

I N D E X

	PAGE
Bill of Complaint .....	1
Order to Show Cause .....	25
Answering Affidavits .....	27
Conclusions .....	32
Order .....	33
Notice of Appeal .....	35
Petition of Appeal .....	36

INDEX

1	Order of the Knights of St. John
2	Order of the Knights of St. James
3	Order of the Knights of St. Michael and St. George
4	Order of the Knights of St. Andrew
5	Order of the Knights of St. Elizabeth
6	Order of the Knights of St. Catherine
7	Order of the Knights of St. Margaret
8	Order of the Knights of St. Anne
9	Order of the Knights of St. Ursula
10	Order of the Knights of St. Barbara
11	Order of the Knights of St. Agatha
12	Order of the Knights of St. Lucia
13	Order of the Knights of St. Theresia
14	Order of the Knights of St. Elizabeth
15	Order of the Knights of St. Catherine
16	Order of the Knights of St. Margaret
17	Order of the Knights of St. Anne
18	Order of the Knights of St. Ursula
19	Order of the Knights of St. Barbara
20	Order of the Knights of St. Agatha
21	Order of the Knights of St. Lucia
22	Order of the Knights of St. Theresia
23	Order of the Knights of St. Elizabeth
24	Order of the Knights of St. Catherine
25	Order of the Knights of St. Margaret
26	Order of the Knights of St. Anne
27	Order of the Knights of St. Ursula
28	Order of the Knights of St. Barbara
29	Order of the Knights of St. Agatha
30	Order of the Knights of St. Lucia
31	Order of the Knights of St. Theresia
32	Order of the Knights of St. Elizabeth
33	Order of the Knights of St. Catherine
34	Order of the Knights of St. Margaret
35	Order of the Knights of St. Anne
36	Order of the Knights of St. Ursula
37	Order of the Knights of St. Barbara
38	Order of the Knights of St. Agatha
39	Order of the Knights of St. Lucia
40	Order of the Knights of St. Theresia
41	Order of the Knights of St. Elizabeth
42	Order of the Knights of St. Catherine
43	Order of the Knights of St. Margaret
44	Order of the Knights of St. Anne
45	Order of the Knights of St. Ursula
46	Order of the Knights of St. Barbara
47	Order of the Knights of St. Agatha
48	Order of the Knights of St. Lucia
49	Order of the Knights of St. Theresia
50	Order of the Knights of St. Elizabeth
51	Order of the Knights of St. Catherine
52	Order of the Knights of St. Margaret
53	Order of the Knights of St. Anne
54	Order of the Knights of St. Ursula
55	Order of the Knights of St. Barbara
56	Order of the Knights of St. Agatha
57	Order of the Knights of St. Lucia
58	Order of the Knights of St. Theresia
59	Order of the Knights of St. Elizabeth
60	Order of the Knights of St. Catherine
61	Order of the Knights of St. Margaret
62	Order of the Knights of St. Anne
63	Order of the Knights of St. Ursula
64	Order of the Knights of St. Barbara
65	Order of the Knights of St. Agatha
66	Order of the Knights of St. Lucia
67	Order of the Knights of St. Theresia
68	Order of the Knights of St. Elizabeth
69	Order of the Knights of St. Catherine
70	Order of the Knights of St. Margaret
71	Order of the Knights of St. Anne
72	Order of the Knights of St. Ursula
73	Order of the Knights of St. Barbara
74	Order of the Knights of St. Agatha
75	Order of the Knights of St. Lucia
76	Order of the Knights of St. Theresia
77	Order of the Knights of St. Elizabeth
78	Order of the Knights of St. Catherine
79	Order of the Knights of St. Margaret
80	Order of the Knights of St. Anne
81	Order of the Knights of St. Ursula
82	Order of the Knights of St. Barbara
83	Order of the Knights of St. Agatha
84	Order of the Knights of St. Lucia
85	Order of the Knights of St. Theresia
86	Order of the Knights of St. Elizabeth
87	Order of the Knights of St. Catherine
88	Order of the Knights of St. Margaret
89	Order of the Knights of St. Anne
90	Order of the Knights of St. Ursula
91	Order of the Knights of St. Barbara
92	Order of the Knights of St. Agatha
93	Order of the Knights of St. Lucia
94	Order of the Knights of St. Theresia
95	Order of the Knights of St. Elizabeth
96	Order of the Knights of St. Catherine
97	Order of the Knights of St. Margaret
98	Order of the Knights of St. Anne
99	Order of the Knights of St. Ursula
100	Order of the Knights of St. Barbara

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor of  
the State of New Jersey:*

Complainant shows unto your Honor that David C. Reed, John B. Slack and William M. Clevenger, 10  
of the City of Atlantic City, County of Atlantic and  
State of New Jersey are the complainants in this  
cause.

1. That prior to the year 1898, Frederick Hemsley,  
of the said city, county and state aforesaid, became  
seized of a large tract of land situate, lying and be-  
ing within the corporate limits of the City of At-  
lantic City, approximately bounded on the south by  
the Atlantic Ocean, on the north by Arctic Avenue, 20  
on the west by a line running parallel with Stenton  
Place, fifty-four feet westwardly therefrom from the  
high water line of Atlantic Ocean to Arctic Avenue,  
on the east by Iowa Avenue, and that being so seized  
of the said tract of land, he caused the same to be  
laid out and blocked into blocks and lots, and after it  
had been plotted, caused a map thereof entitled  
"Map or plan of lots owned by Frederick Hemsley  
in Atlantic City, N. J.," to be duly filed in the clerk's  
office of the County of Atlantic at May's Landing, 30  
New Jersey.

2. The avenues passing through and along the said  
tract of land from the ocean to Arctic Avenue are  
Iowa Avenue and Stenton Place; that the avenues  
passing through said tract of land at right angles

with the said last mentioned avenues are Pacific Avenue, Atlantic Avenue and Arctic Avenue.

3. That the said Frederick Hemsley laid out the said tract of land into blocks and lots in pursuance of a general scheme or plan to apply to all the land sold by him for the purpose of creating and preserving the health, beauty, ornamentation and value of the premises aforesaid, and for the further purpose of improving that neighborhood, of securing a free circulation of air and of preserving a free and unobstructed view of the ocean, and with this idea he placed upon and subjected his lots to certain restrictions and covenants, and did insert in all deeds or conveyances from him to purchasers certain restrictions and covenants, which are in the words, following:

“1. That no portion of any building shall at any time be erected within seventeen feet of the front property line of any street or avenue bounding said lot or lots, nor within three feet of the northerly dividing line of said lot or lots, nor within twenty-two feet of the southerly dividing line measuring from the first floor of the main body or any building, nor within fourteen feet of the southerly dividing line, measuring from the second floor, and above, of the main body of said building; provided, however, that bay windows may be added to sides and front of said building, but shall not extend more than two feet from the main body thereof. And, provided, also the front porch or front veranda of said building may be erected not nearer than seven feet from the front property line or any street or avenue bounding said lot or lots; excepting therefrom, however, all lots on Pacific

Avenue or lots between Pacific Avenue and the ocean bulkhead now erected, or that may hereafter be erected, on said property, on any of which lots no part of any building shall at any time be erected within eighteen feet of the front property line of any street or avenue bounding said lot or lots, nor within eight feet of the side dividing lines of said lot or lots, nor within three feet of the rear dividing line; excepting, however, the porch or front veranda of said building, which may be erected not nearer than eight feet of the front property line of any street or avenue bounding said lot or lots, and bay windows may be added to sides and front of said building, but shall not extend more than two feet from the main body thereof. 10

“It is expressly agreed, however, that above restrictions shall not be construed so as to prevent the steps or approaches to any porch or house from being built from the front property line of any lot or lots to the porch or main body of any building, but said steps or approaches shall not be covered, but open and free from overhead and lateral obstructions to view, except foundation and rail; and all porches and verandas, except side porches and verandas, shall be constructed without temporary or permanent obstructions to view and air, other than supports, roof and rail. 20

“Fronts for all buildings shall face the front property line of the lots, as laid out on said map; corner lots considered as having two fronts. 30

“2. That no buildings of a value less than \$2,500 shall be erected on said lot or lots.

“3. That the foundation for all dwelling houses shall be erected and set, so that the top

of the porch floor shall not be higher than six feet above grade of the streets or avenues, as now established.

10 "4. Private dwellings only shall be built on said premises; excepting, however, premises that may hereinafter be reserved, and not more than one private dwelling house under the same roof shall be erected upon any one of said lots as marked and laid out on said filed map, and said lines as laid out on said maps, shall not be changed; except where one person shall own two or more adjacent lots, in which case, restrictions as to side lines shall apply only to outside lines of said adjoining lots; this exception is to be exercised only when one owner of adjoining lots desires to erect one private dwelling under one roof covering more than one lot, and cannot be applied to rear dividing lines.

