

13

or who shall die from causes other than
 injuries received in the performance of
 duties. Rederski died from causes other than
 injuries received in the performance of
 duties. The language of the statute plainly looks
 to a case like the one under consideration.
 It may be that the draftsman of the act
 had foreseen a state of facts like the one
 herein presented, would have so drafted
 the act as to make it inoperative in the
 present case. But the act is not so drawn
 and its language is plain. Notwithstanding
 the fact that the relator may have been engaged in a
 military undertaking when he actually received the
 wound which caused his death, his widow
 is entitled to a pension."

No additional cases are cited in respondent's
 appellant's brief in this court from those cited
 in the Supreme Court and which were fully
 answered in the opinion of the Court. The cases
 cited refer to circumstances differing entirely
 from those in the present case and do not any
 of them involve an interpretation or considera-
 tion of the particular statute under which the
 application for pension was made, and the dis-
 tinctions and inapplicability of the same are
 fully and carefully pointed out in the opinion of
 the Supreme Court.

It is respectfully urged that the decision of
 the Supreme Court awarding a peremptory writ
 of mandamus to the relator should be affirmed.

JOHN W. McGEHEAN, Jr.,
 Attorney for and of Counsel with
 Relator-Appellee.

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NOTICE OF APPEAL.

(Filed November 24th, 1926.)

GLOUCESTER COUNTY CIRCUIT COURT.

<hr style="width: 10%; margin: 0 auto;"/> WALTER WALLS & FRANK P. DOUGHERTY, <i>Plaintiffs,</i> v. CHARLES CHRSTOS, <i>Defendant.</i>	}	Action at Law. Notice of Appeal.	10
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To Oscar B. Redrow, Attorney of Plaintiffs:

Please take notice that the defendant appeals from
the whole of the judgment entered in this cause to
the Court of Errors and Appeals.

GROVER C. RICHMAN,
Attorney of Defendant.

[ENDORSED]

Service of the within notice of appeal
is this 28th day of October, 1926, ac-
knowledged.

Oscar B. Redrow,
Attorney for Pltff.

COMPLAINT.

(Filed August 3rd, 1926.)

GLOUCESTER COUNTY CIRCUIT COURT.

10	WALTER WALLS & FRANK P. DOUGHERTY,	} Plaintiffs,	} On Attachment. Action at Law. Complaint.
	v.		
	CHARLES CHRSTOS,	} Defendant.	

20 The plaintiffs of the City and County of Philadelphia and State of Pennsylvania, say that:

1. On September 15th, 1925, the plaintiffs entered into a written contract with one Charles Chrstos, the defendant, whereby the said defendant agreed to convey to the plaintiffs, all those certain tracts or parcels of land and premises, situate in the Township of Deptford, County of Gloucester and State of New Jersey, as more particularly described by a written agreement of sale, a copy of which is hereto attached and marked Schedule "A," for the sum of one hundred thirty thousand (\$130,000) dollars. Three thousand (\$3000) dollars of which was paid as provided in said agreement on September 15th, 1925, and five thousand (\$5000) dollars paid on account of said agreement on October 15th, 1925, as provided there-

in, and the balance of the purchase price was to be secured by giving a purchase money mortgage to the defendant for one hundred thousand (\$100,000) dollars, and the payment of twenty-two thousand (\$22,000) dollars in cash at the time of settlement. The agreement provided that settlement was to be made on January 5th, 1926.

2. In accordance with the terms of the contract, the said defendant, Charles Chrstos, agreed to convey to the plaintiffs the premises described in said contract or agreement of sale, and hereinbefore referred to, free and clear of all encumbrances, and that the title to the above property, mentioned and described in said contract or agreement of sale, was to be good and marketable and such as would be insured by the Land Title and Guaranty Company of Camden, New Jersey.

3. The plaintiffs, in accordance with the agreement which they had made with the defendant, procured searches against the premises described in said agreement upon which searches there appear several exceptions to the title of the defendant to the premises, which the defendant agreed to convey to the plaintiffs. The property mentioned in the agreement was subject to public and private rights of way bounding and crossing the insured premises and subject to the flooding, drowning and drainage rights of adjoining owners in the streams and water courses crossing the property, the rights of adjoining owners and others in the party walls and to restrictions and conditions which had been imposed on the property by the defendant for the benefit of other premises which had been sold by the defendant to other parties, and subject to two certain mortgages ag-

gregating six thousand (\$6000) dollars, and to the rights of lot owners of adjoining property to portion of the land which the defendant agreed to convey to the plaintiff, and was particularly subject to the covenants contained in a certain deed made by the defendant and his wife to the Almonesson Improvement Company, by deed dated July 30th, 1924, of record in the clerk's office at Woodbury in book 337 of deeds, page 295, which conveyed to the said Almonesson Improvement Company the right of that company and its successors and assigns, and its and their agents and servants and tenants and occupants of the premises described in that deed together with other persons to use and occupy for their benefit and advantage, the greater portion of the property which said defendant had by the agreement aforesaid agreed to convey to the plaintiffs. At the time fixed in the agreement of sale between the plaintiffs and the defendant, or at the time fixed by the parties for the settlement as provided in said agreement of sale between the plaintiffs and the defendant, the plaintiffs requested the removal of the exceptions from the title of the property set out in the agreement and tendered the balance of the purchase price to the defendant, and offered to complete the transaction as provided by said agreement of sale, at which time the said defendant agreed that these exceptions affected the title to the property which he had agreed to convey to the plaintiff, and that they cannot be removed from record, and that the defendant then agreed to return to the plaintiffs the deposit which they made, amounting to the sum of eight thousand (\$8000) dollars, as provided by the agreement.

4. Before the time fixed for the settlement, to wit, on December 23rd, 1925, the Almonesson Improve-

ment Company filed a bill in Chancery to enforce the covenants contained in the deed from Charles Christos to it, and did on the same day file a *lis pendens* in the office of the clerk of the county at Woodbury, New Jersey, giving notice of said suit.

5. On September 13th, 1919, the Asbestos-Crete Building Company filed a mechanic's lien claim against the defendant and the premises, which the defendant agreed to convey to the plaintiff, in the amount of ten thousand nine hundred twenty-four dollars and seventy-five cents (\$10,924.75), which said lien claim appears of record and unsatisfied.

6. Without the knowledge or consent of the plaintiffs, the said defendant has or is constructing a dam or road across a portion of the premises described in the agreement of sale between the plaintiffs and the defendant, whereby the value of the property to the plaintiffs is completely destroyed.

7. That by reason of the said agreement of sale the plaintiffs have been put to great expense in procuring searches and in endeavoring to procure the title as aforesaid for the premises in accordance with the terms of said agreement, to wit the sum of more than nine hundred (\$900) dollars.

8. The plaintiffs on the day and year set forth in said agreement and at the time and place designated by the parties to said agreement, were ready and willing to perform and fulfill, and did perform and fulfill all things in the said contract contained, on their part as such purchaser, to be performed and fulfilled to complete the said purchase, whereof said defendant on said days had notice and was then and

there requested by the said plaintiffs to make to them a good title to said premises; yet said defendant not regarding his promise and undertakings, but contriving and fraudulently intending to injure and defraud the said plaintiff in his behalf, did not or would not when he was so requested at any time before or since, make or procure to be made to the plaintiffs a good title to said premises, but has wholly neglected and refused to do contrary to the
 10 said contract and agreement of sale of said premises and undertaking and did revoke his promise and undertaking to comply with the terms of his said agreement and agree to and with the plaintiffs at the times herein stated to return to them the deposit which the plaintiffs had paid to said defendant, to wit, the said sum of eight thousand (\$8000) dollars with interest thereon from the time said moneys was paid and the further sum of nine hundred (\$900) dollars for the cost of procuring searches and title to
 20 the aforesaid premises by the plaintiffs, all of which moneys the said defendant has since refused and neglected to pay.

9. By reason whereof, the said plaintiffs have been deprived of all the benefits and advantages which would have arisen from the completion of said purchase, and have been put to great expense, amounting in the whole to a large sum of money, in endeavoring to complete the purchase of said premises as hereinbefore stated, and have lost all gains and profits
 30 they would have otherwise made, and the use of the aforesaid deposit money paid on account of said contract of purchase.

Plaintiffs demand as damages, the sum of eighty-nine hundred (\$8900) dollars with interest from September 15th, 1925.

Attorney for Plaintiff.

MEMORANDUM OF AGREEMENT made this —15th—day of September A. D. 1925, between Charles Chrstos of the City of Philadelphia, hereinafter known as the party of the first part, and Walter Walls & Frank P. Dougherty, hereinafter known as the parties of the second part: WITNESSETH;

THE said party of the first part agrees to sell and convey to the said parties of the second part, who agrees to purchase

ALL THAT CERTAIN LOT, tract or piece of
 10 ground and premises situate in the Township of Deptford, County of Gloucester and State of New Jersey, bounded and described as per survey made by J. Owen Carter, C. E. Woodbury, New Jersey, BEGINNING at a stake for a corner to Charles Chrstos other land and corner to land about to be conveyed to Edward Harrison; thence (1) along said Harrison's land, North eight degrees and two minutes East, five hundred twenty-six and seventy-four hundredths feet to a stake for a corner in the line of
 20 Frank Bold's land; thence (2) along said Bold's land, South eighty-nine degrees and ten minutes East, one hundred seventy-nine and forty hundredths feet to a corner in the middle of a stream; thence (3) along the middle of said stream the several courses and distances thereof to a corner to Charles Chrstos' other land; thence (4) along said Chrstos' other land, North eighty-eight degrees and forty minutes West, eight and fifty hundredths feet to a stone set on line and continuing the same course a further distance of two hundred twenty and forty hundredths feet to the place of beginning. CONTAINING two
 30 acres and forty-five hundredths of an acre of land be the same more or less.

ALL THAT CERTAIN Lot, tract, or piece of land and premises situate in the Township of Deptford,

County of Gloucester and State of New Jersey and bounded and described as per survey of J. Owen Carter, C. E. as follows:—

BEGINNING at a stone at the Southeasterly corner of lands about to be conveyed from said Julia C. Ewell to Randolph Barrett; thence (1) by the rear line of said Barrett and a lot retained by said Julia C. Ewell, North no degrees and fifty minutes east, one hundred forty-one and twenty hundredths feet to a stake for a corner in line of lands of now or formerly Charles Dougherty; thence (2) by said Dougherty's land, South eighty-eight degrees and forty minutes East, two hundred twenty-nine feet more or less to the center line of Almonesson Creek; thence (3) up said stream or creek in a Southerly direction the various courses and distances thereof about one hundred seventy feet to a corner of lands conveyed by Mary Alice Morrill to Adon Muller; thence (4) by said lands of now or formerly Muller, North eighty-two degrees and twenty minutes East, two hundred fifty-two feet more or less to the place of beginning. CONTAINING eighty-four hundredths acres of land more or less.

ALL THAT CERTAIN lot or piece of land and premises situate at Almonesson in the Township of Deptford, County of Gloucester and State of New Jersey and bounded and described with magnetic bearings corresponding with the year 1917, as follows:

BEGINNING at a stone for a corner in line of lands of Albert C. Jaggard and corner to lands of Charles Chrstos; (1) by said Chrstos' land North eighty-nine degrees and thirty-two minutes, West, six hundred ninety-eight and forty-five hundredths feet to a corner of the lands of Mary Alice Morrill; thence (2) by said other lands, North one degree and fifty-

six minutes East, three hundred sixteen and forty-nine hundredths feet to a stone for a corner in the line of lands of Julia C. Ewell; thence (3) by the same South eighty-two degrees and twenty minutes East, two hundred and forty-two and twenty hundredths feet to a stone, and continuing the same course a further distance of ten feet to the center of the stream leading from Almonesson Lake; thence (4) down said stream Northwardly the various courses and distances about seven hundred feet to a corner; thence (5) by lands of Joseph Jaggard, South eighty-nine degrees and fifty-five minutes East, four hundred and thirty-five feet to a stone corner to Alfred C. Jaggard's land; thence (6) by said Alfred C. Jaggard's land South no degrees and fifteen minutes West, nine hundred eighty-three and ten hundredths feet to the place of beginning. CONTAINING twelve and nine hundredths acres of land more or less.

ALL THAT CERTAIN lot, tract or piece of land and premises, situate in the County of Gloucester, State of New Jersey, bounded and described as per survey made by J. Owen Carter, C. E., Woodbury, N. J., on the Northeasterly side of Cooper Street, bounded on the Southerly side by Cooper Street, on the Easterly side thereof by North Summitt Avenue, on the Northwesterly side by land formerly owned by Herbert A. Ross but now owned by Charles Chrstos and intended to be conveyed in this Agreement, and on the Southwesterly side by land now or late owned by Alfred M. Cunard; together with the Swimming Pool, Bath Houses, Hotel and any other improvements erected thereon. The furnishings and equipment of the Hotel and likewise the Bath Houses and all equipment appurtenant to the operation of both the Hotel and the Bath Houses is included in the sale of this tract of ground.

Title to the above property to be good and marketable, and such as will be insured by the Land Title & Guaranty Title & Trust Company of Camden, New Jersey.

Possession of the entire property will be given with deed at the time of final settlement, at which time possession of the Hotel and all other property and improvements upon the hereinbefore described premises will be turned over to the purchasers, together with books and Accounts Receivable for the lots now under agreement.

Taxes, water rent, interest on first mortgages, and all other apportionable credits and debits are to be adjusted as of the date of settlement.

It is agreed and understood between the parties hereto that the purpose of this agreement is to sell and convey unto the parties of the second part all the right, title and interest of the party of the first part to the parties of the second part to all his real estate situate at Deptford Township, Gloucester County, New Jersey, and known as Almonesson Park.

It is further agreed and understood between the parties hereto that the party of the first part will release from the lien of the One Hundred Thousand Dollars (\$100,000.00) mortgage any portion of the hereinbefore described premises, upon payment to the party of the first part of 75% of the selling price, provided however, that the party of the first part shall receive for the release of the Hotel, Garage and ground appurtenant thereto, a minimum sum of Twenty Thousand Dollars (\$20,000.00) and for the release of the Amusement Park proper and Lake, a minimum sum of Fifty Thousand Dollars (\$50,000.00).

Settlement is to be made on or before January 5th, 1926, and said time is hereby agreed to be the essence of this Agreement and if the said parties of the

second part shall fail to make settlement therefor in the manner and form as herein provided, then the said sum of Three Thousand Dollars (\$3000.00) and any other moneys representing payments on account of purchase shall be retained by the said party of the first part as compensation and liquidated damages and if the said party of the first part shall fail to comply with the terms of this Agreement on his part within the dates and days herein provided, then the said sum of Three Thousand Dollars (\$3000.00) and any other moneys, representing payments on account of purchases, or so much thereof, as remains in his hands, shall be returned to the said parties of the second part and both parties be discharged from liability under this contract.

It is agreed that this contract shall not be acknowledged or recorded or offered for record by either of the parties hereto.

The terms, conditions, covenants and agreements herein contained shall extend to be binding upon and available for the heirs, executors, administrators and assigns of the respective parties hereto.

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

Charles Chrstos (SEAL)
Frank P. Dougherty (SEAL)
Walter Walls (SEAL)

WITNESSETH:

David H. Kruley,
Walter B. Townsend.

RECEIVED FROM WALTER WALLS AND FRANK P. DOUGHERTY the sum of Three Thousand Dollars (\$3000.00) on account of purchase money mentioned in the foregoing Agreement.

Charles Chrstos.

Oct. 15, 1925.

Received from Walter Walls and Frank P. Dougherty the sum of Five Thousand Dollars (\$5000.00) as per agreement.

David H. Kruley,
Atty. for Charles Chrstos.

EXHIBIT "A."

10 LIST OF HOUSES OWNED BY CHARLES CHRSTOS AND LOCATION OF SAME.

Lots No.	Block No.	Description
20-30	6	Block House, Rosmore & E. Summit Avenue
5	10	Royal Bungalow
1-2-3-4-5-6-	11	Chrstos Bungalow, Hillside & W. Summit
9-11	11	Chrstos & Headley
20 1	9	Almonesson Bungalow
20 11	9	Ambler Bungalow
6	15	21 Asbury Avenue
6	19	23 Pasadena Avenue
20	20	105 Pasadena Avenue
2	22	29 Pt. Pleasant Avenue
22	23	109 Pt. Pleasant Avenue
23	23	110 Pasadena Avenue
26	23	105 Pt. Pleasant Avenue
27	23	106 Pasadena Avenue
30	23	101 Pt. Pleasant Avenue
30 31	23	102 Pasadena Avenue
3	24	32 Pt. Pleasant Avenue
7	24	28 Pt. Pleasant Avenue
12	23	119 Pt. Pleasant Avenue
27	25	106 Pt. Pleasant Avenue
31	25	102 Pt. Pleasant Avenue
14-16-18	2	Walton House

EXHIBIT "B."

Lot	Block	NAME	AMOUNT DUE
25	28	Philip Amaradio	\$ 65.00
20-22	34	Maryanna Bardyszewska)	
7	30	" ")	200.96
32	28	Clar & George Blevins	115.00
19	28	Joseph Botto	140.50
27	33	Robert G. Brawley	57.00 10
11	26	Mrs. Jennie Brennan	100.00
9	29	Theodore Browski	37.50
11	29	Joseph M. Cain	30.00
2	16	Mrs. Sarah Cahill	50.00
4	30	David C. Coffey	110.00
18	18	David C. Coffey	48.00
26	2	Michael A. Cavello	85.00
22	24	Frank Carrelli	75.00
20	24	Ralph Carrelli	90.00
1-2-3-4-	6	Martha Dombkoska	620.00 20
29	19	Charles Wilbur Drew	80.00
24-26	24	Agnes Dyrlaga	305.00
27	40	Anna Dyle & Charles (her son)	216.00
4	19	Frank Egitto	65.00
16-18	27	Laura Farr	150.00
12	27	Laura Farr	135.00
13-14	27	Laura Farr	50.00
4	36	Mrs. Carrie Fechter	40.00
1-2	2	Anthony Cagliard	125.00 30
5	17	Dominik Caryonis	140.00
20	40	Angelo Gereroso	111.50
15-17-19	38	Julius Green	83.00
4-5	32	Veronica Grabon	315.00
2-4	24	Julius Green	285.00
7-9	23	John Guzas)	

Complaint

14	18	" ")	210.00
12	36	Mary Anna Hallman	20.00
6	2	Mrs. J. Hammer	153.21
17	6	Frank Hawman	70.00
9	36	Frank & Elizabeth Heater	107.00
3	36	Raymond Heater	45.00
24-25	38	John Hoffman	100.00
24	33	John R. Hoffman	33.50
23-25	20	Rudolph Hoffman	269.00
10 13-15	29	Kasimer Koedaras	126.00
20-22	36	Wincenty Kiliijanski	290.00
5	1	Edward Kohlman	239.00
10-12	16	Karl Konezawski	310.00
31-33	29	Antoni Krupezak	280.00
1	34	Catherine Krupezak	176.00
4	26	Henry Lefeber	116.00
15	8	Stanislaw Lochowicz	608.00
32	24	Mrs. Anna P. Loeffler	112.50
4-6	17	Mrs. Sarah McCourt	35.00
20 1-2-3-4	5	Albert Masciantonio)	
17-19	30	" ")	615.00
21	5	Harvey Mentzer	230.00
28-30	24	Julian Michalek	300.00
15-17-19	23	Emanuel T. Mills	270.00
11-13	38	Mrs. Frances Niewodowski)	
4-6-	37	" " ")	168.00
9	16	Frank & Frances "	220.00
24-26	28	Paul Panvino	120.00
17	2	M. F. Perantuno	155.00
30 6-8	5	Louis Pero	243.50
11	30	George Pollock	28.00
27-26	38	John Price	40.00
13	40	John & Matilda Prorok)	
13	44	" " ")	
29	38	" " ")	
8	17	" " ")	

Complaint

15	29	" " ")	1119.00
1-2-3-4	29	" " " "	560.00
9	13	" " " "	175.00
22-24	20	Rudolph Reich	332.00
24	40	Leon & Frances Sadouska	340.00
2-4	38	Frances Sadouska	26.00
30-31	28	Emil Schwen	485.00
3-4-5-	25	Peter & Julian Shelus	387.00
19-21	21	Mary & Rudolph Skala	75.00
11-13	23	Joseph Skodzus	170.00 10
30-31	14	Joseph Skodzus	246.00
30-31	13	Frank Snock	387.00
31-32	37	John Sterling	235.00
8	2	Mrs. Mary Stearns	160.00
5	23	Joseph Straum	200.00
10	33	Joseph Straum	15.00
7	12	Walter Struzeh	210.00
18-20	33	Joseph & Margaret Schatt	40.00
12-14-16-			
18-20-22-	25	Veronica Szablawska	755.00 20
24-26	25	" "	245.00
28-30	25	Martin Szablewski	280.00
3-5	15	Frank Szalinski	310.00
6-8	25	Mrs. Elizabeth Taggert	125.00
27-28-29-	13	Charles G. Urbon	390.00
16-18	13	" " "	505.00
3	18	" " "	45.00
11-13	16	John Urbon	105.00
2-4	15	Valeria Waska	320.00
27	12	Edwin Wendler	443.00 30
3-5	28	Ludwik Waska	315.00
19	2	Joseph Walton	245.00
14-16	40	Czeslaw & Anna Zglinski	299.00
29	28	Karl Zoeltsch	81.25
2	25	John Ziomek	140.00
1	25	" "	76.00

Appearance

[ENDORSED]

Service of the within complaint is hereby acknowledged this twenty-eighth day of July, 1926.

Grover C. Richman,
Attorney for Charles
Chrstos.

APPEARANCE.

(Filed July 15th, 1926.)

GLOUCESTER COUNTY CIRCUIT COURT.

20 WALTER WALLS & FRANK P. }
DOUGHERTY, }
Complainants, }
v. }
CHARLES CHRSTOS, }
Defendant. }

Action at Law.
In Attachment.
Appearance.

30 The defendant's appearance is entered in the above cause this fourteenth day of July, one thousand nine hundred and twenty-six.

GROVER C. RICHMAN,
Attorney for Defendant.

ANSWER.

(Filed August 5th, 1926.)

GLOUCESTER COUNTY CIRCUIT COURT.

WALTER WALLS & FRANK P. }
DOUGHERTY, }
Plaintiffs, }
v. }
CHARLES CHRSTOS, }
Defendant. }

Action at Law.
Answer.

The defendant, Charles Chrstos, of the City and County of Philadelphia, in the State of Pennsylvania, says that:

FIRST DEFENSE.

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

- 7. He denies the seventh paragraph.
- 8. He denies the eighth paragraph.
- 9. He denies the ninth paragraph.

SECOND DEFENSE.

10 1. The defendant tendered a deed, properly signed and acknowledged, to the plaintiffs in accordance with the terms of the agreement and demanded of the plaintiffs the payment of the balance of the purchase price for said premises. The plaintiffs refused to accept said deed and to pay the balance of the purchase price and still refuse to comply with the terms of said agreement. The defendant is, and has always been, ready to carry out the terms of the agreement and was prevented from doing so by the conduct of the plaintiffs.

20

GROVER C. RICHMAN,
Attorney for Defendant.

30

TESTIMONY.

IN THE CIRCUIT COURT OF GLOUCESTER
COUNTY.

STATE OF NEW JERSEY.

10

WALTER WALLS & FRANK P. DOUGHERTY,
Plaintiffs,
v.
CHARLES CHRSTOS,
Defendant.

No. 28.
Action at Law.

Woodbury, New Jersey, Monday, Oct. 25, 1926. 20

Before HON. FRANK B. JESS, Circuit Court Judge.

APPEARANCES:

OSCAR B. REDROW, Esq., for the plaintiffs.
GROVER C. RICHMAN, Esq., for the defendant. 30

Mr. Redrow: On last Thursday evening Dr. Underwood made an examination of the defendant, and found him perfectly able to be here; and I think that statement should be made part of the record.

Mr. Richman: The defendant is here and ready to go on with the case, your Honor.

The Court: So long as there is no further application for a continuance I think the statement of the doctor perhaps is immaterial; but I think the statement used as a basis for the previous request for a continuance should be made part of the record.

10 (The statement above referred to is as follows:)

“Edward Beecher Finck, M. D.
1518 Pine Street,
Philadelphia, Pa.

Mr. Grover C. Richman.

Dear Mr. Richman:

I am attending Mr. Charles Chrstos for a very severe systemic cold—influenzoid in character. It is absolutely necessary that he remain in bed and carefully follow the treatment advised. It is dangerous for him to attempt to leave home. Should he be persuaded to do—he is liable to contract pneumonia or prolong his present condition that may confine him to bed for weeks instead of days.

Please inform the proper authorities of his condition and of his inability to attend court at this time.

Very truly,
Oct. 20th, 1926. (Signed) Edward B. Finck.”

30

PLAINTIFF'S EVIDENCE.

WALTER WALLS, one of the plaintiffs, being duly sworn according to law, was examined and testified as follows:

By Mr. Redrow:

Q. Mr. Walls, you are one of the plaintiffs in this suit? 10

A. I am.

Q. And where do you reside, Mr. Walls?

A. 1123 South 46th Street, Philadelphia.

Q. Is this a copy of the contract which you signed for the purchase of that property? (Witness examines the paper handed him.)

A. It is.

Mr. Redrow: I offer the contract in evidence.

(Contract marked as Plaintiff's Exhibit A.) 20

Mr. Richman: If your Honor please, there are several pencil memorandums on that, which I know nothing about. With the exception of those I have no objection to the contract being offered.

Q. What was this property, do you remember, Mr. Walls?

A. This property was the Almonesson Lake and the park at Almonesson.

Q. And included all the property outlined there? 30

A. Included all the properties in their agreement.

Q. After the purchase of the property was—

Mr. Redrow: (Addressing Mr. Richman): I think you will admit the money was paid?

Mr. Richman: Yes.

Q. Did you get some searches and title policies on the property, or attempt to?

A. Did I what?

Q. What did you do after you bought the property concerning searches and title policies?

A. The searches were ordered from the Land Title and Trust Company of Camden, in accordance with the agreement—the searches and policies to be ready on time.

10 Q. When did you see the property again after you bought it?

A. I personally didn't see it for—I am not sure I personally saw it again, myself. Mr. Dougherty did.

Q. After you bought the property when did you next see Mr. Chrstos and Mr. Kinley?

A. The next I saw Mr. Chrstos he came into my office and he had Mr. Dougherty's check, which was given him at the settlement; and he asked at that time—he wanted to hold that check and get another in place of it, as he had held that check up to keep from paying some commission on a former sale or something like that.

Q. When did you see him again?

A. Not until the time for settlement.

Q. When was that?

A. On the sixth.

Q. Did you see him on the fifth of January in Mr. Walls' office?

30 A. Mr. Kinley, Mr. Laws, Mr. Dougherty and myself met him at Mr. Kinley's office by arrangement with Mr. Kinley. I called Mr. Kinley's office, as he was the one with whom I had made arrangement on the matter.

Mr. Richman: Objected to.

The Court: There has been no connection shown between Kinley—

Q. Do you know who Mr. Kinley is?

A. I do.

Q. Was he or not representing Mr. Chrstos at that time?

A. He positively was.

Q. Had he gotten in communication with you concerning this contract?

A. Yes, he had been talking to me. 10

Q. Through whom was the agreement of sale made?

A. Mr. Kinley.

Q. This gentleman sitting here? (Indicating.)

A. That gentleman sitting there.

Q. You say that on or about the fifth or sixth of January—when was it you saw Mr. Kinley at his office?

A. On the fifth. 20

Q. Who else was there beside Mr. Kinley?

A. Mr. Laws and Mr. Dougherty.

Q. What did you do that day?

A. Mr. Kinley and Mr. Laws and Mr. Graham were checking up the description.

Mr. Richman: Objected to. The defendant was not there. This contract was dated and signed September 15th, and the fact that Mr. Kinley drew it, September 15th, does not at all show he represented the defendant at the time this transaction had taken place. 30

Q. Did you have any conversation with Mr. Kinley at that time?

A. Yes, in going over the general agreement.

Q. Did he say he was representing Mr. Chrstos, or did he represent Mr. Chrstos in your presence that day?

A. He did.

Q. What was done at that time?

A. The description of the lots and of the accounts receivable which were in charge by Mr. Kinley he didn't have—Mr. Kinley didn't have the accounts receivable ready to turn over; and it was arranged that we meet the next day at the title company, at which time we met with Mr. Chrstos in accordance with our understanding; and a number of things
10 turned up that we could not do anything, and by agreement Mr. Richman, Mr. Kinley and all of us met on the 14th for a final settlement.

Q. When you say checking up on the lot numbers, on the 5th, do you mean this land set out here in the agreement?

A. Yes, exactly.

Q. This land here and the accounts receivable?

A. The accounts receivable and the lots.

Q. How long were you in Mr. Kinley's office that
20 day?

A. I should judge it was two or three hours.

Q. Two or three hours. And then you say you met on the 6th of January over at—

A. At the Land Title & Trust Company.

Q. Over in Camden?

A. Camden.

Q. And was Mr. Kinley present at that time?

A. Mr. Kinley was present.

Q. Who else was present?

30 A. Mr. Richman, Mr. Laws, Mr. Graham, Mr. Dougherty, Mr. Keen, Mr. Townsend and myself.

Q. Was the deed prepared at that time?

A. The deed was—I am not sure whether the deed was ready at that time or not.

The Court: What date was that?

Mr. Redrow: January 6th.

The Witness: Yes, at the 6th—no, the deed wasn't ready at that time.

Q. Had the descriptions been checked up and determined on January 6th?

A. I believe not. The description was a very intricate one, and at the time the agreement was signed with Mr. Chrstos in Mr. Kinley's office Mr. Kinley
10 said he would go over it with Mr. Laws and help out in the drawing of the papers with the title company.

Q. When did you next see these people? What happened there about settlement? Was anything said about settlement?

A. We adjourned on the 6th to meet on the 14th for final settlement.

Q. At what time on the 14th? What time of the
20 day?

A. I don't recall—one or two o'clock.

Q. Did you meet?

A. We did.

Q. Did you meet on the fourteenth?

A. We did.

Q. Just what happened at that settlement on the 14th? Just what took place?

A. On the 14th, in going over the searches there were objections noted, and considerable discussion was entered into, and at that time it was brought out
30 that the hotel had been—

Mr. Richman: I object to any reference to the hotel.

The Court: What is the objection?

Mr. Richman: I object to any reference to the hotel because it is not embraced in the complaint.

The Court: Just let me read the complaint.

Mr. Redrow: Whether or not it may be, I may say this man is entitled to testify as to what took place at the time of settlement.

10 The Court: Objection overruled.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

A. (Continuing answer.) This discussion brought out the fact that the hotel had been closed by the government and a bond had been given; and Mr.
20 Chrstos insisted that Mr. Dougherty and myself give our bond—so that the hotel might be operated—against any violation, because of a former violation.

Mr. Richman: I move that his testimony be stricken out on the ground that it is not embraced in the issues of this case. There is nothing in the complaint filed in this suit at all with reference to any proceedings affecting that hotel with regard to its possession; and we are here to meet the com-
30 plaint, we are not here to meet any other issue.

Mr. Redrow: If the Court please, it is perfectly proper and admissible for the witness to tell what happened, when all were present, in regard to the settlement dealing with this particular contract.

The Court: Is it your contention, Mr. Redrow, that the hotel property was a part of the—

Mr. Redrow: Oh, yes. The agreement itself shows it. (Reads from agreement.) In the second paragraph there is reference to the releasing of mortgage on the hotel property for \$20,000.

The Court: If, as it appears to me, the hotel prop-
erty was included in the terms of the agreement, any
statements with reference to that are admissible as
part of the transaction. Objection overruled. 10

Mr. Richman: May I have an exception?

The Court: An exception may be noted for de-
fendant.

Q. What else was said at the time of settlement?

A. This led to still further discussion, and at that
time Mr. Chrstos retired with his two attorneys. 20

Q. What was this other discussion you speak of?

A. Well, we discussed the bridge and a number of
other items—expenses there.

Q. Was anything said about the condition of the
property at that time?

A. Yes, that was gone over.

Q. What was said about that?

A. Well, the question came up about the lake
being emptied. 30

Q. What was said by Chrstos or yourself?

A. And they said that would be corrected by the
building of the dam.

Q. The building of a new dam?

A. The dam, yes. And at that time Mr. Chrstos
retired with his two attorneys, Mr. Richman and Mr.

Kinley, and after quite a while they came back into the room and Mr. Richman, speaking for Mr. Chrstos, and in his presence—

Q. Mr. Chrstos was there?

A. Yes—said there were only two things he could do—either return our money—

Mr. Richman: Objected to. I object to any statement made by myself or my client with reference to
10 the returning of the money, as immaterial in this issue and cannot bind the defendant in this controversy.

Mr. Redrow: The testimony is certainly admissible, as dealing with the same contract on which we are bringing suit. Any statement, as I understand the law, made by plaintiff or defendant or their representatives, their attorneys, in trying to
20 effect a settlement growing out of a contract they have entered into in writing is certainly admissible as showing what was done by the parties in carrying it out.

By the Court:

Q. Did I understand Mr. Chrstos was present when this statement was made?

A. Yes, sir.

30 The Court: Objection overruled.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

By Mr. Redrow:

Q. What was said?

A. Mr. Richman said the money would be returned or title could be given at some later date. I asked him the question, could he fix a time? He said, "No, that would be impossible." I said. "Then we will take the money." An arrangement was made with Mr. Chrstos.

Q. What was said? 10

A. Mr. Richman turned to Mr. Chrstos and asked him for a check, and Mr. Chrstos said, "I came to get money, and not to give money."

Q. Who said that?

A. Mr. Chrstos. He said he came to receive money, not to pay out money—which was quite natural.

Q. Then what?

A. We agreed to meet Mr. Chrstos the next day at Mr. Laws' office. It was suggested two or three
20 days, but Mr. Chrstos said he would meet the next day, at which time Mr. Dougherty and I met and signed releases.

Q. What did Mr. Chrstos say he would do the next day?

A. Would be there and return the check.

Q. What check?

A. For our deposit money.

Q. What was your agreement with regard to the release? 30

A. What is that?

Q. What was the agreement you made at that time about executing a release?

A. Release of contract, each against the other.

Q. Well, Chrstos agreed —

A. To cancel the contract. He agreed at that time

that we would cancel the contract; and the agreement to that effect was to be signed the next day at Mr. Laws' office.

Q. Did you call at Mr. Laws' office the next day?

A. We did.

Q. Was Mr. Chrstos there?

A. He was not.

Q. Was there any agreement of release signed by you the next day—or by your attorney there?

10 A. There was.

Q. I show you a paper which appears to be executed in duplicate by Walter Walls and Frank P. Dougherty, and ask you if they are the papers which you signed at that time?

A. They are.

Q. And that was the day following the last meeting at the title company?

A. Yes.

20 By the Court:

Q. What was that day? Do you know?

A. The 15th of January.

By Mr. Redrow:

Q. Did you pay the title company for the searches which they made?

A. Mr. Laws did; and we paid Mr. Laws.

30 Q. What did you pay Mr. Laws for that?

A. Four hundred and some odd dollars.

Mr. Richman: Objected to. This man didn't pay it.

A. (Continuing answer.) I paid it to my attorney, and he paid it to the title company.

The Court: That will connect it up with the title company, of course.

Q. Mr. Walls, at any time—on January 5th or 14th—was there any deed tendered to you for the property which you had agreed to purchase, by Mr. Chrstos or his attorneys?

A. There was not.

Q. Has there ever been at any time?

A. There never has been.

Q. Have you ever received your share or any part of the deposit which you made of \$8,000 on this property from the defendant, Mr. Chrstos?

A. I have not.

Q. On the 14th of January were you prepared to make a settlement, as far as you were concerned, on this contract?

A. I was.

Q. What do you mean by that?

A. Had the cash.

Q. With you?

A. With me.

Q. Did you so inform Mr. Chrstos or anybody else at that time?

A. They knew we were there for settlement.

Q. Did you make any statement you were ready for —

A. Yes, we told them we were ready for settlement.

Cross-examination.

