this property free and clear, provided the Szwaks should be paid a thousand dollars?

Ans. No, sir.

Ques. No such offer was ever made to you by Mr. Kates or Mr. Reader?

Ans. What, make me pay a thousand dollars?

Ques. Yes.

Ans. Oh, yes.

Ques. That if you or Mr. Griffiths or Mr. Cinkowski or all of you together would raise a thousand dollars, that you would get your property?

10 Ans. Oh, yes; they asked me many times if I agree to pay a thousand dollars and get my property back.

Ques. You wouldn't do that, would you?

Ans. No use.

Ques. And didn't you tell Mr. Reader the reason you would not do that was because you were going to sue Mr. Cinkowski and Mr. Griffiths and get the money?

Ans. Well, I did offer Mr. Szwak \$800; I got a witness, but he ain't here, but they wouldn't take it; says, "We go see Mr. Reader first," and after they saw Mr. Reader he says, "No, sir; a thousand dollars."

20 Ques. And you told him you wouldn't pay a thousand?

Ans. No, sir.

Ques. What did you tell him you would do?

Ans. After Mr. Reader had that property I offered him a thousand, but he raised me \$500.

Ques. To \$1,500?

Ans. \$1,500; Mr. Josh Borton is witness.

30 Ques. Didn't you tell him first when he offered it to you for a thousand that you wouldn't take it—you wouldn't pay a thousand?

Ans. We had a few of them kind of meetings, but I wasn't agreed to pay that thousand, but at the end of it I got disgusted, and I say, "I had better pay that thousand and get that property."

Ques. I am right, am I? After that when you refused to pay the thousand dollars, you told Mr. Reader

that you wouldn't pay that, you would go sue Mr. Cinkowski and Mr. Griffiths?

Ans. No, if I try to settle with Mr. Reader there was no use to sue anybody.

Ques. Yes, but after you found you couldn't settle with Mr. Reader, didn't you tell Mr. Reader you were going to sue?

Ans. Well, after I find that I was going to sue somebody.

Ques. You were going to sue somebody?

Ans. Yes, it didn't make any difference who I sue out of them three. 10

By Mr. Richards:

Ques. Mr. Poniatowski, in this suit that you brought against Mr. Reader and Mr. Szwak in the Court of Chancery filed October 17, 1913, I find an allegation that you were then, October 17, 1913, totally unable to read the English language, unable to speak it except in a very slight degree. Is it or is it not true that you were at that time unable to speak it, except in a slight degree? 20

Ans. The same as now.

The Court: Are both sides through subject to the other proof you want to offer?

Mr. Woodruff: Yes.

Mr. Wescott: Just one second.

30

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GRIFFITH J. C. RATCLIFFE, SWORN.

By Mr. Wescott:

Ques. Mr. Ratcliffe, where do you live, please?

Ans. 1130 Haddon Avenue.

Ques. What is your business?

Ans. Contractor and builder.

Ques. Do you know Mr. Poniatowski?

Ans. Yes, sir.

Ques. Have you in times past done any writing for him?

Ans. Yes, sir.

Ques. I haven't talked to you?

Ans. No, never said a word to me; never met you before as I know of.

Ques. Well, what kind of writing did you do for him?

10     Ans. I have never done much writing for him. He has repeatedly brought documents there which were written in writing to have me to explain to him, and he has brought copies of a patent that he was trying to get out, wanted to apply for, and asked me what course he should take; also after he had communicated with a firm in Washington, he brought the communication to me to explain it to him, to tell him what it meant. I did so; and since in his different troubles that he has had he has brought papers that has been served on him and notices given him and so forth, he has brought them to me and asked me to explain them to him; some of them were partly printed and other parts filled out in writing.

Ques. Have you prepared receipts for him ever?

Ans. I never wrote a receipt for him that I can recall.

Ques. Have you done any writing for him that you recall?

30     Ans. Never recollect writing a letter. I may have been given some little notice of some kind written on a piece of paper, but I don't ever recollect writing a letter for him.

Cross examination.

By Mr. Woodruff:

Ques. You had been doing that, had you, Mr. Ratcliffe, before he built the house which he afterward lived in?

Ans. No, the man worked for me previous to that.

Ques. Before he built his own home?

Ans. Well, now, I don't know about his own home, the one in which the question arises about now. He had worked for me previous to the time of building this house, then I got slack and paid him off and he went to work for somebody else. I didn't see him any more until after the house was completed, then he came to me, he found that he was in trouble, he came to me with some papers to explain to him; I think the deed was one of them, but I won't be positive about that. 1

Ques. And did you explain them to him, the papers that he had?

Ans. Yes, to the best of my ability.

Ques. He had not brought you the deed when he first had gotten it?

Ans. No, sir; I never saw the deed. I won't be positive that he brought the deed to me afterward. He did bring some papers, in fact, he has been there several times, not once; but I imagine he has been to my house twenty-five or thirty times for me to read over different papers and explain them to him. 20

Ques. But you don't recollect that he brought any papers or any memoranda when he was building the house?

Ans. No, I didn't know he was buying lots or building houses until after the thing was completed, and I believe that ejectment proceedings were served on him, something of that kind, when he brought them to me.

Ques. Has he ever read any of these documents, as far as you know? 30

Ans. Not from appearance; I never saw him read any. I have quite often given him, when he was working for me, when I was going away somewhere and expecting not to be back for a matter of a few days, tried to write it down and give it to him, but I never could make him understand.

Ques. In writing?

Ans. Yes.

Ques. How about printing?

Ans. I never tried that.

Both sides rest.

At this point a recess was taken until Thursday, December 28, 1916, at ten o'clock A. M.

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Camden, New Jersey, December 28, 1916.

Trial of the matter resumed at ten o'clock A. M., on the above date, pursuant to adjournment, in the presence of counsel for the respective parties.

The Court: Gentlemen, do you want to add anything to the testimony?

20

Mr. Woodruff: Yes, sir.

The Court: Well, whose turn is it, yours?

Mr. Woodruff: Yes.

The Court: Well, go on and finish.

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ROCCO PALESE, sworn.

By Mr. Woodruff:

Ques. Mr. Palese, you are a student at law in my office?

Ans. I am.

Ques. And did you examine for me records with regard to the property 1173 Pear Street?

Ans. I did.

Ques. What did you find against that property? In whose name did you find the title to that property?

Ans. In the name of Bessie M. Reader.

Ques. When did she get the property?

Ans. She got it by deed dated April 17, 1913, and recorded April 19, 1913.

Ques. From whom?

Ans. From Anthony Szwak and Aniela, his wife. 10

Ques. Has Mrs. Reader ever conveyed that property?

Ans. She has not.

Ques. Has she ever mortgaged that property?

Ans. She has not.

Ques. Do any other claims appear against the property?

Ans. No; no liens at all.

Ques. Did you also make a search of the records at the City Hall for municipal liens?

Ans. Yes. 20

Ques. What did you find there?

Ans. Found a paving lien, 1913, amounting to \$52.78, and interest and taxes for 1915, amounting to \$32.20.

Ques. 1916 taxes had been paid?

Ans. Had been paid; yes.

Ques. The prior taxes had been paid?

Ans. With the exception of 1915.

Ques. That is all then that appears of record against the property?

Ans. That is all. 30

Cross-examination.

By Mr. Wescott:

Ques. Do you happen to know whether the interest on the mortgage has been paid?

Ans. No; I did not.

JOSHUA GRIFFITHS, SWORN.

By Mr. Richards:

Ques. Mr. Griffiths, are you acquainted with the value of the land in the neighborhood of the Szwak lot?

Ans. Yes.

Ques. What is the Szwak lot worth without the building?

10 Ans. I should think it would be worth \$500 at the present time.

Ques. Have you known any lots in that neighborhood to sell for that much or more recently?

