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New Jersey Court of Errors and Appeals

Between MELFORD N. ROLL, *et al* (*Complainants*) *Respondents,* *and* ABRAHAM EVERITT, *et al.*, (*Defendants*) *Appellants.*	*On Appeal from Chancery.*

BRIEF OF FREDERIC M. P. PEARSE, OF COUNSEL WITH RESPONDENTS.

The suit is brought for partition of lands known as Block number 41 on a map of the Village of South Amboy, made by John Perrine, Jr., Surveyor, June, 1835.

At that time the title to this block and a large tract of which it was a part, was in Alexander I. Cotheal and James P. Thomas, as Trustees, to divide it into building lots and to sell. A large portion of the tract set out on the map was sold, but some was left unsold.

In 1874 a deed was made by Alexander I. Cotheal, surviving trustee, to Mary Jane Roll and Sarah E. Dey, of all the premises conveyed to the trustees, and designated on the Perrine map. This provision, however occurs in the deed (case p. 16). "It is agreed by and between the parties to these presents that this indenture shall not conflict with the title of any part of the aforesaid premises previously *sold and con-*

veyed by said Alexander I. Cotheal and James P. Thomas, to any party or parties and this deed is subject *to any such conveyances.*"

There are no conveyances on record of Block 41 (case p. 17 *et seq.*)

Mrs. Roll subsequently died intestate, without disposing of this property and her heirs conveyed it to her husband, Albert Roll (p. 18). Albert Roll died testate in 1898 and his will gave the complainants, his executors, power to sell real estate which, under the statute, gives them the power to bring proceedings for partition. General Statutes, Partition, Sec. 64. The devisees, under the will, are made formal parties defendant with others.

To return again to the conveyance to Roll and Dey in 1874. Mrs. Dey's interest was sold at Sheriff's sale in 1877 (case p. 25) to Perrine, and Everitt. Everitt died soon after, testate (p. 25), leaving sons, some of whom have since died and the persons claiming under his will or their devisees are parties defendants. Perrine was living at the time of the commencement of the suit but died testate while it was pending and the devisees under his will were substituted as defendants, in his stead.

This, briefly, sets forth the complainants' case, none of the facts of which were in any way disputed by the defendants.

The defendants in their answer set up the claim.

1. No title in complainants' testator.

2. Title in defendants or, as they say, if they cannot sustain this, then

3. Title by a tax lease. This very remarkable instrument is Exhibit D. A. and appears on page 83 of the "Case."

I.

The complainants' testator died seized of an undivided one half part of the premises in litigation.

As said above there is no denial by the defendants of the valid execution of the deeds by which complainants' testator took title. Nor is it disputed that Cotheal and Thomas, trustees, were seized of the premises, as appears by the testimony of Mr. Strong (p. 30, *et seq.*).

The attempt, however, was made to show that the premises in question did not pass by the deed from Cotheal to Roll and Dey because of an alleged sale of them to someone else.

In the first place, as a proposition of law it is no defense where both parties admittedly acquired a title under the same deed, to show that title was not in the grantor, unless the party setting up the outstanding title, claims under it.

But let us consider the evidence by which the defendants attempt to prove their contention.

Attention is called to p. 73 of printed case, title "Peter G. Taylor." Here appears an account, in relation to block 41. The account is not the *original* but a copy which was used by *consent* in another action in relation to another block of land. The copy was used in the first suit because Cotheal lived in New York and could not be subpoenaed and refused to let the original out of his possession (pp. 30 and 31) and was used by consent. No testimony is offered to show that the original was lost or destroyed or could not be produced, and no other foundation laid for the admission of this copy, and its admission was properly denied by the Vice Chancellor. Furthermore no evidence is produced to show that a deed was ever delivered to Taylor or to anyone else for this

property, or that it was in the possession of anyone else. So that outside of any question of law, there was no evidence before the court of any outstanding title or evidence by which the court could consider that the property in question came within the exception in the Cotheal deed of having been "previously sold and conveyed."

II.

The defendants showed no title in themselves by adverse possession.

The Court of Equity will not lose jurisdiction, merely because defendants *say* they have title in themselves. There must be reasonable ground for dispute and a discovery of the defendants' title.

Palmer vs. *Casperson*, 2 C. E. Green, 204.

Hay vs. *Estell*, 3 C. E. Green, 251.

Lucas vs. *King*, 2 Stock, 277.

Furthermore it is a well known principle that to defeat the right of a co-tenant the tenant must present the strongest kind of proof that his possession was adverse to that of his co-tenant—by acts of possession, which he causes to be brought to the attention of his co-tenant, and his intention to hold adversely.

The answer in which the adverse claim is set up is enlightning to show how little the defendants relied upon the contention, and the reading of the testimony of defendants' witnesses, Montgomery and Everitt, (pp. 43 *et seq.*) and cross examination (p. 47) (p. 51, *et seq.*) shows that proof utterly failed.

III.
The tax title.

Let us first call the attention of the court to the fact that complainants' grantor and defendants' grantors, Perrine and Everitt, were tenants in common at the time of alleged tax sale (deed to Perrine and Everitt, by sheriff, dated April 11, 1877, p. 25), (tax deed and sale, June 4, 1877, p. 83).

The review of the statutes in relation to taxes, and the instrument itself, by the Vice Chancellor in his opinion (p. 92 *et seq.*) makes it unnecessary for us to enlarge upon it or set it out again. It is enough to say that the Vice Chancellor concluded that in his mind the deed was void but *that he could not decide that point.*

He retained the cause, to give the defendants an opportunity of proving the validity of the deed by suit or action to be brought within thirty days. This the defendants failed to do, and thereupon final decree was entered. The burden was placed upon the defendants as only constructive possession was shown to be in either complainants or defendants. That it was in the court's discretion to do this cannot be disputed.

Daniels Chancery, Star page 1111, 6th American Edition.

The point therefore raised that the tax deed could not be declared void is not well taken. The court did not so declare it. The final decree relieved the lands from the lien, after the defendants had failed to take advantage of the right to establish it by a suit at law.

That it was within the discretion of the Court of Equity to retain the cause to await the settlement

at law of disputed title and to put the parties upon terms in the law courts is so well settled that no recital of authorities is deemed necessary.

But above and beyond all this—the parties were tenants in common at the time of the tax sale and it is a well established principle *that if one tenant purchases the common joint property at a tax sale the purchase inures to the benefit of all the co-tenants and operates merely as a redemption of the property from the tax.*

(Jones on Real Property, Sec. 1846).

Respectfully submitted,

FREDERIC M. P. PEARSE.

Solicitor for and of Counsel with Complainants.

New Jersey Court of Errors and Appeals.

Between,
MELFORD N. ROLL, et al.,
(Complainants), *Respondents.*
and
ABRAHAM EVERITT, et al.,
(Defendants), *Appellants.*

On Appeal from Chancery.

BRIEF FOR APPELLANTS.

The bill in this case is in the usual form for a partition or sale of a block of land containing forty-four lots in South Amboy known as Block 41 on the original map of South Amboy made in 1835. The complainants are the executors of Albert Roll having a power of sale but no estate in the premises.

It is alleged in the bill that Albert Roll died seized in fee of an undivided half of said Block 41, and that Ward C. Perrine claimed an undivided one-fourth interest and William C. and Abraham Everitt sons of George L. Everitt, and John R. Everitt together claimed the remaining one-fourth. The title of these parties is deduced in the bill from a deed made in 1874 by Alexander I. Cotheal to Mary Jane Roll and Sarah E. Dey.

An answer was filed by Ward C. Perrine and the Everitts denying that Albert Roll was, at the time of his death, or at any time, seized in fee of the undivided one-half of said premises and alleging that the title is wholly vested in said answering defendants, or some of them, and that they or some of them, are in the ex-

clusive possession thereof and have held possession of the same for many years claiming to own said block, and the whole thereof in fee simple.

The answer further set up a tax deed bearing date June 24, 1877 made by John Disbrow, Collector of Taxes of the township of South Amboy to Ward C. Perrine and Abraham Everitt, conveying said Block 41 for a term of seventy-five years, pursuant to a sale for taxes assessed against said premises; and said defendants in their answer insist that the complainants are wholly without title to the said premises or any interest therein, and moreover have no such possession or right of possession as is necessary to enable them to maintain said bill (p. 9, l. 14). Ward C. Perrine died pending the suit and prior to the hearing. His devisees were thereupon made parties.

A decree for sale was made from which the present appeal is taken by the answering defendants. Upon the hearing the complainants offered the deed from Cotheal to Roll and Dey, dated April 16, 1874, conveying three large tracts lying contiguously to each other and together comprising all of the town of South Amboy. Said deed contains at the end of the descrip- the following clause:

"It is agreed by and between the parties to these presents that this indenture shall not conflict with the title of any part of the aforesaid premises previously sold and conveyed by said Alexander I. Cotheal and James P. Thomas to any party or parties and this deed is subject to any such conveyance."

It also appears by this deed that the premises therein described had been surveyed by John Perrine, Jr. in June 1835 and a map of the same filed in the Clerk's office.

It further appeared in the proof that Albert Roll, husband of Mary Jane Roll, acquired whatever interest his wife took under said deed from Cotheal and that he died March 29, 1898, leaving a will in which

he appointed the complainants his executors, giving them power of sale.

The complainants also introduced (p. 25) a deed made by Edward F. Roberts, Sheriff, to Ward C. Perrine and Abraham Everitt April 11, 1877 under an execution against Sarah E. Dey, purporting to convey the whole of said block; also will of Abraham Everitt whereby he devised his real estate to his sons George L. Everitt and John R. Everitt (p. 25); also will of George L. Everitt devising his real estate to his sons Abraham Everitt and William C. Everitt, two of the defendants (p. 26); also a deed from Andrew J. Disbrow and others, commissioners in partition to George L. Everitt and John R. Everitt, purporting to convey twenty-two lots by numbers being one-half of said block (p. 26; also deed by the same Commissioners bearing the same date to Ward C. Perrine, purporting to convey the remaining twenty-two lots of said block (p. 29); also the will of Ward C. Perrine (p. 11-13).

The answering defendants offered in evidence copies of certain documents, the originals of which were in 1885 in the possession of Alexander I. Cotheal, grantor in the deed made in 1874 to Roll and Dey, and which at that time Mr. Cotheal, a resident of the City of New York, refused to allow to go out of his possession. The copies were then made for the purpose of an action of ejectment then pending in Middlesex Circuit Court by Mrs. Mary Jane Roll against one Rea, to recover possession of two lots in another block on the same map of South Amboy and which were claimed by Mrs. Roll under the same deed from Cotheal. The copies were proved in the present case by a witness, John E. Montgomery who was indirectly interested in the ejectment suit and carefully compared the copies at the time they were made (pp. 35 to 39).

Mr. Cotheal at the time of the ejectment suit in 1886 was over eighty years of age and has since died.

The document of which copies were so made and introduced by the defendants in this case were,

First; The Trustees account of sales and settlement with the share holders, October 8th and 13th, 1835 (pp. 55-62).

Second; Book entitled "Deed book—Ledger account of purchasers and memorandum of deeds given—Sale of lots at South Amboy, 1835" (pp. 63-82).

Third; A paper executed by Mary J. Roll and Albert Roll her husband, Sarah E. Dey and Matthew R. Dey, her husband, contemporaneously with the delivery of the deed by Cotheal to Mrs. Roll and Mrs. Dey, which paper reads as follows, (p. 83):

"We, Mary Jane Roll, Albert Roll, Sarah E. Dey and Matthew R. Dey, having made application to Alexander I Cotheal to quit claim such interest as he may have in the South Amboy tract of land surveyed by John Perrine, Jr., in 1835, per map on file in the Clerk's Office, Middlesex County, New Jersey, without any request and without any representations of title or otherwise on the part of the said Cotheal; and furthermore, we having inspected the maps, records of sale and conveyances, and the accounts of the Trustees, James P. Thomas and Alexander I. Cotheal, and having satisfied ourselves in the matter, did agree to take from him a quit claim deed agreeable to a form submitted by us, and which quit claim deed dated 16th April, 1874, made to Mary Jane Roll and Sarah E. Dey, we hereby acknowledge to have received from him in New York, the 27th day of April, 1874, as well as the cancelled and viod trustees' deed of June 17, 1835, made to William H. Messinger."

The book of sales contains the following, with reference to Block 41 (Case, p. 73):

PETER G. TAYLOR.

Deed dated June 17, 1835.

44 lots, $132 00

Whole Block No. 41.

Bounded N. Lousia street. E. Pine avenue. S. Portia street. W. Felter street. Each lot 25 by 100

feet. July 9, 1835. Received Franklin & Jenkins' Receipt, No. 521, 13 20
Cash, 118 80

$132 00

Also case (p. 80, l. 36) it appears that Franklin and Jenkins, the auctioneers of said sale accounted to the Trustees for their receipt No. 521, $13.20 which was ten per cent. of the purchase money for this block.

By account No. 1 (Case, p. 55, l. 30) the trustees charge themselves with the item, "P. G. Taylor $118.-80," (which was the remainder of the purchase money after deducting $13.20 covered by Franklin and Jenkins receipt No. 521).

Said Trustees also in the following line charge themselves, "Franklin and Jenkins $283.00, $13.20, $39.00, $13.20, $15.40,—$363.80," which is a reproduction in substance of what appears at the bottom of page 80 of the case where the Trustees acknowledge receipt from Franklin and Jenkins of moneys represented by their various receipts including No. 521.

The defendants also put in evidence the tax deed, Exhibit D. A. page 83 &c.

I.

THE COMPLAINANTS HAD NO POSSESSION EITHER ACTUAL OR CONSTRUCTIVE.

In order to sustain a suit for partition the complainant must show himself in either possession or where the possession is vacant, in constructive possession by virtue of having the legal title.

Stevens v. Enders, 1 *Green*, 271.
Burroughs v. Dunlap, 1 *Green*, 284.
Smith v. Gaines, 12 *Stew.* 545.
Roarty v. Smith, 8 *Dick.* 253.
Yglesias v. Dewey, 15 *Dick.* 62.

Freeman on Co-tenacy and Partition, Secs. 446, 447.
Florance v. Hopkins, 46 *N. Y.* 186.
Sullivan v. Sullivan, 66 *N. Y.* 37.
Evans v. Bagshaw, L. R. 5 *Ch.* 342.
Affirmed, L. R. 8 *Eq.* 469.

Partition is as much a possessory action as is ejectment, and it cannot be maintained in any case where ejectment could not be maintained.

In the present case the possession was vacant. Block 41 has never been held in actual possession by any one since 1835.

In order, therefore, to maintain a bill for partition the complainant must show a legal title which would draw to itself a constructive possession. The effort of the complainant to show a legal title and constructive possession under the deed from Cotheal, the surviving Trustee in 1874, was met on the part of the defendants by the records which the Trustees had kept contemporaneously with their sales and settlement in 1835, and by the paper signed by Mrs. Roll and Mrs. Dey and their husbands at the time that they received the conveyance from Cotheal in 1874, in which paper the grantees declared that they had inspected the records and accounts of the Trustees.

If the original papers had been produced undoubtedly they would have been competent evidence as declarations made by the predecessors in title of the complainants during the time of their ownership respectively. Thus the records kept by Cotheal prior to his conveyance to Roll and Dey show in a most persuasive manner that a previous conveyance of this particular portion of the entire tract had been made to Peter G. Taylor by deed dated June 17, 1835, conveying forty-four lots, being the whole of Block 41 for a consideration of one hundred and thirty-two dollars, received by the Trustees and by them accounted for with their cestuis que trustent in October, 1835. And the declaration of Mrs. Roll and her husband, (under whom the

complainants claim), shows that these original documents in the possession of Cotheal had been exhibited to them at the time of their excpting the conveyance from him. This is just the same evidence upon which Mrs. Roll was defeated in her action against Rea, reported 21 *Vroom*, 264 and in this Court 28 *Vroom*, 647, as proving an outstanding title in one Lang to block 39.

The copies having been proved to be accurate, were properly admitted as secondary evidence. The originals at the time that the copies were made about twenty years before the hearing in the present case, were in the possession of the surviving Trustees in the City of New York.

At the time of the hearing he had died and there was nothing to show what had become of the original papers. If they were still in existence they were presumably beyond the reach of subpoena. There was no ground for a suspicion that the originals were withheld by the party offering the copies or were in their control.

Johnson v. Arnwine, 13 *Vroom*, 451.

Moreover, it was proved that the copies were made for use in a cause in which Mrs. Roll, under whom the complainants claim, was a party and that they were actually used in that cause against her by her consent, taking the place of the originals. The copies thus became in a sense originals as against Mrs. Roll and those claiming under her.

II.

THE COURT OF CHANCERY SHOULD NOT HAVE DECIDED THE QUESTION OF LEGAL TITLE.

In view of the evidence afforded by the Trustees' Book of Sales and Accounts that there had been a conveyance of Block 41 to Peter G. Taylor in 1835, the Court should have either dismissed the bill or stayed

the suit to enable the complainants to establish their title by action of ejectment. Such an action would lie against the defendants claiming title although the premises were unoccupied.

2 Gen. Stat. 1282, *Section* 3.

In *Slockbower v. Kanouse,* 5 *Dickinson,* 481, this Court said; "The established rule undoubtedly is that upon a bill for partition of lands if the legal title of the parties is brought into dispute, a Court of Equity will not proceed to settle the disputed title but will either dismiss the bill or retain it to allow the legal tite to be settled in an action at law."

Numerous cases are cited in support of this rule, and because the decree of the Court of Chancery in that case violated it, the decree was reversed.

In *Ellis v. Feist* 20 *Dick.* 548, Vice Chancellor Reed, referring to a dispute as to the legal title in a partition cases says: "This condition of affairs deprives this Court of jurisdiction to proceed with this suit until the legal title is settled by an action at law."

Vice Chancellor Pitney in his opinion in the present case (pp. 96, 97) in the first instance declined jurisdiction on the authority of *Slockbower v. Kanouse* to determine the questions of law arising with respect to the tax title, but he nevertheless determined the question of fact with respect to the deed to Taylor.

The rule, however, that a Court of Equity will not determine the legal title on a bill for partition applies as well where the dispute is one of fact as where it is one of law.

In *DeWitt v. Ackerman, 2 C. E. Green,* 215, Chancellor Green says: "A bill for partition will not lie where the title is denied or depends on doubtful facts or questions of law."

If the facts upon which the legal title depends are in dispute, it is the right of the defendant to have them tried by a jury.

The Vice Chancellor says (p. 92, l. 12) "When neither [party] has taken possession to the exclusion

estoppel to set up
use title Freeman Cotenancy § 155

of the other and neither has title, I find it difficult to perceive how either can object to a legal proceeding which will result with simply marking on the ground the limits of what would be the title of each if they had any."

But a partition suit is not intended to be a proceeding for the purpose of marking on the ground the limits of what would be the title when neither title nor possession in fact exists. It is not a proceeding for a division of castles in the air or of purely paper claims.

It is primarily and essentially a proceeding to divide lands which are held in possession or to which there is an immediate right of possession; and when a defendant is brought into Court in such a suit, he necessarily has the right to say that the case is not one in which such a bill will lie.

III.

THE COURT SHOULD NOT HAVE DECLARED VOID THE TAX DEED.

In this case, however, the decree does more than make partition or sale of a purely imaginary title. It adjudges (p. 104, l. 10) that the premises are free and clear of any lien or encumbrance under and by virtue of the tax deed set forth in the answer.

The Vice Chancellor in his opinion refused to adjudicate upon the tax title but directed by order (p. 100) that the bill be retained to enable the defendants to establish any title which they may have under said tax deed in an action at law, and further ordered that proceedings for that purpose must be taken by the defendants within thirty days. No such proceedings were taken and thereupon after the expiration of the limited time, the final decree was made as above stated.

The Court of Chancery could not impose upon the defendants the burden of bringing a suit to establish the title and upon their failure to do so, declare such title void. The defendants were standing upon their

strict legal rights, asking no favor of the Court, and were not subject to be put upon terms.

The complainants had brought a suit in which they encountered a question of legal title which the Court declared itself to be without jurisdiction to determine. The most that the Court could do to aid the complainants was to hold the suit in order that the complainants might establish their title by action at law.

The order which was made deprived the defendants of the advantages of their position and put upon them the burden of establishing their title under the tax deed instead of leaving the burden upon the complainant to establish the title which they sought to have partitioned.

The failure of the defendants to bring suit within the period limited by the order, did not increase the jurisdiction of the Court or enlarge its power to deal with the tax title. The erroneous character of the order is carried into the final decree and the appeal from the final decree raises the entire question.

For the reasons above stated the decree was erroneous and should be reversed with costs.

ALAN H. STRONG,
Of Counsel with Appellants.

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New Jersey Court of Errors and Appeals.

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CASE.

ALAN H. & THEO. STRONG,

For Appellants.

20

FREDERIC M. P. PEARSE,

For Respondents.

IN CHANCERY OF NEW JERSEY.

To the Honorable William J. Magie,

Chancellor of the State of New Jersey.

30

Complaining shows unto your Honor your orators, Melford N. Roll, Addison H. Bergen and Christopher I. Bergen, of the Borough of South Amboy, in the County of Middlesex and State of New Jersey, that Albert Roll, late of the Borough of South Amboy aforesaid, deceased, was at the time of his death seized in fee simple of all the undivided one-half right, title, and interest of, in and to all those certain lots, pieces or par-

cels of land situate in the Borough of South Amboy aforesaid, and bounded and described as follows:

Consisting of the whole of Block forty-one (41) as laid out on a certain map entitled "A Map of the Village of South Amboy," made by John Perrine, Jr., Surveyor, June, 1835, and on file in the office of the Clerk of the County of Middlesex, consisting of forty-four lots more or less and bounded and described as follows:

On the east by Pine avenue,

On the north by Louisa street,

On the west by Feltus street, and

On the south by Portia street.