By Mr. Richman:

Q. Mr. Walls, you had been to this property, hadn't you, before this agreement was signed?

A. Yes.

Q. Many times?

A. No.

Q. How many times?

A. Twice.

Q. When was the last visit?

A. The 14th—or the day before that. We signed the agreement on the 15th. The 14th was the last visit.

Q. You noticed a public park there?

10 A. I did not know it.

Q. You did not know there was a park there?

A. I knew there was a park there, but Chrstos sold us the park.

Q. You knew there was a lake there?

A. Yes.

Q. Boating on it, and fishing?

A. Yes.

Q. There wasn't any doubt about that, was there?

20 A. No doubt about it. That is what we bought.

Q. Yes. Now, you remember the 15th of September?

A. Yes.

Q. When the agreement was signed?

A. Yes.

Q. What was said with reference to the—if anything—with reference to the use of this lake by the Almonesson Improvement Company?

30 Mr. Redrow: I object, if the Court please. Any testimony that deals with the execution of this agreement is not relevant, because this is an agreement in writing for the sale of certain real estate, which cannot be changed by any testimony which Mr. Richman might offer otherwise.

The Court: How is it material, Mr. Richman?

Mr. Richman: If your Honor pleases, I am entitled to show the conversation preceding the agreement; and I am entitled to show what interpretation the parties put on the agreement.

Mr. Redrow: I object to the reason. The agreement speaks for itself, and any exception to it must be in writing. 10

The Court: Unless it had something to do with any collateral agreement, not with the agreement in writing.

(Mr. Richman reads citation from 59 New Jersey Law, 75.)

The Court: But the contract in this case specifically deals with the subject matter, doesn't it? 20

Mr. Redrow: It does.

The Court: And covers all the subject matter?

Mr. Redrow: Absolutely.

The Court: It purports to be all the contract between the parties.

Mr. Richman: And it also shows they had knowledge of the easements against this property. 30

Mr. Redrow: I contend, your Honor, that this is not proper cross-examination, as it deals with this contract which is in writing.

The Court: Objection sustained.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

Q. Now, before you signed the agreement did you read it over?

10 A. Yes.

Q. Did you know at that time or not to what easements the agreement related?

Mr. Redrow: I object, if the Court please, for the same reason.

The Court: Objection sustained.

20 Q. Do you know when searches were ordered for this property?

A. I haven't the date. They were ordered through my attorney.

Q. You don't know that fact?

A. Not the date.

Q. On January the 5th, 1926, you and Mr. Dougherty were not ready for settlement, were you?

A. We were.

Q. Well, is it not a fact that the title company had not issued its settlement certificate?

30 A. They issued it—I don't know whether it was that day or the next.

Q. Well, then, it wasn't issued on the 5th?

A. I am not sure; but we were ready, from our standpoint.

Q. But there was no examination of title made at that date, was there?

A. What is that—on January 5th?

Q. Yes.

A. That application had been made.

Q. But the settlement certificate had not been issued, had it, at that time?

A. That I cannot answer.

Q. How could you be ready if it were not issued?

A. I was ready with the cash.

Q. Well, then, you were not ready on January 5th, were you? 10

A. Yes, I was ready.

Q. Were you at the title company January 5th?

A. I was at Mr. Laws' office, I have already said, in my testimony, with Mr. Kinley, Mr. Chrstos' attorney.

FRANK P. DOUGHERTY, one of the plaintiffs, being duly sworn according to law, was examined and testified as follows: 20

By Mr. Redrow:

Q. Mr. Dougherty, you are one of the plaintiffs in this suit?

A. I am.

Q. And you are one of the persons who purchased this property at Almonesson?

A. I am.

Q. And this is your signature on this agreement, 30 is it?

A. That is my signature, yes, sir.

(The agreement produced by Mr. Redrow, and shown to the witness, was marked by the stenographer "P. E. 1.")

Mr. Redrow: The exhibit number on contract of sale—which was marked “Plaintiffs’ Exhibit A” for identification—is now No. 1, the exhibit being offered in evidence as Plaintiffs’ Exhibit No. 1.

Q. After the execution of the contract, Mr. Dougherty, did you see the property in question, at Almonesson?

A. I did.

10 Q. How many times—and when did you see it?

A. Well, before we purchased it we seen it.

Q. You mean after you purchased it?

A. I went down there after the first of the year—1926.

Q. Was the property in the same condition then as when you purchased it?

A. It was not.

Q. What difference, if any?

20 A. There was a notice on the bridge that you would cross there at your own risk, it had been condemned by the county. And the water was drawn out of the lake.

Q. What arrangement did you make about settlement, if any?

A. Well, the arrangement was made —

Q. Mr. Dougherty, just what did you do?

A. The arrangement was made in accordance with the agreement. We were to settle on or about January 5, 1926.

30

Mr. Richman: I object to that, and ask that it be stricken out.

Mr. Redrow: I shall be very glad to have the Court do so.

Q. On or about January 5th what did you do?

A. (Not answered.)

Q. Who was there?

A. Mr. Kinley, Mr. Walls, Mr. Laws and myself.

Q. Did Mr. Kinley say anything at that time as to whom he was representing?

A. Yes—Mr. Chrstos.

Q. Mr. Chrstos, the same party from whom you bought the property? 10

A. Yes.

Q. And the defendant in this suit?

A. Yes, sir.

Q. What did you do that afternoon, if anything?

A. We made an agreement.

Q. What was done or said that afternoon?

A. They said the agreement was not ready by the title company, and we would have to meet the following day.

Q. How long were you there? 20

A. Three hours.

Q. What were you doing while you were there?

A. Checking up the lots. There were considerable lots sold to us, held by others; and I had a map there and I checked it up. And this map showed it was sold to other people. And the hotel was closed. It was a going proposition when we bought it.

Q. Well, did you assist in checking up on the lots?

A. I did—on a map.

Q. Who else assisted you in that, Mr. Dougherty? 30

A. Mr. Graham, I believe.

Q. Mr. Graham?

A. Yes.

Q. Did Mr. Kinley assist in any way?

A. With Mr. Graham.

Q. Were any descriptions gone over that afternoon?

A. There were.

Q. When did you meet Mr. Chrstos again? I mean, what else did you do with regard to the settlement?

A. January the 6th, 1926, we met them at the Land Title & Guarantee Company, Camden, for settlement.

Q. Who was there at that time?

A. Mr. Chrstos, Mr. Richman, Mr. Laws, Mr. Graham, Mr. Walls and myself.

Q. What was done on that day?

A. We had a conference that day—that is about all we did—and talked the thing over.

Q. Yes?

A. The agreement—or title, rather, wasn't fully searched, and we could make no settlement. And the book account, which pertained to the cottages, or bungalows I guess you would call them—some twenty-two bungalows on the lots—the book account was not there; and we could not reach a final settlement, we didn't have that, it wasn't in shape.

Q. What else was done? What was agreed upon that day between Mr. Chrstos and Mr. Walls and yourself and your attorneys?

A. Mr. Chrstos and Mr. Walls and myself, with Mr. Chrstos' and our attorneys, agreed to meet again on the 15th.

Q. Or the 14th, which was it?

A. The 14th—the 14th—yes, the 14th.

30 Q. Where?

A. At the Land Title & Guarantee Company. And we did meet there.

Q. What took place when, on the 14th, you got to the settlement room prepared to make settlement? Who was there on the 14th?

A. Mr. Walls and Mr. Chrstos, Mr. Richman, Mr. Kinley and Mr. Laws, Mr. Graham and myself.

Q. Mr. Chrstos was present?

A. Yes.

Q. What happened on the 14th?

A. On the 14th I asked a question about a lot of boats that were there—asked Mr. Chrstos how many he owned. He said, "Possibly one hundred and fifty." The furnishings of the hotel, which we were to get, we made an inventory of.

Q. On the 14th?

A. No, previous to that.

Q. Yes?

A. Because we wanted to get a bill of sale through on that as well as on the other material—so we went through the hotel a little bit previous to that. We did get an inventory of that—with the hotel closed up. The first question they asked me was—I raised the point about the hotel being closed. They said that was a very trifling matter. They said we could get over that very readily by us putting up a bond of a thousand dollars. I said, "Why should I have a bond for the sins or prosecutions of somebody else, and be responsible for his act? The very fact of putting up a thousand-dollar bond would make me as guilty as the other fellow. I objected to it, and very strenuously." 20

Q. What did they think?

A. Mr. Walls said he would indemnify me by his personal bond if I got into trouble.

Q. What else was said?

A. The title clerk was at my right, and I said— 30

Mr. Richman: Objected to.

Q. Was Chrstos present?

A. Yes. I said, "Would you guarantee that title?" He said, "Never in the world."

Q. Then what happened?

A. Then Mr. Chrstos and his lawyers left the settlement room, went outside and had a conference there for possibly fifteen minutes.

Q. Who went?

A. Mr. Chrstos and Mr. Richman and Mr. Kinley. And they came back, then, to the settlement room and Mr. Richman said, "Well, we have agreed on two things. That is all we can do. One is to refund to you your money; the other is to put up a bond to have these restrictions removed." My partner, Mr. Walls, spoke up and said, "I want my money back." They looked at me, and I said, "Well, I am very, very anxious to make settlement. I came here prepared to make settlement. I want the property. When I went into this thing I agreed with my partner to coincide or go with him. If he objected, I would object. If he wanted to go through with it, I wanted to go through with it. I was anxious to get the property."

Q. What else was said by Mr. Chrstos or yourself?

A. They agreed—Mr. Chrstos and his attorneys—with all of us there, that we were to meet the next—but first Mr. Richman said to him then, "Mr. Chrstos, are you prepared to refund the eight thousand dollars?" He said, "I came here to receive a check, not to pay one out; but," he said, "I will meet you tomorrow morning." That was the following day. "And," he said, "I will pay the money back, the deposit of eight thousand dollars." And we agreed then for to cancel the agreement. It was agreed then to cancel it—early. And the next day we did—Mr. Walls and myself—stop in Mr. Laws' office, where we were to meet the next day.

Q. What arrangement did you make with Mr. Chrstos and his attorneys?

A. To meet in Mr. Kinley's office and refund our deposit the following day at 10.30.

Q. What time in the morning?

A. 10.30. Mr. Chrstos mentioned the time.

Q. Did you meet there the next day?

A. We did.

Q. Was Mr. Chrstos there?

A. He was not.

Q. Did you on the following day, which was January 15th, sign this paper which is marked "Plaintiffs' Exhibit 2?"

A. I signed that paper. That is my signature.

Q. You signed it in two places?

A. I did.

Q. And you left it with Mr. Laws?

A. I did.

Q. And Mr. Laws was representing you in the settlement?

A. Yes, sir.

Q. On January 5th or 6th or 14th of this year was any tender ever made to you of a deed on this property?

A. Not at any time.

Q. Were you prepared to offer and pay the balance of the purchase price as coming from you?

A. I did.

Q. When?

A. Both on January 6th and the 14th.

Cross-examination.

By Mr. Richman:

Q. Mr. Dougherty, it is true, then, that the settlement certificate had not been issued on January 5th, isn't it?

A. It was not issued; I heard it was in preparation.

By Mr. Redrow:

Q. Who told you that?

A. That was told by counsel.

By Mr. Richman:

Q. But it was also true it was not issued on January 6th; isn't that correct?

10 A. Yes, sir.

Q. And isn't it a fact it wasn't even ready on January 14th?

A. I believe with some restrictions. I raised objection. I asked for one lot No. 5 on Block 29. It was in the agreement. And he asked me to hold that open—Mr. Kinley did.

Q. Isn't it a fact that even on January 14th the settlement certificate had not been issued—completed?

20 A. I don't believe it was entirely completed.

Q. Now, with reference to the meeting at Mr. Kinley's office, on January 5th, was it there that you spoke about the hotel being closed?

A. I mentioned it at every meeting after I discovered it.

Q. On January 5th?

A. On January 5th.

Q. How did you know anything about it on January 5th?

30 A. I went down there around the 1st of January. That is when I seen the water out of the lake.

Q. I am now talking about the hotel. How did you know the hotel was closed previous to January 5th?

A. I had been down previous to January 5th.

Q. Was it in fact closed on January 5th?

A. It was in fact closed on January 5th.

Q. As a matter of fact, the hotel was not closed at all, was it?

A. Positively it was closed.

Q. What?

A. Yes, it was closed. Mr. Strickler was the tenent there, and he had moved out; and he took his bedroom furniture with him. We supposed we were getting everything in the hotel. The piano was moved out; his furnishings were moved out. 10

Q. It wasn't closed, was it?

A. Yes, it was closed. There was a man—I think Squire Kaufman was in charge of the hotel.

Q. In charge of it for Mr. Chrstos, wasn't he?

A. Yes.

Q. There was no difficulty in going in and out of the hotel, was there?

A. Certainly.

Q. How?

A. This man was around only as a caretaker. 20 The hotel wasn't open.

Q. What do you mean by the hotel being closed?

A. As I understand it it was locked by the government, and this man Strickler quit.

Q. How did you get your information about it?

A. The question was raised at the settlement, and I got my information from you and Mr. Chrstos.

Q. As a matter of fact, there was nothing said about the hotel, was there?

A. Certainly—the hotel had been raided. 30

Q. And it was closed at that time?

A. It was. I was down on election day—I don't remember the date; and it was closed that day, too; could not get in.

Q. When you went to look at this property you saw it was a park, didn't you?

A. I seen a private park and lake and bungalows and hotel and garage and boathouses.

Q. You noticed a lake there with boating and fishing on it, didn't you?

A. In September, yes; there was a lake there.

Q. And at the meeting of September 15th wasn't that discussed?

Mr. Redrow: I object, if the Court please.

10

The Court: Objection sustained.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

Q. You knew, didn't you, that those owning houses and lots in the vicinity had the free use of that lake?

20

Mr. Redrow: Objected to.

The Court: Objection sustained.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

30 Q. Now, as a matter of fact, Mr. Dougherty, on January 6th, when you were at the title company, you were not ready to pay for this property, were you?

A. I certainly was.

Q. In what way?

A. My share.

Q. What?

A. My share of the money.

Q. Had you the cash with you?

A. Yes, sir.

Q. How much?

A. Eleven thousand dollars.

Q. In cash?

A. Yes, sir.

Q. With you that day?

A. I had a certified check besides.

10

Q. How much cash did you have with you?

A. I had there—I had about eleven thousand five hundred dollars.

Q. On January 6th?

A. Yes, sir.

Q. Even though you knew the settlement certificate had not been issued.

A. Certainly. I was there to perform my contract; I was anxious to get this property.

Q. Now, the lake you speak of—did you know 20 that Mr. Chrstos had nothing to do with the draining of that water from the lake?

Mr. Redrow: I object.

The Court: Objection overruled.

A. I understood the county done it by reason of the bridge being in a dangerous condition—the weight of the water in the lake had hurt the abutments of the bridge. 30

Q. The dam gave way, didn't it?

A. The abutments of the bridge gave way.

Q. And no fault of Mr. Chrstos?

Mr. Redrow: I object. That calls for a conclusion.

Mr. Richman: I am asking—if he knows.

Mr. Redrow: I don't think it is a proper question—for him to ask for a conclusion.

The Court: No. Put the question in such a form that it will call forth the fact in the answer—if he knows, of course.

10 A. What is your question?

Q. Do you know Mr. Chrstos had nothing to do with the draining of that lake?

A. Mr. Chrstos had been notified by the County Commissioners to draw the water out of the lake, and he didn't do it.

Q. Because of defective dam?

A. Because it was defective in the abutments of the bridge.

20 Q. At the meeting on January 6th and January 14th don't you know there was a deed prepared and ready to be delivered?

A. Never seen it. It was not presented.

JAMES W. LAWS, Esq., being duly sworn according to law, was examined and testified as follows:

30 Mr. Redrow: I would like to offer in evidence the deed from Charles Chrstos and wife dated July 30, 1924, to the Almonesson Improvement Company, recorded August 2, 1924, in Book 337 of Deeds, page 295, and marked as an exhibit "Pltf. 3."

By Mr. Redrow:

Q. Mr. Laws, you are a member of the bar in the County of Philadelphia, Pennsylvania?

A. Yes, sir.

Q. And during this transaction you represented Mr. Walls and Mr. Dougherty in trying to effect a settlement?

A. Represented them through the whole transaction.

Q. Were you present at the time the agreement was signed?

A. I was not.

Q. You came in on the matter after the agreement had been regularly executed? 10

A. After the agreement was signed it was sent to me to make application for the title insurance, and to get into communication with Mr. Kinley, who represented Mr. Chrstos.

Q. What did you do, Mr. Laws, after the matter was referred to you, in relation to Mr. Kinley, dealing particularly with what happened when you were talking with Mr. Kinley or talking with anyone else, or your clients, and Mr. Chrstos was present? 20

A. The first thing I did was to apply for title insurance.

Q. Yes?

A. The next thing I did was to communicate with Mr. Kinley, to get any information that was necessary to help the title company.

Q. Yes?

A. The agreement called for a conveyance of everything Mr. Chrstos owned in Bedford Township. 30

Q. Yes?

A. We had no definite deed to take a description from; and it was a very difficult, complicated matter. A man named Andover, of the title company, had charge of the matter for the title company. The

first definite arrangement I had, I arranged with Mr. Kinley to meet at my office on January 25th.

Q. Yes?

A. And arranged to have the title company send me over a list of all the lots which were unpaid for, and which there was a balance due on, a list of the leases on the bungalows, and a practical description—according to their ideas—of what we were to get from Mr. Chrstos; and Mr. Kinley, Mr. Walls and
10 Mr. Dougherty met at my office on January 5th. I had that tentative description, had the list of the lots unpaid for and balance due, a list of the bungalows on which there were leases. We spent about three hours checking up on the description, checking up the properties and lots and their locations, checking up the balance which was due on those which were still unpaid. And that was on the 5th of January. I said to Mr. Kinley, “What about the time limit on this agreement?”

20

Mr. Richman: I object. It seems to me that can't possibly bind the defendant in this case. The agreement speaks for itself.

Mr. Redrow: This is the agreement. Dealing with the conference held afterward I understand he can show Mr. Kinley was authorized to represent Mr. Chrstos at such conference as was pertinent to the case.

30

The Court: Are you going to show here that he was authorized for that purpose?

Mr. Redrow: I will follow it up.

The Court: If you follow it up, I overrule the objection.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

A. (Continuing answer.) Mr. Kinley said, “The delay is ours. We can't get all this information for you; and we will fix tomorrow to make settlement at the title company if you see the settlement certificate is dated January 28th.”

10

Mr. Richman: I object. The certificate is not in evidence.

The Court: Objection sustained.

A. (Continuing answer.) We met on January 6th.

Mr. Richman: I move it be stricken out. 20

The Court: As to the date of the settlement certificate, it may be.

A. (Continuing answer.) We met January 6th to settle.

Q. Who was present?

A. The following people were present: Mr. Chrstos himself, Mr. Richman—who said he represented him, Mr. Kinley—who told me he represented him, Mr. Walls—my client, Walter Walls, Mr. Dougherty, Mr. Graham and an assistant in my office and myself. The title company produced a settlement certificate, indicating a number of objections. 30

Mr. Richman: Objected to unless the settlement certificate is offered in evidence. Objected to as irrelevant and immaterial at this time.

Mr. Redrow: If the Court please, my understanding of the law is, a witness present at that time has a perfect right to testify as to what took place. He merely says a certificate was produced.

10 The Court: He may go that far.

A. (Continuing answer.) It was shown to Mr. Richman. Mr. Richman had a conversation with Mr. Kinley and with Mr. Chrstos; and we were there quite a time. And the result of it was that Mr. Richman said, "We cannot remove the objections which appear in the settlement certificate now."

20 Mr. Richman: Objected to. I move that it be stricken out.

By the Court:

Q. Was Mr. Chrstos present?

A. Mr. Chrstos was present.

Mr. Richman: I object for the further reason that the settlement certificate speaks for itself.

30 The Court: Objection overruled.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

A. (Continuing answer.) I said to Mr. Richman, "Well, now, we are ready to settle here today; and there is a clause in your agreement relating to the time. What about that?"

Q. Was Mr. Chrstos present?

A. Mr. Chrstos was present. We were all present there together; everybody heard what was said. He said, "The delay is ours, and I believe we can remove these objections," and suggested a time be fixed for settlement; and it was fixed for the 14th of January at the same place, and, I think, at about the same hour—at the Land Title & Guarantee Company, of Camden, New Jersey. 10

Q. And was there any deed prepared at that time?

A. The deed was not prepared at that time.

Q. Was anything said about the proper description to be contained in that deed at that time?

A. The title company—Mr. Andover was the man—said he would have the proper description. 20

Mr. Richman: Objected to.

A. (Continuing answer.) He furnished me with that description.

Q. Was Mr. Chrstos present?

A. Mr. Chrstos was present.

The Court: Objection overruled.

Mr. Richman: May I have an exception? 30

The Court: An exception may be noted for the defendant.

A. (Continuing answer.) And instructions were then given to the title company to write up the

deed and submit it to me. That deed was written up and submitted to me. I sent Mr. Graham to Mr. Kinley's office to check up with his data, to see the description was correct and that all the lots were to be included, and whatever data was to go in there would be in the deed in the correct way; and Mr. Kinley went over it with Mr. Graham, in Mr. Kinley's office, and approved it.

Q. What happened after that?

10 A. Then we met on the 14th at the Land Title & Guarantee Company of Camden, ready to settle; and the original settlement certificate was there, and the objections were taken up, which appeared on that certificate, in the presence of Mr. Chrstos, Mr. Kinley, Mr. Riehman and everybody else. It was a very long discussion; we were there about three hours trying to adjust this thing. And the result of it —

Q. What were you discussing?

20 A. In the first place, all the objections in the settlement certificate.

Q. Yes?

A. In the second place, we discussed the fact that the county commissioners apparently had condemned the dam—the lake was empty—and that there was a terrific expense for rebuilding that dam and restoring that property into the condition it was in when it was sold to us; and the question was, who was to bear the expense of rebuilding that dam and restoring the property.

30 Q. Was anything said about the hotel property?

A. The question then came up definitely—the hotel property had been closed by action of the United States authorities.

Mr. Riehman: I object. It seems to me that should be gotten at through the settlement certificate.

Mr. Redrow: I am asking what was said in Chrstos' presence concerning anything regarding the settlement, concerning our contract. It may be on the settlement certificate and it may not be. That is not in relevancy, as I take it; but what was said when all were there together trying to make a settlement. 10

The Court: Objection overruled.

Mr. Riehman: May I have an exception?

The Court: An exception may be noted for the defendant.

A. (Continuing answer.) The question was 20 then raised about the closing of the hotel, and the entering of a bond of a thousand dollars; and Mr. Riehman suggested that we get around that by Mr. Walls and Mr. Dougherty giving a bond to the authorities. And Dougherty declined to do it; and Walls said he would help out if he could, to put it through. But Dougherty said, "No, I am not going to be responsible for anybody violating the law down there, and I am not going to give any bond. I am buying a property clear of all objections." The 30 question came up then of a lis pendens on the settlement certificate, and Mr. Riehman said he didn't know how he could remove that, it would take time. The result of it was, I asked, "Are you ready to clear up this certificate? We have been three hours here, and are no nearer settlement than we were be-

fore." And Richman, Kinley and Chrstos went out; and I think they had that conversation with Mr. Evans, the title officer—I think I saw him through the glass—talking together. And Mr. Richman came back and said, "We can do one of two things: Cancel the agreement and return your money; or, if you give us time, I believe we can remove all the objections and give you a clear title." I said to Mr. Walls and Mr. Dougherty, "Which do you wish to do?" And Mr. Walls said, "I agree to cancelling the agreement and getting back the money." Mr. Dougherty said, "Well, I want to get the property, but if Mr. Walls wants to cancel I will go in with him, I will cancel the agreement." Mr. Richman then turned to Mr. Chrstos and said, "Have you the eight thousand dollars?" Mr. Chrstos said, "No, I came here to get money, not to pay it out." I said, "It is understood now that we are to get our money back?" Chrstos said, "Yes." Richman said, "Yes." And Kinley said, "Yes." I said, "When are we to get our money?" Chrstos said, "I will meet you at Mr. Kinley's office tomorrow and pay you over the money." I said, "We cancel the agreement in writing, then, by regular release, and that will be the end of it." And so it was.

Q. Mr. Laws, did you ever see this memorandum? (Handing paper to the witness.)

A. (The witness examines paper.)

30 Q. What is it?

A. That was a form of release I dictated to Mr. Graham, my assistant at the settlement, at that meeting—which was the substance of what the release was to contain.

Q. On January 14th?

A. On January 14th. That was subsequently re-

duced to writing, with slight modifications, and signed by my client.

Q. In the presence of Mr. Chrstos?

A. In the presence of all of us. The office was twelve feet one way and eight the other; and all heard what was said.

Q. Whose handwriting is that?

A. I will have to look at that again. It looks like Mr. Graham's handwriting.

Q. Is this your handwriting—this change? 40

A. Yes—"each of"—that is my handwriting below.

Q. That is your handwriting?

A. Yes, that is my handwriting.

Q. And this is the agreement you prepared for the following day?

A. That is the agreement I prepared—and had Mr. Walls and Mr. Dougherty sign it; with a receipt on the bottom for the money. 20

Q. That is your name as witness?

A. That is my signature as witness. Mr. Kinley called me up the next day —

Mr. Richman: Objected to.

The Court: Objection overruled.

A. (Continuing answer.) Mr. Kinley called me up the next day and notified me that Mr. Chrstos was ill and could not complete his engagement, but that he would meet us the following Monday or Tuesday —which he never did. 30

Q. Mr. Laws, has any part of this purchase money been paid to you as attorney—paid back to you as attorney representing Walls and Dougherty?

A. None whatever. The only money paid to me

was the money to defray the expense of the Land Title & Guarantee Company, which was paid by Walls and Dougherty; and I paid the bill, and there is the receipt on the table.

Q. Was any tender made at any time in your presence for the conveyance of this property by Chrstos to Walls and Dougherty?

A. Absolutely no tender whatever.

Q. At no time?

10 A. At no time.

Q. Is this the receipt for the money which you paid to the Land Title Company?

A. That is the amount I paid to the Land Title & Guarantee Company for the account of Mr. Walls and Mr. Dougherty for the examination and drawing of the papers.

Q. For this property?

A. For this very property and this transaction.

Q. Can you say —

20 A. \$475.

Q. And this is the receipt which you had?

A. That is the receipt which I received from them.

Mr. Redrow: I ask that that be marked.

(The receipt was marked for identification.)

Cross-examination.

30 By Mr. Richman:

Q. Mr. Laws, the meeting of January 5th was in your office?

A. Was in my office. My clients may have gone to Kinley's office before that, but the meeting in which we did the checking up was in my office.

Q. And the meeting at which the conversations were had, about which they testified, was in your office?

A. Yes.

Q. They were mistaken about that?

A. They were mistaken about that.

Q. The meeting was held in your office?

A. In my office.

Mr. Redrow: Mr. Walls testified it was in Mr. 10 Laws' office.

Q. Now, Mr. Laws, when did you order, if you did, this title insurance?

A. I will tell you the exact date (looking at a carbon copy of a letter.) It was on November 13th, 1925.

Q. You didn't order title insurance until November 13th, 1925; is that right?

A. Yes, sir. 20

Q. When did you receive a copy of the agreement from your client?

A. I can't tell you that. I don't remember when I got that. I got it sometime between the 15th of September and the 13th of November.

Q. Yes, but you were present, were you not, when the agreement was signed?

A. No, I was not then.

Q. You were not?

A. No. 30

Q. And you don't recall how soon after that you received the agreement?

A. I cannot tell you exactly.

Q. Now, as a matter of fact, on January 5th, the date fixed in the agreement for settlement, neither you nor your clients were ready to settle, were you?

A. Yes, we were ready to settle.

Q. In what way?

A. We were ready with our money.

Q. And the title certificate was ready, was it?

A. No, of course Mr. Kinley could not give me the information.

Q. Then it was not completed.

A. I don't know about that. They could not get the information.

10 Q. But you afterward got the information?

A. Based on information from Mr. Kinley.

Q. But on January 5th you were not ready to settle?

A. We were.

Q. What makes you say that?

A. We had our money.

Q. In bank?

A. It was this money.

Q. At the meeting of January 5th?

20 A. Not at my office, but my clients had the money ready to settle at any time.

Q. But on January 5th, at the meeting in your office, your clients were not ready to settle?

A. They were.

Q. What makes you say that?

A. I mean those men were there ready to settle any time Mr. Kinley was ready with his data.

Q. As a matter of fact, the deed was not prepared?

A. No.

30 Q. Or the settlement certificate?

A. I don't know whether the settlement certificate was ready or not.

Q. Was it there in your office?

A. No.

Q. Now, subsequently, a deed was prepared?

A. Oh, yes, a deed was prepared.

Q. And you approved of it?

A. I approved it after the title company approved it.

Q. And that was handed to Mr. Kinley, was it not?

A. That was handed to Mr. Graham at Mr. Kinley's office.

Q. And that was at Mr. Kinley's office on the 14th?

A. It was executed.

Q. Did you see it executed?

10

A. I didn't see it executed, but I believe it was.

Q. There is no doubt about that?

A. I don't think there was. I believe it was all ready; but I didn't actually see it.

Re-direct examination.

By Mr. Redrow:

Q. There was no deed, however, delivered or ten- 20
dered on January 5th or 6th, was there?

A. Absolutely none.

Q. Absolutely. You approved the description on the morning of January 14th, didn't you, and sent it over—the deed itself?

A. Yes, the deed was approved, the description was, on the 14th. I got Mr. Kinley's approval. The date is somewhere on those papers there. (Indicating.) I thought Kinley approved it on the 13th.

Q. Well, you didn't get the deed until the morning 30
of the 14th, did you, from the title company?

A. I didn't get the deed, but had the description before that.

Q. And you got the deed and sent it to Mr. Kinley on the 14th?

A. Yes.

Q. And no other deed had been offered or drawn previous to that date?

A. No other deed.

Re-cross examination.

By Mr. Richman:

Q. At the meeting of January 6th at the title company the settlement certificate was not ready?

10 A. The settlement certificate was there, containing these objections.

Q. There had not been a complete examination of the title, had there?

A. I don't know what the examination was, but a settlement certificate was there with objections that appeared on the final settlement certificate.

Q. You know, as a matter of fact, the title company had not, at that time, completed their examination?

20 A. They had completed it enough to turn up all these objections. There was another objection turned up which did not appear on that settlement certificate at that time.

RECESS

30

AFTER RECESS

R. EDWARD KLAIZ, being duly sworn according to law, was examined and testified as follows:

By Mr. Redrow:

Q. Mr. Klaiz, you are the Deputy County Clerk?

A. I am.

Q. Do you have in charge and in your possession 10 the lis pendens book of the County of Gloucester, of the courts here?

A. I have.

Q. I show you book called Notices of Lis Pendens for 1909, at page 289; and ask you to tell what you find there.

A. Lis Pendens between Almonesson Improvement Company, Complainant, and Charles Chrstos and Elsie Chrstos, Defendants.

Q. And covers premises where situate?

A. Situate in Almonesson, Township of Bedford, County of Gloucester, State of New Jersey. 20

Q. And that is the record book?

A. That is the record.

Q. This is the record of lis pendens filed in the Clerk's office as of that date?

A. It is.

(Mr. Redrow reads from the book.)

Q. Mr. Klaiz, does this record show that that lis 30 pendens is still a matter of record, and has not been cancelled?

A. It does.

(No cross-examination.)

Mr. Redrow: I would like to offer that record in evidence.

The Court: It may be marked.

CLINTON I. EVANS, being duly sworn according to law, was examined and testified as follows:

10

By Mr. Redrow:

Q. You are a member of the bar?

A. I am.

Q. And have been engaged in title work for a number of years?

A. I have.

Q. How long?

A. Since 1910.

20 Q. Whom were you employed by on or about December and January of last year—December of 1925 and January of this year?

A. Land Title & Guarantee Company of New Jersey—Camden.

Q. What officer were you there?

A. Title officer.

Q. And as title officer did you sign settlement certificates given out by the company?

A. Yes, I did.

30 Q. I show you what appears to be a settlement certificate of the Land Title Guarantee Company of Camden, N. J., dated December 28, 1925, No. 12803, which appears to have your signature as title officer, and I ask you if that is the settlement certificate—if you signed that settlement certificate?

A. That is my signature.

Q. And is that the settlement certificate which was issued by the Land Title Guarantee Company of Camden on the property which is the subject of this suit?

(The settlement certificate referred to above was marked "P6" and was offered in evidence by Mr. Redrow, in behalf of the plaintiffs.)

Mr. Richman: It is objected to on the ground 10 that that settlement certificate was not made by the witness. May I cross-examine him?

The Court: Certainly.

Mr. Redrow: I would like to know what your objection is first.

Mr. Richman: I want to cross-examine the witness. 20

Mr. Redrow: I want to get this thing straight. I am proving this paper, by this witness, as a settlement certificate which he made at that time, and which I ask to have marked as the settlement certificate made at that time over his signature; and I think I am entitled to have that without any cross-examination.

(The settlement certificate was examined by Mr. Richman.) 30

Mr. Richman: My objection is that it appears on the settlement certificate that a continuation was made after January 14th. Secondly, the fact of its date is no evidence of its issuing at that time, De-

ember 28th, 1925; and there is no proof that this was the settlement certificate produced at the time in the meeting, January 6th and January 14th, at the title company.

Mr. Redrow: The objections which he states are hardly worth while answering, as I see it. I expect to continue on, by witnesses, to show this is the one turned over at the time of settlement. I am asking
 10 now—the fact brought out by Mr. Evans' testimony is this: This was the settlement certificate issued by the Land Title Company on this property, dated December 28th. I understand, as a matter of fact, it may be necessary to show how that got to these different people; but I am asking now if this is the settlement certificate, issued by the Land Title Company, which covers this property; and, of course, I must follow it up as to what became of it.

20 The Court: Does that certificate show a continuation after the 14th of January?

Mr. Redrow: No, it does not. It is brought down until the 14th of January.

Mr. Richman: Then, if your Honor pleases, I think I am entitled to cross-examine as to when those continuations were made.

30 The Court: The point is, now, you have examined the witness and are offering this in evidence, and counsel is asking to cross-examine on the offering it in evidence. I think that counsel is entitled to cross-examine on the competency as to the authenticity of this paper.

Mr. Redrow: Neither of the parties to the dis-

pute is offering this, but someone outside. Neither of these parties is concerned at all. For the present I will offer it merely for the purpose of identification.

Q. This is your signature, Mr. Evans, to this paper?

A. That is my signature.

Q. Mr. Evans, I show you a deed which has been marked and offered in evidence, as Exhibit P 3, 10 given by Charles Chrstos and wife to the Almonesson Improvement Company, which said deed refers specifically to the fact that the guarantor, Chrstos, makes certain covenants and grants as to the use of Almonesson Lake and Park to the grantees, to wit, the Almonesson Improvement Company. I ask you whether or not the premises described and mentioned in this deed Exhibit P3 as the Almonesson Lake and Park are the same premises as are mentioned in your settlement certificate which is marked 20 Exhibit P6 for identification?

Mr. Richman: I object. The deed speaks for itself.

Mr. Redrow: I think, if the Court please, I have a perfect right to show by a competent witness whether the premises mentioned in one deed are the same as those mentioned in some other description.

The Court: Objection overruled. 30

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

A. The premises described in this deed —

Q. I didn't ask you that.

A. The lake and park mentioned in this deed is the same Almonesson Lake and Park mentioned in that settlement certificate.

Q. Mr. Evans, as title officer, were you the officer of the company which determined whether or not titles would be insured by your company subject to or without exceptions?

10 A. That was my duty.

Q. As —?

A. As title officer of the company.

Q. In regard to this particular property which is the subject of this suit would your company on January 6th, 1926, or on January 14th, 1926, have insured this title without any exceptions?

20 Mr. Richman: I object. If your Honor please, it seems to me that question is objectionable for this reason: Here is an agreement of sale between these parties, and whether that exception in that settlement certificate is valid or not does not lie within the power of this witness to say. It is for this Court and jury to determine. And we should not be bound by whether Mr. Evans should show that in the settlement certificate or not. The thing speaks for itself.

30 The Court: Well, the agreement as I understand it is that the title shall be such as this particular company will insure. Now they are seeking to prove that this company named in the agreement would not insure it.

Mr. Richman: Well, don't you see, your Honor, that is not the point—whether they will insure it without showing this exception is not the same prop-

osition as to whether they were bound to take under this agreement. We agree to sell free and clear of all encumbrance except certain building restrictions and easements. Our contention is that the use of this lake, concerning which this lis pendens was filed, is an easement which was accepted in the agreement; and whether or not it were shown in the settlement certificate as an exception is no answer as to whether or not these parties were bound by the agreement.