20 Ans. I know two lots that were sold within a year for \$500 apiece; that was the highest rate that any of them was sold. I knew one that was sold for \$400, and three of them for an average of \$1,100; that is a corner, the last lots sold, and I think the only one that is open for sale was the lot bought by the Whitman Park Improvement Association within the last six months; they paid \$600 for that.

No cross-examination.

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WLADISLAW PONIATOWSKI, recalled.

By Mr. Wescott:

30

Ques. Have you examined this house that you built that has been taken away from you?

Ans. Yes, sir.

Ques. What condition is it now?

Ans. Awful bad now.

Ques. How?

Ans. It is awful bad now.

Ques. What would it cost to put it in as good condition as it was when you built it?

Ans. Cost now about \$400 to put it in condition again.

Ques. \$400?

Ans. Yes, sir.

Ques. What is the trouble with it?

Ans. Well, a whole lot of things destroyed, the roof is no good, the cement is no good and not been painted for about four years pretty near, and the cellar heater ain't no good, and the kitchen range ain't no good, and a whole lot of things. The floors ain't no good outside, the back porch, the front porch, a whole lot of different things. 10

Ques. Is anybody occupying it?

Ans. What?

Ques. Is there a tenant in it?

The Court: Does anybody live there?

Ans. Yes, sir. 20

Ques. Has it been empty, as far as you know, any time?

Ans. Oh, I guess only about—I guess the last time it was empty only about two weeks is all.

Ques. Now, how much did you put in that house when you built it?

Ans. I don't know exactly; I know only I spent about \$1,300 mortgage on it; beside that I put, I guess, over \$400 of my money.

Ques. What?

Ans. I put my money over about \$400. 30

Ques. How many?

The Court: \$400, he says.

By the Court:

Ques. You mean you put \$1,700 in it altogether?

Ans. Yes, without the party wall; the party wall would be around \$80, somewhere there.

By Mr. Wescott:

Ques. And how much time did you put on it, labor?

Ans. I don't remember, because we don't work steady on them kind of buildings.

Ques. Well, give us your best judgment. Did you work a day?

Ans. Yes; some day we work on it and some we don't.

Ques. Now, how many days did you work—what was the value of your work put in that house?

10 Ans. Oh, about \$150 anyhow.

Ques. \$150.

Ans. Yes.

Ques. And when you found that you had lost your house or built on the wrong lot, how many different lawyers did you see?

Ans. I guess ten or eleven, something like that; you have got that paper there.

Ques. Ten or eleven?

Ans. Yes.

20 Ques. Give me the names of them. Give me the first one.

Ans. Well, the first one, Mr. Reader.

The Court: Judge, he went all over that the other day, yesterday.

Mr. Wescott: Not all of them, some of them.

30 The Court: He got a lot.

Mr. Richards: Would it ot be better to except those that he didn't get?

Mr. Wescott: Well, I don't know where you would find one of a certain class.

Ques. Who were the rest of them?

Ans. Well, first was Mr. Reader; after Mr. Reader there was Mr. John Kates, and after Mr. John Kates I don't know if I can remember exactly.

Ques. Harding?

Ans. Mr. Harding? Mr. Harris, guess, and Mr. Kelly and Mr. Starr, and Richman & Bergen, something like that, and Mr. Kramer & Stackhouse, and I was to one lawyer just below the ferry; I know his partner, Mr. French.

Ques. Wilson & Carr?

Ans. Wilson & Carr. I was with one lawyer that has 10 got partners with Mr. French; the Prosecutor sent me to that lawyer but I forget the names, his partner is French, Mr. French, but he refused, said he can't do anything, he is in business with Mr. Griffiths, he says.

The Court: Oh, that is French & Richards.

Ques. What did you pay Reader?

Ans. Five dollars for one week.

Ques. What other persons did you pay, lawyers? 20

Ans. I pay Mr. Bergen and Richman, how they call them, but they return me my money again.

Ques. Returned you your money?

Ans. Yes.

Ques. Did you pay any other lawyers?

Ans. I paid Wilson & Carr \$50 but they didn't return me the money.

Ques. \$50.

Ans. Yes.

Ques. And did you pay any other lawyers anything? 30

Ans. No, sir; they asked me for money, but I won't pay in advance because some held me up that way; I won't pay any more.

Ques. Now, how much time did you spend away from your work in consulting these lawyers and travelling back and forth—have you any idea?

Ans. I can't remember that.

Ques. Of course you can't remember, but can't you give me some idea?

Ans. If I put it too much, it might be no good, that is the reason I don't remember.

Ques. I don't want you to put too much. Did you spend a day?

Ans. Oh, I spent not less than four months in all that business; nearly every week I took a day off to go see somebody.

10 Ques. What places did you go to?

Ans. Lawyers? Well, in Camden, outside the county.

Ques. Did you go to Washington?

Ans. Yes; I was in Washington one time on that.

Ques. Did you go to New York?

Ans. I was in New York.

Ques. Where else did you go?

Ans. Jersey City, Trenton.

Ques. Now, what did you go to those places for?

20 Ans. Philadelphia—well, Washington I was to see our Ambassador and find out if he can help me in this trouble.

Ques. Yes; well, what did you go the other places for?

Ans. Well, New York the same thing; I go to our Ambassador just the same; we have got an Ambassador there, and Philadelphia I was to see the Ambassador.

Ques. And Trenton?

Ans. And Trenton I went down to see Mr. Prosecutor and State Chancellor, and Jersey City I went to see some of them lawyers in different city, maybe they might help me better than Camden lawyers, but they all refuse.

30 Ques. Now, Mr. Poniatowski, take the thousand dollars that is on this house, the thousand dollar mortgage, and take the liens of \$84.98, and take into account the condition of the property, what would it be worth to you—what would you get by taking this deed?

Ans. It wouldn't be worth nothing to me.

Ques. Would this property bring more under foreclosure than the mortgage and liens against it in your opinion?

Ans. No, sir.

Cross-examination.

By Mr. Richards:

Ques. You don't mean to say that I ever represented you?

Ans. The Trenton Prosecutor sent me— 10

The Court: No, Mr. Richards, what he said was that he went to see Mr. French, and Mr. French told him he couldn't, because you were his partner.

The Witness: He didn't send me to Mr. French, but he sent me to another name, but he said French was his partner.

By the Court: 20

Ques. But he couldn't act for you because Mr. Richards was his partner, acting for the other side, is that right?

Ans. Yes.

By Mr. Richards:

Ques. You don't mean to say you ever saw me before you came into the court room, do you?

The Court: Mr. Richards, there is no implication that 30 your firm ever represented him; that doesn't lie at your door.

By Mr. Wescott:

Ques. Did you have letters written to these various lawyers from time to time?

Ans. No, sir; I didn't write no letters; they wrote me some letters.

By Mr. Woodruff:

Ques. Do you mean that your property wouldn't bring more than \$1,084.98 now?

Ans. No, sir.

Ques. No more than that?

Ans. No.

10 Ques. Do you know how much it is renting for?

Ans. \$15.00.

Ques. Has it gone back from \$2,300 in the little time since it has been built to \$1,084.98—has it gone back that much in value?

Ans. I don't understand this question; I couldn't answer. It is that much down.

Ques. The lot is worth more than when you bought it, isn't it?

20 Ans. No, sir; that time I bought that lot it was worth only about \$325, something like that; that is what I pay for it.

Ques. Aren't the lots around there worth more now?

Ans. I guess people pay more for lots.

Ques. You know that, don't you, that they are paying more for lots all around there than they did?

Ans. Just now; yes, sir.

Ques. Now, you say the cement is bad?

Ans. Yes, it is busted up in many places.

30 Ques. Where is that?

Ans. Around the alley and in front and in back, and I believe in the cellar the cement ain't no good at all, got to be put in a new one.

Ques. Is that the cement that you put in?

Ans. Yes, sir.

Ques. You say the heater is no good?

Ans. No, sir.

Ques. That was a second-hand heater you put in there, wasn't it?

Ans. It makes no difference what kind it was, it was just as good as new one, but the people that lived there were so rough, that is the reason, they busted everything up.