And your orators further show unto your Honor that the said Albert Roll being so seized as aforesaid on or about the twenty-eighth day of March, in the year 1898, died testate, leaving a last will and testament; that said last will and testament bears date the 13th day of January in the year 1894, and was duly proven before the Surrogate of the County of Middlesex on the 19th day of January in the year 1898, and thereafter recorded in Book R of Wills in said Surrogate's office on page 31.

That in and by said last will and testament your orators and one Elizabeth Roll, the widow of said Albert Roll, were appointed executors, and that upon said 19th day of January, in the year 1898, letters testamentary were issued to them by the said Surrogate of the said County of Middlesex, and thereupon the said Elizabeth Roll and your orators took upon themselves the burden of the administration of said estate.

And your orators further show unto your Honor that in and by said last will and testament the said testator did provide in the fourth, fifth and sixth paragraphs thereof as follows:

"Fourth. It is my will and I do so order and invest my executrix and executors or the survivors of them with full power and lawful authority to sell my personal property or real estate, excepting that given to my wife, that they may think best, and the moneys remaining in their hands shall be invested by them to the best advantage for my estate.

"Fifth. It is my wlil and I so order, that whenever any income from my estate shall exceed one hundred and fifty dollars per month, all over the fifty dollars per month given to my wife, and other expenses to my estate may be equally divided between my three children, Melford N. Roll, Cecelia A. Bergen and Edith S. Bergen, or their heirs.

"Sixth. It is my will and I do so order, that at the death of my wife, all my personal and real estate be equally divided between my three children, Melford N. Roll, Cecelia A. Bergen, wife of A. H. Bergen, and Edith S. Bergen, wife of C. J. Bergen, share and share alike."

And your orators further show unto your Honor that prior to the death of the said Albert Roll, to wit, on or about the 31st day of March, 1894, Edith S. Bergen, the daughter of said testator and the wife of your orator Christopher I. Bergen, departed this life, leaving her surviving, your orator, Christopher I. Bergen, her husband, and three children, who are now under the age of twenty-one years, to wit, Nita S. Bergen, Howard C. Bergen and Raymond A. Bergen.

And your orators further show unto your Honor that thereafter, on the twenty-second day of December, in the year 1904, the said Elizabeth Roll, by deed of conveyance bearing date the day and year aforesaid, assigned, transferred and set over unto your orators for a sufficient consideration therein expressed, all right, title and interest of, in and to the estate of said Albert Roll, deceased, and that said deed of conveyance was thereafter, on the twenty-second day of December, in the year 1904, duly acknowledged by the said Elizabeth Roll, before an officer authorized to take the proof and acknowledgment of deeds, and that said deed of conveyance was thereafter duly recorded in the Clerk's office of the County of Middlesex in Book 364 of Deeds for said county at page 356, &c.

And your orators further show unto your Honor that the said Elizabeth Roll, thereafter, was duly discharged from her duties as executrix of the last will and testa-

ment of the said Albert Roll, deceased, by an order of the Orphans' Court of the County of Middlesex; and that your orators are now the sole executors of the last will and testament of the said Albert Roll, deceased.

And your orators further show unto your Honor that at the time of the death of the said Albert Roll said premises were owned in common with Ward C. Perrine, of the Borough of South Amboy, who claimed an undivided one-fourth interest in said premises, and with George L. Everitt and John R. Everitt, who together claimed an undivided one-fourth interest in said premises. That the said premises were originally purchased by Mary Jane Roll and Sarah E. Dey, from one Alexander I. Cotheal, in the year 1874, and thereafter the said Mary Jane Roll departed this life, leaving Melford N. Roll, Cecelia A. Bergen and Edith S. Bergen as her only heirs at law, she having died intestate, and they in the year 1891 conveyed the interest of the said Mary Jane Roll, in the said premises, to Albert Roll aforesaid, and that the interest of the said Sarah E. Dey in said premises was sold by the Sheriff of the County of Middlesex to said Ward C. Perrine and one Abraham Everitt in the year 1877, and that the said Abraham Everitt departed this life leaving a last will and testament, which was proven in the year 1879, wherein and whereby his interest in said premises were bequeathed to his four sons, George L., David, John R. and Edward T. Everitt, and that thereafter a partition of all of the lands of the said Abraham Everitt was sought by said devisees in the Middlesex County Court of Common Pleas, and in the year 1885 the interest of the said Abraham Everitt in the said premises was sold by the commissioners appointed to sell the same, to the said Ward C. Perrine, George L. Everitt and John R. Everitt, and that thereafter the said George L. Everitt departed this life, and left a will which was proven in the year 1900, in the Surrogate's office of the County of Middlesex, and in and by said last will the interest of the said George L. Everitt in said premises became

vested in his two sons, Abraham Everitt and William C. Everitt.

And the said Abraham Everitt is married and the name of his wife is Margaret Everitt, and the said William C. Everitt is married and the name of his wife is Helen Everitt, and that the said Margaret Everitt and Helen Everitt claim to be entitled to an inchoate right of dower in the interest of their said husbands respectively in the premises aforesaid.

And your orators further show unto your Honor, so far as your orators can ascertain, that the premises hereinbefore described are free from all liens and incumbrances.

And your orators further show unto your Honor that they are desirous that a partition or division of the said tracts of lands and premises should be made among your orators and the several parties seized of and entitled thereto according to their several and respective rights, estates, and interests therein, as the same shall be hereafter established, or in case the said tracts of land and premises cannot be divided among the owners thereof without great prejudice to their interest, then that the same may be sold, together with the right of dower of any of the persons entitled thereto as hereinbefore set forth, and that the proceeds thereof may be divided among your orators and the other parties entitled thereto as aforesaid according to their respective rights and interests as the same shall be established as aforesaid.

But your orators are advised that no valid division or partition or sale of said premises can be effected without the aid and interposition of this Honorable Court, and that this Honorable Court has full and complete jurisdiction in the premises, in consideration whereof, and to the end that the said Ward C. Perrine, John R. Everitt, Abraham Everitt, William C. Everitt, Margaret Everitt, Helen Everitt, Nita S. Bergen, Howard C. Bergen, Raymond S. Bergen, Cecelia A. Bergen, and Marion Roll, may full, true, direct and perfect answer make, but without oath, to all and singular the

charges and matters aforesaid as fully and particularly as if the same were here again repeated and they thereunto particularly interrogated, and that a full partition and division of the above described premises may be made according to the practice of this Court, if the same be practicable and consistent with the rights of all the parties interested therein, among your orators and the other persons who may be entitled to a share of the said premises according to their respective rights and interests therein; and that the liens, if any, on the undivided estate or interest of any of the parties hereto be decreed to be a charge only on the share assigned to such party, and such share to be first charged with its just proportion of the costs of these proceedings in preference to any such liens, and in case such partition and division in fact of the said premises shall be found to be impracticable, or if it should appear that the same cannot be made without great prejudice to the owners of the said premises and to those entitled to dower rights therein, then that the said tracts of land and premises, together with the dower rights therein, as hereinbefore set forth may be decreed to be sold by this Honorable Court, and the proceeds thereof, after paying the costs and charges of this suit, divided among your orators and the other parties interested therein, according to their respective rights, shares and interest, and that a portion of the moneys arising from the said sale of the estate, share or interest of any party against whom there are existing any liens or incumbrances held by any creditor of such party who is a party defendant to this suit, be brought into this Court by the Master or Commissioner, as the case may be, who shall make sale of said premises after deducting the costs, charges and expenses to which it shall be liable, to the end that the Chancellor may make such order therefor as the circumstances of the case may require, and that your orators may have such further relief as the nature and circumstances of the case may require and as shall be agreeable to equity.

May it please your Honor, the premises considered,

to grant unto your orators the State's writ of subpoena to be directed to the said defendants, Ward C. Perrine, John R. Everitt, Abraham Everitt, William C. Everitt, Margaret Everitt, Helen Everitt, Nita S. Bergen, Howard C. Bergen, Raymond S. Bergen, Cecelia A. Bergen and Marian Roll, commanding them and each of them, at a certain day, and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable Court, then and there to answer the premises, and to stand to and abide by and perform such decree therein as to your Honor shall seem meet.

And your orators will ever pray, &c.

Solicitor for and of Counsel with Complts.

IN CHANCERY OF NEW JERSEY.

Between
MELFORD N. ROLL, ET AL.
Complainants,
AND
ABRAHAM EVERITT, ET AL.
Defendants.

On Bill, &c.
Answer.

The answer of Ward C. Perrine, John R. Everitt, Abraham Everitt, William C. Everitt, Margaret Everitt and Helen Everitt, defendants to the bill of complaint of Melford N. Roll and others, executors of the last will and testament of Albert Roll, deceased, complainants.

These defendants for answer unto the said bill say that it is not true that Albert Roll, deceased, mentioned in the said bill of complaint, was at the time of his death, or at any time, seized in fee simple of the undivided one-half right, title and interest, or any interest, in the premises in said bill described; that is to say, Block 41 as laid out on the map of the village of South

Amboy made by John Perrine, Jr., surveyor, in June, 1835.

And these defendants say that the title to the said premises is wholly vested in these defendants, or some of them, and that these defendants or some of them are in the exclusive possession thereof and have held possession of the same for many years, claiming to own said block and the whole thereof in fee simple.

And these defendants further answering, in addition to their claim of title in fee simple as above set forth, and as further claim of title in the event that for any reason these defendants may be adjudged not to own said premises in fee, say that on or about the fourth day of June, in the year eighteen hundred and seventy-seven, one John Disbrow, then being Collector of the Township of South Amboy, in the County of Middlesex aforesaid, having previously in due form of law, by virtue of a warrant for that purpose to him directed by the Township Committee of said township, advertised and sold at public vendue the said Block No. 41 to this defendant Ward C. Perrine and one Abraham Everitt, now deceased, father of these defendants, John R. Everitt, Abraham Everitt and William C. Everitt, for the term of seventy-five years, they having at said sale agreed to take such lands, tenements and hereditaments for said term and pay the taxes assessed thereon for the year eighteen hundred and seventy-four (that being the shortest term for which any person would take said premises and pay said taxes with the interest and expenses), did by indenture bearing date the said fourth day of June, eighteen hundred and ninety-seven, pursuant to the statute in such case made and provided, and in consideration of the sum of one hundred and twenty-seven dollars and seventy-seven cents, the amount of said taxes, interest, fees, costs, charges and expenses, grant, bargain, sell and assign unto the said Ward G. Perrine and Abraham Everitt the said Block No. 41, with the hereditaments and appurtenances; to have and to hold for the said term of seventy-five years, which said deed having been duly acknowledged by the

said John Disbrow, Collector, before Charles Morgan, Esquire, a Master in Chancery of this State, was on the ninth day of June, eighteen hundred and seventy-seven, duly recorded in the office of the Clerk of the County of Middlesex in Book 166 of Deeds on page 349, and by virtue thereof these defendants (the interest of the said Abraham Everitt having since his death become vested in the said John R. Everitt, Abraham Everitt and William G. Everitt, his children as aforesaid), are entitled to hold the said premises and the whole thereof until the said term of seventy-five years, for which the same were sold and conveyed as aforesaid, shall be fully completed and ended.

And these defendants insist that the said complainants are wholly without title to the said premises or any interest therein, and moreover have no such possession or right of possession as is necessary to enable them to maintain their aforesaid bill for partition.

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

A. H. & T. STRONG,
Solicitors for Defendants.

IN CHANCERY OF NEW JERSEY.

Between
MELFORD N. ROLL, ET AL.
Complainants,
AND
ABRAHAM EVERITT, ET AL.
Defendants.

On Bill, &c.
Petition.

The petition of Melford N. Roll, Addison H. Bergan and Christopher I. Bergan, executors of the last Will and Testament of Albert Roll, deceased, respectfully shows unto your Honor that one, Ward C. Per-

rine, was a party defendant in this cause, the same being for the partition of certain lands in the County of Middlesex, the said Ward C. Perrine claiming to own an interest in fee in the same. That the said cause has proceeded to fixing a day for the final hearing of the matter, and has been referred to the Honorable Henry C. Pitney, Vice-Chancellor, to hear the same, but that on the fourth day of August, in the year 1906, said Ward C. Perrine died, leaving a last will and testament, and a codicil thereto, a true copy of which will and codicil is hereto annexed. That said last will and testament and the codicil thereto, were proven before a Surrogate of the County of Middlesex on the 15th day of August, 1906, and letters testamentary thereon were issued to one John E. Montgomery, all of which appears of record.

And your petitioner further show unto your Honor that it appears by the said last will and testament that the estate of the said Ward C. Perrine is devised to one Mary Elizabeth Mount and Abijah C. Mount, her husband, for and during the term of the natural life of the said Mary Elizabeth Mount and Abijah C. Mount, and that after the decease of them, the residue of the estate is devised unto Lydia P. Robertson, George W. Mount and Maude W. Johnson.

And your petitioners further show unto your Honor that the said Abijah C. Mount is dead; and that the said Mary Elizabeth Mount, Lydia P. Robertson, George W. Mount and Maude W. Johnson have not applied to be made parties defendants to this suit, and that they are necessary defendants, as your petitioners have herein stated that the said suit is for the partition of land in which the said Ward C. Perrine claimed an interest, and it is necessary that said suit be revived for that purpose.

Wherefore your petitioners pray that an order be made that the said suit be revived against the said Mary Elizabeth Mount, Lydia P. Robertson, George W. Mount and Maude W. Johnson, and that they be made

parties to the said suit, and that such order be made in the premises as shall seem meet to this Court.

And your petitioners will ever pray, &c.

Petitioners.

Dated September 12, 1906.

State of New Jersey,
County of Middlesex, ss.

Frederic M. P. Pearse, of full age, being duly sworn, on his oath deposes and says that he is the solicitor for the petitioners in the above entitled cause and that he has read the said petition and knows the contents thereof, and says that the facts therein contained are true to the best of his knowledge and belief.

Sworn and subscribed to before me this
11th day of September, A. D. 1906.

I the name of God, Amen, I, Ward C. Perrine, of the Borough of South Amboy, in the County of Middlesex and State of New Jersey, being of sound and disposing mind and memory, do make and publish this my last Will and Testament, as follows:

First. I direct all my just debts and funeral expenses to be paid as soon as may be reasonable after my decease.

Second. I give, devise and bequeath unto my beloved sister, Mary Elizabeth Mount and her husband, Abijah C. Mount, all my estate, both real and personal, in whatever it may consist or wherever situate, which shall belong to or be owned by me, at the time of my death, to have, hold, receive, use and enjoy the rents, interest, issues and profits thereof, after the payment of necessary repairs, taxes and insurance, during the term of the natural life of the said Mary Elizabeth Mount and of her husband Abijah C. Mount; and from and after the decease of my sister, Mary Elizabeth

Mount, and her husband Abijah C. Mount, I give devise and bequeath my said estate real and personal, unto the children of my said sister, Lydia P. Robertson, and George W. Mount and Maude W. Johnson, share and share alike, to their heirs and assigns forever, and the representatives of any deceased child to have the share of his, her or their parent.

And I do hereby constitute and appoint said George W. Mount, Lydia P. Robertson and Maude W. Johnson, executors of this my last will and testament, and I do give to my said executors and the survivors or survivor of them, full power and authority to grant, bargain, sell and convey any or all of my lands to any persons or person in fee simple or otherwise, at public or private sale, after the death of my said sister Mary Elizabeth Mount and her husband Abijah C. Mount; in case my said real estate cannot be equally divided among said children of my said sister, Mary Elizabeth Mount, and Abijah C. Mount, by my said executors.

In witness wherof, I have hereunto set my hand and seal this thirteenth day of August, in the year of our Lord one thousand eight hundred and ninety.

WARD C. PERRINE (L.S.)

Signed, sealed, published and declared by the above named Ward C. Perrine, to be his last Will and Testament, in the presence of us, who were present at the same time, at his request, subscribed our names as witnesses in the presence of the testator and of each other.

WILLIAM G. HOWELL,
JOHN J. COAKLEY, JR.

CODICIL TO A WILL.

Whereas, I, Ward C. Perrine, of the Borough of South Amboy, County of Middlesex and State of New Jersey, have made my last Will and Testament in writing, bearing date on the thirteenth day of August, eighteen hundred and ninety (1890), and have thereby.

Now I do by this my writing which I hereby declare to be a codicil to my said will to be taken as a part thereof. And I do hereby appoint my trusty friend, John E. Montgomery, acting executor of this my last will and testament. And do give unto him the sum of one thousand dollars ($1,000.00) in consideration of the pains and trouble he will have in the execution of this my will. I do give the use or the rent of the house of No. 118 Broadway, in the Borough of South Amboy, New Jersey, to Ann Elizabeth Morgan, the part of the house that she now occupies, during her lifetime. By the payment of the taxes and insurance and to keep the premises in good repair. And not to underlet the part of the house that she occupy to any other person. I do hereby declare that in case I shall in my lifetime advance any pay to any of my sister's children, either son or daughters, any sum or sums of money for his or their benefit or advancement in the world or otherwise. That the sums shall be taken as part of portion, to the end and intent that the said premises may be equally divided among all such children share and share other.

In witness whereof I have hereunto set my hand and seal this seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-six.

WARD C. PERRINE (L.S.)

Signed, sealed, published and declared by the above named Ward C. Perrine, to be his last Will and Testament, in the presence of us who were present at the same time, and at his request, subscribed our names as witnesses in the presence of the testator and of each oher.

JOHN J. COAKLEY, JR.,
So. Amboy, Sept. 17, 1896.
ELWOOD R. BROWN,
So. Amboy, Sept. 17, 1896.

IN CHANCERY OF NEW JERSEY.

Between
MELFORD N. ROLL, ET AL.
Complainants,
AND
ABRAHAM EVERITT, ET AL.
Defendants.

On Bill, &c.
Order.

It appearing to the Court that Ward C. Perrine, one of the defendants in this suit, has departed this life, leaving a last Will and Testament, wherein and whereby all his estate, real and personal, is devised to Mary Elizabeth Mount, for and during the term of her natural life, and after her death to Lydia P. Robertson, George W. Mount and Maud W. Johnson, and which said Will was proven before the Surrogate of the County of Middlesex on the 15th day of August, 1906, and that the said Mary Elizabeth Mount, Lydia P. Robertson, George W. Mount and Maud W. Johnson have become interested in the said matter of this estate, and that the said George W. Mount is married and that the name of his wife is Mary Matilda Mount, and that the said Maud W. Johnson is married, and the name of her husband is Jeremiah Johnson, and that the said Lydia P. Robertson is married and that the name of her husband is Stewart Robertson, and that the complainants choose to make all of said persons above named defendants in this suit, and it further appearing that the said cause is at issue and has been referred to Vice-Chancellor Pitney of this Court to hear the same for the Chancellor and to report thereon to him and to advise what decree should be made therein.

It is on this thirteenth day of November, 1906, on motion of Frederic M. P. Pearse, solicitor for and of counsel with complainant, Ordered that the said suit stand revived against the said Mary Elizabeth Mount, Lydia P. Robertson, Stewart Robertson, George W.

Mount, Mary Matilda Mount, Maud W. Johnson and Jeremiah Johnson, and that they be made parties defendants hereto, in the place and stead of the said Ward C. Perrine, deceased, and it is further ordered that a copy of this Order, which need not be certified, be served upon the parties above mentioned by mailing the same to them, at their respective post office addresses, if the same can be found, or serving upon their solicitor who shall enter an appearance in this cause for them, and in the event of their failure to enter an appearance before the nineteenth day of November, 1906, the complainants may cause their appearance to be entered.

It is further ordered that the answer of the said Ward C. Perrine, heretofore filed in this cause, be deemed and taken as and for the answer of the said Mary Elizabeth Mount, Lydia P. Robertson, Stewart Robertson, George W. Mount, Mary Matilda Mount, Maud W. Johnson and Jeremiah Johnson.

Respectfully advised,

HENRY C. PITNEY,
V. C.

IN CHANCERY OF NEW JERSEY.

Between
MELFORD N. ROLL, ET AL.
Complainants,

AND

ABRAHAM EVERITT, ET AL.
Defendants.

November 19, 1906.

Transcript of shorthand notes of testimony taken in the above entitled cause on November 19, 1906, at Chan-

cery Chambers, Newark, N. J., before Hon. Henry C. Pitney, Vice Chancellor, in the presence of Mr. Frederic M. P. Pearse, solicitor of complainants, and Mr. Alan H. Strong, solicitor for the defendants.

Mr. Pearse: I first want to offer in evidence certified copy of a deed made by Alexander I. Cotheal to Mary Jane Roll and Sarah E. Dey. This deed is dated 16th day of April, 1874, and purports, for a consideration of twenty-five hundred dollars, to convey to these parties, Roll and Dey, three tracts of land. The first is a deed made by Henry Cotheal and wife and others to James P. Thomas and Alexander I. Cotheal, dated the 1st day of September, 1834, and recorded in the Clerk's office in the County of Middlesex, in Book 27 of Deeds, at pages 2 and 3; and the other deed was made by George C. Thomas and wife and others, to the same parties, dated 9th day of September, 1834, and recorded in Clerk's office in Book 27 of Deeds, pages 4 and 5, &c.

The Court: You are reading a description? Those references of those conveyances are part of the description of the land?