20 "5. None of the foregoing restrictions are to apply to any lots on Atlantic Avenue, or side or cross avenues, northwardly therefrom (corner lots on Atlantic Avenue considered as being on Atlantic Avenue); except, that dividing lines of the lots lying on Atlantic Avenue, or between Atlantic and Arctic Avenues, as laid out on said maps, shall not be changed.

30 "6. That no building, or any part thereof, erected on said lot or lots shall be used as a slaughter house, piggery or any other nuisance tending to destroy the health, peaceableness, or proposed character of neighborhood. Warehouses, storehouses, carpenter or paint shops, stores or buildings, for general merchandise business or other like buildings or uses are prohibited; except on lots fronting on Atlantic Avenue, and on lots lying northwardly of the

northerly line of Atlantic Avenue; the selling of beer, wine or any intoxicating liquors is prohibited on said lots; excepting on lots lying on the northerly side of Atlantic Avenue, or on side or cross avenues northwardly therefrom; and no building for that purpose shall be erected or used for that purpose, except in locality aforesaid; corner lots on Atlantic Avenue considered as lying on Atlantic Avenue.

“7. All buildings shall be connected with the sewerage plant and no drainage of any kind, or filth, shall be allowed to drain in the soil. No privy wells or other artificers for holding drainage or deposit of any kind shall be constructed on said lot or lots, if connection can be made with sewerage plants. 10

“8. No stable or stables for livery purposes or for private use shall be erected on said lot or lots; excepting on lots lying northwardly of the lots on the northerly line of Atlantic Avenue as mapped; corner lots on Atlantic Avenue considered as lying on Atlantic Avenue. 20

“9. It is expressly agreed and covenanted that the beach front as laid on said filed map between the bulkhead now existing on said premises and the Atlantic Ocean, or between any bulkhead that may hereafter be erected on said premises and the Atlantic Ocean, shall remain free and unencumbered from and by any restrictions contained in above agreement, the said Frederick Hemsley reserving to himself, his heirs and assigns, the use and enjoyment of said beach front free from all covenants and restrictions. 30

“The above restrictions and reservations are hereby placed upon said lots in pursuance of a

general plan of the owner to enhance the value by beautifying and making more healthful the occupancy of said lands, and said restrictions and reservations are so created as a part consideration for the purchase of said lots; and each and every purchaser shall abide by such covenant, and be entitled to enforce the rigid observance of the same against any person or persons violating the same; they being made for the mutual benefit of all purchasers; and the said grantor, his heirs and assigns, will insert in and make a part of each and every deed of conveyance by him or them of his or their remaining restricted property, comprising the tract of which the within is a part, like covenants, conditions and restrictions.

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“And also it is expressly covenanted and agreed between the parties hereof, that the above restrictions shall attach and run with the land, they being assumed by the purchaser in part consideration of the purchase thereof, and shall be binding upon their heirs and assigns, whether included in subsequent conveyances or otherwise; and it shall be lawful for the said Frederick Hemsley, or any of his heirs or assigns, and for the owner of any lot or lots, to institute and prosecute any proceedings in law or equity, for damages or for injunctions, against the person or persons having violated or threatening to violate any of the covenants and restrictions herein.”

4. That on May 8, 1907, complainant, David C. Reed, became the owner of No. 3 South Stenton Place, Atlantic City, N. J., by deed from Wilbert S. Higbee and wife, duly recorded in the clerk's

office of the County of Atlantic at May's Landing, N. J., in Deed Book 360, page 99, which said property is located on the east side of Stenton Place, fifty feet south of Atlantic Avenue, fifty feet in front by seventy-two and one-half feet in depth, and is the southerly half of lots 2804 and 2806 and 2808 on the said plan of the said Frederick Hemsley.

5. That on September 12, 1901, complainant, John B. Slack, became the owner of No. 15 South Stenton Place by deed from Edward S. Hill, duly recorded in the clerk's office aforesaid in Deed Book 264 at page 86, which said property is located on the east side of Stenton Place, one hundred feet south of Atlantic Avenue, sixty feet in front by sixty feet in depth, and is known as lot No. 15 on the said plan of the said Frederick Hemsley. 10

6. That on September 24, 1898, complainant William M. Clevenger became the owner of No. 17 South Stenton Place by deed from Martha E. Hoopes, executrix of William G. Hoopes, deceased, duly recorded in the clerk's office aforesaid in Deed Book 225 at page 484, which said property is located on the east side of Stenton Place one hundred sixty feet south of Atlantic Avenue and sixty feet in front by sixty feet in depth and is known as lot No. 17 on said plan of said Frederick Hemsley. 20

7. That on January 31, 1900, Frederick Hemsley and wife conveyed unto William J. Walls property at the southeast corner of Stenton Place and Atlantic Avenue in Atlantic City, N. J., forty-seven and one-half feet in front on Atlantic Avenue by one hundred feet in depth on Stenton Place, known as lots 2806 and 2808 on said plan; that on June 2, 1900, 30

the said Frederick Hemsley and wife conveyed to William H. Burkard property on the south side of Atlantic Avenue in Atlantic City aforesaid immediately adjoining the property last aforesaid, twenty-five feet in front on Atlantic Avenue by one hundred feet in depth and known as lot 2804 on the said plan; that on July 31, 1899, Leonard D. Algar became the owner of a lot one hundred feet in depth by fifty-four feet in front on the southwest corner of Stenton Place and Atlantic Avenue, aforesaid, and known as lots 2814 and 2816 by deed duly recorded as aforesaid in Deed Book 235, page 89; that on December 20, 1899, Wilbert S. Higbee became the owner of a lot one hundred feet in depth by fifty-four feet in width at the northwest corner of Stenton Place and Atlantic Avenue, known as lots 2815 and 2817; and that on October 19, 1899, James A. Quinn became the owner of a lot one hundred feet in depth by forty-seven and one-half feet in width at the northeast corner of Stenton Place and Atlantic Avenue by deed of Frederick Hemsley and wife duly recorded in Deed Book 240, page 44. All of which said lots, under the Hemsley map, as filed in the clerk's office aforesaid, had a frontage on Atlantic Avenue only and were subject to restriction No. 5 in paragraph 3 of this bill to the effect that the dividing line of the lots lying on Atlantic Avenue or between Atlantic and Arctic Avenues, as laid out on said maps, should not be changed.

8. That at the time, purchasers of lots in the tract were desirous that the corner lots above set forth should not be used for store purposes, but should be used for dwelling houses only, so far as Stenton Place was concerned, and in order that the result might be brought about, complainant William M.

Clevenger and other owners of lots in the said tract, entered into an instrument in writing signed by the said William J. Walls, William H. Burkard, Leonard D. Algar and Wilbert S. Higbee, bearing date March 12, 1900, wherein and whereby all of the said owners and all other owners within the said Hemsley tract expressly released the said corner properties from the operation of restriction No. 5 against the change of dividing lines and gave permission to the said owners to face the said corner properties on Stenton Place, to erect dwellings thereon and to divide the said lots into two lots of fifty feet in front by the Atlantic frontage in depth, and imposing other restrictions to the effect that the main body of all dwellings should be no nearer than thirteen feet from the property line on the north side of Atlantic Avenue, and no nearer than seventeen feet from the property line on the south side of Atlantic Avenue, should not have porch floors higher than six feet above the street grade as then established, should not cost less than \$2500; that no lot facing on Atlantic should have its front facing on Atlantic Avenue less than laid out by the said Hemsley and that only one building should be erected thereon, all of which will more fully and at large appear by a copy of the said agreement hereto attached and made a part of this bill, as Schedule A, and which, after being acknowledged by all the parties thereto was duly recorded in the clerk's office aforesaid in Deed Book 249, page 264, on September 13, 1900.

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9. That the said agreement was signed by all of the parties interested in the said Hemsley tract at the time of the making thereof with the exception of the said James A. Quinn, and although it was claimed that the said James A. Quinn had full no-

tice thereof, both by the record and his deed, in the litigation between him and an owner in the tract, it was finally decided by the Court of Errors and Appeals of this state that he had not such notice and was not bound thereby, although mention was made of such agreement in his deed.