10

Mr. Redrow: Mr. Richman in his opening took pains to read part of these easements, but did not take the pains to inform the Court and jury what it all meant—"The said property to be conveyed free and clear of all encumbrances except building restrictions and easements"—(continues reading from agreement). It does not refer to any easement or restriction regarding any part of the land or any part of the lake. The agreement goes on to say, 20 "Title to the above property to be good and marketable and such as will be insured by the Land Title Guarantee Company of Camden." That is what it said. Mr. Richman in his opening stopped after the words "building restrictions and easements" and left out the "building operations." This man (referring to the witness, Mr. Evans) is the title officer of that company, and was at that time; and he is asked the question as to whether or not he would insure the title of the property at that time; and it seems to me he is competent as a witness to show 30 that.

The Court: I don't understand that the objection goes to that, but as to whether this title company would insure this title without exceptions. I understand the point Mr. Richman makes now is that

there was no provision in the agreement that it would be that kind of policy, but whether it would be insured by the title company.

Mr. Redrow: I take it, if a title company is asked to insure a title to a property they are obligated to insure the title. Where there are exceptions noted, that is not a compliance with that part of the agreement; but the title company must issue
10 a policy free of any exceptions which would affect the title to that property.

The Court: Of course we all know, as a matter of practice, no policies are issued without some exceptions—none that I know of—and it is perfectly possible for the parties to include that in their agreement.

Mr. Richman: Whether or not the title company
20 would issue their settlement certificate without these exceptions is not the same question as to whether these parties are bound under this agreement. (Continues argument.)

The Court: Let me see if I get your proposition. It is that the agreement that the title shall be such as a title company—or this particular title company will insure, is to be read in connection with and interpreted in the light of the agreement between the
30 parties themselves.

Mr. Richman: Positively.

The Court: I think that is true. No dispute about that. Assuming this agreement had provided the property was to be purchased subject to a mortgage of \$20,000, naming the mortgage, you would not

contend that then the agreement as to the insurance contemplated that provision, would you?—and that the title company was to insure against that mortgage?

Mr. Redrow: No, but the proposition, I take it, is different here. I might have a distinct understanding as to what it would show, and leave the construction of the contract and testimony to the Court to determine. The offer in this case is an
10 offer of testimony that they were to insure this title subject to exceptions. If it were bought subject to mortgage, of course it would show the mortgage. In this particular case, if the exception is with regard to a covenant of dedication—which I am satisfied this is, a dedication of this lake in part for some other purpose—I say the exception is with that intention, and the title policy is to be written with that exception, I say it is for the Court and
20 jury to decide whether that exception was to be included in this agreement which says it should be insured by the Land Title Guarantee Company. I think the Court should give the witness the opportunity of saying whether or not it would insure. (Continues argument.)

The Court: Your purpose now is to show whether or not this company would have issued a policy, and with what exceptions, if any?

Mr. Redrow: That is it exactly.

30

The Court: I think you are entitled to show that.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

(The stenographer was requested to repeat the question, which he read as follows: "Q. In regard to this particular property which is the subject of this suit, would your company on January 6th, 1926, or on January 14th, 1926, have insured this title without any exceptions?")

A. No.

10 Q. What would your title policy have shown as to this particular property in the way of exceptions to the title? (The witness looks at the settlement certificate.)

(On request of Mr. Richman the stenographer repeated the question.)

Mr. Richman: I object to that because the settlement certificate is not in evidence, as I understand; and he purposes now to tell what that settlement 20 certificate shows.

Mr. Redrow: I am asking a witness who is admittedly the man in the title company who at that time wrote title policies, and who said whether they would write them and what they would put on them—I am asking him what the settlement certificate would show at that time.

Mr. Richman: I have a further objection—There 30 is no evidence that he made this examination or knows anything about it, as far as the testimony goes, except what the thing says. Anybody can read it—and it is objectionable.

Mr. Redrow: The settlement certificate is not in evidence, and will be offered later. Mr. Richman is getting the cart before the horse, as I take it.

This man has a perfect right to testify as to what in his official capacity—I don't suppose he was down here and searched the records, I suppose the title company has other men for that purpose, but whatever records were collected were delivered to him—the result of the title company's efforts was set out in a settlement certificate to which he set his name. I am asking him whether or not he would, or the company would have insured the title to that property without exceptions at that time. He said, 10 "No."

The Court: Is he testifying now of his own knowledge?

Mr. Redrow: I would say of his own knowledge.

Mr. Richman: He cannot testify of his own knowledge. 20

The Court: Objection overruled.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

Mr. Richman: I make the further objection to his reading from the settlement certificate because it is not in evidence. 30

By the Court:

Q. Can you testify without reading from the settlement certificate?

A. If the Court please, I can tell the general trend of it. I might leave out some of the details.

Mr. Redrow: I have another answer for that. This settlement certificate, as the Court knows, is signed by Mr. Evans, and is made as of that time; and while it is not in evidence, it is perfectly competent as something which he did, and to refresh his memory as to what would have been on the settlement certificate.

10 Q. What do you do with the certificate before you sign it, or any certificate?

A. I dictate it from memorandums of the title to a young lady, and it is prepared and brought to me to sign.

The Court: The question is, as I understand it, what exceptions would have appeared on the policy?

Mr. Redrow: Yes.

20 The Court: And that this is the gentleman who says he is qualified to determine.

(Objection overruled.)

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the defendant.

30 (The witness reads from book of lis pendens on pages 435 and 437.)

Q. That list that you have there, does that apply to this deed marked "P3?"

A. What was that question?

Q. You said lis pendens filed December 3rd, 1923, between Almonesson Improvement Company and

Charles Chrstos and Elsie Chrstos. Have you reference to the lien claim which was filed here in notices of lis pendens in the county clerk's office, which was read into the record by Mr. Klaisz, deputy clerk?

A. If I could see the record —

(Witness turns to page 292.)

A. (Continuing answer.) The lis pendens referred to in this exception is the same as recorded in this book.

Q. Now, Mr. Evans, do you know when the settlement certificate to which you signed your name was written?

A. Written on January 5th of this year.

Q. 1926?

A. 1926.

Q. Do you know what became of that on the following day? 20

A. It was delivered into the room where the parties were making the settlement.

Q. The parties to this suit, you mean?

A. The parties to this suit.

Q. And was that included—as far as exceptions—as far as you read, and in the same condition as it is today?

A. In the same condition except this sheet containing the continuation and with the description of the properties. 30

Q. So that all the exceptions to the title which you have just testified to were on this settlement certificate?

A. On this certificate.

Q. On January 6th, 1926?

A. Yes.

Q. When it was delivered to the settlement room of this company?

A. Yes.

Q. To the parties in this suit, for settlement?

A. Yes.

Q. Excepting it didn't have all the descriptions?

A. It didn't have the description in it.

Q. Why didn't it have the description in,—if you know?

10 A. The matter of the description had been left to the parties to determine just exactly what wording they wanted to use. We explained, in delivering this certificate, that it covered all the Chrstos property in Almonesson—the exact wording to be used in the description was left to the parties to determine.

Q. And was that policy returned for placing the description in it?

A. Yes.

Q. To whom was it delivered, do you know?

20 A. I do not know.

Mr. Redrow: (addressing Mr. Richman): Do you question the delivery of this to you? (Indicating postcard receipt.)

Mr. Richman: Sure—what is it?

(Mr. Richman examines the postcard.)

30 Mr. Richman: That is all right.

Mr. Redrow: I offer receipt—"Camden, N. J." dated "January 5, 1926"—the "5" is crossed out in lead pencil and "7" written above it. The receipt says, "Received of the Land Title Guarantee Company of New Jersey the following papers: Settlement Certificate under Application No. 12803, Guar-

antee No. (blank), Search No. (blank). Signed "Grover C. Richman, per M. Wheaton."

Q. Mr. Evans, was this settlement certificate returned to your company for placing descriptions in it afterward?

A. Yes.

Q. And do you remember when that was done?

A. I can't say what day it came back or whether it was left there by the parties. 10

Q. Or whether it was turned over to Mr. Richman or not?

A. I do not know.

Cross-examination.

By Mr. Richman:

Q. Mr. Evans, when did you actually affix your signature on the last page of this settlement certificate? 20

A. On the 6th of January sometime prior to 2 P. M.

Q. At that time the continuations made by Mr. Tobin was not on there?

A. Was not there, no.

Q. You never made any examination of this title yourself at all, did you?

A. Yes.

Mr. Redrow: I object. 30

Q. Did you make the original examination?

A. The examination had been made at three different times.

Q. Did you make all of them?

A. Pardon me, Mr. Richman, do you mean I made the abstract or examined the title?

Q. Did you actually make the abstract?

A. No, I examined the title but didn't make the abstract.

Q. You never looked at the original records at all?

Mr. Redrow: Objected to.

10 The Court: Objection sustained.

Q. Mr. Evans, these exceptions that you show—aren't they the usual exceptions that you would show in an ordinary examination of title?

Mr. Redrow: Objected to. It must be designated what these exceptions are. It seems to me his attention should be directed to each and every exception counsel has in mind, and not as to all of
20 them.

The Court: I will allow the question.

(Question repeated by stenographer.)

A. The printed exceptions on the first page are the usual ones, the first six.

Q. The first six?

A. All others—the ones that are typewritten are the ones that come up in each individual examination, and cannot be standardized.
30

Q. But they occur, more or less, in every title, don't they?

A. According to the character of the land being examined.

Q. Beginning with exception No. 7,—“Flowing, grounding and draining rights, if any, of adjoining

owners or tenants in any stream or watercourse crossing or in any way affecting the insured premises.” What do you mean by that exception?

A. On examining the title, where there is a body of water, sometimes it is impossible to determine the flowing rights there may be. We make that an exception always, in examining title where there is a body of water.

Q. In other words, you have no knowledge of any recorded easements; is that right? And you put 10 that in to protect yourself?

A. Yes.

Q. “Rights of adjoining owners and others in any party walls”—What do you mean by that, in this part?

A. In case there might have been party walls on any of the boundary lines.

Q. This was country land?

A. Might have had a double house built on there.

Q. Is that what you mean? 20

A. Right of adjoining owners to build into a party wall if there should be such a party wall.

Q. That is done for your protection?

A. Yes.

Q. “Restrictions and easements imposed on the land by Charles Chrstos”—What do you mean by that?

A. Particularly we meant restrictions which Chrstos had put on there, and the reservations he had made when conveying title to another company, 30 which title we had insured.

Q. Building restrictions?

A. Well, he had building restrictions in most all of his deeds, not all.

Q. Yes?

A. And when he conveyed to the Almonesson Improvement Company he put a covenant in that deed

dedicating a strip of land for a park, and granting an easement over a body of water.

Q. And is that what you had reference to in this exception?

A. Yes.

Q. Exception 9?

A. Yes.

Q. "Restrictions and conditions imposed upon the land by Charles Chrstos?"

10 A. Yes.

Q. Now, 10—"Mortgage made by Ella K. Walton, et vir, to Lakeview Heights Building and Loan Association, dated September 20, 1923; recorded in Mortgage Book 137, page 435; given to secure \$4,000.00. Covering lots 14, 16, 18, Block 2." I notice a marginal note, "Cancelled, 1925." Did you put that there?

A. I did not put that note there, no.

20 Q. Are you prepared to say now that that has not been cancelled?

A. No, it has been cancelled.

Q. It has been cancelled?

A. Yes, since the date of the certificate.

Q. Do you know who put in the notation, "Cancelled December 30, 1925?"

A. I do not.

Q. You mean it has been cancelled since December 28th?

A. December 28th.

30 Q. As a matter of fact, it was cancelled January 5th; is that right?

A. I don't know when it was cancelled.

Q. You don't know?

A. No, but I know it was cancelled,—by looking at the record.

Q. But you don't know when?

A. No.

Q. Exception 11,—“Mortgage made by Ella K. Walton, et vir, to Charles Chrstos, dated September 20, 1923, recorded in Mortgage Book 137, page 439; given to secure \$2,000.00. Covering lots 14, 16, 18, Block 2.” That has been satisfied of record, has it not?

A. I have no idea.

Q. Did you make any examination of the record to show?

A. No.

Q. Then this does not correctly state the record today, does it? 10

A. Today?

Q. Or as of January 5th?

A. Yes. I signed the original. I didn't sign a continuation.

Q. I understand.

A. As of December 28th I know conditions,—which conditions obtain up to this present moment, as far as I signed the certificate. 20

Q. But you say you signed January 5th?

A. Yes.

Q. Which is the condition of the record as of December 28th?

A. Yes.

Q. So you are not testifying as to what it was January 5th?

A. I have testified as to one mortgage that was cancelled.

Q. But as to the rest? 30

A. I cannot tell.

Q. So what your testimony is, is as of December 28th, 1925?

A. Yes.

Q. "Rights of lot owners in and to such portions of land as shown on plan of Lakeview Heights." What do you mean by that?

A. Particularly the streets and other public places shown on the filed plan.

Q. It is a filed plan?

A. A filed plan in the Gloucester County Clerk's office.

10 Q. The exception relating to certain deeds,—Exception 13 I have reference to,—in which you say, "The following conveyances in general of title expressing a nominal consideration, proof will be re-

quired that such conveyances were made for a valuable consideration, not in fraud of creditors, and free from any trusts or limitations, expressed or implied:"—Upon production of an affidavit that that is the fact you remove those exceptions, do you not?

A. We do.

Q. And those are usual to any ordinary settlement certificate?

A. Yes.

20 Q. That question related to Exception 13, a, b, c, d, e, and exception 14, does it not, and your answer that you just made to me?

A. Yes, that affidavit answer would cover 14 too.

Q. Now, lien claim filed by the Asbestos Crete Building Company against Charles Chrstos,—you don't know but what that was cancelled as of January 5th?

A. I do not know.

30 Q. 16,—"Lis pendens filed December 23, 1925, between Almonesson Improvement Company and Charles Chrstos and Elsie Chstos."—Just why do you show that lis pendens?

A. Because it affects title to land involved in that examination.

Q. In what way?

A. The subject-matter of the suit, the land described here, is the subject-matter of the policy.

Q. You have reference to the covenant to the Almonesson Improvement Company, when you show this lis pendens in this settlement certificate, do you not?

A. Not particularly, no.

Q. What?

A. Not particularly.

Q. Well, a lis pendens is a paper filed in a suit, isn't it?

A. Yes.

Q. And you examined this title, you say?

A. Yes.

Q. Wasn't that suit filed to enforce the covenant in that deed?

A. I think it was; I am not sure; I don't remember now.

Q. And wasn't the covenant given to the Almonesson Improvement Company of free use, for boating and fishing, of the lake, and for picnic purposes of the park? Wasn't that the covenant?

A. Yes—use of the park.

Q. And that suit was filed because of that use?

A. Yes.

Q. And because of that use of the lake, and because of the use of the park, you show this lis pendens?

A. Yes.

Q. Under that suit?

A. Yes.

Q. It does not affect the fee simple title of the lake?

A. No.

Q. Nor of the park?

A. No.

Q. It is the mere use of the park—of the lake for boating and fishing, and likewise of the park for picnic purposes?

A. Yes.

Q. Now, 17: "Production and record of deed from Charles Chrstos and Elsie Chrstos, his wife, to the assured." Your title company actually drew that deed, didn't it?

A. Yes.

Q. And to whom did you deliver it, do you know?

A. I do not know.

Q. Well, it was approved by your company?

10

A. Yes.

Q. Do you know whether or not it was executed?

A. I do not know.

Q. But you do know that the description was prepared and approved—the former deed prepared and approved by your company?

A. Yes.

Q. No question about that?

A. No question about that.

20 Q. Now, exception No. 19 is a recognizance. This continuation was not on the settlement certificate as of January 5th, 1926, was it?

A. No.

Q. When was this continuation put on?

A. I have no idea.

Q. It wasn't made by you?

A. No.

Q. But when you signed it, it wasn't there—this continuation?

30 A. The continuation was not there, no, when I signed the certificate.

Q. You are familiar with the exception, are you not?

A. What is it?

Q. You are familiar with the exception, are you not?

A. Referring to what?

Q. 19,—the recognizance against Herman Stichler?

A. I know the situation, yes.

Q. This appears to be a recognizance, Mr. Evans, by Herman Stichler and David C. Coffey, surety, to the United States Government. Just why do you show that bond?

A. That wasn't on there when I signed the certificate.

Q. You haven't anything to do with that, then? 10

A. No.

Q. You aren't prepared, now, to say whether that was a proper exception?

A. If you qualify me as an expert, I can say whether it should or should not be on there. But in this matter I cannot state.

Q. The title of the property is in Charles Chrstos?

A. Yes.

Q. He is not a party to this bond?

A. He is not. 20

Re-direct examination.

By Mr. Redrow:

Q. The hotel, after it was padlocked, still belonged to Mr. Chrstos, didn't it?

Mr. Richman: Objected to.

The Court: Objection sustained. 30

Q. Mr. Evans, when was the deed prepared and approved by company and sent to Mr. Chrstos, or Mr. Laws, I believe, for examination?

A. Between the sixth and thirteenth, or between the sixth and eleventh of January.

Q. Between the sixth and eleventh of January?

A. And the eleventh.

Q. Nineteen and——?

A. 1926.

Q. Mr. Richman called your attention to a mortgage given by Ella K. Walton to Charles Chrstos, appearing here as item No. 11,—and I am showing you the record book of the clerk's office, Book 137, page 437; and I ask you whether that has since been cancelled of record?

A. It has not been cancelled.

Q. And was not as of January 5th?

A. It has never been cancelled.

RALPH S. GRAHAM, Esq., being duly sworn according to law, was examined and testified as follows:

20 By Mr. Redrow:

Q. Mr. Graham, you are working with Mr. Laws?

A. Yes, sir.

Q. Over in Philadelphia, as attorney?

A. Yes.

Q. You are also a member of the bar, I believe?

A. Yes, sir.

Q. I show you an agreement of sale, marked Exhibit P1, on the last two pages of which appear to be quite a few pencil memoranda; and I ask you to tell the Court and jury what they are, if you know, and who made them.

A. These pencil memorandums were made in Mr. Laws' office on January 5, 1926, when Mr. Kinley was present representing Mr. Chrstos, the defendant in this case—Mr. Laws, Mr. Walls, Mr. Dougherty and myself.

Q. Yes?

A. We got together in Mr. Laws' office about two o'clock in the afternoon that day, to go over the description covered by this agreement of sale; and we did go over it and compare it with Mr. Andover's description, the search clerk of the Land Title Guarantee Company, together with a map produced by Mr. Dougherty. Mr. Kinley and myself checked over the various book accounts showing amounts due by persons purchasing lots from Mr. Chrstos; and we found the typewritten amounts set forth in the agreement were not correct. Of course, payments had been made since September 15th, 1925. So we earmarked the correct amount in pencil opposite each man's name; also indicated what lots, if any, had been sold. And we found several here had been sold, and they were ear-marked also by myself in pencil.

Q. These changes are in your handwriting?

A. In my handwriting.

Q. In pencil writing?

A. In pencil writing.

Q. And consented and agreed to by Mr. Kinley, representing Mr. Chrstos?

A. By him, yes; and he and I went over them.

Q. In Mr. Laws' office?

A. In Mr. Laws' office—in his private room.

Q. What else was discussed by you or the parties in interest that day—anything said about the settlement?

A. Mr. Kinley, I believe, stated that he wanted the parties to make settlement at the Land Title; and so it was arranged that they would meet the next day—I believe he said he had fixed two o'clock the next day at the Land Title—and he would be there prepared to make settlement.

Q. Mr. Kinley, representing Mr. Chrstos?

A. Mr. Kinley representing Mr. Chrstos.

Q. Were you over to the Land Title Company the next day?

A. Yes, I went over to the Land Title Company the next day, at which time and place we saw Mr. Chrstos, defendant in this case, Mr. Kinley, his attorney, Mr. Walls, Mr. Dougherty, Mr. Laws, Miss Conover, I believe, collection agent for Mr. Chrstos, Mr. Walter B. Townsend, and a gentleman by the

10 name of John Conn, together with myself.

Q. This was on January 6th?

A. Tuesday, January 6th, at 2 o'clock.

Q. What did you do there? Did you have any settlement certificate at that time?

A. A settlement certificate was produced at that time and handed to Mr. Richman by the settlement clerk. He, in turn, handed it to Mr. Kinley, and Mr. Kinley retained possession of the settlement certificate.

20 Q. What was done toward making the settlement on that day?

A. Mr. Kinley endeavored to get up a set of figures, but as no papers had been prepared he was unable to go ahead; and his book accounts were not in proper shape even at that time to turn over, although we both endeavored to check up the various amounts before this agreement of sale to make sure the amounts we had added up in our office agreed with the amounts he understood his client would be giving credit for to the buyers.

30

Q. Had the deed and bond and mortgage at that time been prepared?

A. None of the papers had been prepared at that time, because the parties were unable to arrive at a definite understanding of the description of the property. At a meeting in Mr. Laws' office, in preparing the description of the property, we found numerous

differences in the comparisons; so it was decided Tuesday afternoon at the settlement company's office that the Land Title Company would prepare the papers; and I spoke to Miss Foster in the presence of all the parties there, including the defendant and the plaintiffs, and gave her instructions how to prepare the bond and mortgage and the two deeds which are required to make settlement.

Q. Hadn't you at that time—or did you know on January 6th just what property would be conveyed? That is, had you and Mr. Kinley agreed on the description of the property? 10

A. We had not agreed absolutely on the descriptions. You might say we had agreed on only a tentative idea of what the deed should include; but Mr. Kinley was not certain concerning all the various lots that should be included, because in checking these up in Mr. Laws' office on the 5th, which was a Monday, we found some differences—of certain lots being sold, which had been included in this agreement of sale and should not be included in the deed. 20

Q. After that, Mr. Graham, when did you see Mr. Kinley—or what did you do toward getting up this description and getting it out?

A. We prepared, as we saw fit and deemed best, a description in accordance with the agreement of sale, and conferred with the Land Title Guarantee Company of New Jersey concerning a proper description to be inserted in the deeds.

Q. Did you take up with Mr. Kinley, then, on the 14th, the description of these lots? 30

A. No, not on the 14th.

Q. On the 13th?

A. Yes, on the 13th. The Land Title Company had sent us, under date of January 11th, a description to be used for all of the papers—which was written on a folio sheet, yellow folded sheet.

Q. Yes?

A. And I took that yellow folded sheet over to Mr. Kinley's office about three o'clock, January 13th; and he and I checked over that description, as well as the various lots and the block numbers, also such lots that included and did not include bungalows. And I asked him whether or not he was satisfied with that description, and whether we should use it in our papers. He O. K'd it as to matter and form; and you
10 will find it on the bottom of the page.

Q. Is this the yellow plot?

A. This is the yellow plot I have reference to. (Indicating.)

Q. I notice something crossed out, and some notations. Were they made by you or Mr. Kinley as a result of your conference with him January 13th last?

A. They were made by me as a result of my conference with Mr. Kinley, with the exception ink
20 arrangement made, I believe by Miss Foster, as to what should and should not be included in the mortgage. But there is the approval date—1/13/26—and signed by Mr. Kinley; and upon that authority we directed the Land Title Guarantee Company to go right ahead and have the deed prepared.

Q. And the bond and mortgage and deed were prepared?

A. Yes.

Q. You were at the settlement January 14th?

A. Yes.

Q. What took place at that time?

A. At the settlement all the parties were present who had been present before with the exception of Miss Conover—Mr. Chrstos, Mr. Dougherty, Mr. Walls—

Q. All except Miss Conover?

A. All except Miss Conover.

Q. She was the agent?

A. She was the agent. Mr. Kinley seemed to have all the book accounts and papers and other lists to be signed.

Q. What was said by the parties in reference to making settlement, if you recall just what was the situation.

A. A discussion was had concerning the padlocking of the hotel.

Q. And what other talk was had? 10

A. Discussion was had concerning the condemnation of the dam and spillway, and the necessity of rebuilding it, and what it would cost. There was a difference of opinion between Mr. Chrstos and Mr. Walls as to what it should cost and the proportion each should bear.

Q. Any discussion as to the dedication of the lake to public use?

A. There was a discussion as to the so-called lis pendens, which has been spoken of here in court as
20 appearing on the settlement certificate.

Q. And what was the result of the statements made after you apparently did not get together? What was done by Walls or Dougherty or Chrstos in relation to the settlement?

A. As a result of the discussion had concerning the lis pendens Mr. Richman, Mr. Kinley and Mr. Chrstos, their client, adjourned outside of the settlement room, and came back and Mr. Richman stated that his client would do one of two things: The
30 first was, he would cancel the agreement of sale and return the deposit money to Mr. Walls and Mr. Dougherty. Or, he would attempt to remove all the objections from the settlement certificate. He would also satisfactorily guarantee to rebuild the spillway and the dam. And that he would make

arrangements to have the padlock released from the hotel.

Q. What was the—

A. And as a result of that Mr. Walls and Mr. Dougherty were asked by Mr. Laws what they wanted to do about it, and Mr. Walls said he wanted his money back. Mr. Dougherty said he would stick with Mr. Walls and would agree to what Mr. Walls wanted to do, and he wanted his money back too.

10 Mr. Chrstos then agreed he would pay their money back. Mr. Laws then suggested the parties join in mutual releases, which could be attached to and endorsed on the original agreement of sale. Each could retain his agreement of sale with these endorsements on. And Mr. Laws dictated a release, which I wrote on the settlement sheet.

Q. That was in your handwriting?

A. Yes, sir.

20 Q. And this was the handwriting you had at that time? (Indicating.)

A. Yes, sir, that is my handwriting.

Q. Then there was a later agreement as a result of that?

A. Yes.

Q. Signed when?

A. Friday—about ten-thirty—in Mr. Laws' office, by Mr. Walls and Mr. Dougherty, and witnessed by Mr. Laws.

30 Q. What was said finally as to what would be the disposition of this contract? Were they going to return the money or go ahead with it, or what happened?

A. They were going to return the money.

Q. Who said so?

A. Said by Mr. Chrstos.

Q. When was he going to return it?

A. The next day, at Mr. Laws' office, although

there was some talk had about postponing it until Monday; but Mr. Chrstos wanted to get the thing off his mind. At the time he said he had come there not to pay out money but to receive it—which we have heard already this morning.

Q. Did you ever, on behalf of your preceptor, Mr. Laws, or on behalf of either of these clients accept any money or receive any money from Mr. Chrstos paying back this deposit money?

A. No, sir.

Q. Also present on January 6th and January 14th, both, were you not?

A. Yes, sir.

Q. Was any deed at that time tendered by the defendant?

A. No deed.

Q. Or any one for him?

A. No deed was tendered by the defendant or by anyone on behalf of him to anybody.

Cross-examination.

By Mr. Richman:

Q. Nor was any money tendered, was there?

A. No. But Mr. Walls and Mr. Dougherty both stated in the presence of Mr. Chrstos then and Mr. Kinley, right then and there, they were ready to pay the money to your client.

Q. Was the mortgage prepared?

A. Prepared and brought in at the settlement.

Q. Executed?

A. It was not executed.

Q. Had it ever been presented to Mr. Kinley to myself for approval?

A. No, sir, it had not been.

Q. Mr. Walls and Mr. Dougherty are married, aren't they, both of them?

Mr. Redrow: Objected to.

The Court: Objection overruled.

Q. Are they?

A. I believe they are.

10 Q. Were their wives present at this settlement?

A. I didn't see them.

Q. And the mortgage wasn't executed at all, was it?

A. No, sir.

Q. And never delivered?

A. No, sir.

Q. Was it prepared?

A. It was prepared.

Q. Was it approved by the title company?

20 A. It was, sir.

Q. Who prepared it?

A. The title company.

Q. You nor Mr. Laws nor Mr. Walls nor Mr. Dougherty were ready to deliver that mortgage on January 14th, were you?

Mr. Redrow: This question is predicated on the proposition that it was a wife and husband purchase money mortgage. Now, the law is that it is not
30 necessary for the wife to join in the mortgage.

The Court: That is the law.

Mr. Redrow: I object to any more questions with reference to that mortgage in that way.

Q. Do you know who was taking title to that property at the settlement?

A. I believe both Mr. Walls and Mr. Dougherty were taking title.

Q. Was the deed made to them, do you know?

A. I do not believe the deed was made to them.

Q. Who was it made to?

Mr. Redrow: Have you the deed, Mr. Richman? I would like to have it. 10

Mr. Richman: It was left at the title company, executed, as far as I know; and they still have it, as far as I am informed.

Q. The fact is that that mortgage was not signed, was it?

A. No, but ready there to sign; but the parties could not make settlement.

Q. And the fact is, Mrs. Dougherty or Mrs. Walls was not present? 20

A. Well, I didn't see them.

Q. And the fact also is that there was no tender made of any money or checks?

A. An offer was made to pay.

Q. But no money actually tendered?

A. No, sir.

Q. You are in Mr. Laws' office, aren't you?

A. I am.

Q. You talked over with him what you were to say today? 30

A. I did not.

Q. Did he talk it over with you?

A. He did not.

Q. You didn't rehearse?

A. No, sir.

Re-direct examination.

By Mr. Redrow:

Q. There was no deed presented, either?
A. No, no formal tender of deed.

Re-cross examination.

10 By Mr. Richman:

Q. But the deed was on the table?
A. In Mr. Kinley's possession, and remained so.
Q. And it was executed and put on the table
around which we were sitting?
A. Whether it was executed I cannot say.
Q. It was there?
A. A deed was there.
20 Q. The same deed the title company prepared?
A. I believed it to be.

Re-direct examination.

By Mr. Redrow:

Q. Mr. Graham, on January 14th, as I understand,
you took this deed and took it to Mr. Kinley?
A. I did; and he said they would execute it, Mr.
Chrstos and his wife.

30 Mr. Redrow: Mr. Richman, I would be very glad
to have this deed. It is part of the res gestae in
this case.

Q. This deed was executed on Janaruy 14th?
A. Yes, sir—well, I cannot say it was executed,

because I didn't see it. I left it with Mr. Kinley for
the purpose of execution.

Q. If the deed was executed at all it was executed
after 11.30 on January 14th?

A. Yes, sir.

Q. 1926?

A. Yes, sir.

10 C. MERLE BUCKLEY, being duly sworn according to
law, was examined and testified as follows:

By Mr. Redrow:

Q. Mr. Buckley, what is your business?
A. I am employed by the Land Title Guarantee
Company as title examiner.

Q. And were you so employed, as title examiner,
in the beginning of, say, November and December, 20
1925, and January, 1926?

A. I was.

Q. And have continued in their employ up to the
present time?

A. I have.

Q. Did you make the record searches, or the title
searches, here in the clerk's office, concerning the
application for a title policy which was to be made—
application which was made to the Land Title Guar-
antee Company?

A. I did.

Q. And you have your records with you?

A. I have.

Q. In making that examination, Mr. Buckley, can
you say whether or not the property which was de-
scribed in that title application, and referred to as
30

a lake and park, is the same lake and park that is indicated in Exhibit P3, of deed, July 30, 1924, by Chrstos to Almonesson Improvement Company?

A. (Witness examines deed.) It is.

Q. And do your records show how the title to these tracts of land came down prior to Chstos?

A. They do.

Q. And it is part of an old title, I understand?

A. It is.

10 Q. Have you your records here?

A. I have.

Q. Pick them out, please.

A. (The witness takes a paper.)

Q. What is this you have here?

A. I have an abstract of the title which we were asked to insure.

Q. Is that abstract of title all in your handwriting?

A. It is.

20 Q. That shows the title of this property from when?

A. To all the property we were asked to insure.

Q. Yes?

A. That portion of the property shown on the file plan—the only data I have with me, the records date from the title into Charles Chrstos, 1914. Our other records I don't have here with me; they are in our office.

Q. You came from that time down?

A. To the file plan.

30 Q. This same company had insured a portion of this Chrstos property, had it not?

A. Yes.

Q. And this deed to Almonesson was one insured by your company, was it not?

A. It was.

Mr. Redrow: I would like to have this abstract of title marked, and we will offer it.

The Witness: Here is a part of the description which was also made part of the abstract.

Q. You turned this abstract over to Mr. Evans, did you?

A. I did.

Q. And as a result of this abstract this title policy 10 was written?

A. Yes, sir.

By the Court:

Q. That is, the settlement certificate?

A. The settlement certificate.

By Mr. Redrow:

Q. This continuation from the date of your settle- 20 ment certificate, December 28, 1925, down to include January 14, 1926—was that also made by you, Mr. Buckley?

A. That was made by me.

Q. And as shown by your transcript of the records??

A. It is.

No cross-examination.

30

Mr. Redrow: I offer in evidence the settlement certificate, which is marked P6 for identification; the abstract of title, which is marked P7; also the release which was executed by Mr. Walls and Mr. Dougherty the day following the settlement, that is, on the 15th of January, marked Exhibit P2; also the

memorandum agreement made by Mr. Graham, which was marked Exhibit P4; also the receipt by the Land Title Company for \$475.00 which was paid, marked P5. And I think that includes all of the exhibits.

Mr. Richman: I have no objection to the receipt, but do have objection to the release, or whatever you call it, and to the sheet memorandum, which does not
10 seem to me very material in this issue. They are absolutely based upon no consideration at all, and what they did is not in any way binding upon the defendant.

Mr. Redrow: The situation as far as this yellow sheet is concerned is that it was made in the presence of the parties.

The Court: I will admit the paper marked "Pltf.
20 4" on the ground that the evidence shows it was dictated by Mr. Laws in the presence of the defendant Chrstos, and therefore contains statements against his interest, as to which he was silent at the time the paper was dictated. I think the objection is good as to the formal release which has been offered.

Mr. Redrow: As to the formal release, I don't
30 think it matters whether it is introduced in evidence or not.

Mr. Richman: May I have an exception as to the admission of the Exhibit Pltf. 4?

The Court: An exception may be noted for the defendant.

Mr. Redrow: Subject to documentary evidence—subject to the evidence which might be offered by the defense—I suppose that would be proper rebuttal, too, as to the deed and the bond and mortgage which has been spoken of here—we rest.

PLAINTIFFS REST.

Mr. Richman: If your Honor pleases, I move for
10 a non-suit on the ground, first, that under the agreement January 5, 1926, was the date fixed for the settlement, and the agreement provides that time is of the essence of the contract; secondly, the evidence shows here that the searches were not ordered until Novmber 15th—or 13th, 1925; and our courts have held—(At this juncture the stenographer was instructed by the Court not to take the argument on
20 the motion, but the grounds upon which the motion was made only). Thirdly, I shall move a non-suit in this case because there are no exceptions in the settlement certificate which are not in conformity with the agreement in this case.

The Court: The motion is denied.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the
30 defendant.

DEFENDANT'S EVIDENCE.

DAVID H. KINLEY, Esq., being duly sworn according to law, was examined and testified as follows:

By Mr. Richman:

10 Q. Mr. Kinley, you are a member of the bar of Pennsylvania?

A. I am.

Q. Where is your office?

A. 1133-37 Commercial Trust Building, Philadelphia.

Q. Did you represent Mr. Chrstos in the preparation of the agreement dated September 15, 1925?

A. I did.

Q. Where was that agreement signed?

20 A. In my office.

Q. Who was present?

A. Mr. Walls, Mr. Dougherty and myself—and Mr. Chrstos, of course.

Q. At that meeting was there anything said by you or by the plaintiffs in this case with reference to the use of the lake and park of the Almonesson Improvement Company?

Mr. Redrow: I object.

30 The Court: Objection sustained.

Mr. Richman: Will your Honor allow me an exception?

The Court: An exception may be noted for the defendant.

Q. When you put in the agreement, at the request of the parties, the exception, to what did it relate?

Mr. Redrow: Objected to.

The Court: Objection sustained.

Mr. Richman: May I have an exception?

The Court: An exception may be noted for the 10 defendant.

Q. After the agreement was signed did you have any discussion with Mr. Walls or Mr. Dougherty with reference to the exception in the agreement?

Mr. Redrow: Objected to unless it is carrying out the written contract. It must be shown first.

The Court: Objection overruled. Just yes or no, 20 however.

A. Yes.

Q. What was said?

Mr. Redrow: Objected to.

The Court: Objection sustained.

Mr. Richman: My offer is: Testimony, parole 30 though it may be, that when this exception was put in the agreement these parties understood that it related to the covenant affecting the lake and the park at Almonesson, particularly the use under that covenant in the Almonesson deed. I am not attempting at all to change the terms of this contract; I am merely attempting to show what was in the minds of

the parties when this agreement was signed; and I think I am entitled to do it.

Mr. Redrow: I object to any testimony of that kind, changing the agreement.

The Court: I still sustain the objection.

Mr. Richman: Will your Honor allow me an exception?