Mr. Pearse: Yes, sir. And also another tract known as the Swan Hill tract, conveyed to Cotheal and Thomas by Joseph Marsh and wife by deed dated 15th of September, 1834, and recorded in the Clerk's office in Book 28 of Deeds, page 333; and also another tract known as the Louis Hansel tract, deed made by Louis Hansel to Cotheal and Thomas and dated 25th of April, 1834, and recorded in the Clerk's office in Book 27, pages 93, &c., and with this recital: "It is agreed by and between the parties to these presents that this indenture shall not conflict with the title of any part of the aforesaid premises previously sold and conveyed by said Alexander I. Cotheal and James D. Thomas, to any party or parties, and this deed is subject to any such conveyances." And there is a further recital in the deed that the above described premises and surveyed by John Perrine, Jr., June, A. D. 1835, and a map of the same filed in the Clerk's

office of the County of Middlesex. The premises in question are Block No. 41 on that map made by John Perrine, Jr., surveyor. This deed was recorded in the Clerk's office of the County of Middlesex on the 30th of April, 1874, in Book 146, at page 612, as appears by this certificate attached to the deed.

The Court: Have you got a description of that one lot?

Mr. Pearse: One block bounded by four streets.

The Court: Then as I understand it, this map is laid out into paper streets, and this is one of the blocks, one of those paper streets.

Deed marked Exhibit C 1.

Frederic M. P. Pearse, sworn.

I am the solicitor for the complainants in this cause, and I have made an examination of the records in the County Clerk's Office of Middlesex County from January 1st, 1833, to May 15, 1874, for conveyances by Alexander I. Cotheal and James P. Thomas, and from that examination I do not find any deed made by Thomas and Cotheal, or either of them, for the premises known as Block No. 41 on the map made by John Perrine, Jr., surveyor, in 1835.

The Court: Where is there any expression before me now that that lot 41 is included in your deed?

Mr. Pearse: I will submit a deed. If the Court please, this deed says that these premises which are conveyed to Roll and Dey are the premises which were made into a map by John Perrine, Jr., surveyor, in 1835.

I have here a search which was made by Charles S. Hill, Clerk of Middlesex County, in 1874. I don't believe that is evidence unless Mr. Strong will consent to let it go in. It shows all the conveyances of Cotheal and Thomas as used in the old Roll and Rae suit.

Mr. Strong: I don't think it is of any value in this case. You have sworn to the fact that there is no other deed on record.

The Court: I don't understand a search of the Clerk is evidence in any court except where the statute makes it so.

Mr. Strong: There is no statute making it so.

The Court: Clerks have an idea that there is something about them that is very valuable, but I could never see any value in it myself, except to show diligence. Perfectly absurd to suppose that a clerk can do anything. What does his responsibility amount to if he makes a mistake? What does it amount to? Don't amount to a row of pins.

Addison H. Bergen, sworn.

Direct Examination, by Mr. Pearse.

Q. You are one of the complainants in this case?

A. Yes, sir.

Q. And you were acquainted with Mary Jane Roll?

A. Yes, sir.

Q. Can you tell us when she died? *A.* May 16, 1889.

Q. And did she die leaving a will, or without a will?

A. Without.

Q. And can you tell us the names of her heirs at law?

A. Edith S. Bergen, Melford N. Roll, Cecelia A. Bergen.

Q. Is that all? *A.* Yes; three.

Q. Now, did she leave a husband? *A.* Yes, sir.

Q. What was his name? *A.* Albert Roll.

Q. And what was done with her real estate after her death? *A.* It was transferred to Mr. Roll.

Q. Now I show you a certified copy of a deed made by Melford N. Roll and others as heirs at law of Mary Jane Roll, dated the 13th day of June, 1891, conveying to Albert Roll, in consideration of the sum of one dollar, certain tracts or parcels of land designated on a certain map made by John Perrine, Jr., A. D. 1835, and including all the undivided one-half interest in Block No. 41, containing forty-four lots, with other property. Did you join in the execution of that deed? *A.* I did.

Q. Did you see the others?

A. I saw them all sign the deed.

Q. Do you know the subscribing witness there, John K. Rodgers? A. Yes; I know him.

The Court: Is that the original deed?

Mr. Pearse: No; this is a certified copy of it.

Q. Do you know where the original deed is?

A. I think we have it; I think my brother has it in his possession.

Q. Didn't you tell me that you had made an exact—

The Court: Never mind.

Mr. Strong: Why don't you offer certified copy of the deed? I think that will answer all purposes.

Mr. Pearse: Yes; but the Court seemed to object to that. I offer that deed in evidence.

Marked Exhibit C 2.

Mr. Pearse: Mary Jane Roll and Sarah E. Dey were the original grantees. The Sarah J. Roll side,—she died in 1889, and her heirs at law conveyed her interest in this property with others to Albert Roll, her husband; Albert Roll died and left a will and gave his executors power of sale, and these executors joined—are the complainants in this case. On the other side of the house, Sarah E. Dey's interest was sold by the sheriff's sale to Perrine and Everitt.

And they are the defendants?

Mr. Pearse: And Mr. Abram Everitt, he is dead, and he left a will, and I made the resulting devisees under his will and his son's will parties to the suit. Book and page of the deed is 256, page 448.

Q. Now when did Mr. Roll die? A. March 29, 1898.

Q. And he left a will? A. Yes, sir.

Q. I have here a certified copy of the will; it is dated

the 13th day of January, 1894, and was probated on the 11th day of April, 1898.

Marked Exhibit C 3.

Q. You and Mr. Christopher I. Bergen and Mr. Roll qualified as executors, did you not, under this will?

A. Yes, sir.

Mr. Pearse: Will you admit that, Mr. Strong?

Mr. Strong: Yes.

Q. Also Mrs. Elizabeth Roll, who was the second wife, was she not, of Mr. Albert Roll, was the executrix? *A.* Yes, sir.

Mr. Pearse: And I show you, or rather, I offer in evidence a deed made the 22nd day of December, 1904, by Elizabeth Roll, widow of Albert Roll, to Melford N. Roll and others, executors of Albert Roll, in which the grantor quit claims all her estate, right, title and interest to the estate, real and personal, of the said Albert Roll, and this deed is duly acknowledged and recorded in the Clerk's office of the County of Middlesex in Book 364, page 356.

Marked Exhibit C 4.

Q. Can you tell us when the devisee, Edith S. Bergen, died? *A.* March 31, 1894.

Q. And whom did she leave surviving her?

A. She left three children, Edie S. Bergen, Raymond Bergen and Howard Bergen.

Q. And her husband, Christopher I. Bergen?

A. Yes, sir.

Q. And have you as executors ever conveyed this property, Block No. 41 on the Perrine map?

A. No, sir.

Q. And do you still have title?

The Court: Quod non apparet non est.

Q. I think that finishes up the Roll title. What is the

character of this land, Mr. Bergen? Is it improved or is it unimproved?

A. It is unimproved, that is, open to the commons, not fenced in, and bushes grown onto it, good sized bushes on it.

Q. (By the Court.) No buildings on it?

A. No buildings whatever.

Q. Any fences? *A.* No fences.

Q. (By the Court.) Any streets been laid out all around it? *A.* No, sir.

Q. (By the Court.) All paper? *A.* There is one, I think, partly dug through part of a hill; one street I think is partially dug through where there is a street going through it.

Q. (By the Court.) Do people travel around it?

A. They can travel through it.

Q. (By the Court.) Do people in going about follow the paper streets? *A.* On one or two sides they do; yes, there is an avenue on one side.

Q. What is the name of that avenue?

A. Pine avenue.

Q. And on the other end, what is the name of the street? *A.* Fulton street.

Q. And there is a street that runs between the two blocks that is open? *A.* Yes, sir.

Q. In fact then the block is open with the exception of the street on one side? *A.* Yes, sir.

Q. But there are no fences? *A.* No fences.

Q. (By the Court.) Any buildings?

A. No buildings.

Q. Have there ever been any buildings? *A.* No.

Q. (By the Court.) Ever been used for any purpose whatever? *A.* No, sir.

Q. (By the Court.) Pasturing cattle or grazing?

A. No, sir; not to my knowledge; it has been grown up in bushes.

Q. (By the Court.) Is it high land?

A. It is high land.

Q. (By the Court.) I have a kind of an impression that you could raise scrub-oaks,—what is it, scrub-oaky

land? *A.* No; there has been perhaps some time larger timber on it.

Q. (By the Court.) How long have you known it?

A. Oh, I have known it for, I guess, at least twenty-five years, if not more; I have lived there over thirty years.

Q. (By the Court.) You have lived where?

A. In South Amboy.

Q. (By the Court.) Whereabouts have you lived for thirty years?

A. In South Amboy; in the town where this is.

Q. (By the Court.) How far out of the body of the town does this land lie? *A.* It is right on the borders of the borough line, very near the borders.

Q. What do you say about the other side of Pine avenue? Is that built up with houses?

A. On one side of Pine avenue is built up with houses, the easterly side is built up.

Q. But the westerly side on which this block is situated? *A.* Is nothing; it is all bushes.

Cross Examination, by Mr. Strong.

Q. Which side of the block is it that is not defined by an open street?

The Court: Does he know the points of compass?

Q. I don't know. The block on paper is defined by four streets. I would like to know which street, either by name or direction, is the one that is not open?

A. Well, I think, as near as I can remember now, it will be one side facing the south, south side.

Q. On the south side of the block?

A. Yes; I don't think that is open at all; and this one facing I would call perhaps north, northwest, that is where it is dug through, where the street there is dug through partially, where they have been digging sand out through the opening of the street; the Pine avenue runs on the easterly side of it; of course that runs east;

somewhere along that side is trolley line, and on the opposite side of that is partially built up all along.

Q. Pine avenue runs which way?

A. Runs about from north to south.

Q. And this block that we have here in question is on which side of Pine avenue?

A. It would be on the westerly side of Pine avenue.

Q. Westerly side? *A.* Yes, sir.

Q. Now Pine avenue is open, is it? *A.* Oh, yes.

Q. And you say there is a building or some buildings on the other side of it? *A.* Yes, that is built up, partially so, a good deal of it.

Q. Then on the opposite side from Pine avenue is this unopened street, is that right? *A.* Yes, this block.

Q. What is that street called? There is a street there that isn't opened? *A.* It runs across from Pine avenue, across to Felter street, between Felter street and Pine avenue is this block.

Q. Felter street is on the opposite side from Pine avenue? *A.* Yes, running parallel with Pine avenue.

Q. And Felter street is the street which you say is not opened, is it? *A.* No, that is opened.

Q. That is opened? *A.* That is opened; yes, sir; built up, partially built up.

Q. Then the other two sides you have given us, the north and the south side, haven't you? *A.* Yes, sir.

Q. Now then the east side, what is there on the east side? *A.* Pine avenue.

Q. You are giving us the east and west sides then instead of north and south side? *A.* Yes, sir.

Q. Now then comes north side of the block?

A. The north side is where this—I forget the name of the street now, but it has been partly dug there; there was quite a hole there of the sand, if I remember rightly.

Q. Isn't it dug through all the way?

A. I don't know whether it is dug the full width or not; it is so you can drive a wagon all the way through to the other street, but it isn't laid out or graded.

Q. Not graded you mean? *A.* Yes.

Q. But it is used as a street, is it? A. That I don't know; I guess very little for travel.

Q. But isn't there a highway there for anybody to go through? A. They can.

The Court: He says they can drive there. They have used what would be the street, I suppose, somewhat indiscriminately, from his language, for digging out sand, killing two birds with one stone. They haven't particularly paid attention to where the lines of the street are, but they have dug out so much a wagon can drive through there. That is the way I interpret the evidence.

Q. Now, on the other side, the remaining side, opposite the one where the sand has been dug, south side, is that opened there? A. Not opened at all.

Q. (By the Court.) Then on the west side it isn't open? A. Oh, yes; the west side is open.

Q. Then it is open on all the sides except the south side? A. Excepting the south side; the north side is in a rough condition, not traveled much, I don't think, very lately.

Q. Have you ever been on that property in your life?

A. Yes, sir; oh, yes; I was on it recently.

Q. What? A. I was onto it just recently.

Q. (By the Court.) Before this suit was brought?

A. Yes, sir.

Q. It is in a remote part of the town where you don't often go, I suppose? A. Oh, I quite frequently go that way; it is out near the cemetery, which of course is near the borough limits; I pass every time I go out to the cemetery, in that way go right by the block.

Q. (By the Court.) Where is the cemetery, beyond it? Is the cemetery outside the corporate limits, or inside? A. Outside.

Q. (By the Court.) Outside? A. Yes, close to it; it runs right up to the line of the borough, I remember that.

William C. Everitt, sworn.
Direct Examination, by Mr. Pearse.

Q. Mr. Everitt, you were served with a subpoena duces tecum to produce a deed made by Edward F. Roberts to W. C. Perrine and Edward Everitt, dated 11th day of April, 1877, and recorded in Book 166, page 23. Have you got that deed?

A. Mr. Strong has the deed.

Mr. Strong: I have the deed.

Mr. Pearse: I offer this deed in evidence.

The Court: Original deed?

Mr. Pearse: Yes, sir.

The Court: Admitted.

Mr. Pearse: It is made by Edward F. Roberts, sheriff, to Ward C. Perrine and Edward Everitt, and is dated 11th of April, 1877, and was recorded in the Clerk's office in Book 166, page 23, and conveys, amongst other properties, Block No. 41 on the map of John Perrine, consisting of forty-four lots.

Q. Now, Mr. Everitt, the Abram Everitt mentioned in that deed was your grandfather?

A. My grandfather.

Q. And he died and left a will, did he not?

A. He did.

Mr. Pearse: I offer in evidence certified copy of the last will and testament of Abram Everitt. This will was dated the 18th of November, 1878, and was probated in the Middlesex County Surrogate's office on the 3d day of January, 1879.

Marked Exhibit C 6.

Q. The wife Annie mentioned in that will was your grandmother, was she not? *A.* She was.

Q. And is she dead now? *A.* She is dead.

Q. The George L. Everitt mentioned in the will is dead? *A.* He is dead.

Q. He was your father? *A.* He was my father.

Q. Is your mother dead? *A.* My mother?

Q. Yes. A. Yes, sir.

Mr. Pearse: And I offer in evidence certified copy of the last will and testament of George L. Everitt, that is the father of this witness, and one of the devisees under Abraham's will, which is dated the 4th day of August, 1900, and was probated in the Surrogate's office of Middlesex County 27th day of November, 1900.

Marked Exhibit C 7.

Q. Now, John R. Everitt mentioned in that will is alive, is he not? A. He is.

Q. And one of the defendants in this case. Now, Mr. Everitt, the real estate of your grandfather Abram Everitt was partitioned, was it not?

A. I don't know anything about it.

Q. You were served with a subpoena duces tecum to produce a deed made by Benjamin F. Howell and others to George L. and John R. Everitt, dated September 19, 1885.

Mr. Strong: I have it here, and produce it. It is an original, this is.

Mr. Pearse: I offer this deed in evidence. It is dated 19th day of September, 1885, and is made by Andrew J. Disbrow and others, commissioners, to sell the real estate of Abram Everitt, deceased, to George L. Everitt and John R. Everitt, and this deed was acknowledged and recorded in the Clerk's office of Middlesex County, September 13, 1894, Book 270, page 347.

The Court: Your theory is the applicants here only owned a quarter, but that the commissioners purported to convey a half?

Mr. Pearse: Yes.

Marked Exhibit C 8.

Q. Mr. Everitt, you say your mother is dead?

A. My mother is dead.

Q. The wife of George L. Everitt? A. Yes, sir.

Q. Almeda Everitt was her name, was it not?

A. Yes, sir.

Q. And you are married? A. I am.

Q. And what is your wife's name?

A. My wife's name is Helen.

Q. Helen Everitt. And your brother Abram Everitt is married? A. Yes, sir.

Q. And what is his wife's name? A. Margaret.

Mr. Pearse: They are also parties defendant.

John E. Montgomery, sworn.

Direct Examination, by Mr. Pearse.

Q. You reside in South Amboy? A. Yes, sir.

Q. And you are the executor under the last will and testament of Ward C. Perrine, are you not? A. I am.

Q. He was a party to this suit before his death?

A. Yes, sir.

The Court: Been substituted since the suit was commenced?

Mr. Pearse: Yes, sir.

Q. When did Mr. Perrine die?

A. August 4th, this year.

Mr. Pearse: I offer in evidence certified copy of his last will and testament, dated the 13th day of August, 1890, with a codicil attached which bears date the 17th day of September, 1896, both of which are proven before the Surrogate of Middlesex County on the 15th day of August, 1906.

Marked Exhibit C 9.

Q. Were you acquainted with Abijah C. Mount, one of the devisees? A. Yes, sir.

Q. He is dead, is he not? A. Yes, sir.

Q. He died before Mr. Perrine? A. Yes, sir.

Q. And Mary Elizabeth Mount, another of the devisees mentioned in this will, she is alive, isn't she?

A. Yes, sir.

Q. And resides in South Amboy? *A.* Yes, sir.

Q. And Lydia P. Robertson?

A. She resides in South Amboy.

Q. And her husband's name is?

A. R. Stewart Robertson.

Q. And George W. Mount, he lives where?

A. Out in the country near Sergeantsville, Hunterdon county.

Q. And Mott W. Johnson?

A. They live in the same place.

Q. And George W. is married, is he not?

A. Mary M. Mounty, Mary Matilla I think it is.

Q. And what is the name of Mrs. Johnson's husband? *A.* Jeremiah.

Mr. Pearse: That is all. Now, if the Court please, before Mr. Strong cross examines, you made an order substituting these parties, and the provision was that the order should be mailed or served on the solicitor of the parties and he should enter appearance of whoever should be employed as solicitor, and I understood from Mr. Montgomery, with whom I am personally acquainted, that Mr. Strong was the representative of these parties, I have communicated with him and told him that the suit was on foot, and I would like to ask Mr. Strong if he does represent them now?

Mr. Strong: I do represent them now.

The Court: Then these new parties are all represented here by Mr. Strong.

Mr. Strong: I represent them.

The Court: Let that be entered on the record.

Mr. Pearse: If the Court please, I think that straightens out the title on both sides.

Mr. Strong has shown me deed made by John R. Everitt and wife to George L. Everitt that was made in 1899; I have never seen it, and did not know that it was on record, and it conveys the interest of John R. Everitt in the premises in this suit to George L. Everitt, who is the father of the two defendants, before his

death, and that would cut out John R. Everitt's interest in the lands.

The Court: And all the persons whom you have made parties.

Mr. Pearse: No; he is alive. This deed is dated 9th day of December, 1899, made by John R. Everitt and wife to George L. Everitt, conveys, amongst others, lots 1, 2, 3, 4 and others composing Block No. 41, and is recorded 16th of December, 1899, in Book 312, page 141.

Marked Exhibit C 11.

Mr. Pearse: I also offer in evidence the deed dated the 19th day of September, 1885, made by Andrew J. Disbrow and others, commissioners, to sell the real estate of Abram Everitt, deceased, to Ward C. Perrine, and it conveys twenty-two lots on Block No. 41, lot 16 to 37, and is duly acknowledged and recorded in the Clerk's office of Middlesex County in Book 205, pages 483, &c., and the date of record is November 4, 1885.

Marked Exhibit C 12.

The Court: Does that cover this same land?

Mr. Pearse: It covers part of it, not all of it. That straightens out the title, according to our contention, and I would like, if the Court please, leave to submit copy of that map. And also I would like to show, if it becomes necessary, I would like permission to show whether or not these premises can be actually divided between the parties.

The Court: There are too many parties here, aren't there?

Mr. Pearse: Yes; but I understand they ought to have some testimony, unless the Court can decide it on that.

The Court: Now, Mr. Strong.

(Mr. Strong's opening.)

Alan H. Strong, sworn.

I was one of the counsel for the plaintiff in a suit in the Middlesex County Circuit Court brought in 1884 by Mary J. Roll, plaintiff, against Adam Rea, in ejectment, to recover possession of two lots in a block known as 39 upon the map of South Amboy, made by John Perrine. The case was tried twice. On the first trial Justice Scudder directed a verdict for the defendant.

The Court: Is that anything more than we find in the report of the case.

Mr. Pearse: What has that to do with this case?

Mr. Strong: It has something to do with it. A rule to show cause was granted and certified by Justice Scudder to the Supreme Court and argued there, and the verdict was set aside and a new trial was granted. I have here in my hand a copy of the printed book which was used on the argument of that rule to show cause. The case then came back for a retrial and was submitted to the jury, who found a verdict in favor of the defendant, upon which judgment was entered and a writ of error was taken by Albert Roll, the husband, and the heirs at law. The plaintiff in the suit, the original plaintiff, having by that time died, a writ of error was taken by her husband and heirs to the Court of Errors and Appeals, and it was there argued and affirmed. I have here also a copy of the printed book used in the Court of Errors and Appeals upon that argument. Both these printed books were prepared by me as counsel in the case, and I was present throughout each of the trials as representing the plaintiff, one of the counsel for the plaintiff upon each of those trials. This paper book, manuscript book which I now produce was used in evidence as taking the place of the original book, which was in the possession of Alexander I. Cotheal, and which he, being a resident of New York, refused to allow to go out of his possession, and which could not be produced at the trial. There was also used in evidence upon each of the trials this copy of the trustees' account as well as the settlement with the share-

holders in 1835 in place of the original document, which also was in possession of Mr. Cotheal, and which could not be produced at the trial.

The Court: Was that by consent or by order of the Court?

Mr. Strong: It was by consent.

The Court: Well, the defendants produced it, didn't they?

Mr. Strong: No; the plaintiff—the defendants produced it, and by the consent of the counsel for the plaintiff, as well as the counsel for the defendant, these copies were used in place of the originals, which it was found impossible to produce.

The Court: You consented to that?

Mr. Strong: Yes, sir.

The Court: The question was not raised whether it would be competent evidence if you had not consented?