Ques. Answer my question, please; wasn't that a second-hand heater you put in there?

Ans. Yes, sir.

Ques. What happened to the floors in the back and front porch? 10

Ans. They are rotten, they ain't been painted.

Ques. They haven't been painted since the house has been built?

Ans. No, sir.

Ques. Were they painted then by you?

Ans. Yes.

Ques. Did you paint them in the first place?

Ans. Yes; that is the first they have been painted; since then they have never been painted. 20

Ques. Now, Mr. Reader is the only one you paid any fee to up until the time you paid Wilson & Carr to bring this other Chancery suit?

Ans. I paid three lawyers.

Ques. Bergen & Richman returned the money?

Ans. Yes, Wilson & Carr ain't.

Ques. Isn't that the reason that you didn't get anything done for you, because you wouldn't give them any money?

Ans. Well, he refused me and told me straight he 30 couldn't do nothing for me.

Ques. Who?

Ans. Mr. Wilson & Carr.

Ques. They refused to go ahead?

Ans. Certainly.

Ques. They have a case now in court for you, haven't they?

Ans. That is all right, he can say whatever he want to; that is what he told me. If he didn't refuse me—

Ques. And that is the reason you went and got Judge Wescott, is that what you mean?

Ans. Yes.

Ques. Now, what Mr. Carr told you was that you ought to accept this deed which Mr. Reader had offered, didn't he?

(Objected to).

10 The Court: I think that is admissible cross-examination in view of his statement as to why Carr didn't go on.

Ans. Mr. Reader offered me a deed? Well, that is all I know, they come with a settlement.

Ques. You mean Mr. Carr told you that he was offered a settlement?

Ans. I don't remember what Mr. Carr told me.

20 Ques. Why did he tell you he wouldn't have anything further to do with you?

Ans. Well, he told me straight he couldn't prove it against them.

Ques. Didn't he tell you that Mr. Reader had offered to give him a deed?

Ans. I don't remember that, maybe he did.

30 The Court: Well, Mr. Woodruff, I understood this action was brought for the recovery of the property intact, clear of encumbrances.

Mr. Woodruff: The Chancery proceedings?

The Court: Yes.

Mr. Woodruff: Yes, with damages and various other things.

The Court: Has there been any other tender except this property subject to the mortgage?

Mr. Woodruff: No, that is all.

Ques. Now, didn't you refuse to give any money to any of these other lawyers?

Ans. Well, some asked me for money and some don't, and that is the reason I don't pay them rest, because some of them cheat me already, took the money and wouldn't do nothing.

Ques. Mr. Reader, you mean?

Ans. Oh, Mr. Reader. I just paid Mr. Reader and quit him.

10

Ques. You paid him and quit him?

Ans. Yes.

Ques. Now, none of these others took any money except Bergen & Richman, did they?

Ans. Bergen & Richman and Wilson & Carr.

Ques. Well, nobody else but Bergen & Richman took any money and then didn't do anything for you?

Ans. No.

Ques. These other people offered to do something for you, didn't they?

20

Ans. Yes, they offered, but wouldn't do it.

Ques. And they told you you would have to pay some money if you wanted some service, didn't they?

Ans. No, some asked money and some not.

Ques. Well, if you wanted them to do something, why didn't you pay them?

Ans. Well, when a man cheat me, how am I going to pay the other? The other thinks I am responsible, I have got some property, and it don't make any difference whether I win or not, he gets his money.

30

Ques. You wanted them to go ahead and take the case without any fees and if they won to get the fees from you?

Ans. Yes, to find out.

Both sides rest.

Mr. Richards: If the Court please, I move the Court to direct a verdict for the defendant, Joshua Griffiths, upon each of the grounds mentioned in the motion for nonsuit, and upon these further grounds: There is no lawful proof of any damage to the plaintiff, and if the plaintiff is injured it does not appear that the action of the defendants or either of them is the sole cause or even the proximate cause of his injury. The jury cannot be permitted to speculate as to whether the plaintiff is injured, nor, if the plaintiff is injured, to speculate either  
10 as to the cause of the amount of the injury.

The plaintiff, Poniatowski, elected not to notify either Mr. Griffiths or Mr. Cinkowski of the fact that a suit had been brought against Poniatowski for the property in question, and prevented them and each of them from either defending or enjoining that suit, and permitted judgment by default to go against him. By so electing, Poniatowski waived all right to hold either Mr. Griffiths or Mr. Cinkowski for any damages accruing directly or indirectly out of such suit and elected to himself stand  
20 responsible for all the consequences.

The plaintiff, Poniatowski, also cannot unload upon Mr. Griffiths and Mr. Cinkowski the burden of his controversy with Mr. Reader. It cannot be assumed and the jury cannot be permitted to guess that upon a settlement between the plaintiff and Mr. Reader the plaintiff could lawfully be required to pay Mr. Reader for an unincumbered title more than the lot without the building was reasonably worth.

30 The Court: The motion will be denied and an exception noted.

Mr. Woodruff: May I have the benefit of the same motion and exception as representing Mr. Cinkowski?

The Court: Yes, you may have an exception.

## CHARGE OF THE COURT.

LLOYD, J.:

*Gentlemen:* The facts in this case are most unusual; I believe that I have never run across a parallel, but the principles by which they are governed are the principles of common law, which are as old as memory itself.

The plaintiff rests his case upon the proposition that he employed these defendants to procure for him a deed to a lot which adjoined his house on what he calls the party wall side, and that it was known on a plan of lots as No. 41. He did not describe it as such; he said he didn't know anything about the numbers, I think, but that he called them to his house or that they came to his house and that he pointed out to them the lot that he wanted, said that it was the lot on the east side; that they got him a lot subsequently and that he paid money for it, that he went on and built his house on what he supposed was the lot that they had been talking about, that he was talking about and that he supposed they had actually gotten for him—that is his claim in this case—and that after he had put up a building on it he discovered that he had put up his building upon the ground belonging to another man, and was helpless in that man's hands for any rights that he might have in the property; that he was ultimately dispossessed of this property by the owner of the soil, so that his work went for nothing and the building that he had built went to the owner of the land.

The defendants do not admit that those are the facts; they say that they did not come to his place and have pointed out to them anything that he wanted, but that Poniatowski told them that he wanted a lot alongside of his house without indicating where; that they then got him this lot on the opposite side, and that they were not responsible for the results. Now, those are the two contentions in this case.

The law is that men who undertake to do a service for another in a business or professional capacity, like real estate agents, lawyers, professional men, that they undertake to use the reasonable skill which is ordinarily possessed by their fellows in like service, nothing more and nothing less; and if they fail in the performance of that duty, that they are responsible to the injured person to the extent of the damages that either naturally flows from the wrongful act and is a direct consequence of it, or of those results, those consequences which are

10 in contemplation of the parties at the time the service is undertaken. Now, you see, applying that definition in this case, if you pass the question as to whether these defendants ought to pay and say they ought, you have presented to you that the plaintiff claims that there was here first the natural expectation that when a man buys a lot he will some time put a building upon it, and that that is a thing that naturally would flow from the purchase of a lot; secondly, his claim is that they had in

20 contemplation at the time this matter was undertaken that he would build on it, because he says he told them that he wanted to build on it, and utilize his party wall for the construction.

Well, gentlemen, you will first take this case and determine whether the defendants are liable or either of them. Negligence is at its basis, even though the circumstances are most unusual and the facts presented are almost without parallel in my observation, yet the rule of law is whether there was negligence under the definition that I have given to you for your guidance, on the

30 part of these men or either of them in this matter. If there was and the plaintiff suffered damages as a direct and natural consequence of it, or as a consequence which was within the contemplation of the parties when the service was undertaken, he is entitled to recover whatever damage thus flowed from it, unless he himself had knowledge, or in the exercise of reasonable care ought

to have had knowledge of the risk he was running in building his house.