The Court: An exception may be noted for the defendant.

Mr. Richman: I may state, further than that, my offer is to prove that both Mr. Walls and Mr. Dougherty knew of the existence of that lake and park for boating and fishing purposes and picnic purposes when they signed that agreement; and that they also knew that the exception in the agreement which excepts "existing building restrictions and easements now covering the property" related to that use provided for in the covenant of the Almonesson deed. That is my offer—to prove, by parole testimony, that knowledge when the agreement was signed.

The Court: But the difficulty is, they entered into a written agreement, and they did not specify that in the written agreement—at least, it does not seem so on the face of it.

(Mr. Richman gives citations.)

The Court: I don't know what that case is, but that is a Court of Chancery and this is a Court of Law.

Mr. Richman: Your Honor will allow me an exception?

The Court: An exception may be noted for the defendant.

Q. Mr. Kinley, after the agreement was signed what became of it?

A. A copy of the agreement was retained in my office; or, in other words, there were two originals, one written in my office and the other turned over to Mr. Walls and Mr. Dougherty.

Q. And then what happened after the execution of the agreement?

A. Immediately after the execution of the agreement I specifically told Mr. Walls and Mr. Dougherty that it would be necessary to immediately order title insurance for the reason that it being a rather large tract of land it might take some time for the title company to make the necessary examination. I volunteered my services in helping them to furnish the necessary information to make up such application, they having not been represented by Mr. Laws up to that time. However, nothing was done at the time; and from time to time as I communicated with Mr. Walls or Mr. Dougherty I inquired as to whether or not they had made application for title insurance. They told me they had not yet but were going to get about it very soon. As time went on, they subsequently stopped in my office—a month later, a month subsequent to the execution of the agreement, on September 13, 1925—September 15th, and I again called their attention to the fact that application for title insurance must be made, and a certificate be put in our hands, that we might know whether there was any objection to the title—so that we might clear it up. However, time drifted

on, and as the time for settlement approached I got in touch with Mr. Laws—I think Mr. Laws got in touch with me, telling me he represented the purchasers, and I inquired of him as to the copy of the settlement certificate; and I was informed that this certificate had not yet been issued. However, as time drew toward the expiration of the agreement it became incumbent upon me to protect my client's interest by fixing a date with the title company. I
 10 fixed the date for January 5th, the last day fixed for the performance of this agreement. I think I met in Mr. Laws' office, together with the purchasers, perhaps a day before that—I think it was the day before, at which time he had a—it wasn't a finished certificate but a form of certificate which was furnished him, containing the description. In the meantime, of course, as is the custom in Philadelphia—and New Jersey I presume—they assumed the responsibility of drawing up a deed and
 20 furnishing—sending it to me for approval.

Q. As to that, was it understood they were to have the deed prepared, and submit it to you for approval?

A. There was no question about that; it was absolutely understood they were to furnish me with the deed. As far as I was concerned I would have been willing to give them a deed with the descriptions contained in the agreement; we could have made settlement the day after the agreement was
 30 signed. We weren't interested in the description of the property before they brought up the mortgage. The mortgage was to be drawn by them and submitted to me for approval. I have never seen the mortgage or bond up to this time. I called Mr. Laws' office—

Mr. Redrow: I object. There is no question.

Q. Do you recall the meeting of January 5th, in Mr. Laws' office?

A. I do.

Q. What was the purpose of that?

A. The purpose of that was to check up on the map, a map similar to the one used at the time of the execution of the agreement—check up on this map and description furnished by the title company.

Q. Is this the map that was used? (Producing
 10 map.)

A. This is not the map that was used but it was a map from the same printer, I suppose.

Q. A similar map?

A. A similar map.

Mr. Redrow: I object to its being used.

The Court: If he can identify it as an exact copy.

The Witness: It is an exact copy, the same as
 20 the one used in Mr. Laws' office; in fact, the one used in Mr. Laws' office was a copy furnished by Mr. Chrstos from the same print.

Mr. Redrow: That map had marks put on with reference to the lots.

The Witness: Those marks were put on by Mr. Graham and Mr. Laws and possibly by myself, in
 30 checking up the description.

Mr. Redrow: This is a plain map with printed numbers, et cetera; and the other was a map on which certain lines had been drawn, showing titles to different sections, and cross marks in red and pink.

The Court: If this is not the same map, or exactly similar to the one used it cannot be used. In order to use a copy, you have to show a precise copy.

Mr. Redrow: Here is a map the title company uses, but Mr. Buckley tells me that is not the map used at that time; and the markings may be different on it.

10 The Court: Well, perhaps the witness on seeing that map can say whether it is the same map or a copy.

The Witness: I could not say that this is exactly marked the same as the one in Mr. Laws' office. The markings made in Mr. Laws' office were made by ourselves as we traced the description from the certificate furnished by the title company.

20 The Court: Would the markings have any bearing on the testimony to be given by the witness?

Mr. Richman: I merely want to offer the map showing the general location of the property.

The Court: There is no objection to that, is there?

Mr. Redrow: Yes, I object to it. I want to have it marked as an exhibit, and if he can produce the
30 original tomorrow morning—

Mr. Richman: The original is on file in the County Clerk's office.

Mr. Redrow: I do not want to be confused; because the map in question had red and black lines indicating this part of the land belonged to the Al-

monesson Improvement Company and something else belonged to Chrstos.

The Court: But Mr. Richman says he is offering this map now to show the general location.

Mr. Redrow: Of what?

Mr. Richman: Of the lake and park.

Mr. Redrow: I am willing to allow a map of Deptford Township.

Mr. Richman: Where would you get that?

Mr. Redrow: In the clerk's office.

Q. You did have a map, did you not?

A. At the time of the execution of the agreement there was a map from which we drew the description, and which was discussed at the time of the execution.

Q. Also at the meeting of January 5th you had a map?

A. Oh, yes.

Q. Was that the same map?

A. It may have been the same map. There were a number of these prints, and I think we furnished a number of them to Mr. Walls and Mr. Dougherty; and one of those, I presume, Mr.—I know one of the maps similar to this one was in the possession of Mr. Laws. That was the time we were tracing it over in his office.

Q. You don't know where that map is now?

A. I do not. If I am not mistaken I think that particular map was the property of Mr. Dougherty.

Q. The one that was marked?

A. Yes.

Mr. Richman: I ask that this map be marked merely for identification.

The Court: It may be marked for identification.

(The map was marked by the stenographer as Exhibit "D1.")

10 Q. At the meeting of January 5th, Mr. Kinley, were you shown any settlement certificate by Mr. Walls, Mr. Dougherty or Mr. Laws?

A. No, I wasn't shown any settlement certificate by Mr. Walls, Mr. Dougherty or Mr. Laws. There was a yellow sheet which contained a description of the property as gotten up by the title company—at least, I understood that was the paper which was furnished by the title company to Mr. Laws; and from that yellow sheet we were checking up the description on this map.

20 Q. Only the description?

A. Only the description. There were no exceptions or anything of that nature, or objections to the property called to my attention at that time.

Q. And neither you nor Mr. Chrstos, as of January 5th, were informed at all there were exceptions to this title?

A. We were not—absolutely none.

30 Q. Were you present at the meeting of January 6th at the title company?

A. I was.

Q. Before going into that, did you say to Mr. Laws or to Mr. Walls or Mr. Dougherty that the delay in making this settlement was yours?

A. I can't recall making such a statement.

Q. Will you say you did not say it?

A. I did not.

Q. You did go to the meeting of January 6th, at the title company?

A. I did.

Q. How did that come about?

A. Well, January 6th was the hour fixed for settlement—I don't recall whether I fixed that hour or whether Mr. Laws' office fixed that hour for settlement at the Title Guarantee Company in Camden, at, I think, one o'clock. We appeared, and there was nothing said at that time about a settlement certificate. The settlement certificate was not ready, and a member of the company came into the room from time to time with a paper, and we were finally informed it was not complete; and then it was suggested by Mr. Laws that we postpone the completion of the settlement for a week, and at that time we all agreed to go back the following—I think it was the 14th.

Q. In the meantime what happened? 20

A. In reference—?

Q. In reference to the preparation of papers or a deed?

A. Well, as far as the preparation of the papers, it was not incumbent upon me to prepare any of the papers; it was agreed at the very beginning that the purchaser was going to prepare a deed and send it to me for execution, and I continually called them up and asked them about it—why I wasn't furnished this paper so I could have it executed and acknowledged in time for the settlement. 30

Q. Yes?

A. However, that deed was not furnished me until, I think it was the morning of January 14th. After checking it up and approving it, it was necessary to get Mr. and Mrs. Chrstos to go to the commissioner of deeds in Jersey. We went around

to 714 Market Street, Morris M. Fierman, of Stern & Company, who acknowledged the deed. We took this deed to the settlement, and, as is customary at the settlement, we presented the deed at settlement, laid it on the table at the title company, and, as far as I know, it is still in the possession of the title company.

Q. That deed was properly executed?

A. Oh, yes.

10 Q. By Mr. and Mrs. Chrstos?

A. There is no doubt about that.

Q. And contained a description submitted to you by the purchaser?

A. Yes, and approved by the title company.

Q. Was there any tender of any money made by the purchasers at that time?

A. I didn't see any tender of money at that time.

Q. Was anything said by either party or anybody about the money?

20 A. No, I can't recall that there was anything said about the payment of any money.

Q. The mortgage for one hundred thousand dollars, called for in the agreement—was that ever presented to you?

A. I have never seen it up to this time.

Q. Was it ever presented to Mr. Chrstos to your knowledge?

A. Not that I know of.

Q. And that is true at the meeting of January 30 6th?

A. And January 14th, yes.

Q. At the meeting of January 14th, what further occurred that you recall?

A. In reference to what, Mr. Richman?

Q. You say Mr. Chrstos was there and had a deed executed and it was handed over at the settlement.

A. Yes.

Q. Why wasn't settlement made?

A. The settlement wasn't made for the reason that the parties weren't ready to make settlement. We had a deed there and presented the deed, an executed deed. The settlement certificate then, up to that time, was not ready. The fact of the matter is, the title company had never furnished a copy of the settlement certificate, as is customary in real estate transactions of this kind; and the only two things I recall, two objections brought up at that time, was the lis pendens and the matter of the bond requested of Mr. Walls and Mr. Dougherty to sign. With reference to those two things I don't recall any other except the discussion as to who was going to pay the cost of the new spillway down there, which was subsequently arranged by Mr. Chrstos to pay the full amount.

Q. What was said about this bond you speak of?

A. That bond, as I understood it at that time, was a bond to be given by the purchasers against future violations of the Volstead Act. 20

Q. At Lakeview Inn?

A. Yes.

Q. Had nothing to do with Mr. Chrstos?

A. No.

Q. You mean that was a bond to be given by them against their own violations?

A. Against their own violations.

Q. Now, the lis pendens—what was the discussion relative to that? 30

A. The discussion with reference to the lis pendens was that a bill in equity had been filed, and, of course, they assumed that as an excuse for refusing to go through with the title; and that is about as far as we got.

Q. There has been some testimony here with reference to cancelling the contract, or something to

that effect. What was the situation as you understood it?

Mr. Redrow: I object. I think he is testifying as to what took place and not as to how he understood it.

Q. What did you hear?

10 A. As I recall, after some discussion you suggested that they either go through with the settlement, and these objections they raised we would remove; otherwise, to accept their money back. Mr. Chrstos remarked that he came there to get money and not to pay it back.

Q. Did he in your presence agree to return the money?

A. Well, he did not.

Q. Nor subsequently?

A. Subsequently, he did not.

20 Q. There was some statement made about it?

A. Yes.

Q. But he didn't agree to it?

A. He did not.

Mr. Redrow: I think we are entitled to ask just what he said.

Q. What did he say?

A. Chrstos?

30 Q. As you recall?

A. The nearest I can recall, he said that he came there to get money and not to pay it out. He didn't make any remarks further than that that I recall.

Q. Was there any arrangement made with regard to further extension of time?

A. No.

Q. Has Mr. Walls or Mr. Dougherty since then ever tendered you the purchase price?

A. They have not.

Q. Have they ever tendered you the mortgage properly executed further than I have received—

Mr. Redrow: I object. There is no question.

Q. Have you received any further communication from them about it? 10

A. Received a communication from Mr. Laws to the effect—

Mr. Redrow: I object. The communication is the best evidence.

By the Court:

Q. You mean, by communication, a letter? 20

A. Yes, sir.

The Court: Objection sustained.

Cross-examination.

By Mr. Redrow:

Q. Mr. Kinley, you say there was no arrangement made for further extension of time on the 14th of January, and has not been since to your knowledge? 30

A. No.

Q. And on the 5th of January or on the 6th of January, nor on the 14th of January, as I understand it, neither you nor Mr. Chrstos made any objection to any extension which had heretofore been accorded; is that right?

A. On January 6th, of course, the title certificate

had not been issued; and it was suggested that we complete the settlement a week later. So far as I recall there was no objection made to that.

Q. And that was perfectly satisfactory to yourself and Mr. Chrstos, whom you represented?

A. Well, of course we were anxious to get the settlement complete as early as possible.

10 Q. And, as a matter of fact, Mr. Chrstos and yourself and Mr. Richman, representing Mr. Chrstos, agreed on January 6th that the settlement would be put off until January 14th; and on January 14th you all appeared there to go through with the settlement?

A. Yes, that is correct.

Q. And on January 5th there was no intention on your part or on Mr. Chrstos' part to compel the completion of the contract at that time—as a matter of fact, you had previously made arrangements with the title company for settlement on the following day?

20 A. The reason I did that was, I wanted to bring it to an issue; it had been put off from time to time, and finally to the 14th.

Q. But up to that time there was no objection on the part of Mr. Chrstos to go through with the settlement?

A. He was ready at all times, after the execution of the agreement, to go through with the settlement. There was no reason for him to delay. We could give a deed in accordance with the terms of the agreement at any time.

30 Q. Do you say the contract provided that the purchasers should prepare a deed?

A. I don't recall that the contract called for that—I don't think it did.

Q. Was there some special agreement for that?

A. The custom is in Philadelphia, and it was subsequently understood and agreed that—

Q. Who agreed to it?

A. Mr. Laws and myself, that the title company was going to prepare the deed; and I requested Mr. Laws several times to get this deed to me so I could get it executed.

Q. And that was after November 13th, wasn't it?

A. Oh, yes.

Q. As a matter of fact, Mr. Kinley, I don't know 10 of any rule here—I think the law provides in this state that the seller shall furnish the purchaser with a good deed; and I wanted to know if there was any special agreement for that?

A. I presume our understanding was under the prevailing custom in Philadelphia.

Q. After this agreement was signed, Mr. Kinley, what did you do toward turning over to the purchasers descriptions of the property—anything at all?

A. I gave them a full description as I had it in the agreement; and I volunteered—which I thought was going a little beyond what was required of me—to furnish any additional information which might be required of them for making application for title insurance.

Q. And you were associated in this case at that time with Mr. Richman, were you not?

A. Well, I—

Q. I mean later on?

A. Later on, yes.

Q. And on January 6th Mr. Richman was present at the title company?

A. Oh, yes.

Q. And the settlement certificate was presented at the title company that day, was it not?

A. I cannot recall that it was. It was not

presented to me or Mr. Richman that I recall. One of the officers of the company came out, and there was a discussion as to completing the settlement and completing the certificate; and we were told then, after considerable negotiation between the settlement room and the title department, that the certificate had not been completed.

Q. And that all that had to be added in was the description of the properties?

10 A. I cannot say that.

Q. You were present this morning when there was offered in evidence a slip from Mr. Richman's office, or signed by Mr. Richman's office, showing receipt of that settlement certificate January 7th?

A. Yes.

Q. And Mr. Richman was associated with you in this case?

A. Yes.

20 Q. Do you recall—is this your signature at the bottom of this memoranda?

A. That is my signature.

Q. Do you recall going over this with Mr. Graham?

A. Oh, yes, I recall that very well.

Q. Would you say that was the description which was—

A. Used?

Q. Yes?

A. I have no doubt that it is.

30 Q. Well, as a matter of fact, Mr. Kinley, even on the 13th—that is dated January 13, 1926, in your handwriting?

A. Yes.

Q. Even at that date there were some corrections made in this description?

A. Yes.

Q. To be put in your deed?

A. Yes, that is correct.

The Court: By whom?

Mr. Redrow: By either Mr. Kinley or ourselves.

The Witness: No, not by ourselves. We were not interested in the description, Mr. Redrow. We agreed to convey everything we had down there, and could have given a deed—that was, if they 10 would have accepted it.

Q. Do you recall having a conference with Mr. Graham on the 13th?

A. I certainly do.

Q. Do you recall suggesting to him that he leave out a certain line out of the description?

A. I did; for the benefit of his client I did that.

Q. You suggested he leave out that particular description for the benefit of his client? 20

A. Yes.

Q. Because you didn't know whether it belonged to Chrstos or not?

A. Exactly.

Q. So even on the 13th you and he were going over this in order to get an accurate description of this property?

A. I would say yes, for the reason that had application been made for title insurance we could have been doing this in November, when they were 30 making their application. And that is what I urged on them from time to time through the entire period of this agreement.

Q. That may be true, but after this suit was brought there was never any mention made about it not being completed on time?

A. That was the purpose—that it be completed.

Q. You didn't mention it on January 5th?

A. Of course we would not take advantage of a day or so provided the people are acting in good faith.

Q. You think now perhaps they are not acting in good faith?

A. I am not prepared to say that.

Q. And you did not take advantage of them January 6th?

10 A. I say, that is not the policy of myself or my client.

Q. And there was no objection taken to this title on the 14th, when you appeared there at the title company?

A. You say there was no objection to the—?

Q. To the extension of time, by you or your client on the 14th?

A. No.

Q. And there had not been previously?

20 A. Not that I recall.

Q. You say a deed was presented to you on the morning of January 14th containing a description of this property, and you say you do not know where that deed is?

A. I left it at the title company fully executed and acknowledged by a commissioner of deeds.

Q. You had approved of that deed, I suppose?

A. Yes.

Q. Do you recall whom the deed was made to?

30 A. I don't recall.

Q. Do you know whether it was made to Walls and Dougherty?

A. I have a faint recollection it was made to a straw party.

Q. If it had been made to a straw party, that was made with the approval of Mr. Chrstos and yourself?

A. We made no objection to that.

Q. And it would be reconveyed from the straw party back to Mr. Chrstos?

A. We had not reached that issue.

Q. But you don't recall to whom it was made?

A. I don't recall, Mr. Redrow.

Q. In your direct examination I understood you to say you did not have any settlement certificate showing these exceptions until the 14th. Mr. Richman was associated with you and represented you at that time? 10

A. He was.

Q. And the fact that this policy was delivered to Mr. Richman on the 7th—would you consider that delivering the title policy to you?

A. Of course not; I didn't see it.

Q. You didn't see it?

A. No.

Q. But it was in Mr. Richman's possession. 20

A. I presume so.

Q. And in regard to the deed, you say you brought the deed in and laid it on the table but you did not make any direct proffer of it?

A. I turned it over to the title company in escrow. I don't suppose they would turn the money over to us.

Q. You made no formal offer of it to Walls and Dougherty?

A. I turned it over to the title company—which is the custom, as you know. 30

Q. Now, this bond you say was to be given by Dougherty and Walls to the Government of the United States to provide that they would not do something—was that the violation of the Volstead Act?

A. As I understood.

Q. You understood it at the time?

A. Yes. I don't think there was any serious contention about that bond.

Q. It was simply a matter that came up and was discussed?

A. Yes, and I don't think there was any objection to that bond.

Q. There had been a violation of the Volstead Act on this property?

A. By a tenant of Mr. Chrstos.

10 Q. And as a result the place had been previously padlocked?

A. The tenant's lease was forfeited and Mr. Chrstos put him off the premises and put a caretaker in charge of the hotel.

Q. Was the place locked up?

A. Not that I know of.

Q. Then why would they be required to give a bond not to violate the Volstead Act, if it wasn't locked up?

20 A. I cannot answer that, Mr. Redrow. I suppose some official of the United States Government required it.

Q. But from what took place at the time of settlement you gathered it was necessary that Walls and Dougherty give a bond in order that—Well, it was only a matter of course. It was necessary for them to do it in order to be relieved from that responsibility?

A. That is correct.

30 Q. You say at the time of the last meeting there, in January, there was some discussion about cancelling the contract that was entered into by you and Mr. Richman, representing your client, and Mr. Walls and Mr. Dougherty?

A. Yes.

Q. And you say Mr. Richman made some statement that it was either pay the money back to Mr.

Walls and Mr. Dougherty or go through with the contract?

A. That is right.

Q. Wasn't it suggested that there be a meeting the following Monday to pay this money back?

A. That is true.

Q. In Mr. Laws' office or your office?

A. In Mr. Laws' office, I believe.

Q. As a matter of fact, didn't Mr. Chrstos say, "I want to get it over with, and want to get it disposed of tomorrow morning, and will meet you at half-past ten?"

A. I don't recall exactly, but it was something to the effect that he wanted to meet us the following morning.

Q. Didn't he also say that time, the 14th, when you were discussing the cancelling of this contract, that if he had any money to pay he wanted to pay it right away and get it over with?

A. I cannot recall that remark.

Q. You just don't recall it?

A. No, I don't recall that remark.

Q. But you do recall that there was a discussion between Mr. Richman and yourself and Mr. Chrstos, and that then Mr. Richman said to Mr. Walls and Mr. Dougherty that there should be either a cancelling of the agreement of sale or a going through with the contract?

A. Yes, sir, as I have testified.

Q. Do you recall whether or not the deed which was drawn contained all the property described in the agreement of sale?

A. Well, I can't answer that yes or no.

Q. Do you know whether it does or not?

A. If you want me to answer it, I will answer it, fully.

Q. I would like to know whether it contains all

the property described in the agreement of sale or not; and then add to it whatever you want, as far as explanation.

A. Well, now, I have to go back to the original execution of the contract.

Q. No, I am not asking about that. I am asking you whether or not the deed which you say was executed describes by metes and bounds or otherwise the property undertaken to have been conveyed or
10 to have been sold by this agreement dated September 15th, 1925, marked Exhibit "P1."

A. As far as I recall, it did with the exception of certain lots which were conveyed in accordance with the terms of the agreement, which provided—and which was understood at the time of the execution of the agreement—that inasmuch as nobody knew the exact description by metes and bounds of the property, that we would convey—or, in other
20 words, the very purpose of that covering clause in the agreement was that we would convey all the property that we—

Q. Just a minute.

Mr. Richman: I insist that the witness be allowed to answer the question.

Mr. Redrow: All right; he is going to answer it.

Mr. Richman: He is answering the question, if
30 your Honor please.

Mr. Redrow: I know, Mr. Richman, the members of the Philadelphia Bar won't offer any testimony I fear, without your suggestion.

Q. May I ask if you recall these numbers on the back?

A. I do, and I can explain the numbers on the back, as well as the covering clause which appears there. That paragraph of the agreement was inserted there after quite a considerable discussion between the parties and after going over a map and that sort of thing.

Q. As a matter of fact, Mr. Kinley, wasn't this the situation, as far as the agreement was concerned—that some of these properties had been sold and there were outstanding agreements of sale? 10

A. Yes.

Q. And when it came down to settlement, in one or two or more instances agreements had been given for them—and some had paid less money—and in order to cover specifically what you meant to convey the agreement provided for everything?

A. Yes, that was one of the specific things that were discussed at the time of the execution of the agreement; and that was one of the reasons why the covering clause was put in there. 20

Q. Did you ever see that before? (Handing a paper to the witness.)

A. I don't recall having seen that, Mr. Redrow.

(Adjourned until tomorrow, Tuesday morning, at 10.15 o'clock.)

EXTRACT FROM BOOK ENTITLED
 "NOTICES OF LIS PENDENS 1909
 GLOUCESTER COUNTY"
 IN CHANCERY OF NEW JERSEY

10 Between Almonesson Im-
 provement Company, a
 corporation, Complainant,
 and
 Charles Chrstos and Elsie
 Chrstos, Defendant.)
 Lis Pendens.

20 Notice hereby given that a suit entitled as above
 has been commenced and is now pending in the
 Court of Chancery. The general object of said suit
 is to enjoin the assignment and pledge or other dis-
 position on the part of the said defendants of a cer-
 tain mortgage made by Almonesson Improvement
 Company to Charles Chrstos, dated July 30th, 1924.
 Of record in the office of the clerk of Gloucester
 County in book No. 142 of mortgages page 1 &c.,
 which mortgage was given to secure the payment
 of the sum of \$50,000, and which covered the lands
 and premises described as follows: (Which said
 lands are affected by said suit) All the following
 30 lots, tracts and parcels of land and premises situate
 at Almonesson, Township of Deptford, County of
 Gloucester and State of New Jersey, more particu-
 larly bounded and described as follows:
 All the following lots shown on Plan of Lakeview
 Heights made in nineteen hundred and fourteen by
 J. Owen Carter, civil engineer, consisting of six

hundred and forty-eight lots and such additional
 land as hereafter described

(There follows the numbers of lots)

(On page 291 of the book of description continues
 as follows:)

All lots in Section No. 45. All lots in Section 46; all
 lots in Section 47. Lot A at the corner of good 10
 Intent Road Lakeside Avenue and lot at the south-
 west corner of Good Intent Road and lakeside Ave-
 nue not numbered on said plan, to be equal in di-
 mensions and boundaries with Lot A and marked Lot
 D in ink.

That tract of land shown on said plan bounded on
 the south by Bellevue Avenue on the west by lots
 10 and 11 Section 3 and on the east by Hurffville
 Road and land marked on said plans as belonging to
 Joseph W. Eastlack's heirs except tract situate on 20
 southwest corner of Hurffville Road and Sunset
 Avenue if extended, having a frontage of eighty feet
 on Hurffville Road by a depth of one hundred feet
 between parallel lines, one of said lines being the
 Southerly line of Sunset Avenue if extended.

Tract of land at the southeast corner of Cooper
 street and Hurffville Road extending southeast-
 wardly on Cooper Street to land of William J.
 Kennedy et al and extending southwardly on Hurff-
 ville Road to land f the same marked Lot #F in ink 30
 on said plan.

Tract of land at the northeast corner of Rosmore
 Avenue and Hurffville Road bounded on the west
 by Hurffville Road on the northeast and northwest
 by land of William J. Kennedy et al on the east by
 land of Philip A. Mason And on the South by Ros-
 more Avenue excepting there out tract of land at

the Northeast corner of Rosmore Avenue and Hurffville Road having a frontage on Rosmore Avenue of one hundred feet on Hurffville Road of two hundred feet and extending at right angles from each of said bounding streets to a point marked lot No. E in ink on said plan.

Further, the object of said suit is to obtain an injunction requiring the said Charles Chrstos to maintain certain easement existing in favor of the land described in said mortgage against, in and upon a
 10 certain lake known as the Almonesson Lake as shown on plan of lots of Lakeview Heights situate at Almonesson, Deptford Township, Gloucester County, New Jersey, made by J. Owen Carter Civil Engineer and on file in the office of the Clerk of Gloucester County, which said lake is bounded on the northerly part thereof by Cooper Street on the easterly part thereof by Lakeside Avenue and a certain private park for use of owners of lots shown
 20 on the plan of Lakeview Heights and by other land of Charles Chrstos, and is bounded on the westerly side thereof by land now or formerly of Eugene Conard and now or late of Joseph Bentley, Redman Bentley, John J. Rice, Joseph B. White, Ruth McCarron, nor or late of one Dougherty, Lena Stuckenberger and other lands of Charles Chrstos, which said lake & the lands flooded thereof are affected by said suit.

Joseph H. Carr
 Solicitor for Complainant

(1) Entered Dec. 23rd 1925 at 8.30 a. m.

Oliver J. West,
 clerk
 (R G) 10/11

Woodbury, N. J., Tuesday, October 26, 1927.

Parties present as before.

DEFENDANT'S EVIDENCE (Continued.)

10

DAVID COFFEY, being duly sworn according to law, was examined and testified as follows:

By Mr. Richman:

Q. Mr. Coffey, where do you live?

A. I live at Almonesson.

Q. How long have you lived there?

A. Eight years—about eight years.

20

Q. Do you know the location of the Lakeview Inn at Almonesson?

A. Yes, sir.

Q. Do you know Herman Strickler?

A. Yes, sir.

Q. Did he use to live at Almonesson?

A. He did.

Q. Where did he live?

A. He kept the hotel at Almonesson.

30

Q. And did he move away?

A. Yes, sir.

Q. When?

A. About the 15th of December last year.

Q. 1925?

A. 1925.

Q. How long had he been there to your knowledge?

A. I think about three years.

Q. Was the Inn open to the public?

A. Yes, sir.

Q. At the time he left?

A. Until he left, so far as I know—I think, yes.

Mr. Redrow: I move that it be stricken out.

10

The Court: What?

Mr. Redrow: "I think, yes."

The Court: I will let it stand.

Q. Was the hotel open while he was there?

A. Yes.

Q. After he moved out who moved in?

20 A. I came in immediately after he came out.

Q. The same day?

A. The same day, yes, sir.

Q. And how long did you remain in possession?

A. Until the 15th of June.

Q. Of this year?

A. Of this year.

Q. Now, during that period of your occupancy was the hotel ever closed?

30 A. The hotel was always—I was there all the time, and the hotel was not open to the public. We did—there was no—there was no—in fact, there was no trade.

Q. You didn't run it as a hotel?

A. No, sir.

Q. What were you?

A. I was the caretaker of it.

Q. Caretaker?

A. Yes, sir.

Q. And for whom?

A. For Mr. Chrstos.

Q. The hotel was not closed by any court order to your knowledge?

A. No, sir.

Q. You were there January 5th, 6th and on the 14th of January, were you?

A. I was.

Q. Was the lake still there? 10

A. The lake—yes, sir, the lake was still there.

Q. On January 14th?

A. Yes, sir.

Cross-examination.

By Mr. Redrow:

Q. You are sure the lake was there on January 14th? 20

A. Yes, sir.

Q. Absolutely certain of it?

A. Yes, sir.

Q. Was it there on January 6th?

A. Yes, sir.

Q. And on January 5th?

A. Yes, sir.

Q. Absolutely certain of it?

A. As certain as humanity can make a man.

Q. And you were living right there on the hotel 30 property at that time?

A. Yes.

Q. And when you say the lake was in you mean the water was up on the lake the same as it had been—had not been withdrawn?

A. The lake was there as it had been.

Q. All filled with water—that is right, isn't it?

A. So far as a lake ordinarily would be.

Q. I mean, the water was in it?

A. Yes, sir.

Q. Had it not been drawn off on January 14th?

A. Yes, sir.

Q. And on January 5th and January 6th?

A. I would have to think whether—I don't know of anything else.

10 Q. Well, Mr. Coffey, you know, as a matter of fact, that the water was drawn off that lake December 20th, don't you?

A. I did not.

Q. You know, as a matter of fact, no water was in January 5th, 6th or 14th like it had been?

A. I do not know that.

Re-direct examination.

20 By Mr. Richman:

Q. On the contrary, it is not true, is it?

A. Not to my judgment; as I believe, it is not true.

Q. The lake was there on the 14th of January?

A. Yes sir.

30 CHARLES CHRSTOS, the defendant, being duly sworn according to law, was examined and testified as follows:

By Mr. Richman:

Q. Mr. Chrstos, where do you live?

A. 6704 Rising Sun Avenue, Philadelphia.

Q. You are the defendant in this case?

A. Yes, sir.

Q. And you executed the agreement between yourself and Walls and Dougherty?

A. Yes, sir.

Q. At the time you signed the agreement were you familiar with the exception relating to building restrictions and easements?

A. Yes.

Q. What easement did the exception relate to, so far as you knew? 10

Mr. Redrow: Objected to.

The Court: Objection sustained.

Mr. Richman: May I have an exception, your Honor?

The Court: An exception may be noted for the defendant. 20

Q. Before the agreement was signed did you call the plaintiffs' attention to the use of the lake?

A. I did.

Q. And the park?

A. I did.

Mr. Redrow: Objected to, and I move that the question and answer, both, be stricken out.

The Court: Yes they may be stricken out? 30

Mr. Richman: Will your Honor allow me an exception?

The Court: An exception may be noted for the defendant.

Q. After the agreement was signed did they ever make any complaint to you about it?

A. No.

Mr. Redrow: I object and move to strike out both the question and the answer.

The Court: The question and answer may be stricken out.

10

Q. Did they ever raise any objection, to you?

A. No, sir, nobody ever did.

Mr. Redrow: I object, for the same reason.

The Court: The same ruling.

Mr. Richman: Will your Honor allow me an exception?

20

The Court: An exception may be noted for the defendant.

Q. From December 15, 1925, to January 14, 1926, did you visit this property?

A. Yes, I did.

Q. How often did you go down there?

A. Pretty nearly every Sunday. Sometimes during the week.

30

Q. And were you there after January 5th?

A. I was there, yes.

Q. Now, during all that period, when you made your visits there, did you go to the hotel?

A. Yes, every time.

Q. Would you stay there?

A. Yes.

Q. Were other people there?

A. Yes—not always but sometimes there were.

Q. Who is Mr. Stiekler?

A. Mr. Stiekler is—he married my wife's sister.

Q. What had he to do with the property at Lakeview Inn?

A. Well, he operated the Inn and looked after the swimming pool during the summer months.

Q. Then who came after him?

A. Mr. Coffey.

Q. Was the hotel ever closed?

10

A. No, sir.

Q. Always open?

A. Always open.

Q. And it was open on January 14th?

A. Yes.

Q. Was the lake there?

A. The lake was there, too.

Q. The same as it always had been?

A. The same as always.

Q. After January 14th what, if anything, did the county do there? 20

A. Well, after January the 14th—after January 16th the men started to drain the lake, a contractor from Pitman.

Q. Then what happened, after that?

A. Well, he drained it about half, and that is the way it stood until the bridge was built.

Q. Who built the bridge; do you know?

A. The county.

Q. Did you pay any part of the costs?

30

A. Yes, I paid one-third of the entire cost.

Q. How much was that?

A. Eleven thousand, eight hundred and some dollars, as I recall it; and eleven hundred and sixty dollars for the draining of the lake.

Q. Now, were you present at the title company on January 6th?

A. I was.

Q. Were Mr. Walls and Mr. Dougherty there?

A. They were both there, yes.

Q. Did they make any tender of any money to you?

A. No, sir.

Q. Did they deliver to you the mortgage called for by the agreement?

A. No, sir.

Q. Or to anyone else that you knew of?

10 A. No, they never did. I never seen any mortgage.

Q. Do you know why the settlement wasn't made on January 6th?

A. They didn't have the title papers ready—what I understood.

Mr. Redrow: Objected to.

Q. Did you return on the 14th?

A. Yes, sir, I was there.

20 Q. To the title company?

A. Yes, sir.

Q. Did you sign a deed to this property?

A. I did.

Q. Did Mrs. Chrstos?

A. She did.

Q. And was that deed acknowledged?

A. Yes.

Q. Whom did you give it to after you signed it?

30 Mr. Redrow: Objected to. The deed is the best evidence, if he has it. It seems to me the deed is the covenant he should submit.

Mr. Richman: Mr. Kinley testified yesterday that that deed was left at the title company. I talked with the title company twice. They looked as late as this morning, and say it is not in their files. I don't

have it, and Mr. Kinley doesn't have it. Now, I don't know what has become of it.

Mr. Redrow: The fact is, there was never any deed executed to Walls and Dougherty for this property. If there was a deed executed I think it is up to Mr. Richman to produce it. It is not likely that lawyers of the ability of Mr. Richman and Mr. Kinley would leave an executed deed around the title company, to be lost, on this property. 10

Mr. Richman: It seems to me the deed was executed and left with the title company by Mr. Kinley. It seems to me testimony as to all that is perfectly admissible.

The Court: I do not think a foundation has been laid for the admission of secondary evidence as to the contents of the deed. Therefore, I shall sustain the objection. 20

Q. Did you see the paper which you signed, called a deed, on the table at the settlement?

A. Yes, I did.

Q. Did you see who put it there?

A. Mr. Kinley.

Q. Have you seen it since?

A. No, sir.

Q. Now, at the meeting of January 14, 1926, did you agree to return the deposit money? 30

A. No sir, I didn't.

Q. What did you say?

A. I said I came there to receive money, not to pay out money.

Q. Were you asked to attend any meeting the next day?

A. Yes.

Q. What did you say?

A. I didn't want to attend. I told Mr. Kinley to go down and attend himself; I was not going to go.

Q. Now, since January 14, 1926, have the plaintiffs in this case tendered you the purchase price?

A. No, sir.

Q. Have they ever demanded of you that you carry out your agreement?

A. No, sir.

10 Q. Have they ever executed a bond and mortgage?

A. No, sir, never did.

Q. On January the 5th, 1926, were you ready to perform your part of the agreement?

A. I was.

Q. Likewise on January 6th?

A. I was.

Q. Likewise on January 14th?

A. I was.

20 Q. And ever since?

A. Ever since.

Q. Is the new bridge built?

A. Yes.

Q. And the water back in the lake?

A. Yes.

Cross-examination.