Mr. Strong: No, it was not, no. Now, there was also used, by like consent, this copy of a paper signed by Mary Jane Roll, Albert Roll, Sarah E. Dey and Matthew R. Dey at the time of receiving the conveyance from Cotheal in April, 1874. It was stated by Mrs. Roll in one of the trials, and by Mr. Roll, I think, too, that they had signed a paper, of which this was a copy, at the time of receiving their deed, and I think it will appear by an examination of these books that Mrs. Roll admitted the execution of that paper, paper of which this is a copy. There was also produced in evidence at that time on those trials a lithographed map which had been received from Mr. Cotheal, and which I also have here.

The Court: That is copy of the map that was on file, was it?

Mr. Srong: This is copy of the map by which the sales were made. It corresponds, as far as I have observed, and as I believe, with the map made by John Perrine and filed in the Middlesex County Clerk's office, but this does not purport to be the Perrine map.

The Court: That the map of 1835?

Mr. Strong: Yes; this map was made in 1835.

The Court: It is certified to be something.

Mr. Strong: This is certified by the commissioner who took the deposition, who made certificate here under seal—that is what your Honor sees—but this map was made in 1835 by Roswell Groves, Jr., City Surveyor, New York, May, 1835.

The Court: What is the name of the surveyor who made the map filed in the Middlesex County office?

Mr. Strong: John Perrine. This is the map by which the sales were made.

The Court: As you understand?

Mr. Strong: As I understand it. Well, Cotheal's testimony shows it. And upon this map—there were numbers of them of course—upon this map the trustees, or one of them, at the time of making the sale wrote the name of each purchaser.

The Court: As you understand?

Mr. Pearse: Mr. Strong is testifying for himself now. I can't see how he testifies to facts of this kind.

The Court: He is only stating what purports to be on the map, and I don't think you better put that in.

Mr. Strong: Very well. I don't want to go beyond what your Honor may consider proper. And this map, at any rate, was produced and admitted in both those trials to be one of the maps by which these sales were made.

Q. (By the Court.) From whom was it procured?

A. It was procured from Mr. Cotheal.

Q. (By the Court.) By you or the other side?

A. By the other side.

Q. (By the Court.) In your presence? *A.* No.

Mr. Pearse: Then it is hearsay.

The Court: Who took the testimony.

A. The testimony over there was taken by Mr. Beekman, but there is a gentleman here who can make better proof of that than I can give, who was present at the taking of the testimony.

Mr. Pearse: It strikes me that that ought to be stricken out.

The Court: There is a part of what Mr. Strong has testified to which was palpable, and appears was not from his personal knowledge. It was giving a little history and description, it was descriptive, would have no effect upon my mind more than it ought to, and I cannot think it will on the mind of the Court of Errors and Appeals.

Mr. Strong: I believe that is substantially all I have to say, Mr. Pearse, if you have any questions.

Cross Examination, by Mr. Pearse.

Q. You testified, Mr. Strong, as to the reasons why you couldn't get possession of the original book at the time of that trial?

The Court: He did not. It was the other side was getting possession of that; it wasn't his interest to get possession.

Q. Yes. All you know about that is simply what you heard from the others, isn't it?

A. I know what course was pursued at the trial.

Q. But you don't know anything about any conversations, you were not present at any conversations with Mr. Cotheal?

The Court: Wasn't present at the taking of Mr. Cotheal's testimony?

A. No.

Q. At which he refused to give over this book?

A. That is true.

Q. So all you know about it is simply what you heard?

The Court: The books came in by consent, he says.

Mr. Pearse: If the Court please, he said he couldn't get the court because Mr. Cotheal—

The Court: That is argument. He was stating

what the situation was and stating as he thought a legal reason why the copies should be used instead of the original.

Mr. Pearse: In that case?

The Court: In that case; yes.

Mr. Pearse: I would like to make further objection to this paper. I understand that the purpose of this paper, part of the proof that deed was delivered to a man by the name of Peter G. Taylor. I also object to this, because it simply states a certain deed was dated 17th day of June, 1835, and there is nothing to show by this paper that that deed was ever delivered.

The Court: Mr. Cotheal may have sworn, I suppose he did, to the suit to which Mr. Strong has testified, that he did execute and deliver, or that there was a deed executed and delivered to the grantors of the defendants which was lost, something like that. There is no proof here of that. I shall not rule out the evidence. I have made my remarks on what I think about it somewhat already.

John E. Montgomery, recalled.

Direct Examination, by Mr. Strong.

Q. Mr. Montgomery, do you remember the case of Roll vs. Rae which was tried in the Middlesex Circuit Court? *A.* I do; yes, sir.

Q. Some twenty years ago? *A.* Yes, sir.

Q. Had you any interest or connection with that case? *A.* Well, I sold the property in that suit to Adam Rae.

Q. By warranty deed?

A. By warranty deed; yes, sir.

Q. And in the defense of that suit on the part of Rae did you take any part? *A.* Yes, I took part.

The Court: Naturally, if he had any pecuniary responsibility. As a plaintiff he had.

A. Yes, I did.

Q. How was it as to Mr. Ward C. Perrine? Was he interested in the outcome of the suit?

A. Yes, he was interested in it; I think that he conveyed by tax title to R. B. Dayton, and R. B. Dayton to myself, and I to Adam Rae, and of course I was interested. The way he was interested. He had a little more money and representing us poor people around South Amboy, that is the way he was interested.

Q. Mr. Perrine had originally owned or claimed to own the entire block 39?

The Court: What has that got to do with this now?

Mr. Strong: I think it may be important as affecting the admissibility of some of the evidence to show that Mr. Perrine, who is represented here on one side, was practically a party to that suit, defending it.

The Court: He was defending it not on account of the property here involved but on account of the other property.

Mr. Strong: As retaining an interest in that same block of land, 39, he was interested to defend the title to these two lots which were directly in question, and he did not in fact assist in defence,—my object being to show that this litigation involved practically the same parties that are now before your Honor in this case. On the other hand are the Rolls, who are the repesentatives of the plaintiff in that case, and on the other side are the representatives of one Perrine, who though not a party on the record, was concerned in the case.

Q. Mr. Perrine had claimed to own the entire Block 39, had he? *A.* No, sir, only a part; I don't know how many lots he owned in there, quite a number, I don't know how many he did own; not all of it, but part of it.

Q. And at the time of the Roll and Rae case he had a remaining interest in other land? *A.* Yes, sir.

Objected to as being immaterial.

Q. Now, did you have anything to do, or were you present—strike out "have anything to do"—were you present at the taking of the testimony—

The Court: Who are you talking about, Abram Everitt?

Mr. Strong: Ward Perrine.

Q. Were you present at the taking of testimony of Alexander Cotheal? *A.* I was; yes, sir.

Objected to as being immaterial in this case.

The Court: I don't see any objection to that; go on.

Q. And where was it taken? *A.* It was taken in his house; it was taken in his residence, I think 62 West 36th street.

Q. In New York City? *A.* Yes, sir.

Q. Do you remember about when it was?

A. The records show; I forget the exact date; I can't tell.

Q. This was along in the year 1886?

A. 1885 or 1886, somewhere about that time, this suit was going on.

Q. Did you hear him testify? *A.* Yes, sir.

Q. And did you see the documents which were produced at that time? *A.* Yes, sir; had them in my possession, handled them and looked at them, read them over.

Q. Did you see a book of sales produced by him?

A. I did; yes, sir; had it in my possession.

Q. And an account of sales?

A. Account of sales, had it in my possession.

Q. And did you see the original paper purporting to have been signed by Mary J. Roll and her husband and Mrs. Dey and her husband? *A.* I did; yes, sir.

Q. Now, what, if anything, was said in your presence by Mr. Cotheal as to allowing those papers to be produced in New Brunswick at the trial?

Objected to as being immaterial.

The Court: That is pretty tight; you are crowding my rule pretty well, Mr. Strong. Here is a statement; if he swore to it, you have got his evidence, I suppose, printed.

Mr. Strong: Yes.

The Court: But what he said about letting them go out of his possession was on that day and on that occasion. He is dead, as you say. How can I take that as proof that you could not produce the original?

Mr. Strong: I am showing the course that was adopted at the trial, and why it was adopted.

The Court: I understand; that is all right. I presume he wouldn't let them go out of his hands; you can prove that; but as I understand you, you consented to the use of those copies on the trial before the question was raised at all in the courts; there was no decision on it.

Mr. Strong: But my understanding is they were admissible anyway.

The Court: You may prove it; but, Mr. Strong, I want it distinctly understood I am not ready to say how it affects, cannot at this moment see how it affects this case. Proceed. It goes without saying, you could not compel him to do it; that is all there is about it. The Court knows there is no process in the State of New Jersey which will compel a man who has got papers out of the State of New Jersey to bring them here. That is one of the disadvantages of what may be called the States Rights doctrine, general in its application. I think there ought to be an amendment to the constitution allowing a court in its discretion to order—State court—a witness to come from San Francisco and bring papers. It is a great drag on the administration of justice.

Mr. Strong: Well, now, may I have the question answered?

Q. What did he say about allowing papers to go out of his possession?

Mr. Pearse: I have my objection?

The Court: Yes; your objection stands to the whole line of evidence. I have extreme doubt about it, but I am going to let it in, according to my usual practice.

Q. Just go on now. A. He said he wouldn't let it go out of his possession.

The Court: So you had copies made. Now how do you know they were correct copies?

Q. That is what we are getting to. What knowledge have you?

The Court: You didn't make the copies?

A. I examined it.

Q. (By the Court.) After it was made?

A. Yes, sir.

Q. (By the Court.) Compared it with the original?

A. Yes, sir; by the Hon. A. V. Schenck; he and I went over it word for word; in one instance I happened to neglect one thing and he checked me up.

Q. You and Mr. Schenck went out after the copies were made and compared them? A. Yes, sir; word for word. This is a copy of the deed book, true copy.

Q. (By the Court.) How long after the taking of testimony was that? A. How long after? I don't understand the question.

Q. (By the Court.) Took testimony over there and wouldn't let the papers come away? A. This was before the testimony, or about the same time.

Q. (By the Court.) Oh, you learned before that that he wouldn't let the originals come out then, eh?

A. Yes; he told me himself; I went to see him.

Q. (By the Court.) That was before you were examined as a witness? A. Yes, sir; when this suit came up I found him out at Tarrytown.

Q. (By the Court.) Well, I want to understand. You went to see him before he was sworn?

A. Yes, sir.

Q. (By the Court.) Then got these copies made?

A. Yes, sir.

Q. (By the Court.) And then you had them already when you went there to take his testimony?

A. Yes, we compared the book.

Q. Did you or not carefully compare the copy of the book? *A.* I did; yes, sir.

Q. And did you in like manner compare the copy of the account? *A.* I did; yes, sir.

Q. (By the Court.) Your attention was called then entirely to the deed made to this woman, to Rae?

A. The fact the whole town, not only one, but everybody was implicated in it.

Q. (By the Court.) I understand. But that was a suit against Mrs. Rae? *A.* Certainly.

Q. (By the Court.) And what you were looking after was deed made to Rae?

A. Yes; not only that, but there were other people affected in the town; I looked for the whole business; this deed and title that Roll and Dey had.

Q. Did you compare the entire book?

A. I did; yes, sir.

Q. And did you compare the entire account?

A. I did.

Q. And did you compare the paper alleged to have been signed by Roll and Dey?

A. I did; this paper here; I did; yes, sir.

Q. Were those three papers before you, copies, correct copies of the three documents respectively?

A. They are.

Q. That is of the sales book, the copy of the account, and of the paper executed by Roll and Dey?

A. Yes, sir.

Q. You swear to that, do you? *A.* I do; yes, sir.

Q. From personal knowledge? *A.* Yes, sir.

No cross examination.

The Court: What do you want to have offered in evidence? Just have them all distinctly stated.

Mr. Strong: I offer copy of the sales book.

The Court: Copy of the sales book, marking of which is waived. Copy of the account of sales.

Mr. Strong: And copy of the paper signed by the Rolls and Deys.

The Court: I don't know about that. What have you got to say to that? How do you know that was Mary J. Roll's handwriting? You don't know anything about it.

A. It is a copy; they swore to that.

Q. (By the Court.) Do you know her handwriting?

A. No, I don't know that; that is copy.

Q. (By the Court.) Did you know her handwriting in the original? *A.* No, not in the original.

The Court: I will allow it to come in, subject to that evidence; but I don't see how it can possibly be used.

Mr. Strong: She testified on the stand that she had signed that paper.

The Court: That is another thing. Then you don't need the paper.

Mr. Strong: Only to show what she signed, that is all.

The Court: That is your own client at that time.

Mr. Strong: She was at that time my client.

The Court: Schenck cornered her on that, eh?

Mr. Strong: Yes, sir.

Witness: Cornered her on the whole thing.

The Court: Those are all admitted. What else do you want to offer, those records?

Mr. Strong: Yes, those books; they are books which were used upon the application.

The Court: I don't know about that. The evidence of Mary J. Roll may be competent there. You claim under Mary J. Roll, don't you, Pearse?

Mr. Pearse: Yes, sir.

The Court: Her evidence may be competent,—

and the decisions of the law court are found there as far as they go, and not found in the record of the—but I am unable to say how they can be evidence. However, subject to your objection, subject to the objection of Mr. Pearse, I will admit them at present, without examining the contents to see how far they are relevant to prove anything beyond the original record of the evidence. I suppose Mr. Pearse won't require Mr. Strong to produce from Trenton the original cases.

Mr. Pearse: No, sir.

The Court: Of which these are printed. Then your objection is not based on the idea that they are mere printed books, but on the ground that the original from which they are printed, the original record, won't be evidence. I will admit them for what they are worth at present, without examining them to see how far they can possibly have any bearing on this case.

Q. Do you know anything about that lithographed map that is now shown you? *A.* I do; yes, sir.

Q. What about it? *A.* I know it was produced there as evidence, and he said it was a true copy.

Q. (By the Court.) He produced it?

A. Yes, he produced it.

Q. Cotheal produced it?

A. Cotheal himself; yes, sir.

The Court: The defendant now in this case I suppose procured all these papers from the counsel —from the defendant in the other case?

Mr. Strong: I did. We should have stated that, I suppose.

A. Wouldn't have known anything about it if I hadn't told him.

The Court: That ought to be shown to have come from the proper source.

Mr. Strong: Yes; I omitted that.

Q. That identical map was produced by Mr. Cotheal?

A. It was; yes.

Q. (By the Court.) In the same condition it is now?

A. Yes, sir.

Q. (By the Court.) The same marks on it?

A. Yes, sir; the same marks.

Q. And do you know what was done with these documents, I mean what was done with this map and these copies? *A.* Mr. Cotheal allowed you to take the map, gave us the map.

Q. Gave you the map? *A.* Yes, sir.

Q. And were these used in evidence on the trial in the case of Roll vs. Rea in New Brunswick?

A. They were.

Q. And were in possession of Mr. Schenck as counsel for Rae, the defendant? *A.* Yes, sir.

Mr. Strong: Now I offer this lithographed map also.

The Court: I admit it, subject to the same objection.

Mr. Pearse: I make the same objection.

No cross examination.

Alan H. Strong, resumed.

I will supplement my former testimony. I obtained these—

The Court: The papers you have just put in evidence as put in evidence by the defense in the case of Roll vs. Rae?

Mr. Strong: Yes, these papers, three copies and lithographed map I have just offered I obtained from Mr. Warren R. Schenck, who is the son of Mr. Abram V. Schenck, who was counsel for the defendant in that case, and had him hunt them up, which he did in my presence from among his father's papers, and he allowed me to take them, with the promise I would see they were returned. Mr. A. V. Schenck is now dead.

The Court: Yes; the Court takes notice of that.

W. C. Everitt, recalled for the defense.

Direct Examination, by Mr. Strong.

Q. Do you know of any timber being cut on this block 41, or any part of it, by your uncle? *A.* I do.

Q. Your uncle John R. Everitt I mean?

A. John R. Everitt; yes, sir.

Q. When was that done, do you know?

A. There was timber cut off of there in—this is 1906—there was timber cut off there last year, 1905, to my knowledge.

Q. And do you know about previously? *A.* No.

Q. Was there any fencing done on this lot by your uncle? *A.* Yes, sir.

Q. Tell us about that. *A.* He fenced a portion of his lots to keep a trolley from running across them.

Q. (By the Court.) When the trolley come across?

A. When the trolley come up the street; yes, sir.

Q. Which street did the trolley come up?

A. Pine avenue.

Q. (By the Court.) When was that?

A. That was last year.

Q. And just tell us what your uncle did,—what was done on this property? *A.* By putting the fence up?

Q. Yes, that is what I want to know. I want to know more about the fence.

A. Why, the trolley were going across him, and he just put a post and rail fence across there to stop them from going across him.

Q. Didn't fence it in, but put a fence—

A. Put a fence across it.

Q. (By the Court.) Didn't enclose anything?

A. Didn't enclose anything; no.

Q. How was this fence, along one street?

A. Right crosswise, not in the street, only on the lots.

Q. On the corner? *A.* On the corner.

Q. Was it on both sides of the corner, or one side only? *A.* One side only.

Q. On Pine avenue? *A.* Pine avenue; and also previous to that he put a fence to keep them from driving

across there, which came up from Pine avenue directly from the cemetery; they had a by-road that they used to use to go through there; he fenced that off and stopped the communication.

Q. (By the Court.) Put a fence across the old by-road? *A.* Yes, sir.

Q. Whereabouts was this fence?

A. That fence was up near the cemetery.

Q. (By the Court.) How many panels?

A. I don't know how many panels there was, but I know there was fencing there.

Q. (By the Court.) How long was it up there?

A. I don't know that; I couldn't tell you that, how long it was up there.

Q. Do you know it is there now?

A. I know the fence is there for the trolley still.

Q. (By the Court.) But the other one you put up, how long was that put up? *A.* I didn't put it up; this was John Everitt; I don't know how long it was there; I happened to see it.

Q. (By the Court.) Can't you tell how long it was there, whether it was five or ten years?

A. Oh, within five years.

Q. (By the Court.) Within five years?

A. Yes, sir.

Q. (By the Court.) That didn't enclose anything? It was a mere barrier to keep the people from driving over it? *A.* To keep the public from crossing there with wagons.

Q. Now on which end of the Block 41 was that done?

A. On the southerly end.

Q. On the southerly end? *A.* Yes, sir; southeast.

Q. And do you know anything about what was done on the other end? *A.* On the westerly end?

Q. No, the opposite end of that?

A. What was done?

Q. Yes. *A.* Nothing whatever, only the street was cutting through there.

Q. (By the Court.) What? They cut a street through there on the other end, that is, they opened one

of the streets? *A.* Opened street right through there on the corner.

Q. Do you remember about any cutting of timber on that end by Mr. Perrine? *A.* No, no.

Q. (By the Court.) How big was this timber that was cut? *A.* Big enough to make posts for fencing.

Q. (By the Court.) What kind of timber was it?

A. Chestnut.

Q. (By the Court.) How much of it was there?

A. How much chestnut?

Q. (By the Court.) How many trees was there?

A. Oh, I don't know; I don't know at all.

Q. (By the Court.) How long ago was that?

A. Why, there was fencing cut off there last year.

Q. (By the Court.) You don't recollect any earlier than that? *A.* Oh, yes; I seen him cut off fencing before that.

Q. (By the Court.) How long ago?

A. Previous to that three or four years.

Q. (By the Court.) Three or four years?

A. Yes, sir.

Q. What portion of the block was claimed by your uncle and by yourselves?

A. What portion of the block?

Mr. Pearse: I think that question is objectionable. I don't understand what he means by it.

Recess.

The Court: You can ask him this, whether they hold the property according to those deeds.

Mr. Strong: I didn't want to put a leading question, but that is the object of it.

The Court: You can answer the question. You hold according to the deeds that have been put in evidence here, do you?

A. Yes, sir.

Q. (By the Court.) How do you understand that those deeds apply? That is the question. Which end did you take, and which end did Perrine take?

A. We take the easterly end.

Q. (By the Court.) You took the easterly end?

A. Easterly end.

Q. And Ward Perrine took the other end?

A. Took the westerly end.

Q. Dividing the block equally? A. Equally.

Q. Now the end which the Everitts claim; some of those lots are claimed by John R. Everitt, your uncle, and some are claimed by yourself and brother, I understand? A. That is the idea; yes, sir.

Q. How are those divided?

The Court: There is no record of that here.

A. Yes, we have a deed for it.

The Court: I understand the deeds that have been put in show that the easterly end of this are taken by one and the westerly end by the other, the whole block; now there is no other division of that easterly and westerly end.

Mr. Strong: I understand there is.

A. Yes, there is a division between the easterly end.

Q. (By the Court.) The easterly end has been subdivided, eh? A. Yes, sir.

Q. That is, between your uncle John R. Everitt?

A. And my father.

Q. And your father's children? A. No; my father.

Q. It was in your father's lifetime?

A. In my father's lifetime.

Mr. Strong: The deed is here; it has been offered in evidence.

Q. And you and your brother claim the right of your father under that deed? A. Yes, sir.

Q. And John R. Everitt claims the remaining lots of that end of the lot? A. Yes, sir.

The Court: The first division was between Perrine and Everitt?

Mr. Strong: Yes.

Q. Do you know about any sand being taken off of

these lots of this property, or off of the street in front of it? *A.* Yes, sir.

Q. Tell me, do you know about that, or what was done about it by the Everitts? *A.* There was sand taken from there last fall, that is this fall a year, by a party and we tried to stop them by suit.

Q. Who did? *A.* My brother and I, and also—yes, my brother and I, that is all.

Q. (By the Court.) This is the north end?

A. This is the north end; yes, sir.

Q. That sand was taken from where, from the street or from the lots? *A.* Taken from the lots.

Q. (By the Court.) Not from the lines of the street?

A. No.

Q. Was it surveyed to find out where the lines of the street would come?

A. I understood at the time we had the case on that the street commissioner went over there and paced it off and said he would take it off the street, but he didn't make any survey whatever.