Now, at this point the defendants have called Mr. Harris to prove or testify that the plaintiff said to him after he got the first floor joists up that he knew that he didn't have the right lot, but that he went on and built his building. The plaintiff denies that. Now, somebody is probably mistaken about that conversation, and in determining who is or was mistaken about it, you would naturally look at the surrounding circumstances and ask whether if Poniatowski knew that he was building a house on another man's ground when he got the first floor joists up, whether he would go a step further without making sure that he had a right to keep it there. Now, that bears upon the question as to whose memory on that occasion is the correct one. 10

Gentlemen, there is another feature of this case: The plaintiff did go on and build his building and expended a considerable sum of money, mortgaged his other property and utilized that money, according to his testimony, in building, and also, if his testimony is credible, but in other moneys that he had or got in the building. Against that there has been tendered in this court by a gentleman who subsequently acquired the title to the lot and consequently to the building a deed, which, however, is subject to an encumbrance against the property in the sum of a mortgage and in the sum of certain municipal claims. It goes, however, gentlemen, to the question of the extent of the plaintiff's loss, and is to be taken by you into consideration in connection with that. The law says that when one has suffered injury or is likely to suffer injury at the hands of another, he must use all reasonable means to make those damages as light as he can. Now, if he can get this property, that is one of the reasonable means which the law would charge him with the duty of lessening his damages by; and it is for you to say how much it diminishes his damages if he has made out his 20 30

claim against the defendants or either of them on the lines of liability.

10 The defendant has asked me to make certain charges to you on the law. The first is denied. The second request is: "If the jury find from the evidence that Mr. Griffiths did all that he agreed to do the verdict must be for Mr. Griffiths." That is true, but when I say that if he did all that he agreed to do, I do not mean alone that which a man verbally arranges for, but that which the law also impliedly attaches to his undertaking. In this case the defendants, if they did undertake this service of getting this particular lot, imposed upon themselves the duty of using reasonable care, the reasonable care which is exercised by their fellows in like service, and that is among the things that they undertook to do. With that meaning attached to it, I affirm it.

20 4. "If the jury find from the evidence that the plaintiff knew Anthony Szwak owned Lot 45 and knew also that he, the plaintiff, was getting a deed from Coady & Cheesman Company, the verdict must be for the defendant, Mr. Griffiths." If he knew it, gentlemen, that he was getting that before he began his construction, that would follow.

30 5. "If the jury find that the plaintiff knew that he was getting a deed for Lot 41, the verdict must be for the defendant, Mr. Griffiths." That is affirmed; of course, a man cannot get what he knows he is getting and then build on another lot and claim the responsibility of someone else for it, of the men who got him the lot he asked for. If that is the fact, then, of course, he cannot recover.

6. "The plaintiff must prove his case by a preponderance of evidence, and if upon any material point the testimony on either side is balanced and equally credible, the defendant is entitled to the benefit of the doubt and your verdict should be for the defendant, Mr. Griffiths." Well, I will say this in answer to that request, that the

law imposes upon the plaintiff the burden of establishing his case by a preponderance of the proofs; when the entire proofs are presented to you, the plaintiff to succeed, must have them preponderate in favor of the propositions that he lays down, that are necessary for his recovery. The rule which applies in the criminal court has no application in the civil courts; there a verdict to be rendered against a defendant of guilty must exclude all reasonable doubt of his guilt. In this court the preponderating proofs are the test.

7. "If the jury find from the evidence that after the plaintiff began to build on Lot 45 he was warned that he was building on Szwak's lot he could not recover damages for any work done or money expended on the house after such warning." That is true; I have already told you that in substance. 10

8. "If the jury find from the evidence that Lawrence B. Reader was attorney for and represented Mr. Poniatowski, the plaintiff, and that Lawrence B. Reader, having learned from Poniatowski the situation, took from Anthony Szwak a deed for lot 45, that deed would be held in trust for the plaintiff, would enure to the plaintiff's benefit, and must be considered as reducing, if not entirely extinguishing the plaintiff's claim for damages." Well, gentlemen, regardless of whether he held it in trust or not, it has now appeared from his own declaration that he does so hold it, so in effect, the request is correct. The last one is refused. No exceptions to the ones that I have refused or modified. 20

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Mr. Wescott: May I give the jury these figures?

Mr. Richards: I object.

The Court: In a damage case, Judge, they cannot go out.

Mr. Richards: May I look over these papers? Part of these are for other properties. It seems to me it is going to be confusing to the jury. This man built a number of houses in that vicinity, and these are bills for all his houses.

The Court: Are they marked in evidence?

10 Mr. Wescott: They were offered in evidence; I don't know whether they were marked or not.

The Court: I cannot identify them, I have not seen them.

Mr. Wescott: These bills were offered in evidence and there was no objection; counsel said they wanted to cross-examine upon them. The record will show that.

20 The Court: They ought to be marked if they are going to be used; there is no way that I can deal with them now.

Mr. Wescott: I think they were marked; if they are not marked it is an oversight of the stenographer.

The Court: Well, gentlemen, all I can do is to admit the papers that are on the record.

30 Mr. Richards: Here is even a deed that was not offered in evidence; I object.

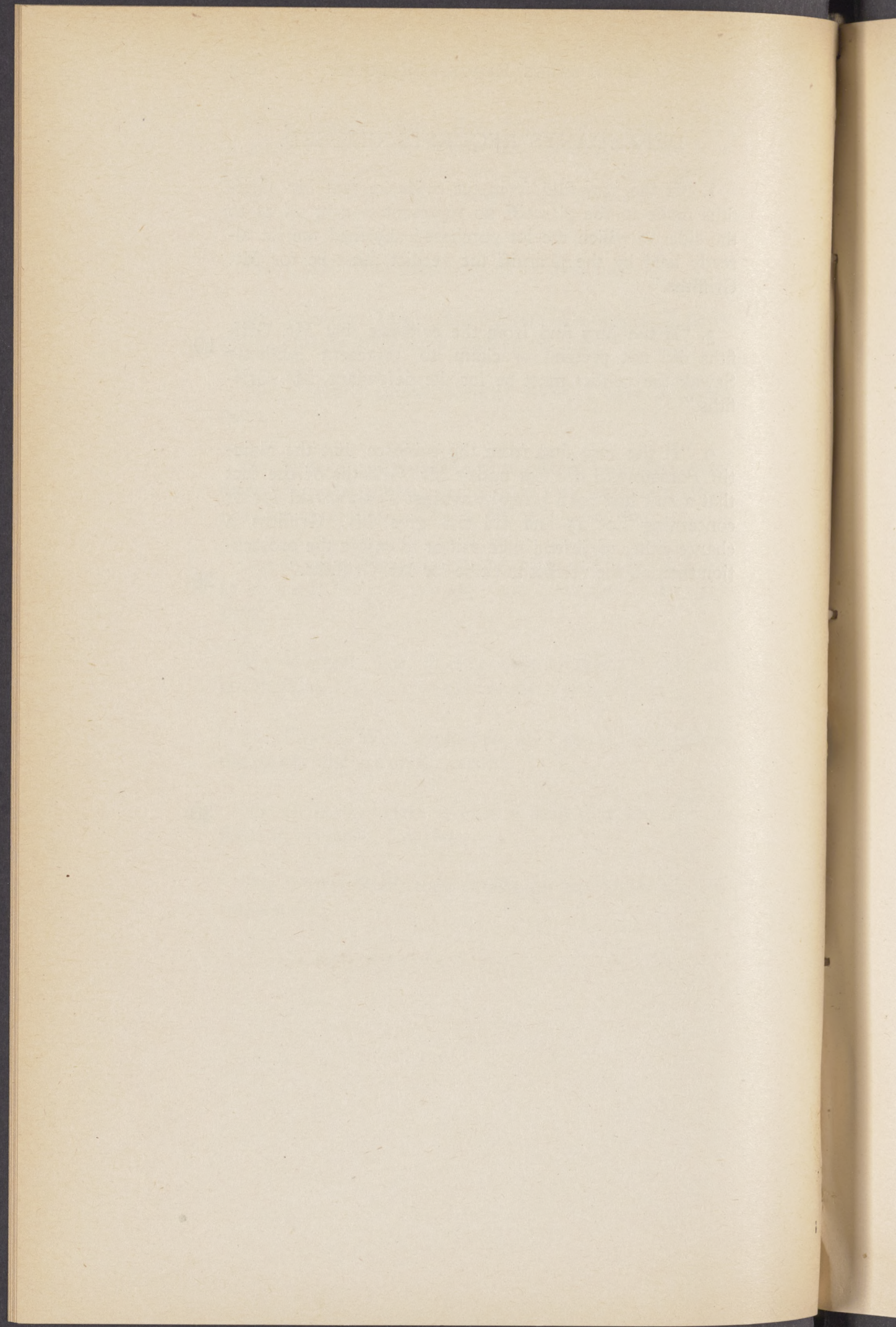
The Court: Well, they cannot go out under the circumstances.