By Mr. Redrow:

30 Q. I understand, Mr. Chrstos, you were ready to settle on January 5th, were ready to settle on January 6th and on January 14th, this year; and, as a matter of fact, you are still ready today to settle?

A. Sure.

Q. And all you want the plaintiffs to do is to pay the balance of the purchase price now?

A. Yes that is right.

Q. And get through with the settlement and get it cleaned up, and get through with the mortgage and all that?

A. Yes, sir.

Q. That is your theory?

A. Yes.

Q. You have always had that idea, haven't you?

A. Sure, that is the reason I sold the place.

Q. And you have on January 5th and January 6th and January 14th, and then today extended the time of settlement so as to give them an opportunity to come across if they would? 10

A. Well —

Q. That is right, isn't it?

A. Well, yes.

Q. Now, as a matter of fact, though, on January 5th the deed had not been prepared, had it, Mr. Chrstos?

A. What?

Q. The deed had not been prepared? 20

A. The deed was ready.

Q. On January 5th?

A. Yes.

Q. Who drew it? Do you know?

A. I don't know.

Q. Where was the deed on January 5th?

A. It was in Mr. Kinley's office; and me and my wife went down to yours on the 5th and —

Q. On January 5th?

A. That I don't know—whether it was on the 5th or on the 14th. 30

Q. You don't know whether it was on the 5th or not?

A. (Not answered.)

Q. You don't know whether it was on the 6th?

A. I don't know.

Q. But you did sign some sort of deed?

A. I signed a deed, but whether it was on the 5th or 6th or 14th I don't know; but it was on a date when we came over here for settlement.

Q. The last date, as you recall it now, wasn't it?

A. I don't know whether the first day or the last day.

Q. But it was one day you came over to the title company for settlement?

10 A. Yes.

Q. You say you did not care to return any deposit money to Walls and Dougherty?

A. No, sir.

Q. Do you remember the last day you were there at the title company you and Mr. Richman and Mr. Kinley walked out of the settlement room and had a little conference among yourselves?

A. Yes.

20 Q. Do you remember when you came back Mr. Richman made the statement that "There are two things we can do?"

A. He did.

Q. And one of those things was to return the deposit money and take a release, and the other was to continue the settlement until such time as you might be able to clear up these exceptions?

A. Yes, sir.

Q. That was the statement he made?

A. That was made, yes.

30 Q. And then, in reply to that, you said you came to get money and not to pay it?

A. Because in the conference I did not hold to their idea—because I said, "I won't return the money until I absolutely have to."

Q. But the other conversation was—Mr. Richman turned around and asked if you had a check with

you, and you told him, "No, I came here to get money, not to pay it out?"

A. That is right.

Q. That is the conversation?

A. That is right.

Q. And afterward when you were there, there was a talk between Mr. Kinley and Mr. Richman and yourself that would meet the following day, at either Mr. Laws' office or Mr. Kinley's office, to make some sort of agreement disposing of this contract— 10

A. That is so, yes; but I didn't agree —

Q. Wait a minute. After that day, and after you were supposed to meet the next day, you told Mr. Kinley you didn't want to go to this settlement, or this meeting, the following day, and left him to go; is that it?

A. I told him right there in the settlement room.

Q. You didn't tell Mr. Walls or Mr. Dougherty, did you?

A. No. 20

Q. You just told Mr. Kinley for him to go?

A. Yes.

Q. To see what he could do?

A. That is right.

Q. Now, in regard to this dam, Mr. Chrstos, sometime during last summer there was a little hole down there that came through the dam underneath just beyond the bridge, through the wall, and was stopped up with sand—Harvey Michener or someone dumped a bag of sand there? 30

A. That is right.

Q. That was sometime in—

A. Sometime in June—no, before June.

Q. Sometime early in the year, last year?

A. Yes. That was caused on account of building the upper end of the road and sending the heavy

Mack trucks there with heavy material, and caused that leak.

Q. This dam around the end of bridge, I understand, was lower down, for a road?

A. Yes and the trolley.

Q. Trolley lines went over it?

A. Yes.

Q. And have ever since you have owned it?

A. Yes.

10 Q. Ever since you have owned it there has been a right-of-way across this dam?

A. Yes.

Q. And the same condition existed there at the time you made the contract as far as the road and the trolley cars running over this dam?

A. Oh, yes, yes.

Q. Now you remember, Mr. Chrstos giving the deed to the Almonesson Improvement Company for a portion of this land which was owned by you—

20 that was some year or so before, wasn't it?

A. Yes, six hundred and forty-eight lots, I remember.

Q. Six hundred and forty-eight lots. And you say that later on—that was, on or about the 17th of December, wasn't it, 1925, that a notice was served on you concerning this dam?

A. Yes, that is right.

Q. And, as a matter of fact, it was leaking pretty badly at that time, wasn't it; just above the bridge?

30 A. No, it wasn't leaking no worse than it ever did, outside of that time when I had it stopped up about the beginning of June there or latter part of May—the latter part of May or the beginning of June, 1925.

Q. This water I speak of was running through the actual dam, wasn't it—seemed to be seeping through from one side to another, and not through the spill-

way? There was a spillway for the water to run through, but this was running through the dam, at the end of the abutments to the bridge?

A. Yes.

Q. And the county gave you notice to drain the lake?

A. Yes.

Q. And they afterward awarded the contract to drain the lake to a man in Pitman, you say?

A. Yes.

Q. And the lake was drained, and your thought now is they didn't start work until January 16th; is that right?

A. That is right.

Q. You mean to say it was a month from the time you were notified before they actually did any work?

A. That is right.

Q. Since that time you have joined with the county in building a new bridge?

A. Yes.

Q. Which is just about completed?

A. It is completed now, outside of the top dressing for the township to officially —

Q. They have been raising and lowering the water for the purpose of gauging—

A. Yes, gauging and bringing the lake up to the level.

Q. Have you made any agreement to convey this property at all outside of the agreement with Walls and Dougherty?

10

20

30

Mr. Richman: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Mr. Redrow: Question withdrawn.

Q. There was no complaint, was there, that you remember, about this time—and prior to the time you signed this agreement, Mr. Chrstos?

A. No, sir.

Q. When you would go down on Sundays you didn't go down to stay overnight, did you, Mr. Chrstos?

A. No, not—sometimes I did stay overnight.

Q. Well, your brother-in-law had been living in the
10 hotel there?

A. Yes.

Q. And did he ever have any trouble with the Federal Government about being closed up or anything?

Mr. Richman: Objected to as irrelevant and immaterial.

The Court: Objection overruled.

20 Mr. Richman: Will your Honor allow me an exception?

The Court: An exception may be noted for the defendant.

Q. Answer the question.

A. Yes, I did, about—I think about four months after it happened.

Q. Four months after it happened is when you
30 knew of it?

A. Yes.

Q. And there had been some complaint about violation of the Prohibition Act, had there?

A. Yes.

Q. By your brother-in-law living on the hotel property?

A. Yes.

Q. And that hotel property was the property you agreed to convey to Walls and Dougherty?

A. Yes, sir; sure.

Q. Mr. Chrstos, you testified about being notified by the county to drain the water off this lake on account of the dam?

A. Yes.

Q. Is this a copy of the notice which was served on you at that time? (Mr. Redrow hands paper to witness.)

A. (Witness examines the paper): Yes, sir.

Q. And that was served on you on December 17th, about four o'clock in the afternoon, wasn't it?

A. I think—I wasn't home, and I got home at 9 o'clock in the evening. My wife gave me this.

Re-direct examination.

By Mr. Richman:

Q. Mr. Chrstos, you are familiar with the location of that property over there?

A. Oh, yes, sure.

Q. I show you a map, marked for identification "D1." Does that show the location of the property?

A. That is the map. That is an exact duplicate—there was one copy, and all were made from that one.

Q. In other words, that is an exact duplicate of the
copy that was filed with the County Clerk?

A. Yes, sir.

Mr. Richman: I offer it for the purpose of showing the general location of that property over there.

Mr. Redrow: I won't object, with the exception that there are lead pencil lines on this map.

Re-cross examination.

By Mr. Redrow:

Q. Who made these pencil lines? Do you know?

10 A. That I don't know.

Mr. Redrow: I ask that they be erased.

The Court: They may be erased.

The Witness: This shows the swimming pool here. (Indicating.)

(The lead pencil lines were erased by Mr. Rich-
20 man.)

Mr. Redrow: As I understand, the map is offered in evidence for the purpose of showing the general location of the property, and for no other purpose?

Mr. Richman: That is right.

The Court: It will be admitted for that purpose.

30 Mr. Richman: If your Honor pleases, I have one other witness—the man who drained the lake; and I intended to prove by him when he began to drain that lake, and I have shown your Honor an affidavit made by him last night to the effect that he began January 16th. That is what I proposed to prove by him, but he is not here.

Mr. Redrow: As far as the legal effect of that is concerned, in rebuttal I will offer this Exhibit "P8" as an exhibit; and to my mind that will relieve Mr. Richman of the necessity of having his witness testify.

Mr. Richman: Of course, I think that paper is objectionable. That is merely notice. It has not anything to do with the actual fact of drainage.

The Court: No.

10

Mr. Richman: The point I wish to make is this: When the parties were actually together, on January 14th, the letter was there, as it always had been.

The Court: Of course, this notice does not fix the time at which the lake was actually drained.

Well, I have waited, Mr. Richman, and given what latitude I think reasonable. I think we should go
20 ahead.

Mr. Richman: Of course, I think you have this affidavit which says this man began to drain the lake on January 16th.

The Court: Is the case closed for both sides?

Mr. Redrow: I close with the offer of this in evidence, and I would ask your Honor to direct a verdict in this case—for several reasons; but before
30 proceeding with the argument I understand this is the proper time to make that application, rather than after argument?

The Court: Oh, yes.

Mr. Redrow: The first reason for the application is that the deed which is offered in evidence, and marked Exhibit "P3," recites as follows: This is a deed from the defendant in this case to another property owner immediately adjoining, as has been shown by the testimony, the Almonesson Improvement Company, states (Mr. Redrow reads the beginning of covenant in deed, which covenant continues as follows): "**** for its and their benefit and advantage at all times to use the said Almonesson Lake as at present existing for boating and fishing. No power-craft of any kind or description to be used on said lake. And, to be used in a proper manner, the private park fronting on said lake, as laid out on plan of Lakeview Heights, for picnic purposes or any other accustomed use."

10 And this is the part, it seems to me, the most important, "And the said party of the first part (that is, Chrstos) does hereby dedicate said lake and park to such usage, and the said parties of the first part do further covenant to and with the parties of the second part, ifs successors and assigns to **** in perpetuity at their own cost and charges."

In other words, it not only grants all these rights to the grantee in this deed, to the Almonesson Improvement Company, but he dedicates the lake and also the park, which is a part of the description, as the testimony shows, that Chrstos agreed to convey to these plaintiffs.

30 After he grants it he dedicates it for those particular usages, and then he charges himself and this property with the duty of maintaining that lake and that park for the purposes for which he has created it.

In other words, it is incumbent, as I take it, upon the owner of that property, whoever he may be, to maintain that lake, to build such dams as may be

necessary to protect this dedication which has been made to these people who are not the fee owners of this property. It means that he must maintain the park and must maintain all the privileges which the defendant in this case has granted to other people.

Now, in that connection I want to—there are three or four reasons I have set out here—in that connection I want to say something about this agreement. Counsel for the defendant, in his opening—while it is not in the pleading, and I will ask the Court to bear that in mind in disposing of this case—said that the agreement provides "The said property to be conveyed free and clear of all encumbrances except building restrictions, etc., etc., which have been respected and complied with in the erection of the present improvements."

Now, there can be, to my mind, no other construction on that paragraph than that which refers to the improvements such as dwelling houses, hotels or park buildings that may be constructed there—that they must comply with those restrictions whatever they may be. (Cites case of De Long v. Spring Lake; 65 Law, page 1), which says, "Lands dedicated to public purposes cannot be regarded as an easement."

And it seems to me there is not any question but what he not only grants and covenants with these things but "dedicates" them, and then requires the property owner to keep up his own property for the benefit of these other people. He is making it a charge on this real estate, as the deed says, "in perpetuity, at their own costs and charges."

The second proposition is that it seems in this particular case that the plaintiffs are required to take title to this property as it now stands. They are buying a lawsuit. According to the book of lis pendens there is already a lawsuit against the owner of

the property—Chrstos, in this case; and it is particularly set out in that *lis pendens*, which was offered in evidence yesterday, that the object of the suit which was brought to restrain the mortgagor from doing anything with the mortgage which they had given; and the other object was to enforce the very covenants and the very dedication that I have spoken of in this particular deed.

10 And, following that same line of thought out, the title to this property is further defective in that the proceedings looking toward the violation of the Volstead Act have never been cleaned up—as far as we know today have never been cleaned up.

Mr. Richman: I don't want to interrupt counsel, but there is no proof of that at all, and I don't think he ought to refer to it. It is not in the complaint and not in the testimony.

20 Mr. Redrow: As I recall, there was some reference to it in the testimony—about a violation of the Volstead Act.

The Court: It is not quoted in the complaint, however, Mr. Redrow.

Mr. Redrow: I appreciate that.

30 There was some reference made by Mr. Richman in his opening—I realize it would have no bearing with the Court but perhaps it could be mentioned without any violation of the rules of court, as to the enormous price which these people paid for the property. I notice that the agreement provides for twenty-two houses and lots, which, at ordinary value of three or four thousand dollars apiece would amount to quite a lot—together with approximately eighteen thousand dollars of bills receivable. That

would be eighteen plus sixty or seventy thousand dollars for the houses and lots, and would bring the value of the lake and park and the hotel to considerably less than what they were taking the mortgage on it for.

This agreement further provides that the title to this property shall be such as will be insurable by a title insurance company. Now, in looking over the cases I find that where that covenant is placed in a deed, or in an agreement such as this, that the law 10 assumes that the title will be acceptable to that title company.

The several exceptions appearing on the title certificate—practically none of which are canceled or have been canceled—and the testimony of the title officer of the company to the effect that the title is not such as would be insurable without noting these several exceptions as appear on the settlement certificate.

20 Another point I make is, that the agreement provides for restrictions and easements, which I claim apply to improvements or to building restrictions; and the deed itself, which is in question—the one given to the Almonesson Improvement Company—uses the word “dedicate;” and, strictly speaking, I think that we must say that this lake and park—and “usage” therein designated—are dedicated, and it is not an easement.

30 In other words, it is dedicated to the use of the public, as set out in that restriction.

The other point I make is this: The undisputed testimony in this case is that at the time of settlement, on January 14th, after everybody had done what they could to effect a settlement of this property, that Mr. Richman made the statement, “We will do one of two things: One is to pay the money back, and the other is” to continue the hearing, or

continue the time of settlement until such time as he might be able to get the settlement certificate cleaned up. Frankly, I don't believe that ever could be done.

There is no denial of that testimony, or there is no denial of the testimony of Walls and Dougherty that they told Mr. Richman that they would accept the money; and, as I understand the law, the statements made by Counsel for his client, in his presence, are binding upon him in matters of this nature.

Therefore, for these reasons we ask that a verdict for the plaintiffs be rendered for the full amount, with the costs.

Mr. Richman: I would likewise move, with the permission of the Court, for a direction of the verdict in favor of the defendant in this controversy.

These people are seeking to recover the return of their deposit money made under a contract for the sale of lands. The burden of establishing to your Honor's and this jury's satisfaction that they have carried out their part of the contract is upon them.

The proof shows that they have failed to perform their part of the contract. The agreement calls for a mortgage of \$100,000. There is no testimony here that that mortgage was executed and delivered by the plaintiffs at the time of the settlement or at any other time.

Secondly, it is admitted in this case that the searches were not ordered by the plaintiffs, nor on their behalf, until November 13, 1925. It seems to me it is shown clearly, because of their neglect in that respect they were not able and ready to carry out their part of the contract on January 5th, the time specified therein. And therefore they assume the consequences of their own default.

The third reason is that the exceptions shown

in the settlement certificate in this case, which they now raise as the reasons why they didn't go on with their contract, are not such reasons, such legal reasons as would afford the plaintiffs an excuse for not carrying out their own contract. I won't go into detail with respect to all of that—all of those reasons, except to say that the major portion of them are mere objections which the title examiner testified could be removed by the filing of an affidavit.

The mortgages and lien claims which appear in the settlement certificate the plaintiffs are not entitled to have removed except at the settlement, out of the proceeds of the sale; and it is not any valid reason, because they appear on the settlement certificate, why they should not go on with their contract.

And then the *lis pendens* which appeared, which relates to the use of the lake and park, was accepted in the agreement in this case. There is the map, and there is the lake and there is the park. They visited the property, and they saw the map. They signed the agreement, and they took the agreement with our guarantee that we would convey everything clear of all encumbrances except existing building restrictions and easements now covering the properties, which regulates and governs the character of improvements in the erection of improvements. That lake has been there ever since the property has been plotted; and the case of *Barber vs. Coleson*, opinion by Chief Justice Comer; 86 Law, as I read it, is this: That where the use of land is given to another, it is an easement.

Here the use was of boating and fishing on the lake, and the use of the park for picnic purposes. They can't say now that after they have gone to the property and looked at the map and signed the agreement with that exception, that they didn't in-

clude that use of that lake and that park. It is only a pretext to get out of their honest obligations.

My last reason is that they have based their suit upon this contract; and they come here and prove, or attempt to prove, some promise outside of the contract, some arrangement which they say was made to return this deposit. Now, they must either stand on their contract or stand on that promise. They can't stand on both; and that is what they are attempting to do.

If they stand on their contract, then they can't take advantage of any arrangement that was made at that settlement. If they ignore their contract and rely upon the promise, there is no consideration shown here at all for the promises that were made; and, as a legal proposition, there was no consideration shown as moving from either party for that purpose—not admitting it was made.

So, for these reasons it seems to me this jury should be told to find a verdict for the defendant and against the plaintiffs as "No Cause of Action."

Mr. Redrow: The question of the pleadings will enter into this matter; and, as I understand it, there is no mention made in the answer concerning any time for settlement; and they don't claim in their answer any reason for not making settlement by reason of that term in their contract. What they do do is to say, "We have good title to this property, and we are ready to make settlement."

The other reasons, it seems to me, have all been fully taken care of. It does not seem to me that there is any question that having once entered into a contract you can make an agreement to cancel that contract.

The Court: Let me see the agreement and the settlement certificate and the deed.

(The Court examined the papers called for, and then proceeded to charge the jury, denying defendant's motion and granting plaintiffs' motion.)

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CHARGE OF THE COURT

By HON. FRANK B. JESS, Judge.

Ladies and gentlemen of the jury: This is a suit brought by Messrs. Walls and Dougherty against Charles Chrstos to recover from Chrstos the sum
10 of money paid by the plaintiffs to the defendant on account of the purchase price on certain lands and premises situate in Deptford Township in this county (Gloucester County).

That agreement between the parties for the sale and purchase of this property was made as of the 15th day of September, 1925, and provided for the conveyance by the defendant to the plaintiffs of certain lots and tracts of land in Deptford Township, and other property mentioned in the agreement and
20 described there, with a concluding provision by which it is stated to be agreed and understood between the parties that the purpose of this agreement is to sell and convey unto the parties of the second part, that is, the plaintiffs in this suit, all the right, title and interest of the party of the first part to the parties of the second part of all this real estate situate at Deptford Township, Gloucester County, New Jersey, and known as Almonesson Park.

It is specifically stated in this agreement that the
30 body of water known as Almonesson Lake, together with the bed of the water to high-water mark, is to be conveyed by the defendant to the plaintiffs. It is further specifically provided that the defendant will convey to the plaintiffs the tract of land known as Almonesson Park.

The purchase price as fixed in this agreement for all the property, which included some personal prop-

erty with which we are not concerned in this suit, was \$130,000; \$3,000 to be paid at the time of the signing of the agreement, on September 15, 1925; \$5,000 more within 30 days after the signing of the agreement, and the balance of the purchase price to be secured to the extent of \$100,000 by a purchase-money mortgage, and \$22,000 to be paid in cash at the time of settlement.

And it was agreed that settlement should be made on or before the 5th day of January, 1926, and that
10 time should be of the essence of the contract.

It appears from the evidence, in fact is undisputed, that the plaintiffs paid to the defendant the first payment of \$3,000, and, on October 15th, the second payment of \$5,000; so that, in that respect they complied with the terms of the agreement as to the initial payments on account of the purchase price.

Now, it is the plaintiffs' contention in this case that the defendant has failed, and is in fact and in
20 law unable to complete his agreement in accordance with its terms. The defendant denies some of the allegations of the Complaint and admits some, and pleads as a separate defence that he has tendered, made a tender of, the title to the property covered by this agreement in accordance with the terms of the agreement, and that the plaintiffs have failed to perform their obligation under the agreement.

I am asked to direct a verdict for the plaintiffs, and also I am requested by counsel for the defend-
30 ant to direct a verdict for the defendant.

This agreement on which the suit is based provides, among other things, that the title is to be good and marketable. I will read that section of the agreement:

"Title to the above property to be good and marketable, and such as will be insured by the Land

Title and Guarantee Company of Camden, New Jersey."

It is further provided, in another clause of the agreement, "that said property is to be conveyed free and clear of all encumbrances except existing building restrictions and easements now covering said properties, which regulate and govern the character of the improvements, which have been respected and complied with in the erection of the present improvements."

10 Now, in pursuance of the agreement application was made to the Land Title and Guarantee Company, the title insurance company designated in the agreement, to issue a title insurance policy upon the premises covered by the agreement.

The title company prepared a settlement certificate upon which were noted a number of exceptions, some of which are the printed exceptions which it is the practice to include in all title settlement certificates and some of which were exceptions which are

20 not thus formally included in settlement certificates. For the purposes of these two motions I deem it necessary only to refer to two of the exceptions noted upon this settlement certificate, which is in evidence and which has been marked Exhibit "P6." These exceptions are numbered 9 and 16. No. 9 reads as follows:

"Restrictions and conditions imposed upon the land by Charles Chrstos."

30 The title officer testified that by that exception reference was had to the deed, which has been offered in evidence, made by the defendant, Mr. Chrstos, and his wife, to the Almonesson Improvement Company—and particularly to the covenant in that deed which purported to create a certain easement or easements in the grantee and its successors and assigns.

No. 16 of the exceptions is a *lis pendens* filed December 23, 1925, between Almonesson Improvement Company and Charles Chrstos and Elsie Chrstos; and that *lis pendens*, as the record itself showed, when produced in court, was notice to all the world and notice to the parties, to the plaintiffs in this suit, that a suit in chancery had been instituted for certain purposes and among them to secure the performance of the covenant in the deed from Mr. Chrstos and his wife to the Almonesson Improve- 10 ment Company.

Now the question arises: What are those covenants referred to in the deed, Exhibit Pltf. 3, dated July 30, 1924, made by Charles Chrstos and Elsie Chrstos, his wife, of the first part, to the Almonesson Improvement Company, a corporation of the State of New Jersey, of the second part, this deed being recorded in the Clerk's Office, of the County of Gloucester, on August 2, 1924, in Book 337 of Deeds, page 295? 20

Now, the covenant in that deed, which appears, according to the *lis pendens*, to be the subject-matter of the suit in Chancery, and which the plaintiffs contend disabled the defendant to give a title in accordance with his agreement, reads as follows:

"And the said parties of the first part, for themselves, their heirs and assigns, covenant and grant with and to the party of the second part, its successors and assigns, that it shall be lawful for it, its successors and assigns, its and their agents and 30 servants, and the tenants and occupants of the premises hereinbefore described, and members of their families, guests and servants for its and their benefit and advantage at all times, to use the said Almonesson Lake as at present existing for boating and fishing—no power-craft of any kind or description to be used on said lake—and to use in a proper manner the

private park fronting on said lake, as laid out on plan of Lakeview Heights, for bungalow purposes or any other accustomed use; and the said parties of the first part do hereby dedicate said lake and park to said usage.

“And the said parties of the first part do further covenant to and with the said party of the second part, its successors and assigns, to maintain said lake, park and privileges herein granted in perpetuity at their own costs and charges.”

10 The defendant contends that these easements or this dedication referred to, which is a covenant of the deed, and which I have just read—were referred to and accepted in the clause of the agreement which I will again read to you:

20 “The said property to be conveyed free and clear of all encumbrances except existing building restrictions and easements now covering said property, which regulate and govern the character of all improvements, which have been respected and complied with in the erection of the present improvements.”

I feel that I am bound to hold that as used in that clause, both by the plain import of the language employed and as a matter of legal construction, that the words “building restrictions and easements” have the same meaning, and that when the word “easements” is used what is meant is an easement by way of a building; and I hold that the clause cannot be construed to refer to easements created by the defendant in his deed to Almonesson Improvement Company.

30 It seems to me to be perfectly clear that while the word “easements” does appear, as counsel for the defendant contends, in the clause, it must be construed with reference to the text of the clause itself; and that, as I take it, leaves no doubt, and

no question of fact for the jury to decide, that what the provision is intended to cover is “building restrictions which now cover said properties, which regulate and govern the character of the improvements, which have been respected and complied with in the erection of the present improvements.” I cannot possibly see how that clause can be held to refer to easements created in the deed from Chrstos to the Almonesson Improvement Company. That deed at that time was a matter of record, and if those were the easements referred to it would have been a perfectly simple matter in this agreement to embody a statement reciting that those were the easements covered by this clause; whereas, as a matter of fact, those easements, grants made by Chrstos to the Almonesson Improvement Company, have nothing whatever to do with building restrictions, as a reading of the covenant itself shows. They were, in express terms, a grant of easements to the grantee and its successors and assigns, and, in express terms, a dedication of the park and the lake for certain public and private purposes; and those were grants, those easements, certainly in the legal sense, which imposed a servitude in perpetuity upon the lands which Chrstos agreed to convey to these plaintiffs.

So that it appears clear to me that the only title which the defendant, Chrstos, can convey to the lands which he contracted to sell, and which he contracted to sell free and clear of all encumbrances, is subject to these easements in the Chrstos deed to the Almonesson Improvement Company, and those easements constitute an encumbrance upon the land; and that the plaintiffs were not bound to accept such a title in fulfillment of the defendant’s agreement, even if such a title had been tendered—and there is

no evidence in the case that there was at any time an actual tender of the title.

So therefore, the existence of these easements and the refusal of the title company to insure the title without making those easements, or the rights under those easements, one of the exceptions to the policy justifies the plaintiffs, in my judgment, in refusing to perform the contract on their part, and entitles them to recover so much money as they have paid
10 under the agreement on account of the purchase price.

They are not bound to take a title which in all reasonable probability will subject them to the hazards of a lawsuit. In fact, they already had notice at the time of settlement, or when settlement was undertaken to be made, that a lawsuit had been instituted which would affect the title to the property which they expected to acquire from the defendant Chrstos.

20 Therefore, ladies and gentlemen, I feel that I must deny the motion of defendant's counsel and grant the motion of plaintiffs' counsel, and give you binding instructions to return a verdict in this cause in favor of the plaintiffs for the sum of \$8,000 plus the sum of \$475—I think was the amount paid for searches, and which the plaintiffs are entitled to recover in this suit, together with interest on those sums; on the sum of \$3,000, from the time payment was made at the signing of the agreement, and on
30 the further sum of \$5,000 from October 15, 1925, when that payment was made, and on the sum paid for searches from the time that payment was made, which, according to the receipt which has been offered in evidence was January 7, 1926.

Now, it is the function of the jury to compute interest on these amounts. I don't know whether counsel has attempted to compute that or not.

(A yellow sheet of paper was handed the Court, containing the computations of interest.)

Ladies and gentlemen, I am going to show you a statement submitted by Mr. Redrow, counsel for the plaintiffs, in which he has undertaken to compute the interest on these amounts; and if you find that to be correct, then you may adopt those figures and render your verdict accordingly. But if you wish, you may retire for the purpose of considering the item of interest and computing it, because your
10 verdict will have to be rendered as one sum of money including interest.

Mr. Richman: If your Honor pleases, I want at this time to pray an exception to your Honor's denial of my motion to direct a verdict in behalf of the defendant. And, also, I pray an exception to your Honor's granting the motion of the plaintiffs and directing a verdict favorable to the plaintiffs.
20

The Court: Those exceptions will be allowed, both as to the denial of the defendant's motion and as to the granting of the plaintiff's motion.

Verdict: \$9,008.32 in favor of plaintiffs.

EXHIBIT P1.

MEMORANDUM OF AGREEMENT made this 15th day of September A. D. 1925 between CHARLES CHRSTOS of the City of Philadelphia, hereinafter known as the party of the first part, and WALTER WALLS & FRANK P. DOUGHERTY, hereinafter known as the parties of the second part; WITNESSETH;

The said party of the first part agrees to sell and convey to the said parties of the second part, who agree to purchase

ALL THAT CERTAIN lot, tract or piece of ground and premises situate in the Township of Deptford, County of Gloucester and State of New Jersey, bounded and described as per survey made by J. Owen Carter, C. E. Woodbury, N. J. BEGINNING at a stake for a corner to Charles Chrstos other land and corner to land about to be conveyed to Edward Harrison; thence (1) along said Harrison's land, North eighty degrees and two minutes East, five hundred twenty-six and seventy-four hundredths feet to a stake for a corner in the line of Frank Bold's land; thence (2) along said Bold's land, South eighty-nine degrees and ten minutes East, one hundred seventy-nine and forty hundredths feet to a corner in the middle of a stream; thence (3) along the middle of said stream the several courses and distances thereof to a corner to Charles Chrstos other land; thence (4) along said Chrstos other land, North eighty-eight degrees and forty minutes West, eight and fifty hundredths feet to a stone set on line and continuing the same course a further distance of

two hundred twenty and forty hundredths feet to the place of beginning. CONTAINING two acres and forty-five hundredths of an acre of land be the same more or less.

ALL THAT CERTAIN lot, tract or piece of ground and premises situate in the Township of Deptford, County of Gloucester and State of New Jersey and bounded and described as per survey of J. Owen Carter, C. E. as follows: BEGINNING at a stone at the Southeasterly corner of lands about to be conveyed from said Julia E. Ewell to Randolph Barrett; thence (1) by the rear line of said Barrett and a lot retained by said Julia C. Ewell, North no degrees and fifty minutes East, one hundred forty-one and twenty hundredths feet to a stake for a corner in line of lands of now or formerly Charles Dougherty; thence (2) by said Dougherty's land, South eighty-eight degrees and forty minutes East, two hundred twenty-nine feet more or less to the center line of Almonesson Creek; thence (3) up said stream or creek in a Southerly direction the various courses and distances thereof about one hundred seventy feet to a corner of lands conveyed by Mary Alice Morrill to Adon Muller; thence (4) by said lands of now or formerly Muller, North eighty-two degrees and twenty minutes East, two hundred fifty-two feet more or less to the place of beginning. CONTAINING eighty-four hundredths acres of land more or less.

ALL THAT CERTAIN lot or piece of land and premises situate at Almonesson in the Township of Deptford, County of Gloucester and State of New Jersey and bounded and described with magnetic bearings corresponding with the year 1917 as follows: BEGINNING at

a stone for a corner in line of lands of Alfred C. Jaggard and corner to lands of Charles Chrstos; (1) by said Chrstos land North eighty-nine degrees and thirty-two minutes, West six hundred ninety-eight and forty-five hundredths feet to a corner of the lands of Mary Alice Morrill; thence (2) by said other lands, North one degree and fifty-six minutes East, three hundred sixteen and forty-nine hundredths feet to a stone for a corner in the line of lands of Julia C. Ewell; thence (3) by the same South eighty-two degrees and twenty minutes East, two hundred and forty-two and twenty hundredths feet to a stone, and continuing the same course a further distance of ten feet to the center of the stream leading from Almonesson Lake; thence (4) down said stream Northwardly the various courses and distances about seven hundred feet to a corner; thence (5) by lands of Joseph Jaggard South eighty-nine degrees and fifty five minutes East, four hundred and thirty five feet to a stone corner to Alfred C. Jaggard's land; thence (6) by said Alfred C. Jaggard's land South no degrees and fifteen minutes West, nine hundred eighty-three and ten hundredths feet to the place of beginning. CONTAINING twelve and nine hundredths acres of land more or less.

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30 ALL THAT CERTAIN lot, tract of land or piece of land and premises situate in the County of Gloucester, State of New Jersey bounded and described as per survey made by J. Owen Carter, C. E., Woodbury, N. J. on the Northeasterly side by Cooper Street, bounded on the Southerly side by Cooper Street, on the Easterly side thereof by North Summitt Avenue, on the Northwesterly side by land formerly owned by Herbert A. Ross but now owned by

Charles Chrstos and intended to be conveyed in this Agreement, and on the Southwesterly side by land now or late owned by Alfred M. Cunard; together with the Swimming Pool, Bath Houses, Hotel and any other improvements thereon erected. The furnishings and equipment of the Hotel and likewise the Bath Houses and all equipment appurtenant to the operation of both the Hotel and the Bath Houses is included in the sale of this tract of ground.

ALL THAT CERTAIN body of water known as Almonesson Lake together with the bed of said body of water to high water mark. 10

ALL THAT CERTAIN lot, tract or piece of ground and premises situate on the Northwesterly side of Almonesson Lake bounded on the East side thereof by Almonesson Lake, on the North side by Cooper Street and containing on the West side two hundred thirty-two and forty-one hundredths feet and on the Southwesterly side three hundred eight and eighty-six hundredths feet as per survey made by J. Owen Carter, C. E. Woodbury, N. J. 20

ALL THAT CERTAIN lot, tract or piece of land together with all buildings and improvements erected thereon, situate in the County of Gloucester, State of New Jersey, bounded and described as per survey made by J. Owen Carter, C. E. Woodbury, N. J. on the Northeasterly side of Almonesson Lake and known as Almonesson Park, bounded on the South by Parkside Avenue, on the East by West Summitt Avenue, on the North by Cooper Street and on the West by Almonesson Lake. 30

ALL THAT CERTAIN lot, tract or piece of land situate on the Southeasterly corner of Almonesson Lake as per survey made by J. Owen Carter, C. E., Woodbury, N. J.

ALSO all those certain twenty-two cottages or bungalows situate on the plan of lots of Lakeview

Heights at Almonesson, Gloucester County, New Jersey, as per survey made by J. Owen Carter, C. E., Woodbury, N. J. and more particularly described in an annexed statement of the location of the respective cottages or bungalows, made a part of this Agreement and marked Exhibit "A."

10 THIS agreement likewise contemplates the sale of all the right, title and interest of the part of the first part in and to all those certain lots situate at Almonesson, Gloucester County, New Jersey as per survey made by J. Owen Carter, C. E. Woodbury, N. J. and more particularly described in the annexed statement which is made a part of this agreement and marked Exhibit "B."

THIS agreement likewise contemplates the assignment to the party of the second part of all the book Accounts Receivable for lots sold as indicated in Exhibit "B" showing the aggregate amount of the book accounts which are now due.

20 FOR THE PRICE OR SUM OF ONE HUNDRED THIRTY THOUSAND DOLLARS \$130,000.00

Payable as follows:

Cash at signing of this agreement THREE THOUSAND DOLLARS 3,000.00

Cash to be paid within thirty days from signing of this agreement FIVE THOUSAND DOLLARS 5,000.00

30 A purchase money mortgage and bond and warrant of attorney to run for a period of five years at 6% for ONE HUNDRED THOUSAND DOLLARS 100,000.00

AND the balance of the purchase price or TWENTY TWO THOUSAND DOLLARS to be paid in cash at the time of settlement 22,000.00

\$130,000.00

The said property to be conveyed free and clear of all encumbrances except existing building restrictions and easements now covering said properties which regulate and govern the character of the improvements which have been respected and complied with in the erection of the present improvements.

Title to the above property to be good and marketable, and such as will be insured by the Land Title & Guaranty Co. of Camden, N. J. 10

Possession of the entire property will be given with deed at the time of final settlement, at which time possession of the Hotel and all other property and improvements upon the hereinbefore described premises will be turned over to the purchasers, together with books and Accounts Receivable for the lots now under agreement.