Q. (By the Court.) It was taken by the orders of the street commissioner? *A.* No; taken by nobody's orders; just wanted some sand to put on his sidewalk.

Q. What did you people do about it?

A. We had him arrested for taking sand.

Q. And did you cause him to stop it?

A. Yes, to stop it.

Mr. Strong: I don't care about the suit, but the fact that they exercised the right of stopping it, that is all, and they stopped it.

Cross Examination, by Mr. Pearse.

Q. You didn't stop it, as a matter of fact. Isn't that a fact, that I represented the defendants in that case, and you were beaten? *A.* We didn't stop it?

Q. You didn't stop it, did you? You didn't have him arrested. You brought suit against him to recover for the value of that sand? *A.* Yes, sir.

Q. And it was shown the sand was in the street, wasn't it? *A.* You showed it.

Q. I showed it to the satisfaction of the judge, didn't I? *A.* Yes, sir.

Q. And to the jury, too?

A. Of course you did to the jury.

Mr. Strong: Justice's court, was it?

Mr. Pearse: Justice's court.

Q. It was a jury of twelve men? *A.* All employed under the same man we had indicted.

Q. You say you had a division amongst your family with reference to this property. You have never done anything about taking possession of the property, have you?

The Court: He hasn't sworn that he has.

Q. No; I say you never took any possession of the property, did you? *A.* No more than pay taxes for it.

Q. And you say that these trees were cut off and fences that were put up were all within four or five years?

The Court: Three years he says.

Q. Yes. *A.* Yes, sir.

The Court: Barrier to stop people from going across the particular line.

Mr. Strong: That was the first.

The Court: First was one put up way down on the southwest end to keep people from driving across it, and another one was put up to prevent the trolley from going across it.

Re-Direct Examination, by Mr. Strong.

Q. Now, then, the fence that was put up to prevent the trolley from going across it, does that cover two sides of the corner? *A.* I don't understand what you mean by two sides.

Q. (By the Court.) Was there more than one fence put up to stop the trolley? *A.* Only one.

Q. Is that all one line or is it at right angles?

Mr. Pearse: Let him testify himself.

A. That is right angle, to keep them from going—

The Court: You mean right across—was there a bend on the fence?

A. No, there was no bend in the fence; there was a bend in the street.

Q. (By the Court.) I know. But could you stand at one end of the fence and look and see the other apparently in a straight line? *A.* Yes.

Q. (By the Court.) Or was the fence built like that (indicating)? *A.* No; fence was straight.

Q. Straight piece of fence? *A.* Yes, sir.

The Court: Across the line of the trolley, line that the trolley they thought was going to go.

Re-Cross Examination, by Mr. Pearse.

Q. As a matter of fact, it cuts off a portion of the street, the street that isn't opened?

A. I don't know where Portia street is.

Q. That is where the bend of the trolley is.

A. I don't know where Pertia street is.

Q. You don't know whether that fence is on the line of this property or line of some other property?

A. That fence is on John Everitt's property.

Q. How do you know?

A. That is what he claims.

Q. (By the Court.) You don't know where Pertia street is? *A.* I don't know, no.

Mr. Strong: That is on the south side of the whole block.

Mr. Pearse: Yes.

Q. (By the Court.) Do you know whether this trolley was going to run through Pertia street, or one side of it, or what? *A.* Going to run on Pine avenue.

Examined by the Court.

Q. This road you wanted to stop by putting up a fence, where was that in regard to Pertia street,—you say you biult a fence?

A. I didn't say that I built a fence.

Q. Somebody did? *A.* My uncle built a fence to keep them from driving across it, what we would call a blind road, what they did for years, and they still continue to, instead of going down the street.

Q. What street was that they ought to have gone down? *A.* They ought to have gone down Pine avenue instead of going across it.

Mr. Strong: There is a street running down this block known as Pertia street.

A. I know there is a street, but I don't know it as that name.

Q. You know it was laid out there? *A.* Yes, sir.

Q. Can you tell where it is?

A. I can tell where it is.

Q. Do people travel it? *A.* Yes, sir.

The Court: I understood the evidence was quite the other way.

Further Cross Examination, by Mr. Pearse.

Q. Do you mean to tell me that Pertia street between Pine avenue is laid out? *A.* Isn't it laid out where Mr. Pine lives? Is that Pertia street?

Q. (By the Court.) Is it laid out on the ground, he means, not is it laid out on the paper, between Pine avenue and street to the west, Felter street?

A. I don't know where Felter street is.

Q. Felter street is the street that runs parallel to Pine avenue and above it.

A. No, it isn't laid out there.

Q. This fence that you talk about, right there at this point, Pine avenue, a year or so ago the course of it was changed, wasn't it? *A.* I don't know that there was any

change to my knowledge; I don't know that it was ever changed.

Mr. Strong: Changed by whom?

Q. By the borough authorities. *A.* I don't know that.

Q. You know that it used to run straight up to the cemetery, don't you? *A.* I don't know that Pine avenue runs straight to the cemetery; I know there was a road runs to the cemetery, but I don't know that was Pine avenue.

Q. You know where it is now, don't you?

A. I do; yes.

Q. And you know that some relative of yours has a house on the corner of Pine avenue and Pertia street, hasn't he? *A.* Yes,—no, no.

Q. What is the name of the street?

A. Pine avenue his house is on.

Q. It is near Pertia street, isn't it? *A.* Oh, yes.

Q. Now the road turns right there, doesn't it?

A. Yes, sir.

Q. Forms a right angle? *A.* Yes, sir.

Q. And there is a short piece of road which runs up about two hundred feet, doesn't it? *A.* Yes, sir.

Q. And right at the junction where the next right angle comes, that is where your fence is, wasn't it?

A. There is where it was.

Q. (By the Court.) What has become of that fence?

A. I don't know.

Q. (By the Court.) Didn't stand long?

A. I don't know how long it did stand.

Q. And that was for the purpose of keeping people from making a straight line instead of going around the right angle turn? *A.* Yes, sir.

John E. Montgomery, recalled.
Direct Examination, by Mr. Strong.

Q. Do you know whether there was any timber cut off of the portion of these lots claimed by Mr. Perrine? *A.* Yes, there was.

Q. Do you know by whom? *A.* By himself.

Q. When? *A.* Well, perhaps ten years ago; about ten years ago I think, somewhere like that.

Q. Which end of the block was it?

A. On the south end, southwest end; in fact, he cut all the timber; there was quite a good deal of standing timber, chestnuts, he cut off for fence posts, built the fence.

Q. How much of the block did he cut off?

A. I suppose about one-half of it; I should think about one-half that he thought belonged to him.

Q. Do you know whether Alexander Cotheal is living or dead? *A.* He is dead.

Cross Examination, by Mr. Pearse.

Q. How do you know he is dead?

A. How do I know he is dead?

Q. Yes.

The Court: He was eighty-six years old at the time they examined him, he was ninety-some at the time of the funeral, and God knows he can't be alive now; he would be a hundred and something.

Q. Do you know how old he was? *A.* Do I know how old he was? He was eighty-one years old at the time of the trial.

Mr. Pearse: That is what Mr. Strong said, if the Court please.

The Court: What is the date of the trial?

Mr. Strong: The date of his examination was in 1886.

The Court: What did he say about his age there? It is competent evidence to prove his age.

A. Eighty-one, you will find it.

Q. (By the Court.) You heard him sworn?

A. Yes, sir.

Q. (By the Court.) Have you heard of his being dead? *A.* Yes, sir; saw it in the paper.

Q. (By the Court.) Saw it in the paper?

A. Yes, sir.

Q. (By the Court.) When? *A.* At the time he died; I think he was something like ninety when he died; I remember seeing it.

Mr. Pearse: If he was as old as that I don't think I will press my question any further.

Mr. Strong: Here it is at the very beginning: "Where do you reside, and what is your age?" "I reside 62 West 36th street, New York City, and I am eighty-one years of age." That was taken January, 1886.

Q. You say Mr. Perrine cut down those trees. Did he do it personally? *A.* No, he didn't do it personally; he had a man do it.

Q. Did you see it done? *A.* I saw the trees after they were cut down; I saw the posts.

Q. Did you see Mr. Perrine direct him to cut down the trees? *A.* Sure I did; he had his cutter to do it; he directed him to have it done.

Q. Did you see him give the directions? *A.* I think at that time I paid the man to cut them down; I was doing business for him; yes, I did, paid the man for doing the work.

Q. (By the Court.) As agent for Mr. Perrine?

A. I paid the man, know it was done.

Q. You say that was about ten years ago?

A. I think about ten years ago; I can't remember.

Q. May have been less than that?

A. No, it isn't less, I don't think; it isn't less than that.

Mr. Strong: We rest.

The Court: Anything in reply, any evidence?

Mr. Pearse: No, sir.

The Court: What I want to hear counsel for the defence upon is, first, whether the proof of the inability to procure this paper showing a conveyance has been sufficient; second, whether if it were proven the Court can infer that a conveyance was made to Mr. Perrine; third, whether if a conveyance were made it made any

difference. The question here, whether as in an ejectment an outstanding title under which either party claims is any defence to an action in partition. The next question I want to ask counsel is, whether this tax title—

Mr. Strong: By the way, that reminds me, I haven't put that deed in. I will ask to put it in.

The Court: All right; let me have it—whether that tax title can possibly be noticed by the Court here.

Mr. Strong: May I offer this at this point?

The Court: Certainly; have it marked, Mr. Stenographer, received in evidence (Exhibit D A).

Mr. Pearse: I would like to have an objection.

The Court: Certainly; you had an objection at the time looking at it; have all the objections you can possibly take to it.

Marked Exhibit D A.

The Court: Whether under the law governing titles made by sales for taxes the deed is good without any proof behind it. In the first place, whether it can possibly be valid when it appears that taxes were levied to John H. Clark in so many dollars, George A. so many dollars, and M. D. Powers so many dollars, without showing first that the taxes were levied on the lands here in question; and, second, without showing that the parties that the taxes were assessed against had the leased interest in the premises, and whether they can sell any lands that are not described in the warrant. Then it appears further by the deed that the warrant execution was signed by five men purporting to be, I suppose, the township committee of the township; one of them is Abram Everitt, and he with Perrine are the purchasers. I will ask the counsel to meet these matters.

Mr. Strong: Yes, sir; I will try to. I am not sure that I have all your Honor's queries in mind, but I think I will touch them before I get through perhaps.

Trustees' Account Sales and Settlement with the Shareholders, Nos. 1 and 2, October 8th and 13th, 1835.

[Copy from and compared with the original South Amboy lots.]

ACCOUNT NO. 1.

Sales of the South Amboy property in account with James P. Thomas and Alexander I. Cotheal, Trustees.

Dr. To cash paid the following, viz:	Dolls.	Cts.
D. Mersereau,	73	00
Expenses to South Amboy,	3	00
do.	20	46
do.	1	50
do.	2	00
do.	6	13
do.	2	00
do.	9	27
I. Bolton for ditching,	148	10
Expenses to New Brunswick,	8	38
do.	1	38
Advertising,	5	25
Miller & Co.,	137	75
Expenses,	5	00
do.	6	00
F. W. Lewis,	4	00
Franklin & Jenkins,	340	24
McCready & Still,	5	25
John Perrine, Jr.,	93	75
Tax for 1834-5,	9	50
do. 1835-6,	9	50
P. DeWitt's bill,	10	10
H. H. Felter's do.,	10	00
Wm, H. Lupp's bill,	54	69
Rosewell Graves, Jr.,	237	00
Pine & Van Antwerp's bill,	201	76
Geo. C. Thomas' do.,	20	00
Samuel Gordon's do.,	126	90
I. Parisen's do.,	18	62
Wm. H. Maxwell's do.,	150	00
Advertising,	10	00
Franklin & Jenkins,	25	00
Maps for filing,	40	00
Fowler's bill,	5	50

Cr. By cash received for the following, viz:	Dolls.	Cts.
One-half of Barkelew & Gordon's note,	500	00
Rapelyee & Purdy,	94	50
Stephen Hill's,	108	00
John D. Clute,	530	00
George B. Rapelyee,	470	40
John K. Goodman,	258	00
Edw. Cook,	118	80
Wm. Gracie,	108	00
Franklin & Jenkins, 12.00, 13.20, 21.00, 50,00, 10.50, 12.00,	118	70
B. Curtis,	138	60
Hartshorn,	36	00
Harrison,	138	60
Jos. Evans,	502	65
Jabesh Lovett,	74	70
Franklin & Jenkins, 15.40, 4.00, 15.40, 6.30, 63.85, 31.60,	136	55
Griffith,	118	80
B. Graham,	138	60
James Wilson, Jr.,	351	00
P. G. Taylor,	118	80
Franklin & Jenkins, 283.00, 13.20, 39.00, 13.20, 15.40,	363	80
Phineas Manning,	236	80
John Crothers,	244	80
Franklin & Jenkins, 27.20, 27.20,	54	40
do. (I. Nagle),	50	00
Wm. Timpson,	366	05
Franklin & Jenkins, 33.95, 14.35, 4.00,	52	30

John D. Clute (over payment by him),	80 00	James Leary,	139 65
(Corrected in account No. 2)		Ryder & Lewis for 40 load sand and freight,	40 00
Expenses to N. B. & Amboy, 2 trips,	10 00	George B. Rapelyee,	455 63
Balance of the account to be divided among the shareholders per memorandum below being $92.14 per share,	4,373 64	Franklin & Jenkins, 11.80, 37.70, 151.87,	201 37
	$6,265 60		$6,265 60

JAMES P. THOMAS,
ALEX. I. COTHEAL,
Trustees.

New York, Oct. 8, 1835.

Examined and found correct by

JOHN E. VAN ANTWERP,
GEORGE C. THOMAS,
Committee of the Shareholders for the examining of this account.

Balance brought down, dividend as follows, viz:

To H. & D. Cotheal,	18 shares,	$91.14 per share,		$1,640 49
Pine & Van Antwerp,	12 do.	"	"	1,093 66
George C. Thomas,	9 do.	"	"	820 24
Samuel Gordon,	3 do.	"	"	273 42
Butler & Graves,	6 do.	"	"	546 83
	48 shares,			$4,374 64

There still remains on hand the property of the company to be divided when collected, viz:

Deed to Wm. Powers, not yet taken up,		$56 00
do. C. I. Miller,	do. do.	162 00
do. C. I. Henshaw,	do. do.	135 00
do. Solomon Soher,	do. do.	108 00
Note drawn by Gault, Biglow & Co., endorsed by John H Smith, dated June 14, 1835, @ 6 mos. due Dec. 17, 1835,		2,623 41
Note drawn by V. Barkalew and Samuel Gordon, dated South Amboy, Sept 22, 1834. @ 6 mos. due March 25, 1835, for $1,000, on which there has been paid one-half, leaving the other half due with interest from March 25, 1835, five hundred dollars,		500 00

Note drawn by Wm. H. Messenger to his own order, dated Sept. 22, 1835, @ 30 days due Oct. 26, 1835,			195 33
Note drawn by James Auchincloss, Sept. 26, 1835, on demand,			339 30
Deed to Samuel Gordon,			798 00
do. George C. Thomas,		$300 00	
do. John W. Taylor del'd to G. C. Thomas,		100 00	
do. John W. Taylor del'd to G. C. Thomas,		100 00	
do. John Van Buskirk	do.	96 00	
			496 00
do. H. & D. Cotheal	do.	1,040 00	
do. John Lang del'd to H. & D. Cotheal,		245 00	
			1,285 00
do. John E. Van Antwerp	do.	1,276 00	
do. do.	do.	1,990 50	
do. do.	do.	788 00	
		$4,054 50	
do. Jacob Brantingham del'd to J. Van Antwerp,		360 50	
			4,415 00
do. Rosewell Graves, Jr.,		96 00	
do. do.		1,860 00	
		1,956 00	
do. Silas Butler,		557 50	
			2,513 50
Say thirteen thousand six hundred and twenty-six 54-100 dollars,			$13,626 54

New York, October 8, 1835. We certify that having examined the above account and compared the same with the vouchers, we do find the same to be correct and satisfactory except 50-100 dollars to be credited by the trustees in new account. The rents from 1st Nov., 1834, to 14th May, 1835, not accounted for to the company.

JNO. E. VAN ANTWERP,
GEO. C. THOMAS,
Committee for the examining of the Trustees' Account.

1st dividend,		91 14 per share.
2d do.		282 56
		373 70

ACCOUNT No. 2.

Sales of South Amboy property in account current with James P. Thomas and Alexander I. Cotheal, Trustees, since account No. 1, of October 8, 1835.

Dr.			Cr.	
To discount allowed to Mr. Butler on Gault, Biglow & Co.'s note,		170 51	By amount of tax for 1835-6 overcharged in acct. No. 1,	9 50
To balance divided among the shareholders as follows, being $282.56 1-3 per share for the 48 shares,		13,563 03	By cash from S. Soher,	81 00
			Franklin & J's recpt.,	27 00 108 00
SECOND DIVIDEND FINAL.			By cash of W. P. Powers deed from Franklin & Jenkins,	56 00
H. & D. Cotheal, 18 shares @ 282 56 1-3,	$5,086 13		By amount charged in acct. No. 1 as an overpayment to J. D. Clute, since found not to be so,	80 00
Pine & Van Antwerp, 12 shares @ 282.56 1-3,	3,390 76		By amts. charged to H. & D. Cotheal.	
Geo. C. Thomas, 9 shares @ 282 56 1-3,	2,543 07		Their own deed,	1,040 00
Samuel Gordon, 3 shares @ 282 56 1-3,	847 69		John Lang's	245 00
Butler & Graves, 6 shares @ 282 56 1-3,	1,695 38			1,285 00
			C. I. Henshaw's deed,	135 00
			W. H. Messenger's deed,	195 33
48 shares,	$13,563 03		Barkalew's Note, 500 00	
			Int. due on it, 17 50	
				517 50
				2,132 83
			By amts charged to Pine & Van Antwerp.	
			J. E. Van Antwerp's deed,	1,276 00
			J. E. Ban Antwerp's deed,	1,990 50
			J. E. Van Antwerp's deed,	788 00
				4,054 50

I. Brantingham's deed,	360 50	
		4,415 00
By amts. charged to G. C. Thomas.		
His own deed,	300 00	
John W. Taylor's deed,	100 00	
Jno. Van Buskirk's deed,	96 00	
	496 00	
John Miller's deed,	162 00	
James Auchincloss' note,	339 30	
		997 30
By deed charged to Sam'l Gordon,		798 00
By amt. charged to Butler & Graves.		
Graves' deed,	96 00	
do. do.	1,860 00	
Buttler's do.	557 50	
	2,513 50	
Gault, Biglow & Co.'s note,	2,623 41	
		5,136 91
	$13,733 54	$13,733 54

JAMES P. THOMAS,
ALEX. I. COTHEAL,
Trustees.

New York, October 12, 1835.

H. & D. COTHEAL—18 Shares.

Dr.		Cr.	
For their own deed,	1,040 00	By dividend No. 1,	1,640 49
John Lang's do.	245 00	By do. No. 2, final,	5,086 13
	1,582 00		
Wm. H. Messenger's deed,	195 33		
C. I. Henshaw's deed,	135 00		

Barkalow & Gordon's note,	500 00		
Interest due on it,	17 50		
		517 50	
		2,132 83	
Balance due J. C. & D. C. settled Oct. 13,		4,593 79	
		$6,726 62	$6,726 62

Trustees' accounts examined and found correct and satisfactory. Settlement acknowledged in full.

H. & D. COTHEAL.

New York, October 13, 1835.

DR. PINE & VAN ANTWERP—12 Shares. CR.

For I. E. Van Antwerp's deed,	1,276 00		By dividend No. 1,	1,093 66	
I. E. Van Antwerp's deed,	1,990 50		do. No. 2, final,	3,390 76	
I. E. Van Antwerp's deed,	78 00				4,484 42
		4,054 50	By their bill of expenses,		201 76
For J. Brantingham's deed,		360 50			
For cash in full,		271 18			
		$4,686 18			$4,686 18

Trustees' accounts examined and found correct and satisfactory. Settlement acknowledged in full.

PINE & VAN ANTWERP.

New York, October 13, 1835.

DR. GEORGE C. THOMAS—9 Shares. CR.

For his own deed,	300 00		By dividend No. 1,		820 24
John W. Taylor's deed,	100 00		do. No. 2, paid final,		2,543 07
John Van Buskirk's deed,	96 00		By his bill of expenses,		20 00
		496 00			
John Miller's deed,	162 00				
Jas. Auchincloss' note,	339 30				
		501 30			

Balance due G.C. Thomas,		2,386 01		
		$3,383 31		$3,383 31
	$820 24			
	20 00			
	840 24			
To cash paid him Oct. 10,	496 00			
		344 24		
	2,543 07			
To cash paid him Oct. 15, 1835,	501 30			
		2,041 77	Balance brought down,	$2,386 01

Trustees' accounts examined and found correct and satisfactory. Settlement acknowledged in full.

GEO. C. THOMAS.

New York, October 15, 1835.

SAMUEL GORDEN, Jr., ANN IMLAY and WILLIAM IMLAY, sole heirs of Sam'l Gorden, deceased—3 shares.

DR.			CR.
To amount of deed of Sam'l Gordon,	798 00	By dividend No. 1,	273 42
		do. No. 2, final,	847 69
			1,121 11
To amount of balance settled with Sam'l Gordon, April 8, 1836,	450 04	By his bill of expenses,	126 93
	$1,248 04		$1,248 04

Trustees accounts examined and found correct and satisfactory. Settlement acknowledged in full.

SAMUEL GORDON.

Ann Imlay, *by her Attorney.*

SAMUEL GORDON.

William Imlay, *by his Attorney.*

SAMUEL GORDON.

Witness present, L. Thickstun.

New York, April 8, 1836.