## DEFENDANTS' REQUESTS REFUSED.

1. "If the jury find from the evidence that Mr. Griffiths made to the plaintiff no representation at all as to the side on which the lot purchased abjoined the lot already held by the plaintiff the verdict must be for Mr. Griffiths."

3. "If the jury find from the evidence that Mr. Griffiths did not pretend or claim to represent Anthony Szwak the verdict must be for the defendant, Mr. Griffiths." 10

9. "If the jury find from the evidence that the plaintiff Poniatowski did not notify Mr. Griffiths of the fact that a suit had been brought against Poniatowski for or concerning Lot 45 and did not give Mr. Griffiths a chance either to defend such suit or to enjoin the prosecution thereof, the verdict must be for Mr. Griffiths." 20



## New Jersey Court of Errors and Appeals

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Wladislaw Poniatowski,  
*Plaintiff and Respondent,*  
vs.  
Joshua Griffiths and Bron-  
islaus Cinkowski,  
*Defendants & Appellants.*

Appeal from  
Supreme Court.

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### BRIEF FOR WLADISLAW PONIATOWSKI, RESPONDENT.

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After reading the appellant's brief, it might be imagined that this case is difficult and complicated. But a simpler case cannot be put. It is this:

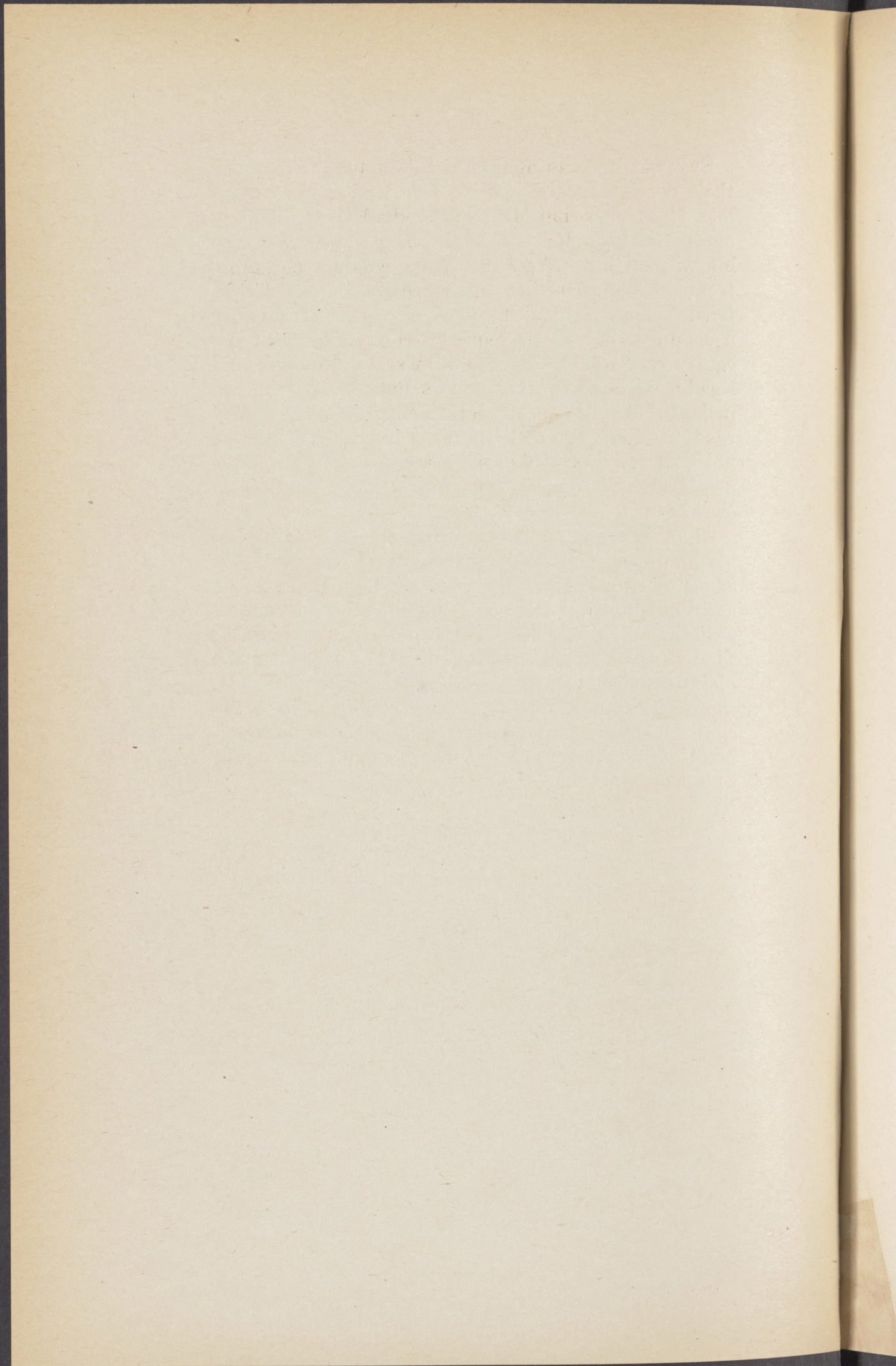
Poniatowski, the plaintiff below, owned and occupied a house on Pear Street, Camden, New Jersey. On one side of his house was a vacant lot. His party wall was on that side of his house. On the other side of his house was also a vacant lot, between which and his house was an alley. Poniatowski is a carpenter. He wished to build a twin house and utilize his party wall. He sent for the defendants, who came to his house, and, in the presence of his wife, told the defendants that he wanted to acquire the lot on the side of his house so as to utilize the party wall. He

pointed the lot out to them there and then. The defendants said that they would get him the lot. The defendants are realty agents. Poniatoski paid them each \$12.50 for their services in acquiring the lot. Poniatoski can neither read nor write. The defendants secured a lot, Poniatoski paid three hundred and twenty-five (\$325) dollars for the lot, placed a mortgage on his house for one thousand (\$1000) dollars, which he put in a house built by him on the party wall lot. Poniatoski built the twin house, on the party wall lot, and put a tenant in it. After a while notice was served on the tenant to vacate and Poniatoski then learned, for the first time, that he had no title to the lot on which he had built the twin house. The defendants had secured for him the vacant lot on the alley side of his house. Poniatoski immediately employed a lawyer by the name of Lawrence B. Reader and paid him to get Poniatoski out of the difficulty. Poniatoski saw several lawyers (148, 149, 150) about the matter. The lot on which Poniatoski had built his twin house was owned by a man by the name of Szwak. After Poniatoski employed Reader, Reader deserted Poniatoski and represented Szwak. Szwak placed a mortgage for one thousand (\$1000) dollars on the twin house and then conveyed the property to the wife of Reader. Reader proceeded promptly to put Poniatoski's tenant out of the house. The result was that Poniatoski found himself with a mortgage of one thousand (\$1000) dollars on his own house, which had theretofore been unincumbered, and found that he had built a house on the Szwak lot which enabled Szwak to take a thousand (\$1000) dollars of Poniatoski's money, together with his labor, and put five hundred (\$500) dollars in the pocket of his recreant lawyer.