Taxes, water rent, interest on first mortgages, and all other apportionable credits and debits are to be adjusted as of the date of settlement. 20

It is agreed and understood between the parties hereto that the purpose of this agreement is to sell and convey unto the parties, of the second part all the right, title and interest of the party of the first part to the parties of the second part to all his real estate situate at Deptford Township, Gloucester County, New Jersey and known as Almonesson Park.

It is further agreed and understood between the parties hereto that the party of the first part will release from the lien of the One Hundred Thousand Dollars (\$100,000.00) mortgage any portion of the hereinbefore described premises, upon payment to the party of the first part of 75% of the selling price, provided however, that the party of the first part shall receive for the release of the Hotel, Garage and ground appurtenant thereto, a minimum sum of Twenty Thousand Dollars (\$20,000.00) and for the 30

release of the Amusement Park proper and Lake, a minimum sum of Fifty Thousand Dollars (\$50,000.00).

Settlement is to be made on or before January 5, 1926 and said time is hereby agreed to be the essence of this agreement, and if the said parties of the second part shall fail to make settlement therefor in the manner and form as herein provided, then the said sum of Three Thousand Dollars (\$3000.00) and any other moneys representing payments on account of purchase shall be retained by the said party of the first part as compensation and liquidated damages and if the said party of the first part shall fail to comply with the terms of this agreement on his part within the dates and days herein provided, then the said sum of Three Thousand Dollars (\$3000.00) and any other moneys representing payments on account of purchase, or so much thereof as remains in his hands, shall be returned to the said parties of the second part and both parties be discharged from liability under this contract.

It is agreed that this contract shall not be acknowledged or recorded or offered for record by either of the parties hereto.

The terms, conditions, covenants and agreements herein contained shall extend to be binding upon and available for the heirs, executors, administrators and assigns of the respective parties hereto.

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

Charles Chrstos (seal)
Frank P. Dougherty (seal)
Walter Walls (seal)

WITNESSETH:
David H. Kinley
Walter B. Townsend

RECEIVED from WALTER WALLS and FRANK P. DOUGHERTY the sum of Three Thousand Dollars (\$3000) on account of purchase money mentioned in the foregoing Agreement.

CHARLES CHRSTOS

EXHIBIT "A."

10

LIST OF HOUSES OWNED BY CHARLES CHRSTOS AND LOCATION OF SAME.

Table with columns: Lot No., Block No., Address, and page number. Includes entries like '29-30 6 Block House, Rosmore & E. Summit Ave.', '5 10 Royal Bungalow', '1-2-3-4-5-6 11 Chrstos Bungalow, Hillside & W. Summit', etc.

EXHIBIT "B."

Lot	Block	Name	Amount Due
25	28	Philip Amaradio	\$65.00
20-22	34	Maryanna Bardyszewska)	
7	30	" ")	200.96
32	28	Clara & George Blevins	115.00
10 19	28	Joseph Botto	140.50
27	33	Robert G. Brawley	57.00
11	26	Mrs. Jennie Brennan	100.00
9	29	Theodore Browski	37.50
11	29	Joseph M. Cain	50.00
2	16	Mrs. Sarah Cahill	50.00
4	30	David C. Coffey	110.00
18	18	" "	48.00
26	2	Michael A. Cavello	85.00
22	24	Frank Carrelli	75.00
20 20	24	Ralph Carrelli	90.00
1-2-3-4	6	Martha Dombkoska	620.00
29	19	Charles Wilbur Drew	80.00
24-26	24	Agnes Dyrлага	305.00
27	40	Anna Dyl & Charles (her son)	216.00
4	19	Frank Egitto	65.00
16-18	27	Laura Farr	150.00
12	27	" "	135.00
13-14	27	" "	50.00
30 4	36	Mrs. Carrie Fechter	40.00
1-2	2	Anthony Gagliardi	125.00
5	17	Dominik Garyonis	140.00
20	40	Angelo Gereroso	111.50
15-17-19	38	Julius Green	83.00
4-5	32	Veronica Grabon	315.00
2-4	24	Julius Green	285.00
7-9	23	John Guzas)	

14	18	" ")	210.00
12	36	Mary Anna Hallman	20.00
6	2	Mrs. J. Hammer	153.21
17	6	Frank Hawman	70.00
9	36	Frank & Elizabeth Heater	107.00
3	36	Raymond Heater	45.00
24-25	38	John Hoffman	100.00
24	33	John R. Hoffman	33.00
24-25	20	Rudolph Hoffman	269.00
13-15	29	Kasimer Koedaras	126.00
20-22	36	Wincenty Kilijanski	290.00
5	1	Edward Kohlman	239.00
10-12	16	Karl Konezawski	310.00
31-33	29	Antoni Krupezak	280.00
1	34	Catherine Krupezak	176.00
4	26	Henry Lefeber	116.00
15	8	Stanislow Lochowicz	608.00
32	24	Mrs. Anna P. Loeffler	112.50
4-6	17	Mrs. Sarah McCourt	35.00
1-2-3-4	5	Albert Masciantonio)	20
17-19	30	" "	615.00
21	5	Harvey Mentzer	230.00
28-30	24	Julian Michalek	300.00
15-17-19	23	Emanuel T. Mills	270.00
11-13	38	Mrs. Frances Niewadowski	
4-6	37	" "	168.00
9	16	Frank & Frances "	220.00
24-26	28	Paul Panvino	120.00
17	2	M. F. Perantuno	155.00
6-8	6	Louis Pero	243.50
11	30	George Pollock	28.00
27-26	38	John Price	40.00
13	40	John & Matilda Prorok)	
13	44	" " "	
29	38	" " "	
8	17	" " "	
15	29	" " "	1119.00

	1-2-3-4	29	“ “ “	560.00
	9	13	“ “ “	175.00
	22-24	20	Rudolph Reich	332.00
	24	40	Leon & Frances Sadouska	340.00
	2-4	38	Frances Sadouska	26.00
	30-31	28	Emil Schwen	485.00
	3-4-5	25	Peter & Julian Shelus	387.00
	19-21	21	Mary & Rudolph Skala	75.00
	11-13	23	Joseph Skodzus	170.00
10	30-31	14	“ “	246.00
	30-31	13	Frank Snock	387.00
	31-32	37	John Sterling	235.00
	8	2	Mrs. Mary Stearns	160.00
	5	23	Joseph Straum	200.00
	10	33	“ “	15.00
	7	12	Walter Struzeh	210.00
	18-20	33	Joseph & Margaret Schatt	40.00
	12-14-16-18			
	20-22	25	Veronica Szablawska	755.00
20	24-26	25	“ “	245.00
	28-30	25	Martin Szablewski	280.00
	3-5	15	Frank Szalinski	310.00
	6-8	25	Mrs. Elizabeth Taggart	125.00
	27-28-29	13	Charles G. Urbon	390.00
	16-18	13	“ “	505.00
	3	18	“ “	45.00
	11-13	16	John Urbon	105.00
	2-4	15	Valeria Waska	320.00
	27	12	Edwin Wendler	443.00
30	3-5	28	Ludwik Waska	315.00
	19	2	Joseph Walton	245.00
	14-15	40	Czeslaw & Emma Zglinski	299.00
	29	28	Karl Zoeltsch	81.25
	2	25	John Ziomek	140.00
	1	25	“ “	76.00

EXHIBIT P2.

It is mutually agreed that the within Agreement of Sale shall be cancelled and the deposit money returned because of the fact that there are certain objections which turned up on the settlement certificate of Land Title Guaranty Company, of New Jersey, under Application No. 12803, which the Vender is unable to remove and which prevent him from conveying an insurable title in accordance with the terms of the Agreement, and the parties mutually agree to and with each other, that each shall be released from their several obligations hereunder with the same force and effect as though the Agreement had never been made and the deposit money never paid.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals this day of January, A. D. 1926.

Walter Walls (SEAL)

Frank P. Dougherty (SEAL)

Sealed and delivered in

the presence of us:

James W. Laws

RECEIVED, on the above date, the sum of Eight thousand Dollars (\$8,000.00), being the deposit money mentioned in the within Agreement.

Walter Walls

Frank P. Dougherty

30

EXHIBIT P3.

THIS INDENTURE, Made The thirtieth day of July, in the year of our Lord one thousand nine hundred and twenty-four (A. D. 1924). BETWEEN Charles Chrstos and Elsie Chrstos, his wife, of the City and County of Philadelphia and State of Pennsylvania, of the first part, and

10 ALMONESSON IMPROVEMENT COMPANY, a Corporation of the State of New Jersey, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of ONE DOLLAR and other good and valuable consideration, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the en-

20 sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, its successors and assigns, ALL the following lots shown on Plan of Lakeview Heights, made in nineteen hundred and fourteen by J. Owen Carter, Civil Engineer, and on file in the office of the Clerk of Gloucester County at Woodbury, New Jersey, as hereafter described,

30 situate in Almonesson, Deptford Township, Gloucester County, New Jersey—

Lots Nos. 10 and 27 in Section No. 1.
 Lots Nos. 7, 9, 11, 13 and 15 in Section No. 2.
 Lots Nos. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30 and 32 in Section No. 3.

Lots Nos. 10, 11, 13, 15, 17, 18, 19 and 26 in Section 4.

Lots Nos. 5 and 7 in Section No. 5.

Lots Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23 and 24 in Section No. 6.

Lots Nos. 17 and 18 in Section No. 7.

Lot. No. 13 in Section No. 8.

Lot. No. 18 in Section No. 9.

Lots. Nos. 2, 8, 10, 11, 12, 17 and 18 in Section No. 11.

Lots Nos. 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 23, 24, 25, 26 and 28 in Section No. 12.

Lots Nos. 5, 11, 13, 14, 15, 17, 19, 21, 23, 25, 32 and 33 in Section No. 13.

Lots Nos. 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 26, 27 and 28 in Section No. 14.

Lots Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31 and 32 in Section No. 15.

Lots Nos. 4, 6, and 8 in Section No. 16.

Lots Nos. 7 and 9 in Section No. 17.

Lots Nos. 5, 7, 9, 11, 13, 15, 17 and 21 in Section No. 18.

Lots Nos. 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33 and 34 in Section No. 19.

Lots Nos. 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 21 in Section No. 20.

Lots Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Section No. 22.

Lots Nos. 3, 4, 6, 8, 10, 14, 16, 18, 20, 21, 24, 25, 28 and 29 in Section No. 23.

Lots Nos. 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 25, 27, 29, 31, 33 and 34 in Section No. 24.

Lots Nos. 11, 13, 15, 17, 19, 21, 23, 25 and 29 in Section No. 25.

Lots Nos. 5 and 7 in Section No. 27.

Lots Nos. 2, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22 in Section No. 28.

Lots Nos. 6, 10, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 32 in Section No. 29.

Lots Nos. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in Section No. 31.

10 Lots Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 in Section No. 32.

Lots Nos. 7, 9, 28 and 29 in Section No. 33.

Lots Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34 and 36 in Section No. 34.

Lots Nos. 4, 5, 6, 7, 8, 10, 11, 12 and 13 in Section No. 35.

20 Lots Nos. 5, 11, 14, 15, 16 and 18 in Section No. 36.

Lots Nos. 2, 3, 5, 7, 8, 9, 14, 16, 18, 20, 21, 22, 23, 24, 25, 26 and 30 in Section No. 37.

Lots Nos. 3, 5, 7, 9, 22 and 32 in Section No. 38.

All lots in Section No. 39.

Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 22, 23, 25, 26, 28, 29, 30, 31, 32 and 33 in Section No. 40.

Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 in Section No. 41.

30 Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, in Section No. 42.

Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 in Section No. 43.

Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,

17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 in Section No. 44.

All lots in Section No. 45.

All lots in Section No. 46.

All lots in Section No. 47.

ALSO all the following described land situate as aforesaid, Lot A on said plan at the corner of north side of Good Intent Road and west side of Lakeside Avenue, having frontage westwardly on said Good Intent Road of one hundred feet and a depth of two hundred feet measuring northwesterly at right angles to Good Intent Road to the south side of Point Pleasant Avenue, if extended, as shown on said plan. 10

Lot at the corner of west side of Lakeside Avenue and southwest side of New Jersey Avenue, and extending westwardly on the southwest side of New Jersey Avenue and Good Intent Road, one hundred feet more or less, and extending southwestwardly of that width on a line parallel with Lakeside Avenue, two hundred feet, and having a width on the southwest line thereof of one hundred feet. 20

That tract of land shown on said plan bounded on the south by Bellevue Avenue, on the north by Bellmore Avenue, on the west by Lots 10 and 11, Section 4, Sunset Avenue and Lots 10 and 11 Section 3, and on the east by Hurffville Road and land marked on said plan as belonging to Joseph W. Eastlack's heirs, except tract situate on southwest corner of Hurffville Road and Sunset Avenue, if extended, having a frontage of eighty feet on Hurffville Road, by a depth of one hundred feet between parallel lines one of said lines being the southerly line of Sunset Avenue if extended. 30

Tract of land at the southeast corner of Cooper Street and Hurffville Road, extending southeastwardly on Cooper Street to land of William J. Ken-

nedy, et al., and extending southwardly on Hurffville Road to land of the same, as shown on said plan.

10 Tract of land at the northeast corner of Rosmore Avenue and Hurffville Road, bounded on the west by Hurffville Road, on the northeast and northwest by land of William J. Kennedy, et al., on the east by land of Philip A. Mason, and on the south by Rosmore Avenue, as shown on said plan, excepting thereout tract of land at the northeast corner of Rosmore Avenue and Hurffville Road, having a frontage on Rosmore Avenue of one hundred feet, on Hurffville Road of two hundred feet and extending at right angles from each of said bounding streets to a point.

20 BEING part of the same lands and premises which Jacob George, widower, by deed dated March 25, 1914, and recorded in the Clerk's Office of Gloucester in book 248 of Deeds, page 16 &c., granted and conveyed to the said Charles Chrstos, in fee, and including the land conveyed to said Charles Chrstos by two deeds made by Olive L. Halter dated 1919, and recorded in said Clerk's Office in book 283 of Deeds, pages 484 and 486 respectively.

30 And the said parties of the first part for themselves, their heirs and assigns, covenant and grant with and to the said party of the second part, its successors and assigns, that it shall be lawful for it, its successors and assigns, and its and their agents and servants and the tenants and occupants of the premises herein above described, members of their families, guests and servants, for its and their benefit and advantage at all times to use the said Almonesson Lake as at present existing for boating and fishing (no power craft of any kind or description to be used on said lake) and to use in a proper manner the private park fronting on said lake as laid out

on Plan of Lakeview Heights for picnic purposes or any other accustomed use and the said party of the first part do hereby dedicate said lake and park to such usage, and the said parties of the first part do further covenant to and with the said party of the second part, its successors and assigns to maintain said lake, park and privileges herein granted, in perpetuity at their own costs and charges. The right hereby granted in said lake and park shall not extend to permit any person authorized to use the same hereunder for commercial purposes. 10

TOGETHER with all and singular the improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, and every part thereof, with the appurtenances: 20

TO HAVE AND TO HOLD the said premises above described, with all and singular the hereditaments and appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use benefit, and behoof of the said party of the second part, its successors and assigns forever. AND the said party of the first part, for themselves, their heirs, executors, and administrators, do by these presents covenant, grant, and agree, to and with the said party of the second part, its successors and assigns, that they the said party of the first part, and their heirs all and singular the hereditaments and premises above described and granted, or mentioned and intended so to be, with the appur- 30

tenances, unto the said party of the second part, its successors and assigns, against them the said party of the first part, and their heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, shall and will warrant and forever defend. IN WITNESS WHEREOF, the said party of the first part to these presents hath hereunto set their hands and seals the day and year first above written.

10

dated the day and year first above written.

Charles Chrstos (L. S.)
Elsie Chrstos (L. S.)

Signed, sealed and delivered
in the presence of
Harvey Mentzer.

STATE OF NEW JERSEY, }
Ocean County } ss.

20

BE IT REMEMBERED, That on this thirtieth day of July in the year of our Lord one thousand nine hundred and twenty-four, before me A Notary Public of New Jersey, personally appeared Charles Chrstos and Elsie Chrstos, his wife, who I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

30

Harvey Mentzer, (SEAL)

BACKER.

DEED

CHARLES CHRSTOS, et ux.

TO

ALMONESSON IMPROVEMENT COMPANY A
CORP. &c.

Received August 2nd, A. D. 1924, at 7.15 o'clock
A. M. and Recorded in the Clerk's Office of Gloucester County, at Woodbury, in Book 337 of Deeds, page 295 &c.

Oliver J. West,
Clerk.
(GLP)

EXHIBIT P4.

20

This 14th day

On account of the fact that certain objections have turned up in the title to the premises covered by agreement on the Settlement Certificate No. 12803 of Land Title Guaranty Co. of New Jersey It has been mutually agreed between C C — W W F. P. D. that this agrt of Sale be cancelled and that the parties hereto mutually release each other from their several obligations hereunder

30

EXHIBIT P5.

Title Insurance Bell Telephone 1110
 Searches CAMDEN, N. J., January 7, 1926.
 James W. Law,
 917-18 Land Title Bldg.,
 Broad & Chestnut Sts., Phila. Pa.

10 To LAND TITLE GUARANTY COMPANY OF
 NEW JERSEY, Dr.
 S. W. Corner Fifth and Market Streets.
 App. No. 12803

To Guaranty	
Premises: Twp. of Deptford.	\$450.00
In Re: Walls and Dougherty.	
To Drawing Papers.	25.00
	<hr/>
20 Land Title Guaranty Co.	\$475.00
Jan. 25, 1926.	
By A. P. Denmede,	
Secretary	
M. R. H.	
PAID	

EXHIBIT P6.

30 LAND TITLE GUARANTY COMPANY OF NEW
 JERSEY.
 Camden, N. J.,
 December 28, 1925.

Pursuant to application No. 12803 the LAND
 TITLE GUARANTY COMPANY OF NEW JER-
 SEY will, upon the surrender of this certificate, the

payment of the premium and expenses, and the pro-
 duction and record of the papers hereinafter called
 for, insure Walter Walls and Frank P. Dougherty as
 Owners. of premises

(For description see inside sheet.)
 to the amount of Two Thousand Dollars, against all
 liens or defects in title, except the following, which
 may now exist, and will be made exceptions in the
 policy unless removed, viz:

It is important that all exceptions which are not 10
 to appear on the title policy be properly removed
 from this certificate before it is surrendered to the
 Company, because, upon surrender of the certificate,
 title policy will be issued containing all of the excep-
 tions appearing on the certificate except those which
 have been removed by an authorized officer of the
 Company.

Where insurance is under a mortgage, the pro-
 duction and appoyal of the bond and mortgage will 20
 be required before issuing policy.

It will not be guaranteed that there are any build-
 ings or improvements on the land intended to be
 insured unless a survey, made under the direction
 of this company, is produced.

This Company will not assume any responsibility
 for unpaid gas, electric light, sewer or other cor-
 poration claims NOT LIENS; nor for the proper ex-
 ecution of papers until approved by it; nor will it
 perform the work required for the removal of any
 proper exception. Counsel should be employed 30
 where legal services are required. All papers should
 be submitted for approval BEFORE settlement day.

If this certificate is to be continued to show a deed
 affecting premises herein described, expressing a
 nominal consideration, an exception will be made
 unless a satisfactory statement is made to the Com-

pany that such conveyance was made for a valuable consideration.

No liability assumed after this date; if settlement is postponed search should be continued.

Upon satisfactory evidence being produced, we shall gladly remove any exception appearing on this settlement certificate or the policy which shall take its place.

See that Revenue Stamps are affixed to all instruments as required by law.

- 10 1. Tenure of present occupants.
 2. Rights of way and rights of the public and others in streets, roads, lanes or alleys bounding or crossing insured premises.
 3. Variation of lines and deficiency in quantity of ground, and such state of facts as an accurate survey and inspection of insured premises would disclose.
 4. Loss or damage by reason of mechanics' lien claims not filed or of record at this date.
 20 5. Taxes, water rents and municipal claims as follows: Official tax search dated December 8, 1925, shows no liens.
 6. Prospective assessments for municipal improvements if any.
 7. Flooding, drowning and drainage rights if any, of adjoining owners or tenants in any stream or water course crossing or in any way affecting the insured premises.
 30 8. Rights of adjoining owners and others in any party walls.
 9. Restrictions and conditions imposed upon the land by Charles Chrstos.
 10. Mortgage made by Ella K. Walton, et vir, to Lakeview Heights Building and Loan Association, dated September 20, 1923, recorded in Mortgage

Book 137, page 435; given to secure \$4000.00. Covering lots 14, 16, 18, Block 2.

11. Mortgage made by Ella K. Walton, et vir, to Charles Chrstos, dated September 20, 1923, recorded in Mortgage Book 137, page 437; given to secure \$2000.00. Covering Lots 14, 16, 18, Block 2. This exception will be removed upon proof that a conveyance by Ella K. Walton, et vir, to Charles Chrstos, was executed and delivered for the purpose of merging said mortgage into the fee title. 10

12. Rights of lot owners in and to such portions of land as shown on plan of Lakeview Heights.

13. The following conveyance in chain of title expressing a nominal consideration, proof will be required that such conveyances were made for a valuable consideration, not in fraud of creditors and free from any trusts or limitations expressed or implied, viz:

a. Deed made by Frank M. Walton, et ux, to Charles Chrstos and Elsie Chrstos, his wife, dated November 12, 1924, recorded in Deed Book 342, page 160. 20

b. Deed made by William S. Taggart and Annie, his wife, to Charles Chrstos, dated February 11, 1924, recorded in Deed Book 330, page 258.

c. Deed made by Charles E. Ewell and Julia C. Ewell, his wife, to Charles Chrstos, dated June 21, 1923, recorded in Deed Book 323, page 164.

d. Deed made by William Morrill and Mary Alice Morrill, his wife, to Adon W. Muller, dated August 3, 1921, recorded in Deed Book 300, page 534. 30

e. Deed made by Adon W. Muller, et ux, to Charles Chrstos, dated May 1, 1922, recorded in Book 309, page 150.

14. Subject to any undisclosed trust not of record, made between William S. Taggart, and Annie Taggart, his wife, and Edward Harrison and Rose Har-

rierson, his wife, affecting parcel (A) of Tract #2, herein described.

15. Lien Claim filed by Asbestos-Crete Building Co. against Charles Chrstos on September 13, 1919, amount \$10924.75. Book 2, page 285, covering lot 11, Block 9. Lot 1, Block 9. Lot 5, Block 10.

16. Lis Pendens, filed December 23, 1925, between Almonesson Improvement Company and Charles Chrstos and Elsie Chrstos.

10 17. Production and Record of Deed from Charles Chrstos and Elsie Chrstos, his wife, to the assured. (For continuation see inside sheet.)

ALL that certain hotel building with the appurtenances known as Lakeview Inn and garage, restaurant, real estate offices, dance hall, bath-houses and all other buildings and improvements erected on the land and premises situate in the Township of Deptford, County of Gloucester, State of New Jersey, bounded and described as follows:

20 TRACT ONE: PARCEL A:

BEGINNING at the intersection of the center line of Cooper Street and the center line of North Summit Avenue; extending thence Northwardly along the center line of North Summit Avenue 874.54 feet, more or less, to lands formerly of Herbert A. Ross, now Charles Chrstos; thence South 81 degrees 52 minutes 30 seconds West 1038.43 feet along said land to a point; thence along land now or formerly of Alfred M. Cunard South 7 degrees 40 minutes East 236.41 feet to the center line of Cooper Street; thence 30 along the center line of Cooper Street South 64 degrees 16 minutes East 305.53 feet, more or less, to a point; thence along land now or formerly Anna Engard South 25 degrees 44 minutes West 257.40 feet, more or less, to line of land of Ruth McCarron; thence South 64 degrees 16 minutes East along lands of said McCarron 308.83 feet, more or less, to the

Westerly edge of Almonesson Lake; thence down the Westerly edge of said Almonesson Lake, the several courses and distances thereof to the center line of the Good Intent Road; thence continuing along the Westerly edge of said Almonesson Lake, the several courses and distances thereof to a point in the line of land now or formerly Eugene Cunard; extending thence along Cunard's land and crossing the Almonesson Branch South 31 degrees 24 minutes East 265 feet, more or less, to a point in the North- 10 erly line of Lakeside Avenue; thence along said line of Lakeside Avenue North 35 degrees 57 minutes East 590 feet, more or less, to line of lands now or formerly of the Almonesson Improvement Company; thence along said line and at right angles to said Lakeside Avenue, the distance of 100 feet to a point; thence parallel with Lakeside Avenue and still along lands of Almonesson Improvement Company 225 feet, more or less, to the center line of the Good Intent Road; thence Westwardly along the center line 20 of said Good Intent Road 50 feet, more or less, to a point; thence North 24 degrees 35 minutes East along line of lot A, as shown on plan of Lakeview Heights, 150 feet more or less, to a point; thence continuing on a curve to the right along line of Lot A, 80 feet to a point; thence still along Lot A, Eastwardly 68 feet more or less, to the Westerly line of Lakeside Avenue; extending thence in a general Northeasterly course along the said line of Lake- 30 side Avenue the several courses and distances thereof to a point in the Northerly line of Parkside Avenue; thence along the Northerly line of Parkside Avenue South 81 degrees 36 minutes East 380 feet more or less, to the Westerly line of West Summit Avenue; thence in a Northerly direction along said line of West Summit Avenue 480 feet more or less, to an angle in said West Summit Avenue; thence in

a Northeasterly direction crossing West Summit Avenue and Cooper Street 175 feet more or less, to the place of beginning.

PARCEL B:

10 ALSO all that five feet reserved strip of land as shown on Plan of Lakeview Heights, bounded on the Northeast by South Side Avenue and on the Southwest by lands now or formerly of Eugene Cunard and Paul P. Jones, and extending from the Westerly line of Lakeside Avenue to the Westerly line of Hurffville Road. Also the five feet reserved strip of land as shown on the aforesaid plan extending from the Southerly line of Elmore Avenue to the Northerly line of Rosemore Avenue and bounded on the West by East Side Avenue and on the East by lands now or formerly the Apgar Farm, Thomas Glover and Philip A. Mason. Also the five feet reserve strip of land extending from the Northeasterly line of Cooper Street to a point in line of lands formerly

20 Herbert A. Ross, now Charles Chrstos and bounded on the West by North Summit Avenue and on the East by land now or formerly Alfred C. Jaggard.

PARCEL C:

ALSO all the following lots as shown on Plan of Lakeview Heights which plan is on file in Gloucester County Clerk's Office and described as follows:

30 Lot 5, Block 1.
 Lots 1, 2, 6, 8, 17, 19, 26, Block 2.
 Lots 1, 2, 3, 4, 6, 8, 21, Block 5.
 Lots 1, 2, 3, 4, 17, Block 6.
 Lots 7, 27, Block 12.
 Lots 9, 16, 18, 27, 28, 29, 30, 31, Block 13.
 Lots 30, 31, Block 14.
 Lots 2, 3, 4, 5, Block 15.
 Lots 9, 10, 11, 12, 13, Block 16.
 Lots 4, 5, 6, 8, Block 17.
 Lots 3, 14, 18, Block 18.

Lots 4, 29, Block 19.
 Lots 22, 23, 24, 25, Block 20.
 Lots 19, 21, Block 21.
 Lots 5, 7, 9, 11, 13, 15, 17, 19, Block 23.
 Lots 2, 4, 20, 22, 24, 26, 28, 30, 32, Block 24.
 Lots 1, 2, 3, 4, 5, 6, 8, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, Block 25.
 Lot 4, Block 26.
 Lots 12, 13, 14, 16, 18, Block 27.
 Lots 3, 5, 19, 24, 25, 29, 30, 31, 32, Block 28. 10
 Lots 1, 2, 3, 4, 9, 31, 33, Block 29.
 Lots 4, 7, 17, 19, Block 30.
 Lots 4, 5, Block 32.
 Lots 18, 20, 24, 27, Block 33.
 Lots 1, 20, 22, Block 34.
 Lots 3, 4, 9, 12, 20, 22, Block 36.
 Lots 4, 6, 31, 32, Block 37.
 Lots 2, 4, 11, 13, 15, 17, 19, 24, 25, 29, Block 38.
 Lots 13, 14, 15, 24, 27, Block 40.
 Lot 13, Block 44. 20
 ALSO the following lots with houses owned by Charles Chrstos.
 Lots 14, 16, 18, Block 2.
 Lots 29, 30, Block 6.
 Lots 1, 11, Block 9.
 Lot 5, Block 10.
 Lots 2, 3, 4, 5, 6, 9, 11, Block 11.
 Lot 6, Block 15.
 Lot 6, Block 19.
 Lot 20, Block 20.
 Lot 2, Block 22. 30
 Lots 12, 22, 23, 26, 27, 30, 31, Block 23.
 Lots 3, 7, Block 24.
 Lots 27, 31, Block 25.
 ALSO all those certain twenty-two cottages or bungalows situate on the plan of lots of Lakeview Heights at Almonesson, Gloucester County, New Jersey, as

per survey made by J. Owen Carter, C. E., Woodbury, N. J., more particularly described as follows:
Lots 14, 16, 18, Block 2.

Lots 29, 30, Block 6.

Lot 1, Block 9.

Lot 11, Block 9.

Lot 5, Block 10.

Lots 2, 3, 4, 5, 6, Block 11.

Lots 9, 11, Block 11.

10 Lot 6, Block 15.

Lot 6, Block 19.

Lot 20, Block 20.

Lot 2, Block 22.

Lot 12, Block 23.

Lot 22, Block 23.

Lot 23, Block 23.

Lot 26, Block 23.

Lot 27, Block 23.

Lot 30, Block 23.

20 Lot 31, Block 23.

Lot 3, Block 24.

Lot 7, Block 24.

Lot 27, Block 25.

Lot 31, Block 25.

TRACT TWO: PARCEL A:

30 BEGINNING at a stake for a corner to Charles Chrstos other land and corner to land about to be conveyed to Edward Harrison; extending thence along said Harrison's land North 8 degrees 2 minutes East 438 feet, more or less, to a point; thence North 21 degrees 23 minutes East 90 feet, more or less, to a stone corner to Frank Bold; thence along his line South 89 degrees 10 minutes East 156 feet 9 inches to a corner in the middle of a stream; thence along the middle of said stream, the several courses and distances thereof to a corner to Charles Chrstos other land; thence along said Chrstos other land

North 88 degrees 40 minutes West 8.50 feet to a stone set on line and continuing the same course, a further distance of 220.40 feet to the place of beginning.

PARCEL B:

BEGINNING at a stone at the Southeasterly corner of lands about to be conveyed from said Julia C. Ewell to Randolph Barrett; thence (1) by the rear line of said Barrett and a lot retained by said Julia C. Ewell North 0 degrees 50 minutes East 141.20 feet to a stake for a corner in line of lands of now or formerly Charles Dougherty; thence (2) by said Dougherty's land South 88 degrees 40 minutes East 229 feet to the center line of Almonesson Creek; thence (3) up said stream or creek in a Southerly direction, the various courses and distances thereof about 170 feet to a corner of lands conveyed by Mary Alice Morrill to Adon Muller; thence (4) by said lands of now or formerly Muller, North 82 degrees 20 minutes East 252 feet, more or less to the place of beginning. 10 20

CONTAINING .84 acres, more or less.

PARCEL C:

BEGINNING at a stone for a corner in line of lands of Alfred C. Jaggard and corner to lands of Charles Chrstos; thence (1) by said Charles Chrstos land North 89 degrees 32 minutes West 698.45 feet to a corner of the lands of Mary Alice Morrill; thence (2) by said other lands North 1 degree 56 minutes East 316.49 feet to a stone for a corner in the line of lands of Julia C. Ewell, thence (3) by the same, South 82 degree 20 minutes East 242.20 feet to a stone and continuing the same course, a further distance of 10 feet to the center of the stream leading from Almonesson Lake; thence (4) down said stream, Northwardly the various courses and distances about 700 feet to a corner; thence (5) by 30

lands of Joseph Jaggard South 89 degrees 55 minutes East 435 feet to a stone corner to Alfred C. Jaggard's land; thence (6) by said Alfred C. Jaggard's land South 0° 15 minutes West 983.10 feet to the place of beginning.

CONTAINING 12.09 acres, more or less.

ALSO ALL THAT CERTAIN body of water known as Almonesson Lake together with the bed of said body of water to high water mark.

- 10 It is agreed and understood between the parties hereto that the purpose of this conveyance is to sell and convey unto the parties of the second part, all the right, title and interest of the party of the first part to the parties of the second part to all his real estate situate at Deptford Township, Gloucester County, New Jersey, and known as Almonesson Park.

Title to tract one became vested in Charles Chrstos and Elsie Chrstos, his wife, by the following deeds:

- 20 (a) Deed from Jacob George, widower, dated March 25, 1914, recorded in Deed Book 248, page 16.
 (b) Deed from Ella K. Walton, et vir, dated November 12, 1924, recorded in Deed Book 342, page 160.
 (c) Deed from Sealah P. Clark, Sheriff, dated January 30, 1923, recorded in Deed Book 316, page 480.

Title to tract two became vested in Charles Chrstos by the following deeds:

- (a) Deed from William S. Taggart and Annie Taggart, his wife, dated February 11, 1924, recorded in Deed Book 330, page 258.
 30 (b) Deed from Julia C. Ewell, et vir, dated June 21, 1923, recorded in Deed Book 323, page 164.
 (c) Deed from Adon W. Muller, et ux, dated May 1, 1922, recorded in Deed Book 309, page 150.

Deed to be made by Charles Chrstos and Elsie Chrstos, his wife, of the City and County of Phila-

delphia, State of Pennsylvania, to Benjamin A. Evans, of the same place.

Deed to be made by Benjamin A. Evans, Singleman, to Walter Walls and Frank P. Dougherty, of the City and County of Philadelphia, State of Pennsylvania, in equal shares as tenants in common.

BOND and MORTGAGE in the amount of \$100,000. to be made by Benjamin A. Evans, to Charles Chrstos.

Record title to Tract #1 is in Charles Chrstos and Elsie Chrstos his wife, by following deeds: 10

(a) One from Jacob George, widower, dated March 25, 1914, recorded in Deed Book 248, page 16.

(b) One from Ella K. Walton, et vir, dated November 12, 1924, Recorded in Deed Book 342, page 160, conveying Lots 14, 16, 18, Block 2.

(c) One from Sealah P. Clark Sheriff, dated January 30, 1923, recorded in Deed Book 316, page 480, conveying Lots 29, 30, Block 6.

Tract #2, is in Charles Chrstos by the following 20 deeds:

(a) One from William S. Taggart and Annie Taggart, his wife, dated February 11, 1924, recorded in Deed Book 330, page 253.

(b) One from Julia C. Ewell, et vir, dated June 21, 1923, recorded in Book 323, page 164.

(c) One from Adon W. Muller, et ux, dated May 1, 1922, recorded in Deed Book 309, page 150.

18. United States District Court. Bankruptcy vs. John Wright, Paterson, N. J. 30

#12803.

Camden, N. J.

January 14, 1926.

The within settlement certificate is hereby continued to date with the following results:—

Exceptions 1 to 9 inc., 11 to 14 inc., and 16 to 18 inc. remain.

19. Exception is hereby made of a recognizance against Herman Stichler, Almonesson, Lakeview Inn. David C. Coffey, Surety, Sunset Avenue, Almonesson. Entered May 15, 1925 in United States Court. Amount \$1000.00.

This Company has notice that at the time of the entering of this recognizance, Herman Stichler occupied part of insured premises, and exception is hereby made of any liability or defect in title, if any, to
10 which insured premises may be subjected by reason of the above lien.

COPY.

SETTLEMENT CERTIFICATE

Under Application No. 12803

for Oscar B. Redrow, Esq.,

premises Twp. of Deptford,

County of Gloucester

State of New Jersey

20

To be returned to the
Company when the Policy is issued

EXHIBIT P7.