SILAS BUTLER and ROSEWELL GRAVES, Jr.,

6 Shares.

Dr.			Cr.	
To deed to Rosewell Graves,	96 00		By first dividend,	546 83
			By second and final dividend,	1,695 38
Deed to Rosewell Graves,	1,860 00			2,242, 21
	1,956 00		By discount on G. B. & Co. note,	170 51
Deed to S. Butler,	557 50			2,412 72
Gault, Biglow & Co., note,	2,623 41		By Graves' bill of surveying,	237 00
		5,136 91		2,649 72
			Bal. paid to the Trustees,	2,487 19
		$5,136 91		$5,136 91

Trustees' accounts examined and found correct and satisfactory and settlement acknowledged in full.

SILAS BUTLER,
ROSEWELL GRAVES, JR.

New York, October 13, 1835.

Balance as above,	2,487 19	Butler's check,	2,249 43
On account of their note to Samuel Gordon,	720 27	Graves' cash,	958 03
	$3,207 46		$3,207 46
		Settled by cash,	720 27
Note to Gordon,	1,275 00	Graves' note bearing int.,	300 00
Int. to Oct. 13, 1835,	45 27	Butler's do. do.	300 00
	$1,320 27		$1,320 27

State of New York,
City and County of New York, ss.

I hereby certify that I have compared the within documents with the original, and that these documents are true examined copies of the originals now in the possession of Alexander I. Cotheal, New York City.

CHARLES EDGAR MILLS,
[L.S.] *Commissioner for New Jersey in New York.*

Dated February 15, 1886.

Deed Book—Ledger Account of Purchasers and Memorandum of Deeds Given—Sale of Lots at South Amboy, 1835.

INDEX.

(These figures indicate the pages of the original book.)

JOHN E. VAN ANTWERP, City of Brooklyn.

All Block	2	13 lots	@	$12 00,	-	$156 00
"	8	20	"	8 00,	-	160 00
"	8	8	"	9 00,	-	72 00
"	9	52	"	9 00,	-	468 00
"	13	16	"	5 00,	-	80 00
"	15	12	"	7 00,	-	84 00

All Block	15	32	lots	@	$5 50	-	$176 00
"	15	8		"	10 00,	-	80 00
"	23	82		"	6 50,	-	533 00
"	27	8		"	6 00,	-	48 00
"	27	64		"	5 00,	-	320 00
"	25	8		"	4 00,	-	32 00
"	35	125		"	3 50,	-	437 00
"	37	70		"	3 50,	-	245 00
"	38	70		"	3 50,	-	245 00
"	44						
"	44 bis.	26		"	5 00,	-	130 00
"	43	44		"	3 50,	-	154 00
"	57	53		"	7 50,	-	397 50
"	58	47		"	3 50,	-	164 50
"	63	18		"	4 00,	-	72 00
							$4,054 50

Charge to PINE & VAN ANTWERP.

Amount as above,	4,054 50
Brantingham deceased,	360 50
	$4,415 00

JACOB BRANTINGHAM, New York.

Deed dated October 1, 1835, $360 50

All of Block 56.

Equivalent to about 7½ lots at $7, 52 50

N. Gorden St. S. A. & B. Turnpike or unknown owners.

Part of Block 4, westerly end.

N. Augusta st. E. lots 12 and 21. S. David st. W. Rosevelt st.—8 lots, Nos. 13 to 20 at $16, each 25x100, 128 00

N. Augusta st. E. Amboy Bay. S. David st. W. lots 9 and 24.—15 lots, 1 to 8 and 25 to 31 at $12, 180 00

Easterly part of Block 4, estimated at 15 lots, more or less.

	$360 50
Charged to Pine & Van Antwerp,	$360 50

HENRY COTHEAL and DAVID COTHEAL.

Part of Block No. 4.

8 lots, 21 to 24 and 9 to 12 at $33, 264 00

West part of Block No. 10.

24 lots at 8, 192 00

Part of Block No. 12.

32 lots, Nos. 18 to 33 and 50 to 65—16 at 6, and 16 at 17, 368 00

Part of Block No. 13.

18 lots, 9 to 17 and 68 to 74 at 12, 216 00

Total, 82 lots. Deeds on 1-35, $1040 00

Recorded in Middlesex County Clerk's office, March 12, 1836, in Book 2 of Deeds, pages 635 to 638.

October 10, 1835, settled with the Trustees of H. & D. C.

Amount as above,		1040 00
John Lang's deed,		245 00
		1285 00
I. Henshaw's deed,		130 00
W. H. Messenger's note,		195 33
Barkalew & Gorden's note,	$500 00	
Interest on it,	17 50	
		517 50
Charged to H. & D. Cotheal,		$2132 83

JOHN LANG, (originally purchased by H. & D. Cotheal.)

Date June 17, 1835.

70 lots, $245 00

Whole of Block 39.

Bounded by N. Augusta street. E. Stevens avenue. S. David street. W. Pine avenue. Dimensions 25 by 100 feet.

June 19, 1835. Rec'd John Lang's note this date for, $245 00

Charged to H. & D. Cotheal.

ROSEWELL GRAVES, JR.

Part of Block No. 8.

8 lots, Nos. 16 to 23 at 12, 96 00

Part of Block No. 10.

31 lots at 60, 1860 00

$1956 00

Commencing 300 feet from Broadway into the water, (excepting the premises owned by H. & D. Cotheal, with the privilege thereunto belonging).

Charged to BUTLER & GRAVES.

Graves deeds, 1956 00

Butler's deed, 557 50

2513 50

Gault, Biglow & Co.'s note, 2623 41

$5136 91

Discount allowed on note, $170 51.

SILAS BUTLER.

Deed dated Oct. 1, 1835.

38 lots, $95 00

All Block No. 60.

Equivalent to 38 lots of 25 by 100 feet. Bounded N. John street. E. Feiter's street. S. George street. W. lands of unknown owners.

All Block 29.

68 lots, 2½, 170 00

All Block 30.

70 lots, 2⅝, 183 75

All Block 61.

29 lots, 3¾, 108 75

Amount 3½, 95 00

$557 50

Charged to Butler & Graves.

SAMUEL GORDON, JR.

All of Block No. 21.

36 lots at 7,	252 00
36 lots at 6.50,	234 00
All of Block No. 22,	
Equivalent to 52 lots at 6,	312 00
	$798 00

JOHN W. TAYLOR.

Dated June 17, 1835.

For 20 lots, $100 00

Part of Block No. 126.

Each lot 25 by 100 feet, numbered 9 to 18, 63 to 72. Bounded N. David street. E. by the 8 lots which front on Broadway. S. Henry street. W. by 2 lots Nos. 19 and 62.

Sept. 7, 1835. Deed delivered to G. C. Thomas and amount charged to him, $100 00

JOHN VAN BUSKIRK.

Dated June 17, 1835.

16 lots, $96 00

Part of Block No. 12.

Lots No. 34 to 49. Dimensions 25 by 100 feet. Bounded N. John street. E. lots 39 and 50. S. George street. W. Broadway.

Sept. 18. Deed delivered to G. C. Thomas and charged to him, $96 00

GEORGE C. THOMAS.

Deed dated June 17, 1835.

For 58 lots, $300 00

22 lots constituting Block 7.

Bounded by N. Ferris street. E. Amboy Bay. S. Louisa street. W. Broadway.

36 lots part of Block No. 26.

Each 25 by 100 feet. Nos. 19 to 36 and 45 to 62. Bounded N. David street. E. by the 2 lots Nos. 18 and

63. S. Henry street. W. by the 8 lots fronting on Stevens avenue.

Sept. 7, 1835. Deed delivered to G. C. Thomas and amount charged to him, 300 00

John W. Taylor's deed, 100 00

Sept. 18. John Van Buskirk's deed, 96 00

$496 00

Settled by George C. Thomas, October 10, 1835.

GEORGE B. RAPELYE.

Deed dated October 1, 1835.

For 180 lots,							$607 50
All of Block 4 bis.	equivalent to	16	lots of	2500	ft. at	6,	96 00
E. half " 19	contg.	36	"	25x100		3,	108 00
W. part " 14	"	34	"	25x100		4,	136 00
W. " " 32	"	34	"	25x100		2¾,	93 50
All of " 51	equivalent to	8	"	2500		4,	32 00
" " 52	"	28	"	"		2½,	70 00
" " 53	"	24	"	"		3,	72 00
		180					$607 50

October 6, 1835. Received from Franklin & Jenkins receipt, No. 894, 151 87

Cash, 455 63

$607 50

JOHN MILLER.

Deed dated Oct. 1, 1835, $162 00

S. E. corner of Block 25.

4 lots, Nos. 5 to 8, each 25x100, 8, 32 00

All Block 28.

Equivalent to 26 lots of 2500 feet, 5, 130 00

$162 00

Deed delivered to George C. Thomas and charged to him, $162 00

SOLOMON SOHER.

Deed dated October 1, 1835, $108 00
Westerly half, Block 18.
36 lots, 25x100, at 3, $108 00
October 9, 1835. Received from Franklin & Jenkins receipt, No. 892, 27 00
Check, 81 00

$108 00

CHARLES I. HENSHAW.

Deed dated Oct. 1, 1835. $135 00
All Block No. 41 Bis.
Equivalent to 45 lots at 3, $135 00
Deed delivered to H. & D. Cotheal and charged to them, $135 00
Oct. 14. H. & D. Cotheal received from Henshaw cash, 101 25
Franklin & Jenkins, cash, 33 75

$135 00

W. P. POWERS.

Deed dated Oct. 1, 1835.
8 lots, East side, Block 26, at 7, $56 00
Oct. 8. Received check from Franklin & Jenkins and delivered to them, $56 00

JAMES AUCHINCLOSS.

Dated June 17, 1835.
For 114 lots, $377 00
All of Block No. 136.
Bounded N. John street. E. Stevens avenue. S. George street. W. Pine avenue. [70 lots.]
Whole Block No. 49.
Bounded N. David street. E. Pine avenue. S. Henry street. W. Felter's street. [44 lots.] In the whole 114 lots each 25 by 100 feet.
Sept. 26, 1835. Received from Franklin & Jenkins receipt, No. —, 37 50

Note this date on demand, 339 30

$377 00

WM. H. MESSENGER.

Deed dated June 17, 1835.

For 38 8-10 lots, $206 00

All Block No. 5.

Equivalent to 10 8-10 lots of 2500 sq. feet each. N. Portia street. E. Amboy Bay. S. Land of unknown owners. W. Broadway, with all the water privileges belonging.

Part of Block 25.

28 lots, each 25x100 feet, Nos. 23 to 36 and 45 to 58. N. Henry street. E. lots 22 and 59. S. John street. W. by the 8 lots on Stevens avenue.

Consideration, 206 00

Interest, 1 13

$207 13

Sept. 23, 1835. Received Franklin & Jenkins receipt, No. 527, 11 80

Note same date at 30 days, 195 33

$207 13

Note not paid at maturity and deed not delivered.

Copy of writing across the above mentioned deed after taking off the seals and erasing the names of the grantors, witnesses and commissioner.

This deed was made in furtherance of a contract for sale of the property mentioned herein; the purchase was never paid and consequently this deed has never been delivered and is void.

(Signed) ALEX. I. COTHEAL.

New York, April 16, 1874.

JAMES LEARY.

Deed dated June 7, 1835.

For 44 lots, $154 00

All of Block 45.

Bounded N. Lefferts street. E. Pine avenue. S. Catharine street. W. Felter's street. Each lot 25 by 100 feet.

Sept. 14, 1835. Received Franklin & Jenkins' receipt, No. 530,	14 35
Cash,	139 65
	$154 00

WILLIAM TIMPSON.

Deed dated June 17, 1835.

122 lots,	$560 00	
36 lots, part of Block No. 18, at 4.50,	162 00	

Nos. 1 to 22 and 59 to 72, each 25 by 100 feet, being easterly half of said block. Bounded N. Louisa street. E. Broadway. S. Portia. W. by lots 23 and 58.

All of Block No. 17.

Equivalent to 65 lots of 2500 ft. each, for the sum of	163 50

N. Portia. E. Broadway. S. lands of unknown owners. W. Stevens avenue.

All of Block No. 40.	
Equivalent to 21 lots of 2500 ft each at 3.50,	74 50
	$400 00

N. lands of R. R. Co. E. Stevens avenue. S. Augusta street. W. Pine avenue.

Consideration in the deed,	560 00
Deduct error in calculation,	160 00
	$400 00

Aug. 31, 1835. Received from Franklin & J. receipt, No. 525,	33 95
Cash,	366 05
	$400 00

Aug. 31, 1835. Consideration four hundred dollars instead of five hundred and sixty expressed in deed.

WM. TIMPSON.

JOHN CROTHERS.

Deed dated June 17, 1835.

32 lots, $272 00

Whole of Block No. 20.

Each lot 25 by 100 feet. Bounded N. Gordon stereet. E. Broadway. S. Ferris street. W. Tompkins Place.

July 15, 1835. Received Franklin & Jenkins' check, No. 518, 27 20

Cash, 244 80

$272 00

PHINEAS MANNING, original purchaser.

Deed made to Stephen Hills, Jr. Dated June 17, 1835, for 33 lots.

All of Block No. 16.

Equivalent in quantity to 33 lots of 2500 sq. feet each. Bounded N. RailRoad Co. Tract. E. Roosevelt street. S. Augusta street. W. Broadway.

$264 00

July 11, 1835. Received Franklin & Jenkins' receipt, No. 520, for 27 20

Cash, 236 80

$264 00

GEORGE GAULT.

Dated June 17, 1835.

73 lots, $2830 00

Whole Block No. 11.

Bounded N. George street. E. Roosevelt street. S. Amboy and Borden Turnpike. W. Broadway, together with the buildings erected on said lot.

July 9, 1835. Received Franklin & Jenkins' receipt, No. 680, 283 00

Gault, Biglow & Co.'s note, dated June 14, 1835, at 6 mos., endorsed by I. H. Smith, 2623 41

$2906 41

Consideration as above, 2830 00
6 mos.' interest on 9-10 of 2830, 76 41

$2906 41

PETER G. TAYLOR.

Deed dated June 17, 1835.

44 lots, $132 00
Whole Block No. 41.

Bounded N. Louisa street. E. Pine avenue. S. Portia street. W. Felters street. Each lot 25 by 100 feet.

July 9, 1835. Received Franklin & Jenkins' receipt, No. 521, 13 20
Cash, 118 80

$132 00

JAMES WILSON, JR.

Deed dated June 17, 1835.

$390 for 110 lots, viz:

40 lots in Block 14.

Nos. 1 to 24 and 59 to 74. Bounded N. David street. E. Roosevelt street. S. Henry street. W. lots 25 and 58.

70 lots comprising Block 31.

Bounded N. Ferris street. E. Stevens avenue. S. Louisa street. W. Pine avenue. All the lots 25 by 100 feet each.

July 6, 1835. Received Franklin & Jenkins' receipt, No. 593, for 39 00
Cash, 351 00

$390 00

BERNARD GRAHAM.

Dated June 17, 1835.

44 lots, $154 00
Whole Block No. 47.

Bounded N. John street. E. Pine street. S. George street. W. Felters street. Each lot 25 by 100 feet.

July 3. Received Franklin & Jenkins' receipt, No. 514, 15 40
Cash, 138 60

$154 00

FRANCIS GRIFFETH.

Dated June 11, 1835.

12 lots, $132 00

Whole of Block No. 6.

Being 12 lots, each 25 by 100 feet. Bounded N. Louisa street. E. Amboy Bay. S. Portia street. W. Broadway, with water right.

July 1, 1835. Received Franklin & Jenkins receipt, No. 516, for $13 20
Cash, 118 80

$132 00

JABESH LOVETT.

Deed dated June 17, 1835.

For 27 lots, $71 00

All of Block 62.

Equivalent to 27 lots of 2500 sq. feet each. N. David street. E. Felter's street. S. Henry street. W. lands of unknown owners.

Consideration as above, $71 00
Error, being too little, 10 00

$81 00

June 24, 1835. Received Franklin & Jenkins receipt, No. 531, for $6 30
Cash, 74 70

$81 00

JOSEPH EVANS.

Deed dated June 17, 1835.

72 lots, $568 25

7 lots all of Block No. 1.

N. John street. E. Amboy Bay. S. George street. W. Roosewell street.

8 lots in Block 12.

Fronting on Roosewell street, each lot 25 by 100 feet, Nos. 1 to 8. Bounded N. John street. E. Roosewell street. S. George street. W. lots 9 and 74.

8 lots in Block No. 13.

Fronting on Roosewell street. Nos. 1 to 8. N. Henry street. E. Roosewell. S. John street. W. lots 9 and 74.

22 lots in Block No. 15.

Each 25 by 100. Nos. 25 to 35 and 48 to 58. N. Augusta. E. lots 24 and 59. S. David street. W. lots 36 and 47.

All of Block No. 34.

Equivalent to 10 lots of 2500 feet. N. A. and B. Turnpike. E. Stevens avenue. S. Catharine. W. Turnpike and Catharine street.

All of Block 55.

Equivalent to 17 lots of 2500 feet. N. Gordon street. E. Felter's street. S. Ferris street. W. lands of unknown owners.

June 24, 1835. Error in amount of consideration,	$1 75
Received Franklin & Jenkins receipt, No. 524, for	63 85
Cash,	502 65
	$568 25

WILLIAM HARRISON.

Deed dated June 17, 1835.

44 lots,	$154 00

Whole Block No. 48.

Each lot 25 by 100 feet. Bounded N. Henry street. E. Pine avenue. S. John street. W. Felter's street.

June 23, 1835. Received Franklin & Jenkins receipt, No. 510, for	$15 40
Cash,	138 60
	$154 00

RICHARD T. HARTSHORN.

Deed dated June 17, 1835.

For 8 lots, $40 00

Part of Block 26.

Nos. 37 to 44. Bounded N. David street. E. lots 36 and 45. S. Henry street. W. Stevens avenue. Each lot 25 by 100 feet.

June 23, 1835. Received Franklin & Jenkins receipt, No. blank, $4 00

Cash, 36 00

$40 00

BENJAMIN CURTIS.

Deed dated June 17, 1835.

44 lots, $154 00

All of Block No. 50.

Bounded N. Augusta street. E. Pine avenue. S. David street. W. Felter's street. Each lot 25 by 100 feet.

June 23, 1835. Received Franklin & Jenkins receipt, No. 583, for $15 40

Cash, 138 60

$154 00

WILLIAM GRACIE.

Dated June 17, 1835.

16 lots, $120 00

Part of Block No. 13.

Lots No. 34 to 49. Each 25 by 100 feet. Bounded N. Henry street. E. by lots 33 and 50. S. John street. W. Broadway.

June 22, 1835. Received Franklin & Jenkins receipt, No. 532, $12 00

Cash, 108 00

$120 00

EDWARD COOK.

Deed dated June 17, 1835.

44 lots, $132 00

All of Block No. 46.

Bounded N. George street. E. Pine avenue. S. Leferts street. W. Felter's street. Each lot 25 by 100.

June 22, 1835. Received Franklin & Jenkins receipt, No. 511, for

$13 20
118 80
10

$132 00

JOHN K. GOODMAN.

Dated June 17, 1835.

80 lots, $258 00

Part of Block No. 32.

Lots No. 1 to 22 and 57 to 70. Bounded N. Gordon street. E. Stevens avenue. S. Ferris street. W. by lots 23 and 56.

36 lots. 20

All of Block No. 42.

Bounded N. Ferris street. S. Louisa street. E. Pine avenue. W. Felter's street. 44 lots. Each of the lots 25 by 50 feet.

June 19, 1835. Received cash, $258 00

GEORGE B. RAPELYE—originally sold to David I. Boyd.

Dated June 17, 1835.

For 70 lots, $210 00 30

Whole Block No. 33.

Bounded N. Catharine street. E. Stevens avenue. S. Gordon street. W. Pine avenue. Dimensions each lot 25 feet by 100, except the N. W. corner of said block cut off by the Turnpike.

One deed for 316 00

One do 210 00

$526 00

June 19, 1835. Deduction for corner cut off of block 33, 3 00
Franklin & Jenkins receipt, No. 529, for 21 00
do. do. 526, 31 60
Cash, 470 40

$526 00

GEORGE B. RAPELYE—originally sold to W. H. Maxwell.

Dated June 17, 1835.

For 77 lots, $316 00

Part of Block No. 12.

Lots No. 9 to 17 and 66 to 74—18 lots. Dimensions 25 front by 100 deep. Bounded N. John street. E. by the 8 lots and Roosewell street. S. George street. W. by lots 18 and 65. 18 lots.

Westerly half of Block No. 19.

Each lot 25 by 100. Bounded N. Ferris street. E. lots 59 and 22. S. Louisa street. W. Stevens avenue. 36 lots.

Whole Block No. 54.

23 lots. Bounded N. Ferris street. E. Felter's street. S. Louisa street. W. land of unknown owners. 23 lots.

N. B.—Block No. 54 is considered as 23 lots, let the dimensions be what they may.

JOHN D. CLUTE.

Dated June 17, 1835.

For 36 lots, $196 00

Whole Block No. 24.

Bounded N. on John street. E. Broadway. S. George street. W. Clinton Place. Dimensions each lot 25 front by 100 depth.

John D. Clute's deed for 36 lots, 196 00
I. I. de Figaniere's do 16 " 128 00
Theodore Grunenthal do. 32 " 256 00

$580 00

June 18, 1835. Received Franklin & Minturn's receipt, No. 522, for 50 00

Cash, 150 00

J. D. Clute's check, 380 00

530 00

$580 00

THEODORE GRUNENTHAL — original purchaser John D. Clute.

Dated June 17, 1835.

For 32 lots, 1835. $256 00

Part of Block 25.