10. That there has been a practical and actual construction of the said agreement by all of the parties in interest; by Leonard D. Algar, in the year 1900, erecting at the southwest corner of Stenton Place and Atlantic Avenue, a private dwelling house, facing on Stenton Place, set back seventeen feet from the property line of Stenton Place on lot fifty feet in front on Stenton Place by fifty-four feet in depth; by Martha K. Crowley later on, erecting upon a lot fifty feet in front by fifty-four feet in depth, immediately adjoining, another private dwelling facing Stenton Place, a like distance from the said Stenton Place; by Thomas J. Dickerson erecting upon the southeast corner of said Stenton Place, a handsome pressed brick private dwelling facing Stenton Place, upon a lot fifty feet in front on Stenton Place, seventy-two and one-half feet in depth on Atlantic Avenue, seventeen feet back from said Stenton Place; by Wilbert S. Higbee, likewise erecting a private dwelling facing Stenton Place, upon a lot fifty feet in front by seventy-two and one-half feet in depth, likewise located seventeen feet back from the westerly line of said Stenton Place; by the said Wilbert S. Higbee in the year 1900, erecting on the northwest corner of said Stenton Place, and Atlantic Avenue a private dwelling facing Stenton Place, on a lot fifty feet in front on Stenton Place by fifty-four feet in depth, thirteen feet back from said Stenton Place; by the said Wilbert S. Higbee

erecting on the lot remaining, fifty feet in front of said Stenton Place by fifty-four feet in depth, a private dwelling house, facing Stenton Place and distant thirteen feet back from the line of Stenton Place, and by the said James A. Quinn erecting on the lot located on the northeast corner of Stenton Place and Atlantic Avenue, a private dwelling house, facing Stenton Place and distant thirteen feet back from Stenton Place line, located on a lot of fifty feet in front by forty-seven and one-half feet in depth, leaving vacant the remainder of his said lot fifty feet in front on Stenton Place by forty-seven and one-half feet in depth on Atlantic Avenue, but which is now occupied by stores erected since the decision in his favor. One Belisari Martino, who recently purchased the northwest corner of Stenton Place and Atlantic Avenue, has caused his building to be raised and stores to be erected thereunder. Arthur J. Leppert, Anna M. Leppert and Benjamin Heritage, Jr., filed a bill in this court to restrain such action and obtained a rule to show cause thereupon, but failed to prosecute the same to a completion because of some settlement made between them. 10 20

11. That the deed from Frederick Hemsley and wife to the said William J. Walls conveyed the said lot 2806 and 2808 Atlantic Avenue under and subject to the restrictions set out in paragraph 3 of this bill; that the deed from said Frederick Hemsley and wife to the said William Burkard conveyed said lot 2804 Atlantic Avenue under and subject to the restrictions set out in paragraph 3 of this bill; that on February 24, 1901, said William J. Walls and wife conveyed the property at the southeast corner of Stenton Place and Atlantic Avenue being seventy-two and one-half feet in front on Atlantic Avenue 30

by one hundred feet in depth on Stenton Place unto John F. Ryon subject to the restrictions set forth in paragraph 3 of this bill and to the changes in the said restrictions set out in Schedule A attached hereto and made a part hereof; that on May 17, 1902, said John F. Ryon and wife likewise conveyed the said property to Thomas J. Dickerson subject to the restrictions as aforesaid; that on August 14, 1903, Thomas J. Dickerson conveyed fifty by seventy-two  
10 and one-half feet of the said property at the corner of Stenton Place and Atlantic Avenue to Mary E. Salmon subject to the restrictions above set forth; that the said Mary E. Salmon on September 25, 1903, conveyed the said property to Aurelia F. Nixon subject to the restrictions above set forth; that Smith E. Johnson, sheriff of the County of Atlantic, conveyed this property to the Union National Bank of Atlantic City, N. J., on July 2, 1907, subject to the restrictions as aforesaid; that the Union National  
20 Bank conveyed the same property to Sarah N. Doughty on May 13, 1910, subject to the restrictions as aforesaid; that on January 31, 1920, the Camden Safe Deposit & Trust Company, executor and trustee of the said Sarah N. Doughty, conveyed the said property unto Julia E. Zazzali by deed duly recorded in the clerk's office at May's Landing aforesaid in Deed Book 625 at page 93, under and subject to all the restrictions aforesaid, and that on  
30 May 15, 1922, by deed likewise recorded in said clerk's office in Book 680, page 229, the said Julia E. Zazzali and husband conveyed the said property unto Fannie and Solomon Docterman, the present owners thereof, and in the said deed stated that the said conveyance was made subject "to all restrictions, reservations and covenants as may be of record."

12. That the dwelling facing on South Stenton Place owned by the complainant, David C. Reed, is erected and constructed in accordance with the restrictions and agreement aforesaid; that the dwellings of the complainants, John B. Slack and William M. Clevenger, erected upon the lots above stated, are erected and constructed in accordance with the restrictions aforesaid, and that the dwelling of the defendants, Fannie and Solomon Docterman, is presently erected and constructed upon the lot by them in accordance with the restrictions and agreement aforesaid, and is actually used by them for dwelling purposes, and in addition thereto the said Fannie and Solomon Docterman have had actual notice of the erection and the construction of the dwellings on the said properties as above set forth; that they had actual notice of the agreement permitting the division of the lots aforesaid; that they had constructive notice of the said agreement by virtue of the recital in the deed which they received from Julia E. Zazzali and of the title policy which they received from the said South Jersey Title & Finance Company which insured the same to them.

13. That on November 11, 1922, one Philander E. Lane, who plans and constructs buildings of all kinds, and who trades under the name of J. F. Snyder & Company, called at the home of complainant William M. Clevenger and stated he was representing and that he was about to be employed by the defendants, Fannie and Solomon Docterman, for the purpose of effecting certain alterations to the building owned by them at the southeast corner of Stenton Place and Atlantic Avenue; that he and the said defendants had talked the whole matter over; that it was their idea to build a store on the easterly end of the lot facing on Atlantic Avenue for

the full width of the lot on Stenton Place, making the same conform to the construction of the cottage now erected thereon and connecting it therewith, using the floors above the store for apartments and so changing the interior of the present cottage that it could be used for apartment purposes, and if this was successful to then construct some sort of a cheap booth on the Stenton Place front with the idea of working a complete violation of the restrictions and for the purpose of enabling the defendants to eventually construct stores and apartments upon the whole lot owned by the said defendants. That the complainant, William M. Clevenger, informed the said Lane that this could not be done, and inquired if he had read the agreement known as the Wilbert S. Higbee agreement which placed additional restrictions upon the said lot and he said that he had not and that he had only seen the Hemsley restrictions. The said complainant, William M. Clevenger, then informed the said Philander E. Lane that the changes contemplated could not be made; that the Hemsley restrictions prevented a changing of the lines of the lots as originally laid out; that the Higbee amendments confined the use of the property to dwelling purposes, to the erection of one building upon the land, regulated the cost, the height of the porch and prevented any building within seventeen feet of the easterly line of Stenton Place. The said Lane said he would look into the matter and advise the said complainant, William M. Clevenger, of the result of his investigation.

14. On November 21, the complainant, William M. Clevenger, saw the said Lane and asked him what was being done at the corner and he was advised by him that they had taken out a permit to make interior changes, that it was their intention to

change the interior into apartments and later to file plans in the building inspector's office for the purpose of erecting stores facing on Atlantic Avenue; that in his judgment under both sets of restrictions the defendants had a perfect right to build anything they wished upon the lot so long as they kept back seventeen feet from the east side of Stenton Place, and that they proposed to do. The said complainant, William M. Clevenger, then informed the said Lane that an effort would be made to restrain 10 him in his work.

On the same day the said William M. Clevenger inspected the records of the building inspector and found that no application for the erection of the stores had as yet been filed, but that a permit had been issued for interior alterations. Complainants charge that the said defendants had notice of the intended application before they started any of the work in and about the changes and that very little 20 has been done at this time except to knock out the side of the wall on the south side of the house for a doorway, the removal of steps leading to the kitchen, and the hauling of lumber for use in the interior construction.

15. That the said restrictions in the agreement aforesaid and under the Hemsley deed aforesaid have been substantially, if not actually, lived up to and obeyed by all of the property owners within the property aforesaid, that the single exception of 30 the said James A. Quinn, whose suit was decided in his favor, of the Ambassador Hotel Company, whose suit thus far has been decided against them, and the said Belisari Martino, whose violation was not the fault of these complainants, but of those who undertook to enforce the same, and whose building is not located within the square within which these

complainants reside; that the property owners on Stenton Place between Atlantic and Pacific Avenues have endeavored to have and keep the said street free from stores of any character; that the character of the street has been improved thereby, and that the property has greatly enhanced in value; that the desirability of the street as a residential section has been much improved, that a free circulation of air and an unobstructed view of the ocean  
10 has been entirely preserved and that the erection of stores and apartments on the property of the defendants will seriously effect the value of complainants' properties for the purposes sought to be obtained at the time of the imposition of the restrictions, and that if the said violations are permitted it will result eventually in the complete destruction of the said street for residential purposes.

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

1. That Fannie Docterman and Solomon Docterman and Philander E. Lane, trading as J. F. Snyder and Company, who are the defendants in this suit, may answer this bill of complaint without oath and each statement therein made.