ABSTRACT OF TITLE NO. 12803

Dated 12-28-25

Examined by C. M. Buckley. Time 8 days. Ap-
proved by Evans. Certificate by D. Hughes. Closed
30 192 by

PREMISES

All those following described tracts or parcels of land and premises, situate in the Twp. of Deptford, Glou. Co., State of N. J. bounded and described as follows:—

Tract 1. Parcel (a). Begng. at the intersection of

the centre li. of Cooper St. and the centre li. of N. Summit Ave., thence Nwdly, along the centre li. of N. Summit Ave. 874.54' more or less, to lands formerly of Herbert A. Ross now Chas. Chrstos; thence S 81° 52' 30" W. 1038.43' along sd. land to a point; thence along land now or formerly of Alfred M. Cunard S. 7° 40' E 230.41' to the center li. of Cooper St., thence along the centre li. of Cooper St. S 64° 16' E. 305.53', more or less, to a point; thence along land now or formerly Anna Engard, S. 25° 44' W. 257.40',
10 more or less, to li. of land of Ruth McCarron, thence S. 64° 16' E. along lands of sd. McCarron, 308.83', more or less, to the Werly edge of Almonesson Lake; thence down the Werly edge of sd. Almonesson Lake the several courses and distances thereof to the center li. of the Good Intent Road; thence continuing along the Werly edge of said Almonesson Lake the several courses and distances thereof to a point in the line of land now or formerly Eugene Cunard; thence along Cunard's land, and crossing the Almonesson Branch, S 31° 24' E. 260' more or less, to a
20 point; thence along a 5 ft. reserve, and the Nerly line of Lakeside Ave. N. 35° 57' East 590', more or less, to line of lands now or formerly of the Almonesson Improvement Co.; thence along sd. line, and at right angles to said Lakeside Ave., the distance of 100' to a point; thence parallel with Lakeside Ave., and still along lands of Almonesson Improvement Co. 225', more or less, to the center li. of Good Intent Rd; thence Wwdly along center li. of said Good Intent
30 Road, 50' more or less, to a point; thence N 24° 35' E. along line of Lot A as shown on Plan of Lakeview Heights 150' more or less to a point; thence continuing on a curve to the right along li. of Lot A, 80' more or less to a point; thence still along Lot A, Ewdly 68' more or less to the Werly line of Lakeside Ave; thence in a general NE erly course along the sd. li. of

Lakeside Ave. the several courses and distances thereof to a point in the Nerly li. of Parkside Ave. thence along the Nerly li. of Parkside Ave. S. $81^{\circ} 36'$ E. 380' more or less to the Werly li. of W. Summit Ave. thence in a Nerly direction along said li. of W. Summit Ave. 480' more or less to an angle in said W. Summit Ave. thence in a N.E. erly direction crossing W. Summit Ave. and Cooper St. 175' more or less to the place of Begng.

- 10 Parcel (b) also all that 5' reserved strip of land as shown on plan of Lakeview Heights bounded on the N.E. by South Side Ave. and on the S. W. by lands now or formerly of Eugene Cunard and Paul P. Jones and extending from the Werly li. of Lakeside Ave. to the Werly li. of Hurffville Rd.

Also the 5' reserve strip of land as shown on the aforesd. plan extending from the Serly li. of Elmore Ave. to the Nerly li. of Rosemore Ave. and bounded on the W. by East Side Ave. and on the E. by lands

- 20 now or formerly the Apgar Farm, Thomas Glover and Philip A. Mason.

Also the 5' reserve strip of land extending from the N. E. li. of Cooper St. to a point in li. of lands formerly Herbert A. Ross now Chas. Chrstos and bounded on the W. by N. Summit Ave. and on the E. by land now or formerly Alfred C. Jaggard.

Parcel (c) also all the following Lots as shown on plan of Lakeview Heights which plan is on file in Glou. Co. Clerks Office and described as follows.

- 30 Lot 5 Block 1; Lots 1-2-6-8-14-16-17-18-19-26 Block 2.
 Lots 1-2-3-4-6-8-21 Block 5.
 " 1-2-3-4-17-29-30 Block 6.
 " 1-11 Block 9.
 " 5 Block 10.
 " 3-4-5-6-9 Block 11.
 " 7-27 Block 12.
 " 9-16-18-27-28-29-30-31 Block 13.

- " 30-31 Block 14.
 " 2-3-4-5-6 Block 15.
 " 9-10-11-12-13 Block 16.
 " 4-5-6-8 Block 17.
 " 3-14-18 Block 18.
 " 4-6-29 Block 19.
 " 20-22-23-24-25 Block 20.
 " 19-21 Block 21.
 " 2 Block 22.
 " 5-7-9-11-12-13-15-17-19-22-23-26-27-30-31 Block 10
 23.
 " 2-3-4-7-20-22-24-26-28-30-32 Block 24.
 " 1-2-3-4-5-6-8-20-22-24-26-27-28-30-31 Block 25.
 " 4 Block 26.
 " 12-13-14-16-18 Block 27.
 " 3-5-19-24-25-29-30-31-32 Block 28.
 " 1-2-3-4-9-31-33 Block 29.
 " 4-7-17-19 Block 30.
 " 4-5 Block 32.
 " 10-18-20-24-27 Block 33. 20
 " 1-20-22 Block 34.
 " 3-4-9-12-20-22 Block 36.
 " 4-6-31-32 Block 37.
 " 2-4-11-13-15-17-19-24-25-29 Block 38.
 " 13-14-15-24-27 Block 40.
 " 13 Block 44.
 " 12-14-16-18 Block 25.

Tract 2. Parcel (a) Begng. at a stake for cor. to Chas Chrstos other land and cor. to land about to be convey. to Edward Harrison; thence along said Har- 30
 rison's land N. $8^{\circ} 2'$ E. 438' more or less to a point; thence N $21^{\circ} 23'$ E. 90' more or less to a stone cor. to Frank Bold; thence along his li. S. $89^{\circ} 10'$ E. 156' 9" to a cor. in middle of a stream; thence along the middle of sd. stream the several courses and distances thereof to a cor. to Chas. Chrstos other land; thence along sd. Chrstos other land N. $88^{\circ} 40'$ W. 8.50' to a

stone set on li. and continuing the same course a further distance of 220.40' to the place of Begng.

(b) Begng. at a stone at the S.E. erly cor, of lands about to be conveyed from said Julia C. Ewell to Randolph Barrett; thence (1) by the rear li. of said Barrett and a lot retained by sd. Julia C. Ewell N. (141.20)

- 50' E. 142.20' to a stake for a cor. in li. of lands of now or formerly Chas. Dougherty; thence (2) by sd. 10 Dougherty's land S. 88° 40' E. 229' more or less to the center line of Almonesson Creek; thence (3) up sd. stream or creek in a Serly direction the various courses and distances thereof about 170' to a cor. of lands conveyed by Mary Alice Morrill to Adon Muller; thence (4) by sd. lands of now or formerly Muller N. 82° 20' E. 252' more or less to the Place of Begng.

Contg. .84 acres more or less.

- (c) Begng. at a stone for a cor. in li. of lands of Alfred C. Jaggard and cor. to lands of Chas Chrstos; 20 thence (1) by sd. Chas. Chrstos land N. 89° 32' W. 698.45' to a cor. of the lands of Mary Alice Morrill; thence (2) by sd. other lands N. 1° and 56' E. 316.49' to a stone for a cor. in the li. of lands of Julia C. Ewell; thence (3) by the same S. 82° and 20' E. 242.20' to a stone and continuing the same course a further distance of 10' to the centre of the stream leading from Almonesson Lake; thence (4) down sd. stream Nwdly the various courses and distances about 700' to a cor. thence (5) by lands of Jos. Jaggard S. 89° 55' E. 435' to stone cor. to Alfred C. Jaggard's land; thence (6) by sd. Alfred C. Jaggard 30 land S. 15' W. 983.10' to the place of Begng.

Contg. 12.09 a. more or less.

#7. Flooding, drowning or drainage rights, if any, of adjoining owners or tenants in any stream or

water course crossing or in any way affecting insured prem.

#8. Rights of adjoining owners and others in any party walls.

#9. Restrictions and conditions imposed upon the lands of Charles Chrstos.

#10. Mtg. made by Ella K. Walton et vir, to Lakeview Hts. Building & Loan Asso. dated 9/20/23 R. in Bk. 137-435 given to secure \$4000.00 covering lots 14-16-18 Bl. 2. 10

#11. Mtg. made by Ella K. Walton, et vir, to Charles Chrstos. dated 9/20/23 R. in Bk 137-437 given to secure \$2000. covering lots 14-16-18 Bl. 2. This exception will be removed upon proof that a conveyance by Ella K. Walton, et vir, to Charles Chrstos was executed and delivered for the purpose of merging sd. mortgage into the fee title.

#12. Rights of lot owners in and to such portions of land as shown on plan of Lakeview Hts.

#13. The following conveyances in chain of title expressing a nominal consideration, proof will be required that such conveyances were made for a valuable consideration, not in fraud of creditors and free from any trusts or limitations, expressed or implied; viz; 20

- (a) Deed made by Frank M. Walton, et ux, to Charles Chrstos and Elsie, his wife, dated 11-12-24 R. in Bk. 342-160.
- (b) Deed made by William S. Taggart and Annie his wife to Charles Chrstos, dated 2/11/24 R. 30 in Bk 330-258.
- (c) Deed made by Charles E. Ewell and Julia C. his wife to Charles Chrstos dated 6/21/23 R. in Bk 323-164.
- (d) Deed made by William Morrill and Mary Alice Morrill his wife, to Adon W. Muller, dated 8/3/21 R. in Bk 300-534.

- (e) Deed made by Adon W. Muller et ux, to Charles Chrstos dated 5/1/22 R. in Bk 309-150.
- #14. Subject to any undisclosed trust not of record made bet. William S. Taggart, Annie Taggart his wife and Edward Harrison and Rose Harrison his wife, affecting parcel (a) of tract #2 herein described.
- #15. Lien Claim filed by Asbestos-Crete Building Co. against Charles Chrstos on 9/13/19 Am't \$10924.75 Bk. 2-285 covering lots 11 Bl. 9; lot 1 Bl. 9; Lot V Bl. 10.
- #16. Lis Pendens filed 12/23/25 bet. Almonesson Improvement Co. and Charles Chrstos and Elsie Chrstos.
- #17. Production and Record of dd. from Charles Chrstos and Elsie Chrstos his wife to the Assured. Record title to tract #1 is in Charles Chrstos and Elsie Chrstos his wife by following dds:
 - (a) One from Jacob George widower, dated 3/25/14 R. in Bk 248-16.
 - (b) One from Ella K. Walton, et vir dated 11/12/24 R. in Bk 342-160 conveying lots 14-16-18 Bl. 2.
 - (c) One from Sealah P. Clark, Shrff, dated 1/30/23 R. in Bk 316-480 conveying lots 29-30 Bl. 6.
 Tract #2 is in Charles Chrstos by the following dds:
 - (a) One from William S. Taggart and Annie Taggart his wife dated 2/11/24 R. in Bk 330-258.
 - (b) One from Julia C. Ewell et vir dated 6/21/23 R. in Bk. 323-164.
 - (c) One from Adon W. Muller et ux, dated 5/1/22 R. in Bk 309-150.

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30

- Jacob George, widower } W. Deed. Dated 3/25/14
to } Ackn'd same State
Charles Chrstos } County before
Rec'd 3/28/14 Book 248
pp. 16
Cons. \$1 etc.
Grant Hab.
Restrictions
Subject to
- Abstracted in full in #7036. 10
Prior title in #7036 and #7198.
- Charles Chrstos } Spec. Deed. Dated 8/25/20
Elsie, his wife } Ackn'd Same State N. J.
to } County Glou. before Har-
Ella K. Walton, wife of } vey Mentzer, C. D.
Frank M. Walton } Rec'd 10/14/20 Book 293
I R S 50¢ } pp. 366
Cons. \$1—
Grant H & A Hab. H & A 20
Restrictions of (1)
Subject to
- Conveys lots 14-16-18 Bl. 2.
R. D. 248-16.
- Ella K. Walton } Mortgage. Dated 9-20-23
Frank M. Walton, her } Ackn'd Same State N. J.
husb. } County Cam. before Gro-
to } ver C. Richman, M. C.
Lakeview Heights B & } Rec'd 9/25/23 Book 137 30
L. Assn., N. J. Corp. } pp. 435
To secure \$4000.
Due
Instal
Interest 6%, payable
- Covers Lots 14-16-18 Bl. 2.
R. D. 293-366.
C A N 12/30/25.

10 Ella K. Walton } Mortgage. Dated 9-20-23
 Frank M. Walton, her } Ackn'd Same State N. J.
 husb. } County Cam. before Gro-
 to } ver C. Richman M. C.
 Charles Chrstos. } Rec'd 9/25/23 Book 137
 } pp. 437
 } To secure \$2000.
 } Due 5 yrs.
 } Interest 6%, payable S. A.

Covers lot 14-16-18 Bl. 2.
 Subject to Mtge \$4000.
 R. D. 293-366.

20 Frank M. Walton } Spec. W. Deed. Dated 11-
 Ella K. Walton, his } 12-24
 wife } Ackn'd Same State N. J.
 to } County Glou. before Har-
 Charles Chrstos } vey Mentzer N. P.
 Elsie Chrstos, his wife } Rec'd 1-24-25 Book 342
 I R S \$2.00 } pp. 160
 } Cons. \$1 etc.
 } Grant H & A Hab. H & A
 } Restrictions
 } Subject to

Conveys lots 14-16-18 Bl. 2
 RD 293-366

30

Charles Chrstos } Mortgage. Dated 11-1-20
 Elsie Chrstos, his wife } Ackn'd Same State N. J.
 to } County Glou. before Har-
 Lakeview Heights B & } vey Mentzer C. D.
 L Assn., N. J. Corp. } Rec'd 11-4-20 Book 125
 } pp. 578
 } To secure \$2500.
 } Due
 } Instal.
 } Interest 6%, payable 10

Covers lots 29 and 30 Bl. 6

Charles Chrstos } spec. Deed. Dated 3/28/21
 Elsie, his wife } Ackn'd 4/1/21 State N. J.
 to } County Glou. before Har-
 Adelina Carfagno, wife } vey Mentzer CD
 of John Carfagno } Rec'd 5/26/21 Book 299
 IRS 50¢ } pp. 270
 } Cons. \$1 etc
 } Grant H & A Hab. H & A 20
 } Restrictions of (1)
 } Subject to

Conveys lots 29-30 Bl. 6

John Carfagno } Mortgage. Dated 4-1-21
 Adelina, his wife } Ackn'd 6/14/21 State N. J.
 to } County Glou. before Har-
 Charles Chrstos } vey Mentzer NP
 } Rec'd 7-12-21 Book 128
 } pp. 159 30
 } To secure \$1100.
 } Due 5 yrs.
 } Interest 6%, payable S. A.

Covers lots 29 and 30 Bl. 6
 Whereas (1) have negotiated with Lakeview Hts.
 B & L for loan of \$2500 to be secured by Mtge upon

above prem. which said Mtge is to be a 1st lien there-
fore this Mtge is to be 2nd in order & subsequent
lien to aforsd Lakeview Hts. B & L. Mtge.

NOT OF RECORD.

10 Sealah P. Clark Shrff. }
 to }
 Charles Chrstos }
 } Shrff. Deed. Dated 1-30-23
 } Ackn'd Same State N. J.
 } County Glou. before Fran-
 } cis B. Davis M. C.
 } Rec'd 2/26/23 Book 316
 } pp. 480
 } Cons. \$2815
 } Grant H & A Hab. H & A

Court Chancery Date of Decree 11/21/22 Date of
Writ 12/2/22

Object of Action Foreclosure Solicitor

Amount to be made \$2501.25 P & I Mtg. 125-578;
\$1201.75 P & I Mtg. Bk 128-159

Costs: \$126.28 & \$9.06

20 Advertised P & P Date of Sale 12/29/22 Sold to (2)
 for \$2815 Confirmed 1-9-23
 Parties Lakeview Hts. B & L Assn. is complainant
 & Adelina Carfagno & John Carfagno her husb, Chas.
 Chrstos, Pincus Lubow, Martin Burman, Herman
 Jacobs, Michael Williams are defendants.

Conveys lot 29-30 Sec. 6 Plan Lakeview Hts.

R D 248-16

Trace "A" as shown on map herewith

30

Edward P. Stewart, }
 George M. Tatum, }
 John C. Smallwood, }
 Com. }
 } B & S Deed. Dated 4/8/68
 } Ackn'd Same State N. J.
 } County Glou. before C. B.
 } Carman M. C.
 } Rec'd 4/15/68 Book F5
 } pp. 462

to }
 John E. Lord }
 } Cons. \$1430
 } Grant H & A Hab. H & A
 } Restrictions
 } Subject to

10

Whereas Orphans Court in application of Wm. R.
Tatum guardian of children and H at law of John
Smallwood, did appoint (1) commissioners

Order for sale by (1) by Court dated 12/11/67

Conveys tract described in Bk 172-249

RD Robert Bailey et ux to John Smallwood dated
7/15/52 Bk N-4-197.

PETITION OF Letters Admin. against Est. John
E. Lord

20

To Surrogate of County, recorded in
Book of Petitions for

pp. shows death of ,
testate, married, on ,

leaving surviving as only next of kin:
Name Relationship Address

No Petition
Letters Admin granted to

William R. Tatum
on 4-16-72 Book C pp. 78

30

Decree barring creditors
Book L, Orphans minutes.

Sale of lands to pay debts against est. John E.
Lord

Order for Sale by Orphans Court dated 9/4/72 Bk
L-331

Report of sale by Wm. R. Tatum Admin. dated 3/20/73 shows tract 22 acres sold to Adam Cunningham for \$1430.

Approved by Court on 3/20/73 Book L-376

10 William R. Tatum, Admin. of John E. Lord, decesd. to Adam Cunningham

Admin. Deed. Dated 3/22/73

Ackn'd Same State N. J. County Glou. before J. C. Smallwood M. C. Rec'd 3/31/73 Book O-5 pp. 459 Cons. \$1430 Grant H & A Hab. H & A Restrictions Subject to

Whereas Orphans Court ordered sale of land on 9/4/72 by (1)

20 Date of sale 1/25/73 Price of \$65 per acre Amt. \$1430

Conveys tract descrbd in Bk 172-249

R.D. Edward P. Stewart George M. Tatum and John C. Smallwood Commissioners of est of John Smallwood date 4/8/68 to John E. Lord.

30 Adam Cunningham Hester, his wife to William R. Tatum, Admin. of John E. Lord, decesd.

Mortgage. Dated 3/22/73 Ackn'd State County before Rec'd 3/31/73 Book KK pp. 626 To secure \$954. Due 1/2 in 1 yr; 1/2 in 2 yrs. Interest %, payable

Covers tract descrbd in Bk 172-249 Purchase Money Mtge.

Joseph Tatum, George M. Tatum, Extr. of William R. Tatum, decesd. to John H. Bradway, trustee of Hannah H. Jones

Assignment. Dated 10/20/74 Ackn'd 10/21/74 State County before Rec'd 10-21-74 Book D pp. 8 Cons. \$

Assigns Mtg Bk KK-626

10 John H. Bradway, late trustee of Hannah H. Jones to Hannah H. Jones

Assignmt. Dated 10-24-88 Ackn'd Same State N. J. County Glou. before John S. Jessup MC Rec'd 1-12-89 Book I pp. 13 Cons. \$1.

Assigns Mtg. Bk KK-626

Adam Cunningham Hester Cunningham, his wife to Mary Ingraham

20 Mortgage. Dated 8/10/86 Ackn'd 8/12/86 State N. J. County Glou. before Wm. Moore M. C. Rec'd 8/12/86 Book YY pp. 82 To secure \$100. Due 1 yr Interest legal %, payable

Covers tract descrbd in 172-249 RD O-5-459

30

Franklin D. Springer, Shriff
 to
 Jonathan D. Cunard

Shriff Deed. Dated 10-5-96
 Ackn'd 10/8/96 State N. J.
 County Glou. before David
 O. Watkins M C
 Rec'd 10/9/96 Book 172
 pp. 249
 Cons. \$1139
 Grant H & A Hab. H & A

- 10 Court Chancery Date of Decree 8/3/93 Date of
 Writ 8/14/96
 Object of Action Foreclosure Costs \$67.97 Solicitor
 John S. Jessup
 Amount to be made \$1003.13 P & I Bk KK-626 with 2
 assignmt
 Advertised P & P Date of Sale 9/21/96 Sold to (2)
 for \$1139 Confirmed 10/2/96
 Parties Hannah H. Jones is complainant Adam Cun-
 ningham, Hester Cunningham, his wife, Mary In-
 graham, Emily Mary Pearson, are defendants.
- 20 Conveys tract Begng at cor in middle of Rd leading
 from Almonesson to Westville cor to late Henry F.
 Cattell now Jonathan D. Cunard; thence along mid-
 dle of said Road N 85½° E 6.44 ch to corner; thence
 N 17° 10' E 4.18 ch to stone; thence N 85° 10' E 8.82
 ch crossing Almonesson branch to stone cor to
 Joseph Jaggard; thence by same S 4° 50' E 14.79 ch
 to cor in li Jas W. Perce's land; thence S 85° 10' W
 16.50 ch by Perce and mill property and crossing sd
 Branch to begng
- 30 Containing 22 acres more or less
 R.D. Wm. R. Tatem, Admins of John E. Lord,
 decd, conveyed to Adam Cunningham Bk O-5-459.

Jonathan D. Cunard,
 widower,
 to
 Lida Cunard

Spec W Deed. Dated
 1-25-06
 Ackn'd 7-7-06 State N. J.
 County Glou. before Wm.
 C. Cattell CD
 Rec'd 7-27-06 Book 206
 pp. 591
 Cons. \$340.90
 Grant H & A Hab. H & A
 Restrictions 10
 Subject to
 Conveys tract #1 descrbd in Bk 303-86
 Being part 172-249

Samuel J. Cunard
 Lida Cunard, his wife
 to
 Charles A. Dougherty
 Anna M. Dougherty,
 his wife

Spec W Deed. Dated
 11-30-17
 Ackn'd Same State N. J.
 County Glou. before Fran-
 cis B. Davis MC
 Rec'd 11-30-17 Book 269 20
 pp. 298
 Cons. \$1 etc
 Grant H & A Hab H & A
 Restrictions
 Subject to
 Conveys Tracts descrbd in 303-86
 RD #1 206-591; #2 245-106; #3 245-108

No Record of Death
 of
 Anna M. Doughetry,
 in Glou. Co. 30

Charles A. Dougherty }
 to }
 William S. Taggart }
 Annie Taggart, his }
 wife }
 IRS \$4 }
 10 }
 W. Deed. Dated 10-26-21
 Ackn'd 10/26/21 State
 N. J.
 County Glou. before Fran-
 cis B. Davis MC
 Rec'd 10/26/21 Book 303
 pp. 86
 Cons. \$4000
 Grant H & A Hab. H & A
 Restrictions
 Subject to

Conveys 3 tracts

#1 Begng at pt in middle of Almonesson Branch cor to other lands of Jonathan D. Cunard said cor being 8½' from stone in 1st descrbd line; thence passing over sd stone and along other lands of sd. Jonathan D Cunard N 89° 35' W 667.4' to cor in middle af Almonesson & Westville Rd sd cor being 15' from stone sd descrbd li; thence along middle of sd Rd N 5' W 240.4' to a cor in same sd cor being 15' from stone set in next descrbd li; thence passing over sd stone and along land of John M Wright N 89° 43' E 425.04' to stone at butt of turkey oak; thence still along same N 21° 23' E 276¾' to stone cor to land of said Wright and Jas Jaggard; thence along sd Jaggard land N 89° 23' E 156¾' to middle of Almonesson Branch; thence up said stream several courses and dist thereof to begng

20
 30
 #2 Begng at stone at SE edge of large turkey oak and at SE cor of lot this day conveyed by Alfred M. Cunard to Eugene L. Cunard; thence due N by land conveyed to E L Cunard and Jacob Gunther 257.95' thence by other land of Cunard due E 102.50' to stone cor to Samuel J. Cunard; thence by sd lands S 21° 40' W 277.50' to begng.

Containing .30 acre
 #3 Begng at cor in middle of public Rd leading from Almonesson to Westville at cor of land of Samuel J. Cunard; thence due E by Samuel J Cunard 15' to stone set in E edge of sd Rd; thence continuing same course further dist. 409.80' to stone for cor at foot of and on SE edge of large Turkey oak; thence by land this day conveyed by Alfred M. Cunard to Samuel J. Cunard due N 102.55' to cor of land this day conveyed by Alfred Cunard to Jacob Gunther, thence due W by Gunther 428.80' to cor in middle of Almonesson & Westville Rd aforsd; thence along center thereof due S 102.55' to Begng.

10
 Containing 1 acre strict measure
 R.D. Samuel J. Cunard et ux to Chas S. Dougherty and Anna M. Dougherty Bk 269-298 and said Anna M Dougherty departed this life; the full and complete title to said land and prem vested in (1).

Spec W Deed. Dated 2/11/24
 Ackn'd Same State N. J.
 County Glou. before Harvey Mentzer N P
 Rec'd 2/28/24 Book 330
 pp. 258
 Cons. \$1 etc
 Grant H & A Hab. H & A
 Restrictions
 Subject to
 20
 30

Conveys tract Begng at a stake for cor to Charles Chrstos other land & cor to land about to be conveyed to Edward Harrison along said Harrison's land N 8° 2' E 526.74' to a stake for a cor in the line of Frank Bold's land; thence along sd Bold's land S 89° 10' E 179.40' to a cor in the middle of a stream; thence along the middle of said stream the several

courses and dist. thereof to a cor to Charles Chrstos other land; thence along sd Chrstos N 88° 40' W 8.50' to a stone set on line and continuing the same course a further dist of 220.40' to the place of Begng.

Containing 2.45 acres, more or less
(Being part of 303-86)

When (1) sold an adjoining piece of land said Dd. recited Dd 303-86 and also following clause "Sd. Taggart held title to sd. land for Edward Harrison & Rose Harrison his wife in an undisclosed trust, Taggart having paid the consideration."

10

WILL

Henry F. Cattell

Date of death.....

Date 12-26-49
Proved 3/30/58
County Glou. State N. J.
Rec'd Book E pp. 474
Ex'c'rs Rebecca P. Chester and Deborah Pratt

20

- 1st: Just Debts, etc—
- 2nd: Legacy of \$5.00
- 3rd: In additional to hur right of dower I give and bequeath to my dear wife, Rachel Cattell one bed, etc.
- 4th: and lastly I give and bequeath all residue of my est both real and personal to my two daughters Rebecca P. Chester and Deborah Pratt to them, their H & A forever.

30

I appoint Rebecca P. Chester and Deborah Pratt my 2 daughters Extrx of this my last testament and will.

In Witness whereof, etc.

Henry F. Cattell

Attestation Clause defective
Affidavit of witnesses does not state "at the request."

Rachel Cattell, widow of Henry F. Cattell Rebecca P. Chester (late Cattell) William Pratt Deborah, his wife (late Cattell) to Jonathan D. Cunard	Spec. W. Deed. Dated 10/25/66 Ackn'd Same State N. J. County Cam. before Ed- ward Turner, CD Rec'd 11-7-66 Book E-5 pp. 66 Cons. \$1000. Grant H & A Hab. H & A Restrictions Subject to	10
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Conveys tract Begng at cor of Amos Cattell & Jos W. Eastlack in middle of Almonesson & Woodbury Rd; thence by Eastlack N 7½° W 20ch to pine cor; thence by Howey S 70½° E 5 ch to black oak; thence N 72½° E 4 ch to small white oak; thence N 86° 10' E 11.15 ch crossing Almonesson and Westville Tpk to stone cor to Jaggard; thence by same S 5° 10' W 8.03 ch to stone; thence by same S 19° W 4.17 ch to cor; thence still by same S 88° 20' W 6.45 ch to middle of aforstd Tpk; thence along middle thereof S 2° 35' East 9.89 ch to cor of Andrew J. Barber; thence by sd lot S 87° 20' W 3.31 ch to cor John G. Stewart; thence N 2° 35' W 2.20 ch to cor of same; thence still by sd lot S 87° 20' W 1.57 ch; thence South 31° 2.20 ch to middle of aforesd Woodbury Rd; thence along middle of sd Rd N 59° W 3.15 ch to Begng

20

Containing 28.80 acres, more or less.

Being part David Ward conveyed to Henry F. Cattell 3/1/22 Book JJ-215 and (1) became seized under will of Henry F. Cattell proved in Glou. Co.

Jonathan D Cunard
 Elizabeth N. Cunard,
 his wife
 to
 John M. Wright

W Deed. Dated 8/15/88
 Ackn'd Same State N. J.
 County Glou. before W.
 Harrison Livermore, C D
 Rec'd 8/28/88 Book 147
 pp. 416
 Cons. \$1700
 Grant H & A Hab. H & A
 Restrictions
 Subject to

10

Conveys tract described in Bk 210-508
 Being part H of Henry F. Cattell sold to (1) Bk
 E-5-66.

20

John M Wright
 Emma Wright, his wife
 (signs 'Ema')
 to
 Alfred M. Cunard

Spec. W. Deed. Dated
 5-11-07
 Ackn'd Same State N. J.
 County Glou. before F. L.
 Wilkins C D
 Rec'd 5/11/07 Book 210
 pp. 508
 Cons. \$1800
 Grant H & A Hab. H & A
 Restrictions
 Subject to

30

Conveys tract Begng at stone in line of late John
 Smallwood's land now Adam Cunningham, on E
 side of turkey oak; thence N 21° E 4.18 ch to stone;
 thence along line Jaggard N 8° E 8.03 ch to stone in
 Jaggard li cor to Joseph McAllister's land; thence
 along McAllister's li S 87° W 5.42 ch to Wm. Howey
 li; thence along same S 2° E 1.28 ch to stone corner
 to Howey; thence along same S 87° W 4 ch to middle
 of Westville Rd; thence along middle of said Rd N
 2° W 128 links to McAllister li; thence along same
 S 87° W 1.90 ch to stake; thence still along McAllis-
 ter S 72° W 3 ch to black oak; thence N 69½° W 5 ch

to stake standing in middle of pine stump cor to
 Eastlack & Howey land; thence along said Eastlack S
 6½° W 17 ch to stake cor to Jos Eastlack; thence
 along said Eastlack land and other land of Jonathan
 D. Cunard to stake cor in line of John Stewart S 58°
 E 6.73 ch thence still along sd Stewart li and Morgan
 and Edward Stewart N 2° E 4.69 ch to stone cor to
 Edward Stewart lot; thence N 88° 30' E along Stew-
 art 3.31 ch to middle of Westville Road; thence along
 middle of said Rd N 1° E 4.17 ch to stone standing in
 middle of said Road; thence S 89° E 6.45 ch. to
 Begng.

10

Containing 25.56 acres, more or less.
 R. D. 147-416.

Alfred M. Cunard
 Edith, his wife
 to
 Samuel J. Cunard

W Deed. Dated 2/21/11
 Ackn'd Same State N. J.
 County Glou. before Wm.
 M. Carter CD
 Rec'd 9-26-13 Book 245
 pp. 106
 Cons. \$30.
 Grant H & A Hab. H & A
 Restrictions
 Subject to

20

Conveys tract #2 descrbd in Bk 303-86
 Being part 210-508.

30

Tract B

Jonathan D Cunard
Lillian M., his wife
to
Sarah E. Amerling

10

W Deed. Dated 8/4/10
Ackn'd Same State N. J.
County Glou. before John
Boyd Avis MC
Rec'd 8/5/10 Book 224
pp. 479
Cons. \$1600
Grant H & A Hab. H & A
Restrictions
Subject to

Conveys tract as descrbd in 254-79 with same excep-
tions
Being part of 172-249

Charles Amerling
Sarah E. Amerling, his
wife
to
Florence A. Ross, wife
of Herbert A. Ross

20

W Deed. Dated 1-31-13
Ackn'd Same State N. J.
County Glou. before John
Boyd Avis, M C
Rec'd 2/4/13 Book 241
pp. 134
Cons. \$2500
Grant H & A Hab H & A
Restrictions
Subject to

Conveys tract same as in 254-79 with same excep-
tions which do not affect
R D 224-479

30

Florence A. Ross
Herbert A., her husb.
to
Julia C. Ewell
IRS 50¢

Spec. W. Deed. Dated
8/7/15
Ackn'd Same State Pa.
County Phila. before Wm.
Morton West N P Clk
Certif O.K.
Rec'd 8/31/15 Book 254
pp. 79
Cons. \$1 etc
Grant H & A Hab . H & A
Restrictions
Subject to

10

Conveys tract descrbd in 172-249 in Tract "A"
after excepting out 4.87 acres Bk 206-591; also 214-
494; also 221-20; also lot Begng at pt in center line
Almonesson & Westville Rd cor to land conveyed by
Jonathan D. Cunard to Joseph E. Cunard; thence
along center line of said Rd N 10' E 46' to cor; thence
along land hereby conveyed S 89° 50' E 242' to cor;
thence S 10' W 46' to cor to aforsd lot Jos E. Cunard; 20
thence N 89° 50' W 242' to place Begng.

Also excepting also from tract above a lot to be con-
veyed to (2) by another deed and descrbd:
Begng at pt in middle of road leading from Westville
to Almonesson at SW cor of lands conveyed by Jona-
than D. Cunard to Lida Cunard dd dated 1/25/06;
thence running along Serly li of sd Lida Cunard's
land thence S 89° 35' E. 150' to a pt forming a cor
to other lands of sd Florence A. Ross; thence along
sd Ross other land and parallel with road aforsd S 30
10' E 75' to another cor in sd Ross's land thence still
by same N 81° 35' W 150' to middle of Rd leading
from Almonesson to Westville aforsd; thence along
middle of same N 10' W 75' to Begng.

Being part Chas. Amerling conveyed to Florence
A. Ross Bk 241-134

Tract being conveyed by these presents being same interalia Bk 241-134.

None of these exceptions affect.

10	Charles E. Ewell Julia C. Ewell, his wife to Charles Chrstos IRS 50¢	} W Deed. Dated 6/21/23 Ackn'd Same State N. J. County Glou. before J. Owen Carter NP Rec'd 7-31-23 Book 323 pp. 164 Cons. \$1 etc. Grant H & A Hab. H & A Restrictions Subject to
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20 Conveys tract Begng at stone at the SErly cor of lands about to be conveyed from Julia C. Ewell to Randolph Barrett; thence by the rear line of sd Barret and a lot retained by sd. Julia C. Ewell N no degrees 50' E 141.20' to a stake for a cor in line of lands of now or formerly Charles Dougherty; thence by sd Dougherty's land S 88° 40' E 229' more or less to center line of Almonesson Creek; thence up said stream or creek in a Serly direction the various courses and dist. thereof about 170' to a cor of lands conveyed by Mary Alice Morrill to Adon Muller; thence by sd lands of now or formerly Muller N 82° 20' E 252' more or less to Begng. Cont. .84 acres, more or less. (Being part 254-79)

30

TRACT "C"

Julia C. Ewell Charles E. Ewell, her husband to Frank Jurkiewicz Kate Jurkiewicz, his wife IRS \$2.	} W Deed. Dated 12/26/17 Ackn'd Same State N. J. County Glou. before John J. Rice, C D Rec'd 12/27/17 Book 269 pp. 478 Cons. \$1, etc. Grant H & A Hab. H & A 10 Restrictions Subject to Conveys tract descrbd Bk 285-180 Being part of 254-79—abstracted in Tract "B" of this abstract.
--	--

Frank Jurkiewicz Kate Jurkiewicz, his wife to Mary Alice Morrill IRS \$3.50	} W Deed. Dated 12-6-19 Ackn'd Same State N. J. County before John J. Rice, N P 20 Rec'd 12-8-19 Book 285 pp. 180 Cons. \$3250. Grant H & A Hab. H & A Restrictions Subject to MTG Bk 17-259 —Cancelled
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30 Conveys tract Begng at stone in middle of Rd. leading from Almonesson to Westville cor to lands Michael Cunard Est formerly Kate Warwick; thence along center line of said Road N 50' E 63.20' thence South 89° 10' E 20.17' to stone and continuing same course 220' to a stone; thence by Jos. E. Cunard, Jonathan C. Cunard and Rebecca C. Barrett N 50' E 256' to stone; thence by land of (1) South 89° 10' E 197.10' to stone; thence by same South 82° 20' E 242.20' to stone and continuing same course 10' to

center of stream leading from Almonesson Lake; thence down said stream Nwdly about 700' to cor; thence by lands of Joseph Jaggard S 89° 55' E 435' to stone cor; thence by said Jaggard S 15' W 983.10' to stone cor; thence by Chrstos and Michael Cunard N 89° 32' W 1131.65' to Begng.