Lots 1 to 4—4 lots; 9 to 22—14 lots; 59 to 72—14 lots. Bounded N. Henry street. E. Broadway and lot 25 of C. D. Sacket. S. John street. W. lots 23 and 58. Each lot 25 front and 100 feet deep.

Settled by John D. Clute.

JOAQUIN JOSE DE FIGANIERE—original purchaser John D. Clute. Commonly called Joaquin Cerar de Figaniere a Mora.

Dated June 17, 1835.

16 lots, $128 00

Block No. 13 in part.

Nos. 26 to 33—8 lots; 50 to 57—8 lots. 16 lots. Bounded S. on John street. W. by lots 34 and 49. N. Henry street. E. lots 25 and 58.

Settled by John Clute.

STEPHEN HILLS, Jr.

Dated June 17, 1835.

For 40 lots, $120 00

Whole Block No. 59.

Bounded N. George street. E. Felter's street. S. Leffert's street. W. land of unknown owners.

N. B.—The block is considered as 40 lots, the dimensions be what they may.

June 18, 1835. Received Franklin & Jenkins receipt, No. 508, for 12 00

Cash, 108 00

$120 00

GEORGE RAPELYE AND JOHN PURDY.

Dated June 17, 1835.

21 lots, $105 00

Whole of Block No. 3.

Bounded N. David street. E. Amboy Bay. S. Henry street. W. Roosewell street—together with all water rights.

June 18. Received Franklin & Jenkins receipt,

No. 559, for 10 50

Cash, 94 50

$105 00

FRANKLIN & JENKINS.

June 22, 1835. Received from them for their 6 receipts.

No. 532, 12 00

No. 511, 13 20

No. 529, 21 00

No. 522, 50 00

No. 559, 10 50

No. 508, 12 00

$118 70

June 26, 1835. Received for their 6 receipts, viz:

No. 583, 15 40

Blank, 4 00

No. 510, 15 40

No. 531, 6 30

No. 524, 63 85

No. 526, 31 60

$136 55

July 9, 1835. Received for their 5 receipts, viz:

No. 680, 283 00

No. 521, 13 20

No. 593, 39 00

No. 516, 13 20

No. 514, 15 40

$363 80

Aug. 5, 1835. Received for their 2 receipts, viz:

No. 518,	27 20	
No. 520,	27 20	
		$54 40

Aug. 7, 1835. Received for 1 receipt,

No. 517,	170 30	
Less amt. paid to J. Naib per Mr. Lockwood,	120 50	
		$50 00

Sept. 21, 1835. Received for their two receipts, viz: **10**

No. 525,	33 95	
No. 530,	14 35	
		$48 30

Sept. 21, 1835. Received for one, No. 519. $4 00

Oct. 6, 1835. For three receipts, viz:

Messenger, 527,	11 80	
Auchincloss,	37 70	
Rapelye,	151 87	
		$201 37 **20**

Oct. 9, 1835. Received for their receipt 892, $27 00

Oct. 8, 1835. Received for W. P. Powers' deed and receipt, $56 00

WHITEHEAD J. CORNELL.

Deed dated June 17, 1835.

12 lots, $192 00

Part of Block 14.

Lots Nos. 38 to 41. Each 25 by 100 feet. Constituting S. W. corner. Bounded N. by lot 42. E. by lot 37. **30** S. Henry street. W. Broadway—4 lots.

Part Block No. 26.

Lot Nos. 1 to 8. Bounded N. David street. E. Broadway. S. Henry street. W. lots 9 and 72. Each lot 25 by 100—8 lots.

Does not take his deed but agrees to forfeit his deposit money—which deposit money is credited by Pine & Van Antwerp in their bill of expense.

Lots sold over Sept. 30, 1835.

CLARENCE D. SACKETT.

Dated June 17, 1835.

4 lots, $76 00

Part of Block No. 25.

Lots Nos. 5 to 8 constituting S. E. corner of said block. Bounded N. by lot No. 4. E. Broadway. S. John street. W. lot No. 9. Each lot 25 by 100 feet.

Does not take his deed and lots sold over Sept. 30, 1835. De posit money to be returned to him by the auctioneers.

FRANKLIN W. LEWIS—Sale annulled.

Paid him $4 for his auctioneer's receipt, and received from Franklin & Jenkins $4 for the receipt.

Lots sold over Sept. 30, 1835.

JOHN NAGLE—Sale annulled.

Aug. 7, 1835. He delivered up his receipt of

F. & J. for 170 30

Cash paid in for change, 120 30

$50 consideration for annulling the sale, $50 00

Lots sold over Sept. 30, 1835.

State of New York,
City and County of New York, ss.

I hereby certify that I have compared the within and foregoing document with the original and that this document is a true examined copy of the original now in the possession of Alexander I. Cotheal in New York city.

[L. S. CHARLES EDGAR MILLS,
Commissioner for New Jersey in New York.

Dated February 15th, 1886.

We, Mary Jane Roll, Albert Roll, Sarah E. Dey and Matthew R. Dey, having made application to Alexander I. Cotheal to quit claim such interest as he may have in the South Amboy tract of land surveyed by John Perrine, Jr., in 1835, per map on file in the Clerk's Office, Middlesex County, New Jersey, without any request and without any representations of title or otherwise on the part of the said Cotheal; and furthermore, we having inspected the maps, records of sale and conveyances, and the accounts of the Trustees, James P. Thomas and Alexander I. Cotheal, and having satisfied ourselves in the matter, did agree to take from him a quit claim deed agreeable to a form submitted by us, and which quit claim deed dated 16th April, 1874, made to Mary Jane Roll and Sarah E. Dey, we hereby acknowledge to have received from him in New York, the 27th day of April, 1874, as well as the cancelled and viod trustees' deed of June 17, 1835, made to William H. Messinger.

MARY J. ROLL.
ALBERT ROLL.
SARAH E. DEY.
M. R. DEY.

Witness: M. M. ROBINSON.

EXHIBIT D. A.

This Indenture, made the fourth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, between John Disbrow, collector of the Township of South Amboy, in the County of Middlesex and State of New Jersey, of the First Part, and Ward C. Perrine and Abraham Everitt, of the same place aforesaid, of the Second Part: Whereas a certain warrant hath been put into the hands of said collector, as follows: "Middlesex County, ss. South Amboy Township and Sayreville. Whereas, it appears to the subscribers, the Township Committee of the Township of South Amboy and part now of Sayreville, that

one John H. Clark, one Milley D. Powers and George Leary, who reside out of this State, were duly assessed by the assessor of said township in the sum of Milley D. Powers for the year A. D. eighteen hundred and seventy-four for ninety-one dollars, credit by law seventy dollars, and for the year A. D. eighteen hundred and seventy-five one hundred and fifty-four dollars and fifty-six cents John H. Clark for four years ninety-one dollars and ten cents; George E. Leary fourteen dollars and ten cents, for their taxes for the years on account of lands, tenements and hereditaments of the said John H. Clark, Milley D. Powers and George Leary, situated in said township, which said lands, tenements and hereditaments whereby the said assessor description, and that the said assessment together with interest thereon and the costs and fees, have remained unpaid for the space of one year after the said tax was payable, you are therefore hereby commanded to make the said sum of the taxes aforesaid and interest thereon from and after the twentieth day of December, A. D. eighteen hundred and seventy-four, the cost and fees in relation to said assessment and the collection thereof together with all lawful fees for the execution hereof, of the lands, tenements and hereditaments as described as aforesaid, by selling the same or any part thereof as will be sufficient for that purpose for the shortest term for which any person or persons will agree to take the same and pay such taxes, interest, costs and fees, charges and expenses, and you are further commanded to pay the money raised by such sale to the said township committee of said township and make return of this warrant and your proceedings thereunder to said township committee according to the provisions of the statute in such case made and provided.

"Abrm. Everitt (L.S.)
"W. W. Cook (L.S.)
"I. B. Thompson (L.S.)
"B. F. Howell (L.S.)
"Neil McGonigle (L.S.)"

"Attest: T. L. Frazee, Clerk."

And whereas, the said John Disbrow having given notice of the time and place of the sale of the lands, tenements and real estate, in said warrant described by advertisements, signed by him and inserted in a newspaper printed and published in the county, where the said sale took place, for at least sixty days, once in each week, before the time appointed for such sale, and also set up for the same period in five of the most public places in said township, one of which was near the lands, tenements and hereditaments to be sold, did at the time and place in said advertisements set forth, that is to say, at the Inn of Josephine Clark in the township aforesaid, on the thirtieth day of June, one thousand eight hundred and seventy-seven, proceed to sell and strike off the following described part of said lands, tenements and hereditaments, viz: the lands, tenements and real estate of the said John H. Clark, being lots numbers one to forty-four inclusive (comprising forty-four lots) in block number forty-one (41), comprising the whole of the said Block number forty-one (41), and from one (inclusive) to lot number twenty-eight (inclusive) in block number forty-three, making in all seventy-two lots, as described and laid down on the map on file in the office of the block of Middlesex County, entitled a "Map of property situate in the town of South Amboy, Middlesex County, N. J., surveyed and protracted by John Perrine, Jr., surveyor, June, 1835," said lots being the least part of said lands sufficient for the purpose to make the tax, interest, costs, fees, charges and expenses aforesaid, and the above named Ward C. Perrine and Abraham Everitt having at said sale agreed to take the said lands, tenements and hereditaments, last above described, for the term of seventy-five years, and pay the said taxes assessed thereon, and the said interest, costs, fees, charges and expenses, and the same being the shortest term that any person or persons would take the said lands and premises, and pay the said tax, interest, costs, fees, expenses and charges, the same was then and

there publicly cried off and sold to them for the said term.

Now, this indenture witnesseth, that in consideration of the sum of one hundred and twenty-seven dollars and seventy-seven cents, the amount of said tax, interest, fees, costs, charges and expenses, as relates to said John H. Clark, to me paid by the said Ward C. Perrine and Abraham Everitt, I do hereby grant, bargain, sell and assign unto the said Ward C. Perrine and Abraham Everitt the aforesaid lands, tenements and hereditaments so sold to them as aforesaid, to have and to hold for the term of seventy-five years, purusuant to the statute in such case made and provided.

JOHN DISBROW (L.S.)
Collector.

Signed, sealed and delivered in the presence of
the word and together with the name Abraham Everitt on the first line of page fifth, interlined before execution.

CHAS. MORGAN.

State of New Jersey,
Middlesex County, ss.

Be it known, that on this fourth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, before me, one of the Masters in the Court of Chancery of New Jersey, personally appeared John Disbrow, who I am satisfied is the collector of the said Township of South Amboy, and is the grantor in the within deed of conveyance named; and I having first made known to him the contents thereof he did acknowledge that he signed, sealed and thereupon delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

CHARLES MORGAN,
M. C. C.

State of New Jersey,
Middlesex County, ss.

I, John Disbrow, Collector of the Township of South Amboy, in the County of Middlesex and State of New Jersey, do solemnly swear that the land and real estate described in this deed, made by me to Ward C. Perrine and Abraham Everitt, was by me sold by virtue of a good and subsisting tax warrant as is therein expressed and recited; that the money ordered to be made has not been, to my knowledge or belief, paid or satisfied; that the time and place of the sale of said land and real estate was by me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

JOHN DISBROW.

Sworn and subscribed before me this
4th day of June, A. D. 1877.

CHAS. MORGAN,
M. C. C.

OPINION.

PITNEY, V. C.

The complainants, on behalf of themselves and certain *cestui que trustents* who are made defendants but who are really in the same interest with the complainants, claim to be the owners of the equal undivided half of certain lands situate in the Borough of South Amboy, Middlesex County, and file their bill against the defendants, other than the *cestui que trustents* just mentioned, praying for a partition.

I will hereinafter ignore the *cestui que trustent* defendants and speak of the real defendants, Abraham Everitt, et als., as the defendants.

The land in question consists of a block which was numbered forty-one (41) and laid out on a map of the village of South Amboy, made in 1835 by one Perrine, and on file in the office of the Clerk of Middlesex

County, and is bounded on the east by Pine avenue, on the north by Louisa street, on the west by Feltus street and on the south by Portia street.

The block lies in the extreme outskirts of the borough as now improved, and has never been improved in the least or built on or occupied by anybody.

The streets at the east, north and west have been travelled, but not that to the south. The lot iself is covered with brush.

It is alleged by the complainants, and distinctly admitted by the defendants at the hearing, that this block of land is a part of what was, in 1835, laid out by two gentlemen, Messrs. Cotheal and Thomas as trustees for a syndicate of land speculators, and partially sold off at auction.

The whole tract thus laid out consisted of several small farms, the title of which was united in said Thomas and Cotheal, in 1834.

In April, 1874, Cotheal, as the survivor of Thomas, conveyed these farms to Mary Jane Roll and Sarah E. Dey, in consideration of $2,500.00.

This deed of conveyance, however, contained this clause: "It is agreed by and between the parties to these presents that this indenture *shall not conflict with the title to any part of the aforesaid premises previously sold and conveyed* by the said Alexander I. Cotheal and James P. Thomas to any party or parties, and this deed is subject to any such conveyances. And all the parks, streets and avenues as laid out on the aforesaid map are hereby accepted from this deed and are not quit claimed or in any manner conveyed by these presents."

It is palpable, of course, that the object was to convey all the parts of these farms which were laid out on the map of 1835 and not previously conveyed.

The complainants represent the title so conveyed to Mary Jane Roll, and the defendants, as alleged by the complainants, represent the title so conveyed to Sarah E. Dey.

The public records show that the title passed from Mrs. Dey to Everitt and Perrine by a sheriff's convey-

ance based on an execution against said Sarah and a decree for deficiency on the foreclosure of a mortgage against her. This sheriff's deed was dated April 11th, 1877, just three years after the conveyance to Roll and Dey.

No deed appears of record from Cotheal and Thomas or either of them to any person for the lot forty-one here sought to be divided and which was confessedly a part of the three farms comprising the original plot of the Village of South Amboy.

That Cotheal and Thomas were once seized of block forty-one was admitted by the defendants.

It follows then that the conveyance to Mrs. Roll and Mrs. Dey passed the title to them as tenants in common, with the usual result, in the absence of anything like adverse possession or claim of title on the part of anybody else, that they, Roll and Dey, became constructively in possession of the land, and as there has been no sort of adverse claim or possession either as between Mrs. Roll and Mrs. Dey or their grantees or by any third party, that constructive possession continued.

To this case made by the complainants the defendants set up two distinct defences.

They do not deny that Cotheal and Thomas were at one time seized of the premises in question, and that Cotheal, as survivor, was competent to convey them to Mrs. Roll and Mrs. Dey, or that the consideration of $2,500.00 mentioned in that deed was not actually paid in good faith by Roll and Dey to Cotheal, but they allege that block forty-one (41) was not included in the description found in that conveyance, but was excepted thereout by the language of that deed above quoted, because it had been previously conveyed away by Thomas and Cotheal to one Taylor.

Now I conceive the burden is on the defendants to prove this and this they attempt to do. They do not produce any deed executed by Cotheal and Thomas or either of them, or any record of any or the evidence of anybody that they ever saw such a deed, or that it was ever executed; nor do they produce any memorandum in the

handwriting of either Cotheal or Thomas that they had ever executed such a deed, but they attempt to prove it in this wise.

In the year 1884 an action was brought in the Middlesex Circuit Court by Mrs. Roll against one Rea to recover possession of two small building lots, parcel of another block in South Amboy, based on the before mentioned conveyance of 1874, and in that cause the deposition of Mr. Cotheal, then alive and a resident of New York City, was taken, wherein he swore that he had made a conveyance of the lots claimed by Rea to one Lary, and for that purpose Mr. Cotheal refreshed his memory by reference to a book kept by himself or under his immediate direction in which he set down the various conveyances which he and his co-trustee, then dead, had made of these premises. Also an account which he had kept of the amount of money received for such sale and the persons from whom he had received it. This book and the original account he refused to have go out of his possession. But by consent of counsel in that cause a copy of each was made and compared and used on the trial of the case of *Roll vs. Rea*, which took place in 1886. Defendants now produce the copy then made of the original book and document in Cotheal's possession, and prove by a witness that those copies are true copies of the original, compared at the time of the taking of Mr. Cotheal's evidence, and they offered the copies in evidence in this cause without any proof of any effort to produce and find the original.

The object of this offer is to show that block forty-one was conveyed to one Taylor by Cotheal and Thomas in 1835. They also produce an old copy of the Perrine map upon which forty-one distinctly appears and across it is written the word "Taylor."

I admitted these documents in evidence subject to the timely objection of counsel for the complainants but expressed the opinion at the time that the evidence was insufficient to show that the conveyance of 1874, upon which complainants rely, did not include the land in

question, or rather that the land in question was excepted from that conveyance under the excepting clause above quoted.

After hearing further argument and given the matter further consideration, I am still of that opinion.

If Taylor had ever come forward and claimed title to the land or was in possession claiming under a lost deed it is possible, I will not say probable, that a different ruling might be proper. But the present situation is simply this. Two persons pay for and accept a conveyance from a third party of land of which their grantor was once the undoubted owner. One files a bill against the other for partition and that other sets up as a defence that the land in question was not included in the terms of the deed under which they both claim, or rather was excepted out. Now I think in such a case the person making the allegation should be held to strict proof. Such proof has not been made.

Moreover, it is worthy of remark that the clause in the deed from Cotheal to Roll and Dey of 1874 does not say that the description in the conveyance shall not be held to include any land previously conveyed, but it says that "this description shall not *conflict* with the title of any part of the aforesaid premises previously sold and conveyed," etc. Now the difference between that language and the verbiage of an ordinary exception out of a description may be slight, but I think for present purposes it is material. It permits the doctrine of construcive possession to hold good until the actual appearance and claim made by some holder of an older title.

This conclusion renders it unnecessary to determine another question which would arise if the giving of the deed of Thomas and Cotheal to Taylor in 1835 had been established by parol, and that question is whether such proof would at all effect the relation of these perties to each other, since it would destroy the title of each and neither have any title by constructive possession. Here we have a party at one time the admitted owner of the premises making a conveyance of them to two

parties by a description which clearly describes and includes a certain block of land, but containing a clause which as claimed by one party excludes all land previously conveyed. Now it seems clear enough that such conveyance gives the grantees a color of title with constructive possession, which can only be disturbed and destroyed by parol proof of a former conveyance under which no entry or possession has been made or taken. If such parol proof be made it does not in the least affect the relation of the two grantees to each other. It simply results in showing that neither has any title. Now when neither has taken possession to the exclusion of the other and neither has title I find it difficult to perceive how either can object to a legal proceeding which will result in simply marking on the ground the limits of what would be the title of each if they had any. The only effect that I can perceive of the proof by the defendant that neither he nor the complainants have any legal title is to relieve him from the liability to pay costs. I have looked through numerous cases, including all those cited by counsel for the defendants, and I can find no authority for the position which he here takes in that respect. The rule that the defendant in ejectment may defend his actual possession, or that of his tenant, by showing that the plaintiff has no title has no application to the present case, for the simple reason that here the defendants are not in actual possession.

The next defence set up by the defendants is a tax title supported by a deed made on the fourth day of June, 1877, by John Disbrow, collector of the Township of South Amboy, to Ward C. Perrine and Abram Everitt, who, as we have seen, had purchased at a sale by the sheriff the right of Mrs. Dey in the premises by a deed dated the eleventh day of April, 1877.

The deed by the collector of June 4th, 1877, is based on a warrant signed by five persons purporting to be the township committee of the Township of South Amboy, of whom Abram Everitt, one of the grantees, purports to be the chairman, and it recites that "it appears

to the committee that one John H. Clark, one Milley D. Powers and George Leary, who reside out of the State, were duly assessed by the assessor of said township, in the sum of Milley D. Powers for the year 1874 for $91.00 and for the year 1875 $154.56, John H. Clark for four years $41.10, George Leary $14.10 for their taxes for the years (without mentioning the years) on account of lands, tenements and hereditaments of the said John H. Clark, Milley D. Powers and Geo. Leary, situate in said township, which said lands, tenements and hereditaments were by the said assessor description—no description given—and that the said assessment, together with interest thereon, etc., have remained unpaid for the space of one year after the said tax was payable, you are therefore hereby commanded to make the said sum of the taxes aforesaid and interest thereon from and after the twentieth day of December, A. D. 1874, the cost and fees in relation to said assessment and the costs of the execution hereof of the lands, tenements and hereditaments so described as aforesaid by selling the same or any part thereof as will be sufficient for that purpose for the shortest term," etc., "and you are further commanded to pay the money raised by such sale to the township committee and make return of this warrant and your proceedings thereunder," etc. Then follows a recital that the collector had given notice of the time and place of the sale "of the lands, tenements and real estate in said warrant described by advertisement," etc., and at the time and place, on the 30th day of June, 1877, he sold and struck off the following described part of said lands, tenements and hereditaments, namely the lands of John H. Clark. Then follows a reference to block 41 and lots in other blocks, with a reference to the map of Perrine, in the Township of South Amboy, previously mentioned, and that Perrine and Everitt bid for the lands the amount of the tax mentioned in the warrant, $127.77, for the term of seventy-five years. Then there is an acknowledgment of that deed before a Master in Chancery on

June 4th, 1877, and the ordinary affidavit that the lands had been sold to the best advantage, etc.

To this instrument the counsel for the complainants makes two answers. First, that it is void on its face, and second, that if it is not void and the court shall be of opinion that it is a valid deed, he takes the ground, for which there is more or less authority, that one tenant in common cannot cut off the interest of another tenant in common by buying in the property under a sale for taxes under circumstances like those above recited, but that the same are subject to redemption by him at any time, and offers to pay one-half of the amount so paid by Ward and Perrine, with interest during all these years. I will consider his first point first.