Suit was brought against the defendants below for their carelessness in getting the deed to the wrong lot. It appears that Mr. Carr filed a bill in Chancery against Szwak, his wife, Lawrence B. Reader and his wife to have their dastardly conduct equitably treated. That case has never been and never will be tried. The result of the present case is manifestly a complete bar to the equity proceeding. But the equity case is between Poniatowski and Szwak and Reader and their wives. It is not against the appellants. Therefore, any arguments about the equity case are aside from the point, which is whether or not Griffiths and Cinkowski are guilty of actionable negligence in their breach of contract with Poniatowski.

That they are properly chargeable is established beyond question. See pages 28, 29, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61. In fact, there is not a circumstance in the case that does not show that Griffiths and Cinkowski committed a grave mistake. Their own evidence, 69-97, powerfully supports the plaintiff's declaration. Reader's testimony, 107-121, shows the same thing. The jury could not have the slightest question about the negligence of the appellants. The verdict, therefore, is sound and ought to be affirmed.

Respectfully submitted,  
WESCOTT AND WEAVER,  
*Counsel for the Respondent.*



# NEW JERSEY COURT OF ERRORS AND APPEALS.

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|---|------------------------------------|
| WLADISLAW PONIATOWSKI,<br>Plaintiff and Respondent,<br>vs.<br>JOSHUA GRIFFITHS AND BRONIS-<br>LAUS CINKOWSKI,<br>Defendants and Appellants. | }<br>APPEAL FROM<br>SUPREME COURT. |
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## BRIEF FOR JOSHUA GRIFFITHS, APPELLANT.

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### STATEMENT OF THE CASE.

This is a case concerning which Judge Lloyd said he had never run across a parallel. It is a three cornered litigation and each of the parties has tried it from his own standpoint. This is particularly true of the defendants, each being antagonistic to the other, although each had to meet the case made by the plaintiff. Indeed the issue is more involved even than that. It is further an issue with interests which are not made parties to the suit and whose exact rights can be worked out only in a court of equity.

Poniatowski, the plaintiff, owned and lived on a 20 feet lot, being lot No. 43 on the North side of Pear street, in

Camden. On each side of him was a vacant lot of the same size. Szwak owned lot 45 on one side and Coady & Cheesman Company owned lot 41 on the other side.

Poniatowski conceived the idea of purchasing and building on the Szwak lot and thereupon had some negotiations with Szwak looking toward the purchase of this lot. Szwak, however, wanted too much money and the negotiations with him were dropped. Poniatowski then saw the defendant Cinkowski and at this point the testimony is in dispute as to just what he told Cinkowski he wanted—whether it was merely a lot adjoining him or whether it was the Szwak lot in particular. There is no dispute however about the fact that whichever lot it was he told Cinkowski he wanted, Cinkowski then and there agreed to try to get it for him.

Cinkowski thereupon looked up some real estate maps and records and concluded that the lot he wanted was owned by the Home Builders Company. He then went to the defendant Griffiths (who was connected with that company) and, according to the undisputed testimony, told Griffiths where Poniatowski lived and that he wanted to buy the lot adjoining. Cinkowski may have even had a particular lot in mind but the testimony stands uncontradicted that he did not in his talk with Griffiths indicate any preference as to which side—which of the lots he wanted.

Griffiths looked into a register that he had and found Poniatowski's lot was No. 43 and that No. 41 adjoining it was owned by Coady & Cheesman Company. He then told Cinkowski that Coady & Cheesman Company owned lot 41 adjoining and he would find out whether they would sell it. He did find out that they would sell for

\$325 and so reported to Cinkowski who in turn reported to Poniatowski who said he would take the lot and as a consequence the money to bind the bargain was put up by Cinkowski. Within a few days thereafter a deed from Coady & Cheesman Company was delivered to Poniatowski, and was examined by him and put away among his papers.

Some time later Poniatowski built on the Coady & Cheesman lot but meanwhile he built also on the Szwak lot for which he had negotiated and for which he had no deed.

After the house on the Szwak lot was completed Poniatowski came to Cinkowski and told him he had built on the wrong lot. Cinkowski straightway came and told Griffiths about it and Griffiths said "It is not our fault but it is a shame; we will see if we can't get this thing straightened out." An effort was then made to buy the Szwak lot but without success.

The matter then dragged along for some time and was complicated by the fact that Mr. Reader, the attorney, who had been representing Poniatowski in the matter took Szwak's side of the controversy and for Szwak brought an action of ejectment against Poniatowski. Although Poniatowski admittedly had an equitable defense and could have restrained this suit he never notified either Cinkowski or Griffiths of its pendency and never made any defense or attempt to restrain the suit but instead let judgment go against him by default.

After Poniatowski had thus lost the property and the tenant had attorned to Szwak, Szwak mortgaged the property for \$1,000 and conveyed it to the wife of Mr. Reader subject to the mortgage. Poniatowski thereupon at that

late day filed a bill in Chancery against Mr. and Mrs. Szwak and Mr. and Mrs. Reader, setting up against Szwak what if seasonably presented would have been a good ground for restraining the ejectment suit and setting up against Reader facts which show that the title is held by Reader in trust for Poniatowski. The relief there prayed for is full and complete and would absolutely restore Poniatowski everything he has lost.

The Chancery suit is still pending. Without ever bringing it to trial, Poniatowski commenced the present suit for damages against Griffiths and Cinkowski. As already indicated Judge Lloyd declared the case before him was without parallel in his observation and it seemed for a time as if he would arrest the progress of the trial until the equity suit could be disposed of. He, however, permitted it to go to the jury and a joint verdict was returned against Griffiths and Cinkowski for \$1,550 and judgment was accordingly entered thereon.

Griffiths appealed from that judgment and the matter is now here upon his appeal.

#### GROUNDS OF APPEAL.

1. The Court, against objection made on behalf of Mr. Griffiths, admitted in evidence statements which may have influenced the jury in bringing in a verdict against Mr. Griffiths, notwithstanding the fact that such statements were made by Mr. Cinkowski not in the presence of Mr. Griffiths. (Pages 25, 26, 49 and 50.)

2. The Court, against objection made on behalf of Mr. Griffiths permitted counsel for the plaintiff to read in evi-

dence a statement made by Mr. Cinkowski before a committee of the Camden Bar Association, and this notwithstanding the fact that such statement was not made in the presence of Mr. Griffiths. (Pages 49 to 59.)

3. The Court, against objection made on behalf of Mr. Griffiths and without any memorandum or note thereof in writing signed by Mr. Griffiths or by any person thereunto by him lawfully authorized, admitted oral evidence from which the jury were permitted to conclude not only that a contract had been made for or in respect of an interest in or concerning lands but also that Mr. Griffiths had made a representation, guarantee or assurance. (Pages 26, 27 and 62.)

4. The Court overruled the following question to the witness Ludwig Grabowski:

“Ques. Was the house half done when Mr. Poniatowski first told you that he knew he was building on Szwak’s lot and he intended to sue Griffiths and Cinkowski?” (Page 104.)

5. The Court denied a motion for nonsuit made on behalf of Mr. Griffiths. (Pages 62 and 63.)

6. The Court denied the motion to direct a verdict made on behalf of Mr. Griffiths. (Page 156.)

7. The Court refused to charge this defendant’s first request. (Pages 160, 161 and 163.)

8. The Court refused to charge this defendant’s third request. (Pages 160, 161 and 163.)

9. The Court refused to charge this defendant’s sixth request. (Pages 160, 161 and 162.)

10. The Court refused to charge this defendant’s ninth request. (Pages 160, 161 and 163.)

11. The Court in dealing with the fourth request denied the first part thereof by this statement :

“If he knew it, gentlemen, that he was getting that before he began his construction, that would follow.”  
(Pages 160 and 161.)