2. That complainants be granted the state's writ of injunction issued out of and under the seal of this  
30 Honorable Court, directed to the said Fannie Docterman, Solomon Docterman, Philander E. Lane, trading as J. F. Snyder and company, their contractors, servants, employees and agents, commanding them and each of them that they do absolutely desist and refrain from building or completing, adding to or altering any structure upon the land owned by Fannie and Solomon Docterman; from raising the porch

floor more than six feet above the established grade, from building within seventeen feet from the east line of Stenton Place for the full width of the lot of land owned by them, from erecting, constructing or maintaining more than one building upon the said lot, from erecting, constructing or converting the said building now on the said lot or hereafter to be placed thereon for other purposes, or from erecting, constructing and converting the said building or any addition thereto into apartments for dwelling or other purposes, and commanding the said defendants to remove or to cause to be removed from the said lot or from the said reconstructed building all work and material looking toward the change of the character of the use of the said building, and commanding them, their agents, contractors, servants and employees to forever desist and refrain from erecting or constructing any building or other structure upon the lot of land owned by the said Fannie and Solomon Docterman contrary to the covenants imposed upon the said land by the Hemsley restrictions aforesaid and by the agreement attached hereto and made a part hereof. 10 20

3. And for such other and further relief as to the Court shall seem equitable and just.

4. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 30

JOHN B. SLACK,  
*Solicitor for and of Counsel  
with Complainants.*

## SCHEDULE A.

Frederick Hemsley, et als.,	}	Deed.
To		
Wilbert S. Higbee.		

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- 10 This Indenture made the twelfth day of March, A. D. 1900. Between Frederick Hemsley M. A. Devine, Leonard D. Algar, William M. Clevenger, William H. Burkard, Mrs. R. Smith, Francis Dougherty et als of Atlantic City, New Jersey owners of land comprising certain lots as laid out on a map of tract of lands in Atlantic City, New Jersey, owned by Frederick Hemsley, which map is duly filed in the Clerk's Office of Atlantic County and Wilbert S. Higbee of the same place. Witnesseth, that where-
- 20 as under and by the terms of certain restrictions and reservations, cited and laid out in certain deeds made heretofore by Frederick Hemsley and wife of Atlantic City, New Jersey to William G. Hoopes Joel R. Leeds, Eva B. Clark and others duly recorded in the Clerk's Office of Atlantic County, New Jersey it is provided in Section 5 of said restrictions, "That dividing lines of the lots lying on Atlantic Avenue shall not be changed" the reference to lots therein being made to lots Nos. 2800,
- 30 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2814, 2815 2816 and 2817 Atlantic Avenue as laid out on the map or plan aforesaid, and Whereas the undersigned with the said Wilbur S. Higbee agree that the lines dividing the said above mentioned lots from each other should not be unalterably fixed but that the purchasers should have the right to build one

building covering more than one of said lots. Now therefore in consideration of the mutual advantages to be obtained and derived from said change and the benefits accruing thereby to the property owned by us, we the under-signed owners of property on said tract of land and premises do hereby release and assign all our right to the enforcement of said restrictions in as much as provided that said dividing lines should not be changed and do hereby agree to and with each other and the said Wilbur S. Higbee his heirs and assigns that the owners of lots designated as above shall have the right to consider the intervening lines between said lots, as being not unalterably fixed and that one or more of said lots may be used together for building purposes without regard to the intervening line as laid out on said map. Provided however that no dwelling house shall be erected on the lots lying on the Southerly side of Atlantic Avenue the main body of which shall be nearer than Seventeen (17) feet from the property line of Stenton Place as laid out, South of its intersection with the Southerly line of Atlantic Avenue, or which shall have the top of the porch floor higher than six (6) feet above grades of streets or Avenues, as now established and shall cost at least Twenty-five hundred (\$2500) Dollars, Provided that no dwelling house shall be erected on the lots lying on the Northerly side of Atlantic Avenue the main body of which shall be nearer than Thirteen (13) feet from the property line of Stenton Place as laid out Northwardly from its intersection with the Northerly line of Atlantic Avenue. Provided however that nothing herein shall empower any purchaser of said lots to lay out any lot or lots out of the land comprising the said above mentioned lot or lots that shall have its front or width facing

on said Atlantic Avenue less than that laid out on the map or plan of lots duly filed in the Atlantic County Clerk's office as aforesaid. In Witness whereof we the several parties hereto have hereunto set our hands and seals this twelfth day of March, A. D. 1900.

	Fredk. Hemsley	(Seal)
	Enoch L. Higbee	(seal)
	A. E. Waldmayen	(seal)
10	Ellis B. Adams	(seal)
	C. J. Addams	(seal)
	Leonard D. Algar	(seal)
	Wm. H. Burkard	(seal)
	J. Summerill Smith	(seal)
	Geo. W. Carson	(seal)
	Rachel Smith	(seal)
	William A. Hamman	(seal)
	Chas. B. Boyer	(seal)
	Lizzie P. Sharp	(seal)
20	Joel R. Leeds	(seal)
	Catherine C. Chambers	(seal)
	Emna C. Hoopes	(seal)
	W. J. Walls	(seal)
	Eva B. Clark	(seal)
	Annie L. Drake	(seal)
	Annie R. Moore McManus	(seal)
	Frances Doherty	(seal)
	Israel G. Adams	(seal)
	Lucius I. Wright	(seal)
30	M. A. Devine	(seal)
	Wm. M. Clevenger	(seal)
	Wilbert S. Higbee	(seal)
	Chas. S. Forsyth	(seal)
	Frank Camp	(seal)

Signed, sealed and delivered  
in the presence of  
Harry Wootton

State of New Jersey }  
Atlantic County }ss.

Before—this 19th day of July 1900 a Master in Chancery of N. J. personally appeared Enoch L. Higbee, A. E. Waldmayen, C. J. Adams, Leonard D. Algar, Wm. H. Burkard, J. Summerille Smith, Rachel Smith, Wm. A. Hamnan, Joel R. Leeds, Eva B. Clark, Annie L. Drake, Annie R. M. McManus, Wm. M. Clevenger, Wilbert S. Higbee, M. A. Devine, Chas. S. Forsyth, Israel G. Adams, Lucius I. Wright, Francis Doherty, Frank Camp, Emma C. Hoopes, Catherine Chambers, who I am satisfied are parties to above agreement & having made known to them the contents thereof they acknowledged that they signed, sealed and delivered same as & for their voluntary acts & Deeds.

Harry Wootton,  
M. C. C. of N. J. 20

State of New Jersey }  
Atlantic County }ss.

Before me this fifth day of September a Master in Chancery of New Jersey personally appeared Wm. M. Clevenger, Frederick Hemsley, Chas. B. Boyer, Ellis B. Adams, who I am satisfied are parties to above agreement & having made known to them the contents thereof they acknowledged that they signed, sealed & delivered same as and for their voluntary act & deed.

Harry Wootton  
M. C. C. of N. J. 30

Rec'd and Recorded Sept. 13, 1900.

Lewis P. Scott,  
Clerk.

State of New Jersey }  
 County of Atlantic } ss.

I, SAMUEL KIRBY, Clerk of the Court of Common Pleas, in and for the County of Atlantic, the same being a Court of Record, do hereby certify that the foregoing is a true, full and correct copy of a certain deed made by Frederick Hemsley et als to Wilbert S. Higbee, as the same is recorded in my  
 10 said office, in Book of deeds #249, page 264 &c.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court and County at May's Landing, N. J. this twenty-ninth day of August, A. D. one thousand nine hundred and ten. (1910).

(Signed) Samuel Kirby,  
 Clerk

“ Albert C. Abbott  
 Deputy-clerk

20

ENDORSED:  
 Certified Copy of Agreement  
 Frederick Hemsley, et als  
 To  
 Wilbert S. Higbee.  
 Book #249 Page 264 &c.  
 Samuel Kirby,  
 Clerk.

30

STATE OF NEW JERSEY, }  
COUNTY OF ATLANTIC, } ss.

WILLIAM M. CLEVINGER, of full age, being duly sworn according to law upon his oath, says:

1. I am one of the complainants in the above stated cause.

2. I have read the foregoing bill of complaint and swear that the same is true to the best of my knowledge and belief. 10

3. It is particularly true that on November 12, 1922, Philander E. Lane called at my home, stated that he was representing Fannie and Solomon Doerman, owners of the property at the southeast corner of Stenton Place and Atlantic Avenue, Atlantic City, N. J.; that they were about to employ him to design and build a store and apartment addition to the building owned by them; that the dwelling house was to be changed into an apartment house; that the store would be added to and form a part thereof; that the store would face on Atlantic Avenue, and be added to the rear of the present dwelling; that the present dwelling would open into the new building to be built in the rear thereof; that if no objections were raised to this a cheap building would then be erected on the corner within the 17 feet line and that the general idea was to destroy the restrictions so that the entire corner could be utilized for store and apartment purposes. I told him his proposition would result in a violation of the Hem-sley restrictions and the Higbee agreement of March 12, 1900, and suggested that he read the same 20 30

before undertaking work. This he said he would do and let me hear from him. On November 21, 1922, noticing considerable activity around the corner house, I saw Mr. Lane and asked him the conclusion he had reached and he advised that he had taken out a permit to alter the interior of the building; that he intended to change it into apartments; that he had not taken out a permit to build the store facing on Atlantic Avenue; that he intended  
10 to do so; that he had read all the restrictions and the agreement; that he had a right to do whatever he pleased with the property excepting to build within 17 feet of Stenton Place; that he did not intend to build within 17 feet of Stenton Place and that he proposed to go ahead with the work as outlined. I told him that we proposed to bring suit to enforce the restrictions and agreement.