Containing 13.25 acres, more or less.
R D 269-478

10

William Morrill
Mary Alice Morrill, his
wife
to
Adon W. Muller
IRS \$2.50

W Deed. Dated 8/3/21
Ackn'd Same State N. J.
County Glou. before J.
Owen Carter, Comm.
Rec'd 8-13-21 Book 300
pp. 534
Cons. \$1 etc
Grant H & A Hab. H & A
Restrictions
Subject to

20

Conveys tract descrbd in 309-150
Being part of 285-180

Adon W. Muller
Dorothy Muller, his
wife
to
Charles Chrstos
IRS \$2.00

W Deed. Dated 5-1-22
Ackn'd Same State N. J.
County Glou. before Har-
vey Mentzer N P
Rec'd 6-14-22 Book 309
pp. 150
Cons. \$1 etc
Grant H & A Hab. H & A
Restrictions
Subject to

30

Conveys tract Begng at stone for a cor in line of lands of Alfred C. Jaggard and cor to lands of Charles Chrstos; thence by said Chrstos land N 89° 32' W 698.45' to a cor of the lands of Mary Alice Morrill; thence by said other lands N 1° 56' E 316.49'

to a stone for a cor in the line of lands of Julia C. Ewell; thence by the same S 82° 20' E 242.20' to a stone and continuing the same course a further dist. of 10' to the centre of the stream leading from Almonesson Lake; thence down said stream Nwdly the various courses and dist. about 700' to a cor; thence by lands of Joseph Jaggard S 89° 55' E 435' to a stone cor to Alfred C. Jaggard's land; thence by said Alfred C. Jaggard's land S no degrees 15' W 983.10' to the place of Begng.

Containing 12.09 acres, more or less.
R D 300-534

10

MECHANIC LIEN
County Court
Asbestos-Crete Build- } Entered 9/13/19 Docketed
ing Co. } From
vs. } Book 2 pp. 285 Attorney
Charles Chrstos } Debt (Damages) \$
Cost \$ 20
Docketing \$ \$

Covers lots 11 Bl. 9; Lot 1 Bl. 9; Lot V Bl. 10.
Amount \$10924.75
Discharged 1/29/26

Lis. Pend.
Almonesson Improvement }
Co. }
Complainant }
and } filed 12/23/25 30
Charles Chrstos & Elsie }
Chrstos, }
Defendants. }

General object of sd. suit is to enjoin the assignment, pledge or other disposition on part of sd. defendants of Mtge made by Almonesson Improvement Co. to Chas. Chrstos, dated 7/30/24 R in Bk. 142-1 given to

secure \$50,000. which covered lands described as follows: (which sd lands are affected by sd suit)

Lots hereinafter recited do not affect.

Further the object of sd suit is to obtain an injunction requiring sd. Chas. Chrstos to maintain certain easement existing in favor of the land described in sd Mtge. against, in and upon a certain lake known as Almonesson Lake, as shown on plan Lakeview Hts. on file Glou. Co. Clks' Office, which sd lake is bounded on Nerly part thereof by Cooper St. on Erly. part thereof by Lakeside Ave. and certain private park for use of owners of lots shown on Plan of Lakeview Hts and by other land of Chas Chrstos and -is bounded on W. side thereof by land now or formerly of Eugene Cunard and now or late of Joseph Bentley, Redman Bentley, John J. Rice, Joseph B. White, Ruth McCarron, now or late of one Dougherty, Lena Stuckenberger and other land of Chas. Chrstos which sd lake and the lands flooded thereof are affected by said suit.

Joseph H. Carr,
Solicitor for Complainant.

30

LIS PENDENS.

IN CHANCERY OF NEW JERSEY.

Between

ALMONESSON IMPROVE-
MENT COMPANY, a cor-
poration,

Complainant,

and

CHARLES CHRSTOS and
ELSIE CHRSTOS,

Defendants.)

10

Lis Pendens.

20

Notice is hereby given that a suit entitled as above has been commenced and is now pending in the Court of Chancery. The general object of said suit is to enjoin the assignment, pledge or other disposition on the part of the said defendants of a certain mortgage made by Almonesson Improvement Company to Charles Chrstos, dated July 30th, 1924, and of record in the office of the Clerk of Gloucester County in Book No. 142 of mortgages, page 1, &c., which mortgage was given to secure the payment of the sum of \$50,000, and which covered lands and premises described as follows (which said lands are affected by said suit):

All the following lots, tracts and parcels of land and premises situate at Almonesson, Township of Deptford, County of Gloucester and State of New

Jersey, more particularly bounded and described as follows:

All the following lots shown on Plan of Lakeview Heights, made in nineteen hundred and fourteen by J. Owen Carter, civil engineer, consisting of six hundred and forty-eight lots and such additional land hereinafter described. Lots Nos. 10, 27, Section 1. Lots Nos. 7, 9, 11, 13 and 15 in Section No. 2. Lots Nos. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30 and 32, in Section No. 3. Lots Nos. 10, 11, 13, 15, 17, 18, 19 and 26 in Section 4. Lots 5 and 7 in Section No. 5. Lots Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24 in Section 6. Lots Nos. 17 and 18 in Section No. 7. Lot No. 13 in Section No. 8. Lot 18, Section 9. Lots Nos. 1, 2, 8, 10, 11, 12, 17 and 18 in Section No. 11. Lots Nos. 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 23, 24, 25, 26 and 28 in Section No. 12. Lots Nos. 5, 11, 13, 14, 15, 17, 19, 21, 23, 25, 32 and 33 in Section 13. Lots 20 Nos. 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 26, 27, 28 in Section No. 14. Lots Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31 and 32 in Section No. 15. Lots Nos. 4, 6 and 8 in Section No. 16. Lots Nos. 7, 9 in Section No. 17. Lot Nos. 5, 7, 9, 11, 13, 15, 17 and 21 in Section No. 18. Lots Nos. 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33 and 34 in Section No. 19. Lots Nos. 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 21 in Section No. 20. Lots Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Section No. 22. Lots Nos. 3, 4, 6, 8, 10, 14, 16, 18, 20, 21, 24, 25, 28 and 29 in Section No. 23. Lots Nos. 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 25, 27, 29, 31, 33 and 34 in Section No. 24. Lots Nos. 11, 13, 15, 17, 19, 21, 23, 25 and 29 in Section No. 25. Lots Nos. 5 and 7 in

Section 27. Lots Nos. 2, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22 in Section No. 28. Lots Nos. 6, 10, 12, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 32 in Section No. 29. Lot No. 9 in Section No. 30. Lots Nos. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in Section No. 31. Lots Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 in Section 32. Lots Nos. 7, 9, 28 and 29 in Section No. 33. Lots Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34 and 36 in Section 34. Lots Nos. 4, 5, 6, 7, 8, 10, 11, 12 and 13 in Section 35. Lots Nos. 5, 11, 14, 15, 16 and 18 in Section 36. Lots Nos. 2, 3, 5, 7, 8, 9, 14, 16, 18, 20, 21, 22, 23, 24, 25, 26 and 30 in Section 37. Lots Nos. 3, 5, 7, 9, 22 and 32 in Section 38. All lots in Section 39. Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 22, 23, 25, 26, 28, 29, 30, 31, 32 and 33 in Section No. 40. Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 in Section 20 No. 41. Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, in Section No. 42. Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 in Section 43. Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 in Section No. 44. All lots in Section No. 45. All lots in Section No. 46. All lots in Section No. 47. Lot A at the corner of Good Intent Road and Lakeside Avenue, and lot at the southwest corner of Good Intent Road and Lakeside Avenue not numbered on said plan to be equal in dimensions and boundaries with Lot A, and marked Lot D in ink. That tract of land shown on said plan bounded on the south by Bellevue Avenue, on the west by lots 10 and 11, Section 4, Sunset Avenue, and Lots 10 and 11, Section 3, and on the

east by Hurffville Road and landmarked on said plan as belonging to Joseph W. Eastlack's heirs except tract situate on southwest corner of Hurffville Road and Sunset Avenue, if extended, having a frontage of eighty feet on Hurffville Road, by a depth of one hundred feet between parallel lines one of said lines being the southerly line of Sunset Avenue if extended.

10 Tract of land at the southeast corner of Cooper Street and Hurffville Road, extending southeastwardly on Cooper Street to land of William J. Kennedy, *et al.*, and extending southwardly on Hurffville Road to land of the same, marked Lot 4F in ink on said plan.

20 Tract of land at the northeast corner of Rosmore Avenue and Hurffville Road, bounded on the west by Hurffville Road, on the northeast and northwest by land of William J. Kennedy, *et al.*, on the east by land of Philip A. Mason, and on the south by Rosmore Avenue, excepting thereout tract of land at the northeast corner of Rosmore Avenue and Hurffville Road, having a frontage on Rosmore Avenue of one hundred feet, on Hurffville Road of two hundred feet and extending at right angles from each of said bounding streets to a point, marked Lot No. E in ink on said plan.

30 Further, the object of said suit is to obtain an injunction requiring the said Charles Chrstos to maintain certain easement existing in favor of the land described in said mortgage against, in, and upon a certain lake known as the Almonesson Lake, as shown on Plan of Lots of Lakeview Heights, situate at Almonesson, Deptford Township, Gloucester County, New Jersey, made by J. Owen Carter, civil engineer, and on file in the office of the clerk of Gloucester County, which said lake is bounded on the northerly part thereof by Cooper Street, on the easterly part

thereof by Lakeside Avenue and a certain private park for the use of owners of lots shown on the Plan of Lakeview Heights, and by other land of Charles Chrstos, and is bounded on the westerly side thereof by land now or formerly of Eugene Conard, and now or late of Joseph Bentley, Redman Bentley, John J. Rice, Joseph B. White, Ruth McCarron, now or late of one Dougherty, Lena Stuckenberger and other lands of Charles Chrstos, which said lake and the lands flooded thereby are affected by said suit.

JOSEPH H. CARR,
Solicitor for Complainant.

RULE FOR JUDGMENT.

GLOUCESTER COUNTY CIRCUIT COURT.

WALTER WALLS & FRANK P.
DOUGHERTY,
Plaintiffs,
v.
CHARLES CHRSTOS,
Defendant.

In Attachment.
Rule for Judgment.

This action having been tried before Hon. Frank B. Jess, Judge of the Gloucester County Circuit Court, with jury in the presence of counsel of the parties, on October 25th and 26th, 1926, and the jury, under direction of the Court, having returned a verdict in favor of the plaintiffs for \$9,008.32 damages.

It is thereupon, ordered that judgment final be entered in favor of the plaintiffs and against the defendant, Charles Chrstos, for the sum of \$9,008.32 and the plaintiffs' costs to be taxes.

FRANK B. JESS,
Judge.

On motion of OSCAR B. REDROW,
Attorney for Plaintiffs.

Rule entered October 26th, 1926.

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—————
GROUNDS OF APPEAL.

COURT OF ERRORS AND APPEALS.

—————
WALTER WALLS & FRANK P. DOUGHERTY, }
20 Appellees, }
v. } Action at Law.
CHARLES CHRSTOS, } Grounds of Appeal.
Appellant. }

Now comes Charles Chrstos, the appellant, and assigns the following grounds of appeal upon which he relies in support of his appeal in the above entitled
30 cause.

1. The Court denied the appellant's motion for a non-suit.
2. The Court overruled the following questions:
"Q. Did you know at that time or not to what easements the agreement related?" (C., p. 17.)

"Q. You knew, didn't you, that those owning houses and lots in the vicinity had the free use of that lake?" (C., p. 29.)

"Q. At that meeting was there anything said by you or by the plaintiffs in this case, with reference to the use of the lake and park of the Almonesson Improvement Company? (C., p. 93.)

"Q. When you put in the agreement, at the request of the parties, the exception, to what did it relate? (C., p. 94.) 10

"Q. After the agreement was signed did you have any discussion with Mr. Walls or Mr. Dougherty with reference to the exception in the agreement?" (C., p. 94.)

"Q. What easement did the exception relate to, so far as you knew?" (C., p.131.)

"Q. Before the agreement was signed did you call the plaintiffs' attention to the use of the lake?" (p. 131). 20

3. The Court denied the appellant's motion for a direction of verdict in favor of the appellant.

4. The Court allowed the appellees' motion for a directed verdict in favor of the appellees.

GROVER C. RICHMAN,
Counsel for Appellant.

—————
[ENDORSED]

30

Due and legal service of the within grounds of appeal is hereby acknowledged, April 23, 1927.

Oscar B. Redrow,
Counsel for Appellee.

chase price of \$130,000. The contract provided for final settlement, January 5th, 1925, and time was expressly made the essence thereof. The plaintiffs-appellees paid the sum of \$8000 on account of the purchase price and \$450 was paid by them for title insurance and these sums plus interest is sought to be recovered in this suit.

The trial Court, at the conclusion of the testimony, upon motion of the plaintiffs-appellees, directed a verdict in their favor and accordingly judgment was entered for the sum of \$9,008.32 plus costs.

ARGUMENT.

I.

The Court should have granted the defendant-appellant's motion for a non-suit.

The plaintiffs-appellees base their right of recovery from the defendant-appellant, upon two grounds. First, the inability of the defendant-appellant to carry out and perform his covenants in the agreement of sale. Second, a parol rescission of the agreement of sale, coupled with a parol promise on the part of the defendant-appellant to pay back the deposit money.

The burden of proof is on them to show conclusively that they had performed their covenants of the agreement of sale. Failure to do this defeats their recovery, even though there may be a failure of performance on the part of the vendor, the defendant-appellant.

"The universally recognized legal rule is,

where there are concurrent covenants to be performed by vendor and vendee, that before the latter is enabled to rescind and sue for a breach of the contract, he must show tendered performance of such concurrent covenants on his part and that he has demanded performance by the vendor of concurrent covenants on his part."

Long v. Hartwell, Adm'r of Carpenter, 34 N. J. L., p. 117;

Caporale v. Rubine, 92 N. J. L., p. 463;

Bernstein v. Kohn, 96 N. J. L., p. 223;

Chatsworth Estates Co. v. Chatsworth Estates, 121 Atl., p. 517.

By expressed provision of the agreement of sale, time is of the essence thereof. The agreement of sale fixed January 5th, 1925, as the time for final settlement, although the agreement of sale between the parties was entered into and signed on the fifteenth day of September, 1925. The plaintiffs-appellees did not place an order for title insurance until November 13, 1925 (C., 59) and by this delay the vendees must be taken to have assumed the consequences.

Barry, et al. v. Ruskin, 133 Atl., p. 528.

On January 5th, 1925, the plaintiffs-appellees, due to the delay in placing an order for title insurance, the title examination had not been completed and the vendees were not ready to make final settlement in accordance with the terms of the agreement. Accordingly, at their request, the time for the performance of the agreement of sale was extended by parol to January 14th, 1925.

The plaintiffs-appellees agreed to pay \$130,000 for the property, \$30,000 in cash and a purchase

money mortgage of \$100,000. On January 14th, 1925, they failed to tender to the defendant-appellant the balance of the cash payment and to execute and deliver the purchase money mortgage of \$100,000. In fact, the purchase money mortgage was not even prepared and no actual tender thereof was made by the plaintiffs-appellees of either the money or the mortgage. This was their clear duty under the agreement of sale and in order for them to recover, they must show affirmatively that they had performed their part of the undertaking and this they failed to do.

Moreover, on January 14th, 1925, the time to which the performance of the agreement of sale was, upon request of the plaintiffs-appellees, extended by parol, the vendees made no demand upon the defendant-appellant to carry out and perform his part of the agreement nor did they so demand prior to the commencement of the suit. The duty of making this demand or the giving of a reasonable notice within which the vendor could comply with the terms of the agreement of sale, rested upon the plaintiffs-appellees and their failure to do so, bars their right of recovery in this case.

Nissel v. Swinley, 76 N. J. L., p. 288;

Barba v. Gunsberg, et al., 129 Atl., p. 747.

The Court in the latter case, page 747, said:

"In this situation it is plainly apparent that the respondent was in no position to demand a return of the moneys paid on the contract. He had agreed to the extension of the time of settlement, and it was his duty to abide thereby, or, if he intended to withdraw therefrom, accord appellants a reasonable time within which to comply with the terms of the agreement."

However the plaintiffs-appellees seem to rely principally upon a parol rescission of the agreement of sale and a parol promise on the part of the defendant-appellant to return the deposit money. It is their contention that on January 14th, 1925, the parties to the agreement of sale mutually agreed by parol to rescind the agreement and the vendor, defendant-appellant, promised verbally to return the deposit money. If such an agreement was made it was unenforceable. An agreement to convey lands is within the statute of frauds and it cannot be varied or altered by a substituted oral agreement. Under the agreement of sale the plaintiffs-appellees had an interest in the land covered thereby and this interest could not be released except in writing. Exhibit P4, C., 183, does not meet this legal requirement because not signed by the parties.

Long v. Hartwell, Adm'r of Carpenter, 34 N. J. L., p. 116;

Nissel v. Swinley, 76 N. J. L., p. 288;

Kerzner v. Chanin, Atl. 118, p. 693.

The Court in the latter case, at page 694, said:

"The learned Judge treated the case as if the contract were an ordinary contract in writing disregarding the fact that it was a contract which is required by the statute of frauds to be in writing, or have some memorandum or note thereof in writing. He relied upon the language of the New York Court of Appeals in *Thomson v. Poor*, 147 N. Y. 402, 42 N. E. 13, as quoted in *Nissel v. Swinley*, 76 N. J. Law 288, 69 Atl. 960, thus failing to distinguish a case where, before the time for performance is extended, it has arrived. The present case is very different. It counts (as the original complaint averred) on

a substituted oral contract, substituted because both parties either agreed to abrogate or, as the plaintiff says, to change material particulars affecting the time of payment and the security to be given; oral because no part of it was in writing except the original contract. The case of contracts coming within the statute of frauds is expressly excepted by Williston (Contracts, 598, 1828), from the rule allowing merely written contracts to be varied by subsequent oral agreements. The complaint on which issue was joined was not sustained by the evidence. The contract proved even on the plaintiff's own showing did not comply with the statute of frauds.

There was a motion for non-suit and to direct a verdict duly excepted to, and there was an exception to the charge adequate to raise this point. The judgment must be reversed to the end that a venire may issue for a new trial."

The plaintiffs-appellees, therefore, having failed to show that they had performed the covenants imposed upon them under the agreement and having failed to show an enforceable parol agreement, the motion for a non-suit made on behalf of the defendant-appellant, should have prevailed.

II.

The Court erred in excluding oral testimony of the subject matter of the agreement, particularly the knowledge and conduct of the plaintiffs-appellees with respect thereto.

The agreement of sale included a lake known as "Almonesson Lake" and a park adjacent to the lake. On July 3rd, 1924, the defendant-appellant, by deed, Exhibit P3, conveyed certain adjoining lands to the Almonesson Improvement Company. The deed contained the following covenant:

"And the said parties of the first part for themselves, their heirs and assigns, covenant and grant with and to the said party of the second part, its successors and assigns, and its and their agents and servants and the tenants and occupants of the premises herein above described, members of their families, guests and servants, for its and their benefit and advantage at all times to use the said Almonesson Lake as at present existing for boating and fishing (no power craft of any kind or description to be used on said lake) and to use in a proper manner the private park fronting on said lake as laid out on Plan of Lakeview Heights for picnic purposes or any other accustomed use and the said party of the first part do hereby dedicate said lake and park to such usage, and the said parties of the first part do further covenant to and with the said party of the second part, its successors and assigns to maintain said lake, park and privileges herein granted, in perpetuity at their own costs and charges. The right hereby granted in said lake and park shall not extend to permit any person authorized to use the same hereunder for commercial purposes."

The agreement, Exhibit P1, contained the following clause:

"The said property to be conveyed free and clear of all incumbrances except existing build-

ing restrictions and easements now covering said properties which regulate and govern the character of the improvements which have been respected and complied with in the erection of the present improvements.”

Before entering into the agreement, Exhibit P1, the plaintiffs-appellees visited and inspected the premises, particularly the lake and park and undoubtedly were familiar with the actual conditions there existing. An attempt was made at the trial by the defendant-appellant to show that the vendees, at the time of the signing of the agreement, Exhibit P1, knew of the use to which the lake and park was subject, under Exhibit P3, and further that this use was understood and discussed by the vendor and vendees and that the word “easements” in the exception in the agreement, Exhibit P1, was put there with the consent and understanding of both the vendor and vendees, that it related and referred to the use to which the lake and park was subject under the covenant, in Exhibit P3.

Hagelin v. Lehman, 100 N. J. L., page 322;

Axford v. Meeks, 59 N. J. L., p. 502;

Fletcher v. Inter-State Chemical Company,
110 Atl., p. 709;

Ryer v. Turkel, 75 N. J. L. 677.

The Court at page 685 said:

“(b) It is to be accepted as settled law that, as between the parties themselves, oral evidence is not admissible to contradict a written agreement. *Leslie v. Leslie*, 5 Dick. Ch. Rep. 155, 160, 161 (1892), and *Bandholz v. Judge*, 37 Vroom 80, 85 (1901), are recent illustrations of the rule in equity and at law. Nevertheless, the

rule does not, in a proper case, forbid the throwing of light upon the meaning of the written agreement by evidence of the circumstances of the parties to it, or of their conduct after its execution, or of the condition of its subject matter. *Axford v. Meeks*, 30 Id. 502, 503 (1896); *Naughton v. Elliott*, 2 Robb. 259, 267 (1904).”

It is submitted that the defendant-appellant was entitled to show the knowledge of the parties to the agreement and the circumstances and conditions of the subject matter covered by the agreement of sale and the ruling of the Court in this respect was therefore erroneous.

III.

The Court erred in directing a verdict in favor of the plaintiffs-appellees.

The trial Court in directing a verdict in favor of the plaintiffs-appellees did so upon the theory that no ambiguity existed in the terms of the written agreement, Exhibit P1, and that its construction and effect was a matter of law to be determined by the Court and not by a jury.

Smith & Wallace Co. v. Lunger, 64 N. J. L.,
p. 539.

The particular clause of the agreement which the trial Court thus construed is as follows:

“The said property to be conveyed free and clear of all encumbrances except existing building restrictions and easements now covering said

properties which regulate and govern the character of the improvements which have been respected and complied with in the erection of the present improvements."

Other exceptions appeared in the settlement certificate, Exhibit P6, but they were such as could be removed at the final settlement and this was all that the plaintiffs-appellees were entitled to.

Kadow v. Cronin, 97 N. J. L., p. 301.

The trial Court held that the word "easements" as used in the agreement of sale as an exception, did not include the use to which the property was subject under the covenant in the deed, Exhibit P3, and that therefore, the defendant-appellant was unable to convey the property free and clear of all encumbrances.

The covenant in the deed, Exhibit P3, subjects the property covered by the agreement, Exhibit P1, to a use in favor of others. This is an easement.

Propper v. Colson, et al., 86 N. J. Eq., p. 399.

The Court at page 401 said:

"A covenant or agreement restricting the use of any lands or tenements in favor of, or on account of, other lands, creates an easement that makes one tenement subservient, and the other dominant. All that is necessary to create such an easement is a clear manifestation of the intention of the person who is the source of title to subject one parcel of land to a restriction in its use for the benefit of another, and efficient language to make that restriction perpetual."

The Court concluded that the words "building restrictions" and the word "easements" were synonymous and that they had to do with the construction of buildings and improvements on the property. The agreement of sale, as has been stated, included a park and a lake. An examination of the premises readily discloses the fact that the lake and park were subject to a use by others. Those owning properties on the lake were entitled to the use thereof and all buildings were built and occupied subject to that use, and this use has been respected and complied with by others in the erection and construction of improvements.

The meaning, therefore, of the word "easements" as used in the agreement is not clear. Did it relate to the accustomed use of the lake and park by others, such as boating, fishing and picnic purposes, &c., or did it relate to ordinary building restrictions? If it means ordinary building restrictions then there was no occasion to use the word "easements" in the agreement of sale, because the words "building restrictions" covered the matter. The words "building restrictions," however, would not relate to the accustomed use of the lake and park by others, hence the necessity of the use of the word "easements" in the agreement of sale. The use of the words "building restrictions" and "easements" by the vendor and vendees was for a purpose. There was no necessity for using words that were synonymous. They were dealing with two things, building restrictions relating to the construction of buildings, houses, etc., upon the premises and uses to which the property was subject otherwise. Both had been respected and complied with by others. Parol testimony was clearly admissible because of this uncertainty and ambiguity to explain the exception in the agreement

of sale. The real meaning of this agreement was a question for the jury and not for the trial Court.

It is respectfully submitted that the judgment below should be reversed and a new trial awarded.

Respectfully submitted,
GROVER C. RICHMAN,
*Attorney for and of Counsel with
the Defendant-Appellant.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

WALTER WALLS & FRANK P. DOUGHERTY,
Plaintiffs-Appellees,

v.

CHARLES CHRSTOS,
Defendant-Appellant.

ACTION AT LAW.

BRIEF OF PLAINTIFF-APPELLEES.

This appeal is from a judgment obtained in the Gloucester County Circuit Court by the appellees for the return of deposit made on account of the purchase of certain real estate owned by the appellant, and the costs and expenses of searches made against this property by the appellees. The Circuit Court directed that judgment be rendered in favor of the appellees in the amount of nine thousand eight dollars and thirty-two cents.

The reasons assigned by the appellant in support of his appeal are:

1. The denial of appellant's motion for non-suit.
2. Over-ruling of certain questions asked by ap-

pellant's counsel of witnesses, which call for an oral construction of the written agreement.

3. The denial of appellant's motion for direction of verdict.

4. The directed verdict for the appellees.

The facts are that on September 15, 1925, the parties entered into a written agreement (Case 164) for the purchase of a tract of land, about thirty bungalows, several vacant lots, together with land which adjoin a lake and was used as a park, and also together with the lake known as Almonesson Lake. The purchase price of this property was \$130,000, \$3,000 paid when the agreement was signed, \$5,000 on October 15, 1925, \$22,000 at the time of settlement and the balance to be secured by a purchase money mortgage, covering the entire property. The payments of \$3,000 and \$5,000 were paid as provided in the agreement.

The agreement further provided as follows:

"The said property to be conveyed free and clear of all encumbrances except existing building restrictions and easements now covering said properties which regulate and govern the character of the improvements which have been respected and complied with in the erection of the present improvements."

"Title to the above property to be good and marketable and such as will be insured by the Land Title and Guaranty Company of Camden, New Jersey."

The searches which were made against the property show several exceptions. The exceptions which

are the object of this appeal, were designated on the settlement certificate (Case 186-188) as exceptions Nos. 9 and 16, and referred to a deed which had previously been made by the grantor of adjoining property, whereby the property which was to be conveyed by the agreement in this case, had been previously dedicated and granted for various purposes and the property covered by this agreement became obligated to the carrying into effect of these grants and dedications. On December 3, 1925, before the settlement was made, The Almonesson Improvement Company, grantees in the deed of the adjoining property, brought a suit against the grantor, Chrstos, for the purpose of carrying out the grants and dedications mentioned in their deed, and filed a *lis pendens*. (Case, 225-126.)

The lower Court was of the opinion that the grants and dedications contained in the deed, Exhibit "P3" (Case, 176), for the property adjoining, constituted encumbrances on the property mentioned in the agreement in this case and that the plaintiffs were not bound to accept the title with these encumbrances upon it.

The printed State of the Case, which has been furnished to me contains several errors and those which have been brought to my attention are page 50, line 2, date should be "January 5, 1926," page 74, line 36, should read "December 3, 1925."

The undisputed testimony in the case was that all of the parties met on January 5, 1926, in order to check over the description which included many lots, houses and different properties as well as the lake and park, that on January 6, 1926, they met at the Land Title and Guaranty Company, in Camden, New Jersey, at which time the settlement certificate was presented, and at which time Chrstos requested

an adjournment in order to dispose of some of the exceptions, and which settlement was further adjourned by consent of all parties, until January 14, 1926, at the same office of the Title Company, at which time all the parties and their attorneys met and where Chrstos admitted that he could not remove the exceptions from the settlement certificate and offered to still further postpone the settlement or to pay back the money paid on deposit, and that the appellees refused to extend a time of settlement and thereupon the appellant, Chrstos, agreed to return the deposit of \$8,000 the following day. (Case, 31-42-56-91-122-123.) The title company, on both January 6, 1926, and January 14, 1926, refused to insure the title to the property in question, on account of the several exceptions shown by their settlement certificate. (Case, 184.) There are, in this appeal, as I take it, no dispute of facts. The questions arising being whether or not the title which the appellant could give was sufficient title as called for by the agreement of sale, and the other question being whether or not any testimony could be offered at the trial in order to change the written agreement in the respect as suggested by the questions which were asked and objected to.

ARGUMENT.

I.

The reasons for a non-suit are set forth in (Case, 101):

A. That time was the essence of the contract. The agreement called for settlement on January 5, 1926. On January 5, 1926, the attorneys for the

respective parties were working for three hours trying to obtain proper descriptions of the properties, adjusting the accounts (Exhibit B. Complaint, Case 15) on which Chrstos had collected moneys, and it was by mutual agreement (Case, 51-87 to 92) decided to make the settlement on January 6, 1926; on that day, Chrstos was unable to remove the exceptions from the title, and by consent of all the parties, the settlement was continued until January 14, 1926. (Case, 27-40-53.) The parties by agreement extended the time of settlement. (Case, 27-51-40-53-87.)

Stryker v. Vanderbilt, 25 N. J. L. 482;
Nissel v. Swinley, 76 N. J. L. 288;
Barba v. Gunsberg, 129 Atl. 747.

B. Searches were not ordered until November 13, 1925. Between the date of the contract, September 15, 1925, and November 15, 1925, the appellees tried to get some information from the appellant as to the description and recital of the several deeds which constituted the title to the property mentioned in the agreement and on November 12, 1925, in despair of getting such information, left the agreement with the title company to do the best they could with the description and to have the settlement certificate ready by the time fixed for settlement. The settlement certificate was written on December 28, 1925 (Case, 184), and was delivered to appellant's attorney and on January 5, 1925, all the parties met and tried to effect a settlement, they met by agreement the following day at the title company and at that time by mutual agreement set January 14, 1926, as the time of settlement. The appellant admits that on January 5th, and January 6th, he extended the

time of settlement (Case, 139), to January 14, 1926, and he cannot therefore be heard now on this point.
Nissel v Swinley, 76 N. J. L. 288.

C. No exceptions on settlement certificate which are not in conformity with agreement of sale.

The settlement certificate showed some eighteen exceptions, among them 9 and 16, which referred to the deed to The Almonesson Improvement Company (Case, 176), containing a dedication and charge against the premises in question. The contract called for said premises to be conveyed free and clear of all encumbrances. It seems sufficient to say here that the appellant, knowing of this deed and the suit which had been brought to enforce the covenants, to say on January 14, 1926, at the settlement, "We will pay back the deposit money." (Case, 31-42-56-91.)

"Where the parties to a contract for the sale of land have rescinded the contract, the purchaser is entitled to maintain an action to recover the money paid on account."

Gahan v. Plant, 83 N. J. L. 219.

II.

Overruling certain questions, calling for a construction of a written contract.

It is the well-established rule of law in this State, that parol testimony cannot be offered to change the terms of a written contract.

Grosse Isle Hotel Co. v. P'Anson, 43 N. J. L. 442;

Remington v. Wright, 43 N. J. L. 451;

Gerli v. National Mills Supply Co., 78 N. J. L. 1;

Hcnrchan v. Nat. B. & L. Assn., 66 N. J. L. 80;

Naumberg v. Young, 44 N. J. L. 331;

Kessilman v. Cohen, 135 Atl. 348;

Ncegeli v. Silk City Exchange, 134 Atl. 721;

Crowley v. Homan Co., 130 Atl. 372;

Fuchs v. Heine, 128 Atl. 680;

Hoffman v. Seidman, 127 Atl. 199;

Castelbaum v. Wolfson, 104 Atl. 84;

Loxley v. Studebaker, 68 Atl. 98;

Marsella v. Bloch, 127 Atl. 251.

These questions were for the purpose of varying the terms of the written contract, so as to attempt to show that word "easement" (Exhibit "P1") (Case, 169, line 3) would include the exceptions 9 and 16 on the settlement certificate (Exhibit "P6") (Case, 184).

The clause reads as follows:

"The said property to be conveyed free and clear of all encumbrances except existing building restrictions and easements now covering said properties which regulate and govern the character of the improvements which have been respected and complied with in the erection of the present improvements."

The lower Court properly held that it was obvious that the word "easement" as used in this agreement referred to building restrictions.

"The construction and effect of a written instrument is a matter of law to be determined by the Court and not by the jury."

Grueber Engineering Co. v. Waldron, 71 N. J. L. 597.

III and IV.

The denial of the appellant's motion for a directed verdict and the directed verdict for the appellee.

There is no dispute as to the facts. (See State of Case.)

The proofs were that the appellees did everything required of them under the terms of the agreement of sale.

The answer filed by the appellant does not set up as a defense to the return of the deposit money, any fact or allegation that the appellees had forfeited their rights under the contract by not performing the agreement on January 5, 1926, and offered no proofs to that effect, but on the other hand extended the time of settlement to January 14, 1926. In fact the time was extended by mutual consent to give the appellant, Chrstos, an opportunity to clear up the title.

The appellant's counsel has failed to appreciate the testimony concerning the return of the deposit. It was for the purpose of showing that the parties agreed that the contract should be cancelled and the deposit returned.

Gahan v. Plant, 83 N. J. L. 219.

It is our contention that the opinion of the Court below was the proper opinion under the facts of the law in this case. It is a well established law in this State that the courts will not compel the purchaser of a property to buy a lawsuit, neither will the courts compel a purchaser to take title to a property where it is likely that there may be any outstanding claims or encumbrances. This deed in particular, that is the object of the opinion of the courts below, grants

the use of the lake and park to the grantees in the deed, The Almonesson Improvement Company, and dedicates this same lake and park to such usage, this creates a dedication to public use and the deed goes further and says that the owner of the property, that is the lake and park, covenants to maintain the grant therein made in perpetuity on their own costs and charges. In other words, it not only grants and dedicates, but charges the property with the maintenance of the lake and park for the use of the grantees set forth in the adjoining property.

Reutler v. Ramsem, 102 Atl. 351.

In this case the defendant's title was subject to a reservation contained in all the deeds of conveyances since 1805 which excepted out of the contract conveyed, a lot (heretofore given and granted by a former owner of the land, for the purpose of erecting and building a school house thereon for the accommodation of the neighborhood) held that this exception was an incumbrance on the land to be conveyed and that the plaintiff was justified in refusing to accept a deed for the land subject to exception and was entitled to recover the money paid on account of the purchase price when the contract was made.

Simpson v. Klipstein, 105 Atl. 218.

Where doubt exists as to the validity of title the Court never compels a purchaser to take title where the fact is too doubtful to be settled without litigation. In this case the dedication of a proposed street across the land, made in conveyance by reference to a filed map, is a cloud upon the title, justifying the proposed purchaser in refusing to take title, even though the street had never been opened or formerly

accepted and whether or not the proceedings with the dedication were proper the Court will not compel a purchaser to take title and stand the hazard of litigation.

Love v. Fetters, 121 Atl. 607.

A stipulation in a contract for sale of real estate that the title shall be such as a designated title company will insure, subject to the regular printed exceptions, is not satisfied by the tender of a title in the ordinary sense, but which such title company has refused to insure except to an amount representing the value of a possible outstanding interest.

DeLong v. Spring Lake, 65 N. J. L. 1.

This is a case in which a covenant in the deed was whether or not the lake had ever been dedicated to public use and the Court held "that this was a covenant running with the land adjoining and that it had been so dedicated to such an extent that it was irrevocable and that such a dedication would not permit the giving of the deed free and clear of all encumbrances on the adjoining property.

Gahan v. Plant, 83 N. J. L. 219.

Where the parties to a contract for a sale of land have rescinded the contract, the purchaser is entitled to maintain an action to recover the money paid on account of said contract.

Propper v. Colson, 99 Atl. 385.

A purchaser at auction, whose contract stated that the lots were free from incumbrance, is entitled to be relieved from his contract, where the lots were affected by restrictive building covenants running with the land, since such covenants amount to an

easement which is a breach of the covenant against incumbrances.

An easement by way of building restrictions can be created by any efficient language, manifesting a clear intention to subject one parcel of land to a perpetual restriction for the benefit of another.

The fact that a purchaser of lots under a contract providing that they should be free from incumbrances, knew that there were restrictive building covenants which ran with the land, does not establish waiver of objections to the title because of such covenants or stop him from insisting on a conveyance free from such restrictions.

For these reasons it is respectfully submitted that the judgment of the lower Court should be affirmed.

Respectfully submitted,
OSCAR B. REDROW,
*Attorney for and of Counsel with
Plaintiffs-Appellees.*

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TESTIMONY

Plaintiff's Witnesses

Maximilian T. Rosenberg:	
Direct	53
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