12. The Court instead of the sixth request charged.

“Well, I will say this in answer to that request, that the law imposes upon the plaintiff the burden of establishing his case by a preponderance of the proofs; when the entire proofs are presented to you, the plaintiff to succeed, must have them preponderate in favor of the propositions that he lays down, that are necessary for his recovery. The rule which applies in the criminal court has no application in the civil courts; there a verdict to be rendered against a defendant of guilty must exclude all reasonable doubt of his guilt. In this Court the preponderating proofs are the test.” (Pages 160 and 161.)

13. The Court although charging the eighth request permitted the jury to guess that upon a settlement between the plaintiff and Mr. Reader, his trustee, the plaintiff could lawfully be required to pay Mr. Reader for an unencumbered title more than the plaintiff should in equity pay for the lot. (Page 161.)

14. The Court although charging the eighth request permitted the jury to try an equity case and this without having either the proper parties or the proper evidence before the Court. (Page 161.)

15. The jury were permitted to and did find a joint verdict against the two defendants. (Page 12.)

16. A joint judgment was entered against the defendants. (Pages 12 and 13.)

## BRIEF OF THE ARGUMENT.

1. The statute of frauds is here a complete defense.
2. Erroneous rulings were made upon the evidence.
3. Poniatowski admits that he had a defense in the ejectment suit or at least a good case in equity against Szwak and yet he never defended or restrained the ejectment suit and never notified Griffiths or permitted Griffiths to present the case. As a consequence he cannot claim indemnity from Griffiths.
4. It appears by undisputed evidence that Poniatowski knew it was Szwak's lot before he built on it.
5. The jury against objection were erroneously permitted to try an equity case and that without having before them either the proper parties or the proper evidence.
6. The Court erroneously permitted the jury to speculate not only as to whether action of Griffiths had in fact injured the plaintiff but also to speculate as to the amount of that injury.
7. A joint verdict and a joint judgment were improper.

## ARGUMENT.

## I.

THE STATUTE OF FRAUDS IS HERE A COMPLETE  
DEFENSE.

The plaintiff sues for damages growing out of the breach or improper performance by the defendants of an alleged contract made by them for or in respect of an interest in or concerning lands in connection with which

contract it is claimed the defendants made a representation, guarantee or assurance.

There is no proof that either the contract itself or the representation, guarantee or assurance was in writing.

The Statute of Frauds provides:

“That no action shall be brought” \* \* \* “(4) upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them;” \* \* \* “unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized.”

*2 Comp. Stat. 2612, sec. 5.*

The same section contains a similar provision about an action brought to “charge the defendant, upon any special promise, to answer for the debt, default or miscarriage of another person.” Here the alleged agreement was that Coady & Cheesman Company should convey to the plaintiff title to a certain lot of land.

First oral evidence of this alleged contract was admitted over our objection.

*State of the Case, page 26, lines 34 to bottom.*

*State of the Case, page 27, line 1.*

Next as part of our motion for nonsuit the point was made:

“The complaint declares upon a contract for or in respect of an interest in and concerning lands and there is no proof of any agreement or memorandum or note thereof in writing signed by the party to be charged therewith or by some other person thereunto by him lawfully authorized. There is no proof of

any representation or guarantee or assurance in writing either that the lot conveyed by Coady & Cheesman Company to the plaintiff would be or was anything other than lot 41 or that it would be or was located elsewhere than where it is or that the plaintiff, by reason of that conveyance could safely build anywhere except on lot 41."

*State of the Case, page 62, lines 4 to 16.*

The motion for a nonsuit was denied and the same point was made again on a motion to direct a verdict for the defendant, which motion was also denied.

*State of the Case, page 156, lines 1 to 4.*

## II.

### ERRONEOUS RULINGS WERE MADE UPON THE EVIDENCE.

Against our objection evidence was offered and admitted of conversations between Poniatowski and Cinkowski, not in the presence of Griffiths.

*State of the Case, page 25, lines 36 to bottom.*

*State of the Case, page 26, lines 1 to 4.*

*State of the Case, page 49, lines 3 and 4.*

As shown under subdivision VII the relations between Cinkowski and Griffiths were such that such evidence could not bind Griffiths and it is of course no fault of Griffiths that the plaintiff has seen fit to join him in a suit with Cinkowski.

Oral evidence also was admitted to show matters which the Statute of Frauds requires to be in writing.

*State of the Case, page 26, lines 34 to bottom.*

*State of the Case, page 27, line 1.*

See also subdivision I of this brief.

## III.

PONIATOWSKI ADMITS THAT HE HAD A DEFENSE TO THE EJECTMENT SUIT OR AT LEAST A GOOD CASE IN EQUITY AGAINST SZWAK AND YET HE NEVER DEFENDED OR RESTRAINED THE EJECTMENT SUIT AND NEVER NOTIFIED GRIFFITHS OR PERMITTED GRIFFITHS TO PRESENT THE CASE. AS A CONSEQUENCE HE CANNOT CLAIM INDEMNITY FROM GRIFFITHS.

The present suit is at most an action on an alleged express or implied indemnity to reimburse the plaintiff for property which the plaintiff lost and the possession of which was taken away from him after he had permitted judgment by default to go against him in an action of ejectment.

*State of the Case, page 40 lines 9 to 26.*

*State of the Case, page 8, lines 16 to 24.*

Even Mr. Reader who brought the action of ejectment admitted that Poniatowski might have had a defense to that action.

*State of the Case, page 114, lines 33 to 35.*

Griffiths, if notified and permitted, might have filed a bill to restrain the ejectment suit and have therein presented a case against Szwak at least as strong as Poniatowski admits he then had against Szwak.

*State of the Case, pages 9, 10 and 11.*

*Admission of 5th and 16th paragraphs, page 12.*

Poniatowski, however, gave no notice whatever to Griffiths and no opportunity to defend or restrain the ejectment suit.

*State of the Case, page 40, lines 15 to 36.*

Instead he permitted judgment to go by default (page 40, lines 19 to 26) and afterwards filed a bill which is still pending against the Szwaks and Readers.

*State of the Case, page 11, lines 32 to 36.*

*State of the Case page 12, lines 14 and 15.*

Although not seasonably presented Poniatowski in that bill admits that while the action of ejectment was pending he had a good equitable case against Szwak.

In the bill he alleges that he visited Szwak and Szwak informed him that he, Szwak, was not the owner of Lot 45 and had no interest of any kind therein and that relying on Szwak's statement he purchased of the parties that he thought owned the lot and then Poniatowski built on the lot; that Szwak lived in the immediate neighborhood and observed the progress and construction of the house but intending to take advantage of the mistake remained silent until the house was completed and then began an action of ejectment; that Poniatowski retained counsel to represent him in the ejectment suit but "for some reason unknown to your orator, said suit was not defended, and that judgment by default passed against your orator in said suit."

Poniatowski's testimony is to the same effect in the instant suit.

The equity suit which Poniatowski brought and which is still pending was after the ejectment suit and after Szwak had conveyed the property, but nevertheless Poniatowski therein admits that he had a perfectly good case against Szwak if it had been seasonably presented.

By these admissions Poniatowski is concluded and, having failed to give Griffith notice and an opportunity to present the case, Poniatowski is estopped from claiming any indemnity against Griffiths.

## IV.

IT APPEARS BY UNDISPUTED EVIDENCE THAT PONIA-  
TOWSKI KNEW IT WAS SZWAK'S LOT BEFORE HE  
BUILT ON IT.

Grabowski testified that he advised Poniatowski to buy the lot in question and build on it. To this Poniatowski replied "Find out who is the owner of the lot." Grabowski accordingly did find out that Szwak owned the lot and so reported to Poniatowski.

*State of the Case, page 96, lines 30 to bottom.*

*State of the Case, page 97, lines 1 to 30.*

*State of the Case, page 98, lines 10 to 12.*

Poniatowski does not deny this.