4. On November 21, 1922, I examined the records  
20 in the building inspector's office and ascertained a permit had been taken out for interior alteration at 2804, 2806 and 2808 Atlantic Avenue which is properly known as No. 1 South Stenton Place.

5. I am the William M. Clevenger, who signed the agreement of March 12, 1900, between Frederick Hemsley and Wilbert S. Higbee.

WM. M. CLEVENGER.

30

Sworn and subscribed this 24th day of November, 1922, before me.

C. L. COLE,  
*M. C. C. of N. J.*

I certify above to be a true copy of original bill filed in above cause.

JOHN B. SLACK,  
*Solr.*

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ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

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Between DAVID C. REED, <i>et als.</i> , <i>Complainants,</i> and SOLOMON DOCTERMAN, <i>et</i> <i>als.</i> , <i>Defendants.</i>	}	On Bill, &c. Order to Show Cause.
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Upon reading and filing the bill and affidavit in the above stated cause:

It is, on this 25th day of November, 1922, on motion of John B. Slack, of counsel with the complainants, ordered that the defendants, Fannie Docterman, Solomon Docterman and Philander E. Lane, trading as J. F. Snyder & Co., show cause 30 before the Chancellor, at the Chancery Chambers, in the City of Atlantic City, in the Real Estate and Law Building, on the fourth day of December, 1922, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why a writ

of injunction should not issue, restraining the defendants, their contractors, agents, servants, attorneys and employees from erecting, constructing, altering and completing any new or old building, or any part thereof, or addition thereto, or improvement upon or in any building at the southeast corner of Stenton Place and Atlantic Avenues, Atlantic City, N. J., which shall be nearer than 17 feet to the property line of Stenton Place; which shall  
10 be used for any other purpose than a dwelling house; which shall change the intervening lines between the lots as established by the original Frederick Hemsley restrictions; which shall violate the Higbee agreement of March 12, 1900, recorded in Deed Book 249, at page 264; which shall have the porch higher than six feet above the established grade; which shall result in more than one dwelling upon the said lot or which shall contemplate the facing of stores on the Atlantic Avenue side of the said  
20 lot.

It is further ordered that an uncertified copy of this order and of the bill which may be certified as true by the solicitor be served upon the defendants, Fannie and Solomon Docterman, and that a like copy of this order be served upon the defendant Philander E. Lane, trading as J. F. Snyder & Co., within four days from the date hereof, either within or without the State of New Jersey, and that the complainant have leave to take and serve additional affidavits.  
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Respectfully advised:

R. H. INGERSOLL,  
V. C.

I certify the above to be a true copy of original order.

JOHN B. SLACK,  
*Solr.*

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ANSWERING AFFIDAVITS.

IN CHANCERY OF NEW JERSEY.

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Between DAVID C. REED, <i>et al.</i> , <i>Complainants,</i> and SOLOMON DOCTERMAN, <i>et</i> <i>al.,</i> <i>Defendants.</i>	}	On Bill, &c. Answering Affidavits.
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STATE OF NEW JERSEY, }  
ATLANTIC COUNTY,    } ss.

FANNIE DOCTERMAN, being duly sworn, according to law, on her oath deposes and says:

I am one of the defendants in the above stated cause.

I am the owner of property situate at the south- 30  
east corner of Atlantic Avenue and Stenton Place,  
in the City of Atlantic City, County of Atlantic and  
State of New Jersey, bounded and described as fol-  
lows:

“BEGINNING at a point in the Southeast  
corner of Atlantic Avenue and Stenton Place,

and running thence (1) South in and along the East line of Stenton Place 50 feet to a point; thence (2) East parallel with Atlantic Avenue 72½ feet to a point, thence (3) North parallel with Stenton Place 50 feet to the South line of Atlantic Avenue; thence (4) West in the South line of Atlantic Avenue 72½ feet to the Southeast corner of Atlantic Avenue and Stenton Place, and place of beginning."

10

That said property is known as #1 South Stenton Place, and also known as Nos. 2804, 2806 and 2808 Atlantic Avenue;

That I became the owner of said land and premises by deed from Julia E. Zazalli and husband to myself, dated May 15th, 1922, and recorded in the office of the clerk of Atlantic County, in Book 680 of Deeds, page 229;

20

That on said lot, there is at present erected a three-story and basement brick dwelling;

That on the Atlantic Avenue side of said house, there is a large bow-window forming part of the house itself, built solidly of brick from the ground to the eaves, and being two and one-half stories in height; that around the top is a balustrade, forming a balcony; that said bow-window extends out to the property line on Atlantic Avenue, a distance of about 8 feet from the side wall of the house, and is about 14 feet in width, forming the whole of one

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side of the dining room; that on the Atlantic Avenue side of the house, beginning at a point about 5 feet west of the bow-window above referred to, there is built a porch, approximately 8 feet in width, and extending out to the line of Stenton Place. This porch consists of a brick foundation and slate roof, supported on wooden columns. That in the brick

wall, supporting the porch on the Atlantic Avenue side, there was a window which gave light to the basement, through two windows in the Atlantic Avenue wall of said house;

That I propose to make an addition to said house, by removing the porch on Atlantic Avenue, above referred to, and building a wall connecting with the bow-window, which wall will be about 8 feet from the present Atlantic Avenue wall of said house, and will extend westerly to a point in line with the present Stenton Place wall of said house. This wall will extend to the height of the roof on the present porch on Atlantic Avenue, and will have a storefront on Atlantic Avenue. The west wall of said addition will be flush with the present west or Stenton Place wall of said house, and will extend to the height of the roof of the porch. No change, whatever, will be made either in the porch or steps on Stenton Place, or in the Stenton Place wall of said house; nor will the said Stenton Place porch be raised or altered in any respect whatsoever. A portion of the present northerly wall of said house, between the end of the bow-window and the west or Stenton Place wall, will be removed, and the floor of the present living room will be raised, making a room approximately 16 feet wide by 28 feet deep, no part of which will extend beyond the Stenton Place wall of said house. There will be no communication whatsoever between the store and the house.

That at the northwest corner of Stenton Place and Atlantic Avenue, diagonally across from my property, there has been erected, within the last two or three months, a large two-story brick addition to the frame house which already stood there. This addition consists of three stores on the street level,



IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }  
ATLANTIC COUNTY, } ss.

FANNIE DOCTERMAN, being duly sworn, according to law, on her oath deposes and says:

That in the Hemsley restrictions, referred to in the bill of complaint, it is provided that:

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“Verandas shall be constructed without temporary or permanent obstructions to view and air other than supports, roof and rail.”

Notwithstanding said provision, two of the complainants, namely, David C. Reed and John B. Slack, have enclosed their porches with wood and glass sashes, making what is commonly called a sun porch or parlor, which said construction is in violation of that section of the restrictions, above set forth.

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Sworn and subscribed to before me this        day  
of December, A. D. 1922.

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the affidavit to show knowledge in the complainants of such settlement.

It is unnecessary at this time to determine whether complainants, Slack and Reed, have violated these restrictions and thereby estopped themselves from enforcing the same—complainant, Clevenger, not being charged with any violation thereof.

Submitted: December 20th, 1922.

Determined: January 8th, 1923.

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ORDER.

IN CHANCERY OF NEW JERSEY.

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Between

DAVID C. REED, *et als.*,  
*Complainants.*  
 and  
 FANNIE DOCTERMAN, *et*  
*als.*,  
*Defendants.*

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On Bill, &c.  
 Order.

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This cause having come on for hearing on December 4th, 1922, the return day of the order to show cause heretofore allowed, and the same, by consent of counsel, having been adjourned until December 20, 1922, when it was argued by Bourgeois & Coulomb for the defendants, and Hon. C. L. Cole for the complainants, and the Court having considered of the same: 30

It is, on this 26th day of January, 1923, on motion of John B. Slack, of counsel with the complainants, ordered that the rule to show cause heretofore allowed be and the same is hereby made absolute.

It is further ordered that an injunction do issue out of this Court under the hand and seal of the clerk thereof, in according to the prayer of the said bill, restraining the defendants, their contractors, agents, servants, attorneys and employees from  
10 erecting, constructing, altering and completing any new or old building, or any part thereof, or addition thereto, or improvement upon, or in any building at the southeast corner of Stenton Place and Atlantic Avenues, Atlantic City, N. J., which shall be nearer than 17 feet to the property line of Stenton Place, which shall be used for any other purpose than a dwelling house, which shall change the intervening lines between the lots as established by the original  
20 Frederick Hemsley restrictions, which shall have a porch higher than 6 feet above the established grade, which shall result in more than one dwelling upon the said lot, or which shall contemplate the facing of stores on the Atlantic Avenue side of said lot.

It is further ordered that the said injunction may be served upon the defendants either within or without the State of New Jersey.

EDWIN R. WALKER,  
C.