I find the law as to sale of land for taxes, etc., to have been in 1877 that found in the revision of 1877, page 1163, etc. It consists of the Act of March 17, 1854, a supplement of March 25th, 1863, and a supplement of March 26th, 1873. The first section compels the assessor to assess all the lands in the names of the owners "and to designate the same by some short description as will be sufficient to ascertain the location and extent thereof."

The second section provides that the tax so assessed shall remain a lien thereon for two years from the time when the taxes were payable.

The third section provides that if the taxes remain unpaid for a year (reduced to four months by the act of 1863) then the township committee may issue a warrant to the constable of the township "commanding him to make said taxes, with the interest, etc., of the lands, tenements and hereditaments or real estate *on account whereof the same were assessed as aforesaid* and of which the assessor's description shall be therein set forth, for the shortest term," etc.

Section four provides that the warrant, before execution, shall be recorded by the clerk of the township in a book to be provided.

Section five provides that the constable shall advertise, etc.

Section six directs that a deed shall be made.

Section seven provides that notwithstanding any mistake in the names of the owners of any lands in assessing the taxes the assessment shall be valid.

The supplement of 1873 provides for the sale of lands of any person or persons, whether the owner is a resident or not, and provides for a sale if the taxes are unpaid for the space of four months, instead of a year, and repeats that the lien is to be for two years, and section two provides for redemption by the owner in one year. The revision of this act made after 1877, principally March 14th, 1879, and found in the supplement of the revision, page 990, were, of course, not in force at the time of the giving of the tax deed in this case.

The warrant in this case was issued to the collector instead of the constable, presumably by virtue of a special act entitled "An Act to facilitate the collection of taxes in the Township of East Brunswick, in the County of Middlesex," approved April 4th, 1871, page 1171, which act was extended to South Amboy by an act of 1872, page 616. By that act the collector of the township was given power to enforce the collection of all delinquent taxes "assessed on any real estate in said township by exposing the same for sale," etc., to the person or persons who will take the *least quantity of said land to be laid out in one body and to commence at some designated corner* of the premises on which said taxes are claimed to be due. This provides for sale in fee simple of a specific quantity of land. The second section provides that no land shall be sold until the township collector shall have made a return that the taxes are unpaid and have by him been returned as delinquent and shall verify the same by his affidavit. The third section provides that the return of delinquents by the collector the committee shall cause a copy of the return to be recorded in the clerk's office and the copy to be posted in three public places. The fourth section provides that the township committee shall cause a cer-

tified copy of the return and affidavit to be published therein specifying the time and place where the same will be sold at auction and on that day the collector shall sell the tracts to the person or persons who shall take *the least quantity of the premises* so offered and immediately thereafter such sale the township committee shall execute and deliver to the purchaser a certificate of such sale describing the piece or pieces sold and the amount paid and entitling the holder thereof to a deed of the premises so sold, with a proviso that the owner may redeem within two years. It then provides that if at the expiration of one year the owner shall not appear and redeem then the collector may execute a deed. Then follows a repeal of inconsistent acts.

It is quite evident from the tax deed here in question that the township committee and the township collector have failed to follow either this special act applicable to the townships of East Brunswick and South Amboy or the general act of 1854. No proof was offered in this cause of any of the acts required by the statute to validate a tax sale either under the general act of 1854 or the special act of 1871.

Reliance was had by counsel upon the force of those sections of the act concerning the sale of lands, approved March 27th, 1874, and found in the revision of 1877, at page 1045, sections 14 and 15, which make the recitals in such a deed prima facie proof of their truth. The force of these recitals in tax deeds was dealt with by the Supreme Court in *Allen vs. Woodbridge,* 13 *Vr.* 401, and on error *Woodbridge vs. Allen,* 14 *Vr.* 262. The opinion of the Court of Appeals contains an elaborate treatise on the state of the law at that time.

Without going into detail, if it were within my jurisdiction to determine the question, I should feel constrained to hold the deed here in question absolutely void. First, because the recital in the deed does not show that the taxes assessed against Clark were so assessed upon the very lands which were conveyed. Second, because they do not show that the taxes were so assessed and became payable within two years be-

fore the sale, but rather the contrary. Third, if we look at the East Brunswick act of 1871 we find no such inconsistency in its provisions in this respect with the general act from which we can infer that the provisions in that behalf of the general act were repealed by the special act; and we find the collector in his proceedings not following the provisions of that act.

But, as I feel constrained, by the decision of the Court of Errors and Appeals in the famous and familiar case of *Slockbower vs. Kanouse,* 5 *Dick.* 461, not to determine any question of pure law in this cause, however plain it may be, I shall leave that question to be determined in the manner to be suggested further on.

One other matter deserves attention. The defendants show that by divers conveyances and partitions between Everitt and Perrine they have treated and dealt with the completee tile precisely as if they owned the whole and claim that while there has been no sort of adverse possession or occupation of the premises by the defendants or any other persons whatever at any time, yet that this dealing in conveyances in language which indicated that they had a complete title gives them a sort of quasi adverse possession.

I cannot accede to that position.

Everitt and Perrine undoubtedly bid for and accepted from the sheriff in April, 1877, a deed for the interest of Mrs. Dey. That deed recites a levy on these lands and says the description is taken from Book 146 of Deeds, pages 612, etc., which is the deed from Cotheal to Roll and Dey, and then farther on it specifies what part of that land is levied on as follows: "Also Block No. 41, consising of forty lots, being a part of the same premises conveyed by Alexander Cotheal to the said Mary J. Roll and Sarah E. Dey by deed dated April 16th, 1874, and recorded in the Clerk's Office of the county aforesaid."

Here then in the levy, which preceded the sale under execution, is a distinct notice to the purchaser that the lands they were about to purchase had been conveyed to

Roll and Deey by a deed which presumably created in them an estate as tenants in common, so that the purchaser had notice that Mrs. Dey had prima facie only a half interest.

Now it is quite plain that any subsequent dealings between themselves, of which no notice was brought to Mrs. Roll, could not increase Everitt's and Perrine's interest in the premises. Mrs. Roll and her successors in title were under no obligations to watch and take notice of the subsequent conveyances between Perrine and Everitt of the interest which they acquired under the sheriff's deed.

Complainants argue that this Court has in some instances assumed jurisdiction to determine the validity of a tax title. But those instances were cases where the tax was outstanding and a cloud on the title and the bills were filed especially to remove the cloud, or where the question of the validity of a tax title arose incidentally in a foreclosure proceeding or the like. In the present instance complainants do not attack the tax title by their bill and it is not framed with that view. Nor do I find any more strength in the further point made by the complainants, namely, that the title of the defendants or some of them is equitable only. That circumstance does not give the complainants any right to invoke the aid of this Court to deal with so much of the defendants title as is clearly legal. For reasons already given I feel constrained to await the decision of a court of law as to the validity of the tax title.

Under the circumstances of this case, where neither party have anything more than a constructive possession of the premises, I think the burden is on the defendants to establish their title under the collector's deed, and I will hold the case to enable the defendants to establish that title as they may be advised. Proceedings for that purpose must be taken within thirty days, and if they shall be advised to bring an action of ejectment against the complainants the bringing of such action shall not be held, except for the purposes of the action, to be an admission that the complainants are in

actual possession, and any other provisions may be inserted in the decree to be advised as may be proper to protect the rights of each party in the premises.

The question whether, if the tax title is established, it is subject to redemption by complainant as tenant in common, is reserved.

IN CHANCERY OF NEW JERSEY.

Between MELFORD N. ROLL, ET AL. *Complainants,* AND ABRAHAM EVERITT, ET AL. *Defendants.*	On Bill, &c. Order.

This cause coming on to be heard and determined in the presence of Frederic M. P. Pearse, counsel of complainant, and Alan H. Strong, of counsel with the defendants, the devisees of Abraham Everitt and Ward C. Perrine, deceased, respectively, and Vivian M. Lewis the guardian ad litem, of the infant defendants, Nita S. Bergen, Howard C. Bergen and Raymond S. Bergen, not appearing or answering, whereupon on reading the pleadings and proofs and having duly considered the same, and the arguments of counsel thereon, and it appearing that the parties to his suit are tenants in common of the premises mentioned in the bill of complaint as therein set forth, but that the jurisdiction of this Court to partition said premises is questioned because of an alleged tax deed, purporting to be made by John Disbrow, collector of the Township of South Amboy, to the said Abraham Everitt and Ward C. Perrine, which said tax deed bears date the 4th day of June, 1877, and purports to convey for a term of seventy-five years the premises in question, as set forth in the bill of complaint, but was made subsequent to the time when the said Abraham Everitt and Ward C. Perrine acquired their title to the said premises as set forth in the bill of complaint.

It is on this thirty-first day of December, 1906, ordered that the bill of complaint be retained to enable the said defendants the devisees of Ward C. Perrine and Abraham Everitt, to establish any title which they may have under and by virtue of said tax deed in an action at law, and it is further ordered that proceedings for that purpose must be taken by the said defendants

within thirty days from the date of the service of a copy of this order.

And it is further ordered, that if they shall be advised to bring an action of ejectment against the complainants or any of the other defendants, the bringing of said action is not to be held except for the purposes of the action, to be an admission that the complainants are in actual possession of said premises.

And the Court reserves the question whether if the tax title is established it is subject to redemption by the complainants as tenants in common. And it is further ordered that in any proceedings to be instituted by the said defendants the devisees of Abraham Everitt and Ward C. Perrine, that the only question to be tried shall be the validity of the said defendants' title under and by virtue of said tax deed, and that if the said defendants shall fail to institute said proceedings within the thirty days aforesaid that then they shall be deemed to have waived all rights under said tax deed.

And it is further ordered, that upon the termination of said action at law or the expiration of said thirty days if said defendants shall fail to take proceedings within that time, either party may apply to this Court for a further order and decree in the premises.

W. J. MAGIE, C.

Respectfully advised:

H. C. PITNEY, V. C.

A true copy:

VIVIAN M. LEWIS, Clerk.

IN CHANCERY OF NEW JERSEY.

Between MELFORD N. ROLL, ET AL. *Complainants,* AND ABRAHAM EVERITT, ET AL. *Defendants.*	On Bill, &c. Final Decree.

[Filed February 21, 1907.]

This cause coming on to be heard in the presence of Frederic M. P. Pearse, of counsel with the complainants, and Alan H. Strong, of counsel with the defendants, the devisees of Abraham Everitt and Ward C. Perrine, deceased, and their representatives, and Vivian M. Lewis, guardian ad litem of the infant defendants not appearing; and it appearing that no proceedings have been instituted to establish any title under and by virtue of a certain tax deed made by John Disbrow, collector of the Township of South Amboy, to the said Abraham Everitt and Ward C. Perrine, and bearing date the fourth day of June, 1877, and purporting to convey for a term of seventy-five years the premises in question as set forth in the amended bill of complaint, in pursuance of and within the time limited by an order of this Court hertofore made upon the 31st day of December, 1906, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it further appearing that the complainants are entitled to the relief prayed for in the amended bill of complaint, and it further appearing from the proofs that the said lands and premises and the various interests therein are so situate that a partition thereof cannot be made without great prejudice to the owners of the same.

It is thereupon on this eighteenth day of February, 1907, by his Honor William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and de-

creed, and the said Chancellor does by virtue of the power and authority of this Court hereby order, adjudge and decree that the parties to this suit hereinafter named are seized of and entitled to the lands and premises described in the amended bill of complaint, with the appurtenances and that their respective rights and interests therein are, and they are hereby ascertained, adjudged and declared to be as follows, to wit:

That at the time of the death of Albert Roll, deceased, he was seized in fee of and entitled to the undivided one-half part of the said premises, and that under and by virtue of his last will and testament, duly probated, as set forth in complainant's amended bill, the complainants as executors of said last will and testament are vested with the power of sale of the interest of the said Albert Roll in the said premises, and that the defendant, John R. Everitt, is seized of and entitled to the one equal undivided one-quarter part of lots numbers one to fifteen inclusive and thirty-eight to forty-four inclusive, in block number forty-one of the premises described in the amended bill of complaint, and that the defendants, Abraham Everitt and William C. Everitt, are each respectively seized of and entitled to one equal undivided one-eighth part of lots numbers one to fifteen inclusive and thirty-eight to forty-four inclusive in block number forty-one, as set forth in the amended bill of complaint, and that the share of the defendant, Abraham Everitt, is subject to the inchoate right of dower of his wife, Margaret Everitt, and that the share of the defendant, William C. Everitt, is subject to the inchoate right of dower of his wife, Helen Everitt, and that the defendant, Mary Elizabeth Mount, is entitled to a life estate in the equal undivided one-half part of the lots numbers sixteen to thirty-seven inclusive, on said block number forty-one, and that the defendants, Lydia P. Robertson, Geo. W. Mount and Maud W. Johnson, are respectfully seized of and entitled to one equal undivided one-sixth part of said lots numbers sixteen to thirty-seven inclusive, in said block number forty-

one, subject to the life estate of the said Mary Elizabeth Mount therein, and that the share of the said defendant Lydia P. Robertson is also subject to the right of curtesy of her husband, Stewart Robertson, in said premises, and that the share of the defendant George W. Mount is also subject to the inchoate right of dower of his wife, Mary Matilda Mount, and that the share of the defendant Maud W. Johnson is also subject to the right of curtesy of Jeremiah Johnson, her husband.

And it is further ordered, adjudged and decreed that said premises described in the amended bill of complaint are free and clear of any lien or incumbrance under and by virtue of the tax deed hereinbefore set forth and set forth in the answer of some of the defendants in this cause.

And it is further ordered, adjudged and decreed that all and singular the said premises mentioned in the said amended bill of complaint and therein described as follows, to wit, all that certain tract of land known and described as block forty-one on a certain map entitled a map of the village of South Amboy, made by John Perrine, Jr., surveyor, June, 1835, and on file in the Clerk's Office of the County of Middlesex, consisting of forty-four lots and bounded and described as follows:

On the east by Pine avenue, on the north by Louisa street, on the west by Feltus street and on the south by Portia street, and which said tract of land is subdivided into certain lots twenty-five feet in width and one hundred feet in depth and numbered from one to forty-four inclusive, together with all and singular the hereditaments and appurtenances to the said premises belonging or in anywise appertaining, be sold at public vendue to the highest bidder, in the presence and under the direction of Adrian Lyon, one of the Special Masters of this Court.

And it is further ordered that the said Master sell the same in such portions as to him may seem best for the interest of the parties, and that he give public notice of the time and place of said sale, and in all respect conduct the same according to the provisions of the statute in

such case provided, and that he forthwith, after such sale, make report thereof to this Court, and after his lreport of sale shall have been confirmed by this Court, make and execute unto the purchaser or purchasers good and sufficient conveyances in law of the said real estate, upon their complying with the conditions of such sale, and that such sale and conveyances or conveyance, duly executed as aforesaid, be valid and effectual forever and operate as an effectual bar both at law and in equity against the said parties, complainants and defendants, and all persons claiming by, from or under them or any of them.

And it is further ordered that there be allowed to the counsel of the complainants, out of the share of the answering defendants in the moneys arising from the sale the sum of two hundred dollars, and that all costs and charges, including counsel fee, be paid out of the moneys arising from said sale.

W. J. MAGIE, C.

Respectfully advised:

H. C. PITNEY, V. C.

IN CHANCERY OF NEW JERSEY.

Between MELFORD N. ROLL, ET AL. *Complainants,* AND ABRAHAM EVERITT, ET AL. *Defendants.*	On Bill, &c. Appeal.

The defendants, John R. Everitt, Abraham Everitt, William C. Everitt, Margaret Everitt, Helen Everitt, Mary Elizabeth Mount, Lydia P. Robertson and Stewart Robertson, her husband, George W. Mount and Mary Matilda Mount, his wife, Maud W. Johnson and Jeremiah Johnson, her husband, hereby appeal from the final decree made in the above entitled cause, bearing date on or about the eighteenth day of February, nineteen hundred and seven, and from the whole and every part of said decree to the Court of Errors and Appeals in the last resort of the State of New Jersey.

Dated May 8, 1907.

ALAN H. & THEO. STRONG,
Solicitors for said Appellants.

I conceive that there is good cause for appeal from the said decree.

ALAN H. STRONG,
Of Counsel with Appellants.

New Jersey Court of Errors and Appeals.

Between
MELFORD N. ROLL, ET AL.
(Complainants) *Respondents,*
AND
ABRAHAM EVERITT, ET AL.
(Defendants) *Appellants.*

On Bill, &c.
Petition of
Appeal.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of John R. Everitt, Abraham Everitt, William C. Everitt, Margaret Everitt, Helen Everitt, Mary Elizabeth Mount, Lydia P. Robertson and Stewart Robertson, her husband, George W. Mount and Mary Matilda Mount, his wife, Maud W. Johnson and Jeremiah Johnson, her husband, appellants in the above entitled cause, respectfully shows that your petitioners find themselves aggrieved by a certain final decree made in the Court of Chancery by the Honorable William J. Magie, Chancellor of the State of New Jersey, bearing date the eighteenth day of February, in the year nineteen hundred and seven, in a cause wherein Melford N. Roll and others were complainants, and your petitioners and others were defendants, in this respect, that the said decree orders, adjudges and decrees that the parties to said suit are seized of and entitled to the lands described in the bill of complaint in said cause with the appurtenances, and that their respective rights and interests therein are and by said decree were ascertained to be as follows, to wit:

That at the time of the death of Albert Roll, deceased, he was seized in fee of and entitled to the undivided one-half part of the said premises, and that under and by virtue of his last will and testament, duly

probated, as set forth in complainants' amended bill, the complainants as executors of said last will and testament are vested with the power of sale of the interest of the said Albert B. Roll in the said premises, and that the defendant, John R. Everitt, is seized of and entitled to the one equal undivided one-quarter part of lots numbers one to fifteen inclusive, and thirty-eight to forty-four inclusive, in block number forty-one of the premises described in the amended bill of complaint, and that the defendants Abraham Everitt and William C. Everitt are each respectively seized of and entitled to one equal undivided one-eighth part of lots numbers one to fifteen inclusive and thirty-eight to forty-four inclusive in block number forty-one, as set forth in the amended bill of complaint, and that the share of the defendant, Abraham Everitt, is subject to the inchoate right of dower of his wife, Margarett Everitt, and that the share of the defendant, William C. Everitt, is subject to the inchoate right of dower of his wife, Helen Everett, and that the defendant Mary Elizabeth Mount is entitled to a life estate in the equal undivided one-half part of the lots numbers sixteen to thirty-seven inclunsive, on said block number forty-one, and that the defendants Lydia P. Robertson, George W. Mount and Maud W. Johnson, are respectively seized of and entitled to one equal undivided one-sixth part of said lots numbers sixteen to thirty-seven inclusive, in said block number forty-one, subject to the life estate of the said Mary Elizabeth Mount, therein, and that the share of the said defendant Lydia P. Robertson is also subject to the right of curtesy of her husband, Stewart Robertson, in said premises, and that the share of the said defendant George W. Mount is also subject to the inchoate right of dower of his wife, Mary Matilda Mount, and that the share of the defendant Maud W. Johnson is also subject to the right of curtesy of Jeremiah Johnson, her husband.

And in this respect,, that it was further ordered, adjudged and decreed that the said premises are free and

clear of any lien or encumbrance under and by virtue of the tax deed therein before set forth and set forth in the answer of some of the defendants in said cause; and in this respect that it was further ordered, adjudged and decreed that the said premises mentioned in the amended bill of complaint and therein described and also described in said decree, with the hereditaments and appurtenances, be sold at public vendue to the highest bidder in the presence and under the direction of one of the Special Masters of said Court, and that the said Master should sell the same in such portions as to him may seem best for the interests of the parties, and that he should give public notice of the time and place of said sale and in all respects conduct the same according to the provisions of the statute in such case made and provided, and that he forthwith after such sale make report thereof to said court, and after his report of sale shall have been confirmed by said court, make and execute unto the purchaser or purchasers good and sufficient conveyances in law of the said real estate upon their complying with the conditions of such sale, and that such sale and conveyance duly executed be valid and effectual forever and operate as an effectual bar both at law and in equity against the said parties, and all persons claiming by, from or under them or any of them. And in this respect, that it is further ordered by said decree that a counsel fee be paid to the counsel for the complainants out of the share of the proceeds of said sale representing the interest therein of the said appellants.

And your petitioners respectfully appeal from the said portions of said decree upon the ground that the same are erroneous for that the said Court of Chancery had no jurisdiction to render such decree or to make any decree for partition in said cause; and for that the said tax deed mentioned in said decree is not subject to be attacked or declared invalid in said cause; and for that during the term of years conveyed by the said tax deed and not yet expired a suit for partition of said lands cannot be maintained.

And for that the said complainants and the defendants other than the said appellants, are not seized of the several shares, estates and interests in said lands as declared in said decree; and for that the title of the said complainants must first be established at law before any decree can lawfully be made in said cause; and for that the evidence in said cause was not sufficient to sustain said decree; and for that the said decree is contrary to equity; and for that the said bill of complaint should have been dismissed; and for that the said counsel fee should not have been allowed to the counsel for complainants out of the shares of the appellants.

Your petitioners therefore pray that the said decree of the said Chancellor may in the particulars aforesaid be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

ALAN H. & THEO. STRONG,
Solicitors of and of Counsel
with Appellants.

New Jersey Court of Errors and Appeals.

Between
MELFORD N. ROLL, ET AL.
(Complainants) *Respondents,*
AND
ABRAHAM EVERITT, ET AL.
(Defendants) *Appellants.*

On Bill, &c.
Answer.

The answer of the above named Respondents to the Petition of Appeal of the above named Appellants:

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say admit that a decree was entered the eighteenth day of February, in the year nineteen hundred and seven, last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced; and these respondents are advised and believe the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

FREDERIC M. P. PEARSE,
Solicitor for and of Counsel
with Respondents.