Afterwards Poniatowski himself had a talk with Szwak and later told Grabowski "He wants too high a price."

*State of the Case page 98, lines 16 to 22.*

This also is not denied.

Indeed Poniatowski himself admits that he heard from friends that Szwak owned the lot and thereupon he went to Szwak. He says:

"The first time I asked him about the price only. He gave me the prices, but I didn't say anything more; I went home."

*State of the Case, page 25, lines 1 to 16.*

It is true that Poniatowski then proceeds to detail a later conversation with Szwak which in his pending equity suit he claims entitles him to equitable relief against Szwak.

This, however, cannot affect the knowledge he had actually acquired that Szwak owned the lot nor permit him to cast upon Griffiths any part of the responsibility for building on that lot.

## V.

THE JURY AGAINST OBJECTION WERE ERRONEOUSLY PERMITTED TO TRY AN EQUITY CASE AND THAT WITHOUT HAVING BEFORE THEM EITHER THE PROPER PARTIES OR THE PROPER EVIDENCE.

Judge Lloyd charged and we must consider it the law of the case that :

“If the jury find from the evidence that Lawrence B. Reader was attorney for and represented Mr. Poniatowski, the plaintiff, and that Lawrence B. Reader, having learned from Poniatowski the situation, took from Anthony Szwak a deed for lot 45, that deed would be held in trust for the plaintiff, would enure to the plaintiff’s benefit, and must be considered as reducing if not entirely extinguishing the plaintiff’s claim for damages.”

To this Judge Lloyd added that it now appeared by Mr. Reader’s own declaration that he so held the deed in trust.

*State of the Case, page 161, lines 26 and 27.*

In the pending equity suit against the Szwaks and the Readers (none of whom are parties to the instant suit) relief is prayed for, which would completely satisfy any possible claim made by Poniatowski.

*State of the Case, pages 9, 10 and 11.*

In our motion to nonsuit, we said:

“Finally, it already appears that this Court has not the machinery to do full and complete justice in this case, the parties are not before the Court, and the issues are already before the Court of Chancery, or some new sufficient issues should be raised before the Court of Chancery and there tried out.”

*State of the Case, pages 62 and 63.*

In the motion for a direction we added:

“It cannot be assumed and the jury cannot be permitted to guess that upon a settlement between the plaintiff and Mr. Reader the plaintiff could lawfully be required to pay Mr. Reader for an unincumbered title more than the lot without the building was reasonably worth.”

*State of the Case, page 156, lines 24 to 29.*

Early in the case Judge Lloyd declared:

“What about this alleged trusteeship? That can only be definitely determined by the Court of Chancery.”

*State of the Case, page 21, lines 15 to 17.*

Later he stated:

“If it develops that it can be determined only in the Court of Chancery, I will arrest the progress of this trial until that is done, and something definite is determined by that Court.”

*State of the Case, page 21, lines 25 to 29.*

Because of lack of proper parties and because a law court could not, even if it had the parties before it, try the equitable questions necessary to be determined to fix

the extent of the liability of the Readers and Szwaks the case should not have been submitted to the jury.

## VI.

THE COURT ERRONEOUSLY PERMITTED THE JURY TO SPECULATE NOT ONLY AS TO WHETHER ACTION OF GRIFFITHS HAD IN FACT INJURED THE PLAINTIFF BUT ALSO TO SPECULATE AS TO THE AMOUNT OF THAT INJURY.

The plaintiff is of course bound by his own admissions. We are entitled to take him at his word and say he had a perfect equitable defense against Szwak.

*State of the Case, pages 9 to 12.*

For some reason the plaintiff did not make this defense but permitted judgment by default to go against him. It is not pretended that Griffiths was in any way responsible for this waiver and abandonment by Poniatowski of his defense. If the defense had been presented in time before the proper Court and established there would have been no injury and nothing that could be chargeable to Griffiths. And if perchance there is now an injury it is the direct consequence of the plaintiff's own act in abandoning his case.

Moreover the plaintiff has now pending an equity suit against the Szwaks and the Readers. If he succeeds in that suit he will not be injured at all.

The jury were therefore permitted to say that Poniatowski's admission in his bill concerning his defense against Szwak and his uncontradicted testimony here to the same effect were untrue and likewise to speculate and

say to what extent Poniatowski will succeed in his pending equity suit against the Szwaks and the Readers. To ask even a lawyer to determine what a Court of Equity would do in a case where the evidence is not all before him would be useless. To ask 12 laymen what such a Court would do in a case where they have before them neither the parties nor the evidence is unthinkable.

Upon these points we submit there was no evidence to justify a verdict in any amount. Such alleged damages must be proximate, natural and probable and must be clearly and unqualifiedly proved. The jury is not permitted to estimate such damages without data to justify their finding.

*Bartow vs. Erie Railroad Co.*, 73 N. J. L. 12.

*Mason vs. Erie Railroad Co.*, 75 N. J. L., 521.

*Louon vs. Public Service Co.*, 80 N. J. L., 252.

*Smith vs. Public Service Corp.*, 78 N. J. L., 478.

*Iron City vs. Welisch*, 128 Fed., 693, 695; 63 C. C. A., 245.

## VII.

### A JOINT VERDICT AND A JOINT JUDGMENT WERE IMPROPER.

This is not a case of joint tort feasons.

Poniatowski's contract was with Cinkowski. Judge Wescott in his opening said:

"He (Poniatowski) was anxious to get the lot to build the twin house. He went to the defendant, Cinkowski, who is a real estate agent in the City of Camden, and told him he wanted the lot, told him what he wanted."

*State of the Case*, page 15, lines 16 to 19.

Judge Wescott also offered and read the following testimony of Cinkowski to the same effect.

“Ques. What was the first thing you knew about it?

“Ans. After he had completed his house on the first lot that he purchased in that section he came to me and wanted to know whether or not the lot adjoining his property was for sale. I told him I didn't know, but I would see. I then went to the City Engineer's office and looked up his records and his records disclosed that the lot was held in the Home Builders' Company. I then went to Mr. Griffiths and asked him who owned the lot adjoining Poniatowski's on Pear Street, and if it was for sale. Mr. Griffiths looked up his book, pulled out his book and looked it over, and he said, 'Yes, Coady & Cheesman owns the lot. I will write to them and find out whether or not they will sell it.' I said 'All right.' Very shortly afterwards I saw Mr. Griffiths again, and he told me that he had communicated with Coady & Cheesman and that Coady & Cheesman were willing to sell their lot for \$325. I said, 'All right.' I said, 'I will see Mr. Poniatowski and tell him.' I saw Mr. Poniatowski a day or two afterwards and I told him that the lot was for sale, and the price of it was \$325. He said 'All right; I will take the lot.' ”

Cinkowski then gave his personal check for \$25 to be sent to Coady & Cheesman to bind the bargain.

*State of the Case, page 52, lines 33 to bottom.*

*State of the Case, page 53, lines 1 to 23.*

It will thus be seen that Griffiths was at most a sub-contractor. Indeed we might properly say that Griffiths was the agent of Coady & Cheesman and as such dealt with Cinkowski who in turn made his own contract with Poniatowski.

We submit that no liability at all on the part of Griffiths had been shown and certainly no joint liability. The joint verdict and judgment was therefore improper.

*Loomis vs. Perkins, 70 Conn., 444.*

#### CONCLUSION.

Evidence was improperly admitted over our objection, there was no evidence which would or could warrant a verdict against Griffiths, this suit was prematurely brought before it could be determined whether the plaintiff would suffer any loss, if after the equity suit is tried it appears that the plaintiff will suffer some loss that loss will be the result of his own act in surrendering and not at the proper time presenting his case against Szwak, the Judge should have arrested the trial of the instant suit, the motion for nonsuit should have been granted and the motion to direct a verdict for Griffiths should have been granted. The judgment should therefore be reversed.

All of which is respectfully submitted.

FRENCH & RICHARDS,  
Attorneys for Joshua Griffiths.