30 Respectfully advised,  
R. H. INGERSOLL,  
V. C.



## PETITION OF APPEAL.

*To the Honorable the Court of Errors and Appeals  
in the last resort in all causes:*

The petition of Soloman Docterman, Fannie Docterman and Philander E. Lane respectfully shows  
10 that your petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor Edwin R. Walker, Chancellor of the State of New Jersey, bearing date the twenty-sixth day of January, 1923, wherein David C. Reed, *et al.*, were complainants and your petitioners were defendants, in this respect, to wit: That the said decree adjudges that a rule to show cause theretofore made in said cause be made absolute, and further adjudges and  
20 orders that an injunction issue out of this court under the hand and seal of the clerk, in accordance with the prayer of said bill, restraining the defendants, their contractors, agents, servants, attorneys and employes from erecting, constructing, altering and completing any new or old building, or any part thereof, or addition thereto, or improvement upon, or in any building at the southeast corner of Stenton Place and Atlantic Avenue, Atlantic City, N. J., which shall be nearer than 17 feet to the property line of Stenton Place, which shall be used for any  
30 other purpose than a dwelling house, which shall change the intervening lines between the lots as established by the original Frederick Hemsley restrictions, which shall have a porch higher than 6 feet above the established grade, which shall result in more than one dwelling upon the said lot, or which shall contemplate the facing of stores on the Atlantic Avenue side of said lot. And your petitioners

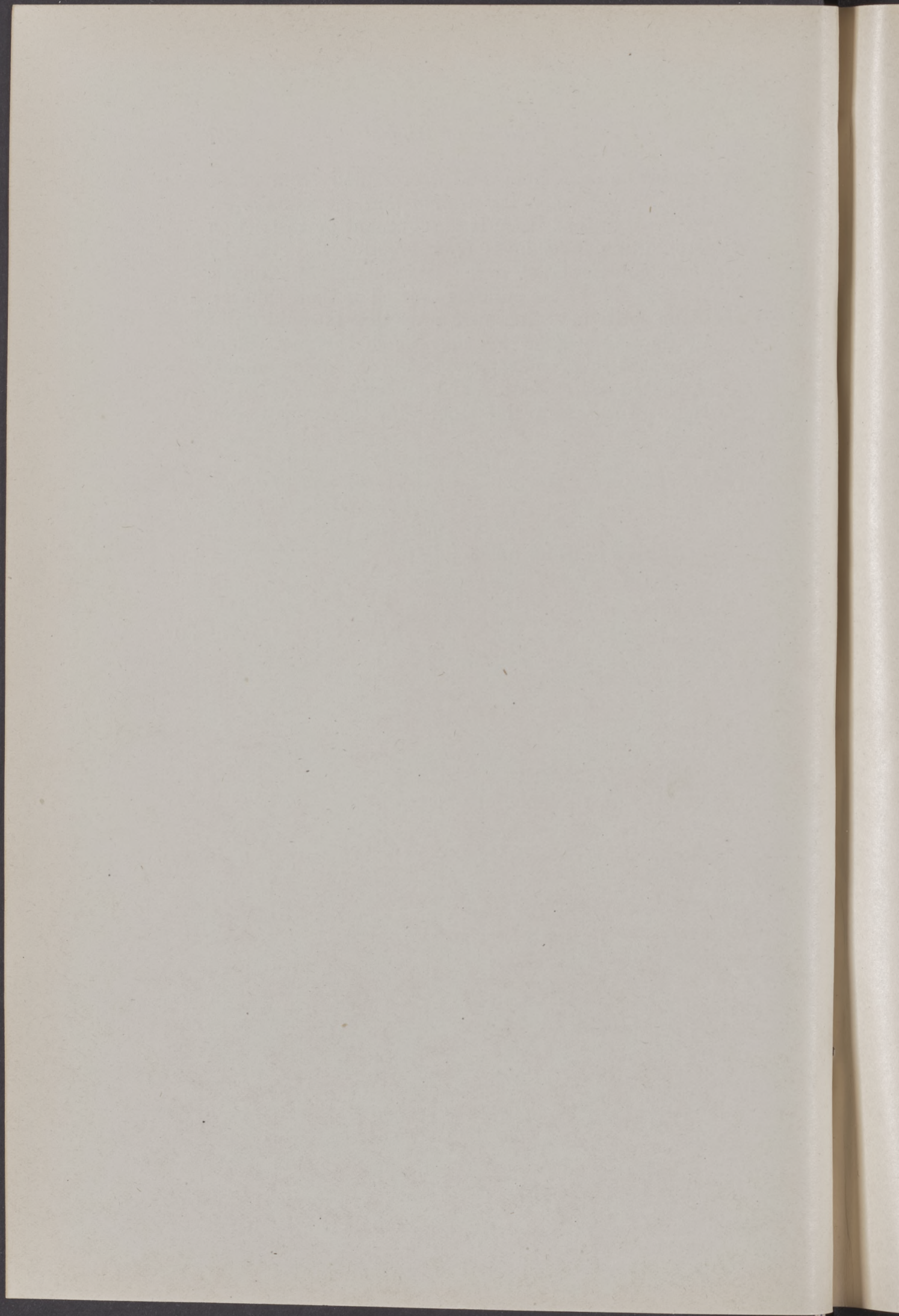
humbly appeal from said decree, and from every part thereof, upon the ground that the same is erroneous, in that there is no covenant or restriction prohibiting defendants from erecting the store by them contemplated to be erected on the Atlantic Avenue side of the building erected on their said lot. Your petitioners therefore pray that the said order of the said Chancellor may be in the particulars aforesaid 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. 10

BOURGEOIS & COULOMB,  
*Solicitors for and of Counsel with Defendants-Appellants.*

Answer in usual form.

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NEW JERSEY  
Court of Errors and Appeals

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BETWEEN  
DAVID C. REED ET AL.,  
*Respondents-Complainants,*  
AND  
SOLOMON DOCTERMAN ET AL.,  
*Appellants-Defendants.*

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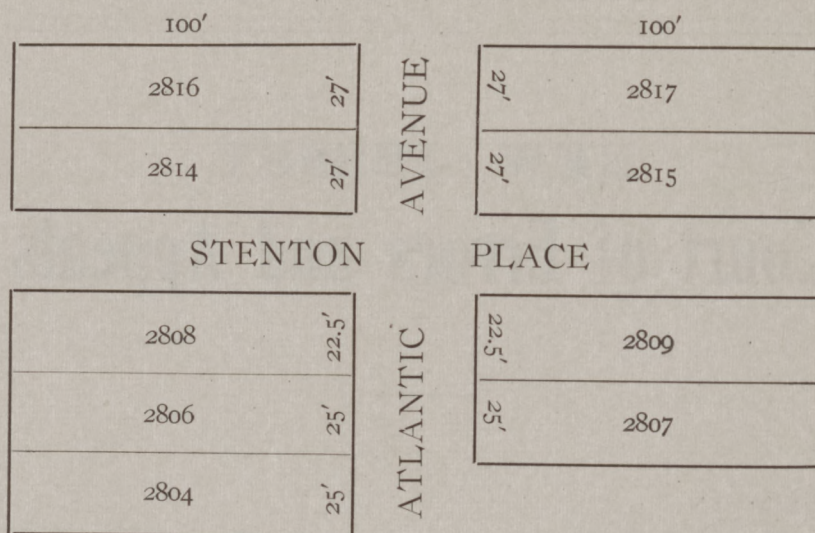
**Brief for Respondents.**

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STATEMENT.

Frederick Hemsley was the owner of a large tract of land in the vicinity of Chelsea Beach, Atlantic City, and, pursuant to a general plan, laid out in blocks and lots and sold therefrom, subject to carefully prepared building restrictions.

At the time of the filing of the map of the restricted tract, the section of property involved in this litigation stood as follows:



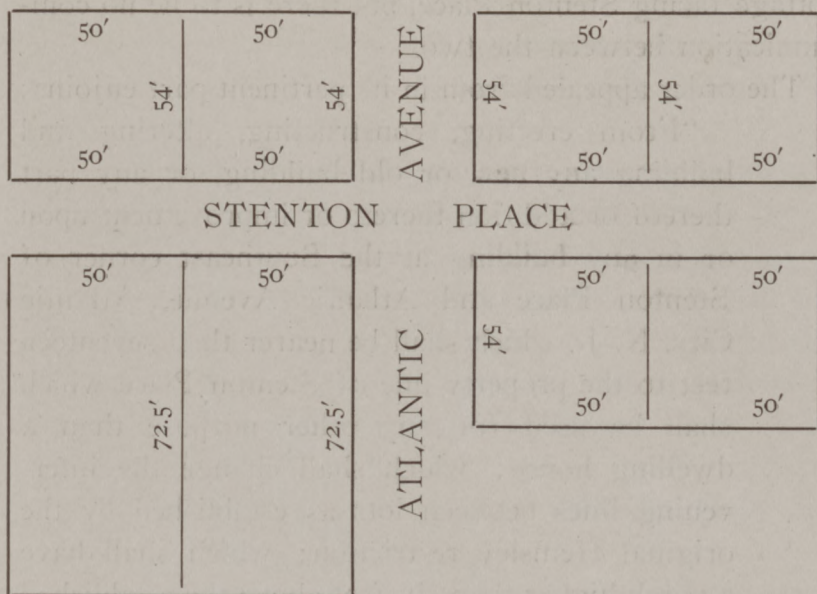
The lots 2807 and 2809 were 25.225 feet front respectively on Atlantic Avenue, by 100 feet in depth.

Lots 2815 and 2817 were 27 feet front on Atlantic Avenue, by 100 feet in depth.

Lots 2804, 2806 and 2808 were 22.5, 22.5 and 25 feet front respectively on Atlantic Avenue, by 100 feet in depth.

The lots 2814 and 2816 were the same size as 2815 and 2817.

Almost immediately after the lots had been sold to other parties, it was seen that Stenton Place corners could be vastly improved if the same lots fronting on Atlantic Avenue were faced as dwelling lots on Stenton Place, and upon which should be erected dwellings, which, on the South side of Atlantic Avenue, should be set back seventeen feet from the property line, and on the North side of Atlantic Avenue, thirteen feet from the property line. The following illustrates the section after the change:



Owners of real estate in the restricted tract, were accordingly urged to enter into the agreement of March 12, 1900, attached as an exhibit to the bill of complaint in this cause, and immediately after the execution thereof, three of the corners were built upon in strict accordance with the provisions of the said agreement.

It will thus be seen that the dwelling involved in this case and located on lots 2804, 2806 and 2808 occupies five and one-half feet in depth by fifty feet in width of the corner half of 2808, practically all of the half of 2806 and a portion of 2804; the remaining seventeen feet in width by fifty feet in depth of 2808, not being used for dwelling house purposes as provided in the agreement. The agreement prohibits the erection of a building nearer than seventeen feet to the property line of Stenton Place.

Under clause 5 of the Hemsley restrictions, this five and one-half feet of land may not be used. It is only possible to use it under the agreement of March 12, 1900.

According to the affidavit of defendant, it is intended to construct a store facing Atlantic Avenue and built flush therewith and to immediately abut the existing

cottage facing Stenton Place, but there is to be no communication between the two.

The order appealed from in its pertinent part enjoins:

“From erecting, constructing, altering and building any new or old building, or any part thereof or addition thereto or improvement upon or in any building at the Southeast corner of Stenton Place and Atlantic Avenue, Atlantic City, N. J., which shall be nearer than seventeen feet to the property line of Stenton Place which shall be used for any other purpose than a dwelling house; which shall change the intervening lines between lots as established by the original Hemsley restriction; which shall have a porch higher than six feet above the established grade; which shall result in more than one dwelling on said lot, or which shall contemplate the facing of stores on the Atlantic Avenue side of said lot.”

The inquiry is, is the order erroneous in whole or in part.

#### ARGUMENT.

It is not denied that appellants as successors in title to Dickinson who signed the agreement on page 18 is not bound thereby. As we understand it, the argument is that no work is contemplated which violates its provisions or the provisions in the Hemsley deed creating the original restrictions. It is plain from reading the agreement of 1900 that the owners of corner lots were to be privileged to alter the intervening lines or lots as they appear on the Hemsley map as filed. It is likewise clear that for this privilege they were to be deprived of certain rights which existed under the Hemsley deed in favor of lots facing on Atlantic Avenue. By the plainest implication only dwelling houses could be erected on Atlantic Avenue. By express language there is a pro-

hibition against building on any lot or lots facing Atlantic Avenue which should be narrower than the width of said lots as shown on the Hemsley map as filed. The agreement reads:

“Provided, however, that nothing herein shall empower any purchases of said lots to lay out any lot or lots out of the land comprising the said above mentioned lot or lots that shall have its front or width facing on said Atlantic Avenue less than that laid out on the map or plan of lots duly filed in the Atlantic County Clerk’s Office as aforesaid.”

The addition of the brick store will be in plain violation of the quoted provision.

Moreover, the effect of the agreement of 1900 was to impose upon the lots facing Atlantic Avenue the provisions of Paragraph or Section 4 of the Hemsley restrictive covenant which forbid more than one building upon a single lot. If defendants are allowed to complete the project there will be not only the existing cottage but a separate and independent store. It will not be overlooked that the construction of the cottage or dwelling house on the property now owned by defendants, but the cottages oceanward thereof were all built in keeping with the construction or interpretation here contended for and our insistence is that the defendants are bound by such construction or interpretation. So construed, the order for the injunction was correct and it should be affirmed.

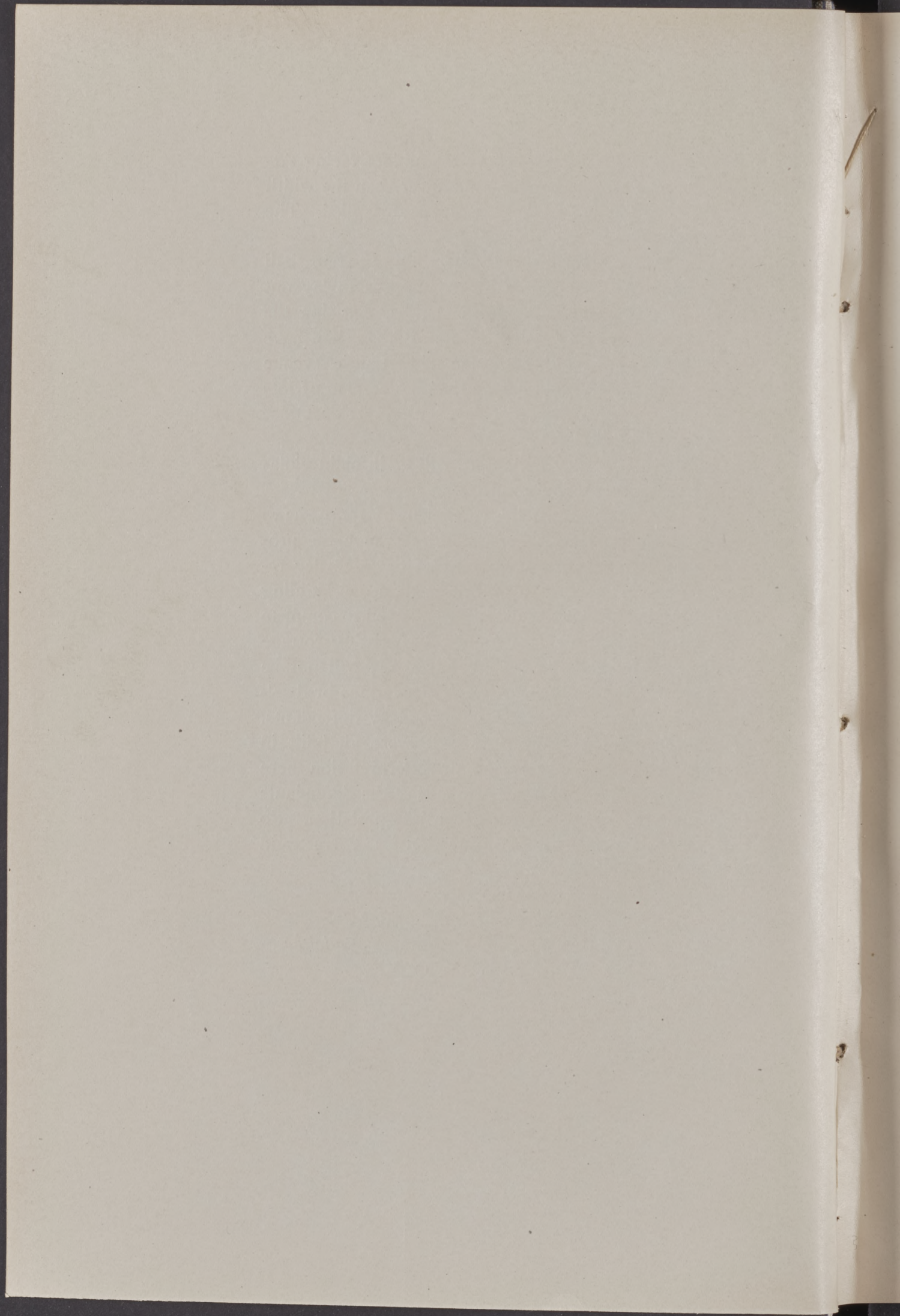
Respectfully submitted,

JNO. B. SLACK,

*Solicitor.*

C. L. COLE

*of Counsel.*



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between  
DAVID C. REED, *et al.*,  
    *Respondents-*  
    *Complainants,*  
and  
SOLOMAN DOCTERMAN, *et al.*,  
    *Appellants-*  
    *Defendants.*

On Bill, &c.  
On Appeal.

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BRIEF OF BOURGEOIS & COULOMB, FOR  
APPELLANTS.

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STATEMENT.

This is an appeal from an order of the Court of Chancery, awarding a preliminary injunction against defendants, restraining them from building an addition to their property on Atlantic Avenue, at the intersection of Stenton Place, in Atlantic City, N. J., advised by Honorable Robert H. Ingersoll, Vice-Chancellor.

FACTS.

The bill of complaint alleges the laying out by Frederick Hemsley of a tract of land in Atlantic

City, N. J., into streets and lots, and the sale thereof subject to building restrictions (page 1, lines 24 to 30).

Appellants are the owners of three (3) lots on Atlantic Avenue, numbered 2804, 2806 and 2808 Atlantic Avenue, part of said Hemsley tract (page 28, line 11). These lots are situate at the southeast corner of Atlantic Avenue and Stenton Place (page 27, lines 30 to 34). Stenton Place is a cross street or avenue, extending from the ocean northerly to the thorofare. Erected on these lots is a brick dwelling which fronts toward the west. The bill alleges that this house is built in accordance with the Hemsley restrictions (page 13, lines 8 to 12). There is an eight foot porch on the Atlantic Avenue side of said building; also a two-story bow-window (page 28, line 22 and lines 30 to 35). Appellants propose to remove the porch on the Atlantic Avenue side, and build an addition to the Atlantic Avenue side, and build an addition to the Atlantic Avenue side of said house, which addition is to be used for store purposes, with entrance on Stenton Avenue (page 29, lines 5 to 10). This addition is to extend no further westwardly than the westerly line of the present dwelling, which the bill avers conforms to the restrictions.

The bill of complaint seeks to restrain appellants from erecting a store on said lots on the Atlantic Avenue front (page 16, line 30). The affidavits show that it is not the intention of appellants to extend this addition westwardly of the westerly line of said building, which is seventeen feet distant from the Stenton Place line.

ARGUMENT.

It is contended that there is no covenant which restrains appellants from erecting the store on Atlantic Avenue, as they contemplate.

The building restrictions affecting the property are copied in the bill of complaint, and consist of nine clauses under paragraph 3 of said bill (page 2, line 3).

The first four clauses of the restrictive covenant deal with the location of the buildings upon the lots, the erection of bay-windows, the fronting of the buildings upon the streets, &c. (pages, 2, 3 and 4, to line 18).

The fifth clause provides as follows (page 4, line 19):

“5. None of the foregoing restrictions are to apply to any lots on Atlantic Avenue, or side or cross avenues, Northwardly therefrom (corner lots on Atlantic Avenue considered as being on Atlantic Avenue); except, that dividing lines of the lots lying on Atlantic Avenue, or between Atlantic and Arctic Avenues, as laid out on said maps, shall not be changed.”

The sixth clause provides (page 4, line 27):

“6. That no building, or any part thereof, erected on said lot or lots shall be used as a slaughter house, piggery or any other nuisance tending to destroy the health, peaceableness, or proposed character of neighborhood. Warehouses, storehouses, carpenter or paint shops, stores or buildings, for general merchandise business, or other like buildings or uses are prohibited; except on lots fronting on Atlantic

Avenue, and on lots lying northwardly of the northerly line of Atlantic Avenue; the selling of beer, wine or any intoxicating liquors is prohibited on said lots; excepting on lots lying on the northerly side of Atlantic Avenue, or on side or cross avenues northwardly therefrom; and no building for that purpose shall be erected or used for that purpose, except in locality aforesaid; corner lots on Atlantic Avenue considered as lying on Atlantic Avenue."

The seventh clause pertains to sewerage, drainage, &c., and is not involved in this matter (page 5, line 9).

The eighth clause provides that (page 5, line 16):

"8. No stable or stables for livery purposes or for private use shall be erected on said lot or lots; excepting on lots lying northwardly of the lots on the northerly line of Atlantic Avenue as mapped; corner lots on Atlantic Avenue considered as lying on Atlantic Avenue."

The ninth clause pertains to the beach-front property (page 5, line 23).

Paragraph 8 of the bill (page 8, line 31), alleges that a certain agreement was entered into on the twelfth day of March, 1900, wherein and whereby all of said (corner lot) owners, and all other owners within the said Hemsley tract expressly released the said corner properties from the operation of restriction No. 5 against the change of dividing lines and gave permission to the said owners to face the said corner properties on Stenton Place, to erect dwellings thereon and to divide the said lots into two lots of fifty feet in front by the Atlantic Avenue frontage in depth, and imposing other restrictions to the effect that the main body of all dwellings

should be no nearer than thirteen feet from the property line on the northerly side of Atlantic Avenue, and no nearer than seventeen feet from the property line on the southerly side of Atlantic Avenue, the language being:

“Witnesseth, that whereas under and by the terms of certain restrictions and reservations, cited and laid out in certain deeds made heretofore by Frederick Hemsley and wife of Atlantic City, New Jersey, to William G. Hoopes, &c., duly recorded in the Clerk’s Office of Atlantic County, New Jersey, it is provided in Section 5 of said restrictions, ‘That dividing lines of the lots lying on Atlantic Avenue shall not be changed,’ the reference to lots therein being made to lots Nos. 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2814, 2815, 2816 and 2817 Atlantic Avenue as laid out on the map or plan aforesaid, and Whereas the undersigned with the said Wilbur S. Higbee agree that the lines dividing the said above mentioned lots from each other should not be unalterably fixed but that the purchasers should have the right to build one building covering more than one of said lots. Now, therefore, in consideration of the mutual advantages \* \* \* we the undersigned owners of property on said tract of land and premises do hereby release and assign all our right to the enforcement of said restrictions in as much as provided that said dividing lines should not be changed and do hereby agree to and with each other and the said Wilbur S. Higbee, his heirs and assigns, that the owners of lots designated as above shall have the right to consider the intervening lines between said lots, as being not unalterably fixed and that one or more of said lots

may be used together for building purposes without regard to the intervening line as laid out on said map. Provided however that no dwelling house shall be erected on lots lying on the Southerly side of Atlantic Avenue the main body of which shall be nearer than Seventeen (17) feet from the property line of Stenton Place as laid out, South of its intersection with the Southerly line of Atlantic Avenue, or which shall have the top of the porch floor higher than six (6) feet above grades of streets or Avenues."

Paragraph 12 of said bill states (page 13, line 1):

"That the dwelling facing on South Stenton Place owned by the complainant, David C. Reed, is erected and constructed in accordance with the restrictions aforesaid; that the dwellings of the complainants, John B. Slack and William M. Clevenger, erected upon the lots above stated, are erected and constructed in accordance with the restrictions aforesaid, and that the dwelling of the defendants, Fannie and Soloman Docterman is presently erected and constructed upon the lot by them in accordance with the restrictions aforesaid, and is actually used by them for dwelling purposes."

The answering affidavit of Fannie Docterman describes her property located at the corner of Atlantic Avenue and Stenton Place, and says (page 29, line 5):

"That I propose to make an addition to said house, by removing the porch on Atlantic Avenue, above referred to, and building a wall connecting with the bow-window, which wall will be about 8 feet from the present Atlantic Ave-

nue wall of said house, and will extend Westerly to a point in line with the present Stenton Place wall of said house. This wall will extend to the height of the roof on the present porch on Atlantic Avenue, and will have a store-front on Atlantic Avenue. The West wall of said addition will be flush with the present West or Stenton Place wall of said house, and will extend to the height of the roof of the porch."

It seems apparent that there is no covenant which prevents the appellants from constructing this addition on the Atlantic Avenue side of the house, nor which restricts them in the use of it for store purposes.

Under the original restrictions, this lot was considered to be an Atlantic Avenue lot, and was, therefore, exempt from all of the restrictions contained in clauses 1, 2, 3, 4 and 6 thereof.

The agreement of March 12th, 1900, voided that portion of clause 5, which prohibited the changing of the property lines and building within seventeen feet of Stenton Place. Other than that, it had no force or effect upon the covenants.

This agreement was before the Court of Chancery and this Court in the case of *Clevenger v. Quinn* (79 Eq. 485-642).

The object which was sought to be obtained by the agreement of March 12th, 1900, was to remove the restriction which prohibited changing the property lines of the corner lots, and imposing a building restriction on the corner lots on the southerly side of Atlantic Avenue, that no building should be built nearer to Stenton Place than seventeen feet. It was so held in the *Clevenger* case.

Prior to the agreement of March 12th, 1900, the owners of Atlantic Avenue corner lots might build

to the Stenton Place property line. It is not proposed to violate this seventeen foot Stenton Place restriction.

There is no covenant, either in the original Hemsley deed nor in the agreement of March 12th, 1900, which prohibits the building of a store on the Atlantic Avenue lots of appellants, nor using said store for general merchandise purposes, provided said store is kept back seventeen feet from Stenton Place, as the affidavits show this building will be. It is therefore respectfully submitted that the order of the Court of Chancery should be reversed and set aside.

BOURGEOIS AND COULOMB,  
*Solicitors for and of Counsel with  
Appellants-Defendants.*

Copy served on  
John B. Slack  
2/15/23.

