

## New Jersey Court of Errors and Appeals.

Between—

MARGARET MARTIN, *et al.*,  
Appellant,

*and*

BRIDGET A. LAMB,  
Respondent.

On demurrer to  
Complainant's  
bill.

### Brief for Appellant.

The demurrer in this cause was well taken, and should have been sustained by the Chancellor for the following reasons:

#### I.

The bill shows neither opportunity nor disposition on the part of the defendants to commit the act sought to be restrained.

It does not allege that the defendants have filed a plea of the Statute of Limitations, or that they are about to do it, or are threatening to do it. Indeed, it shows that they have no present opportunity of doing it, as no declaration has yet been filed.

The wrong which a complainant seeks to enjoy in a Court of Equity must be both threatened and imminent. It must be threatened, because the Court will not assume that any man intends to do a wrong simply because it is to his interest to do it, and he has the opportunity.

And it must be imminent, because the Court is jealous of the exercise of its delicate and tremendous power by injunction, and it will not put it forth either in advance of or beyond the necessities of the case.

In 1 High on Injunctions, p. 15, § 18, it is said that satisfactory proof that the defendants threaten the commission of a wrong which is within their power is sufficient ground to justify the interference of the Court by injunction.

In *Morris Canal and Banking Company v. The Central R. R. Co.*, 1 C. E. Gr., 442, Chancellor Green declared that to warrant the Court in granting an injunction "the right must be clear and the injury be impending or threatened, so as to be averted only by the protecting, preventive process of injunction."

In *Lutheran Church v. Mashop*, 2 Stock., 57, Chancellor Williamson said: "This Court cannot grant an injunction to allay the fears and apprehensions of individuals. They must show the Court that the acts against which they ask protection are not only threatened, but will, in all probability, be committed to their injury."

But it is said by the Chancellor that neither a threat nor a declaration of intention is necessary to be shown in this case, because it is here entirely certain that the defendants will interpose a plea of the Statute unless restrained.

Why is this entirely certain? Upon what does the Chancellor base his assurance?

To plead the Statute in this case would, according to his conclusion, be "very inequitable."

Indeed, a defense of the Statute of Limitations cannot be restrained except upon the ground that it is a fraud upon the plaintiff.

The injunction goes to restrain a wrong, not a right, as much in a case like this as in any other.

In *The Bank of Tennessee v. Hill*, 10 Humph., 176, it was said: "The power of a Court of Chancery to enjoin the pleading of the Statute of

“Limitations, is a high power, to be exercised only  
“in plain cases of a fraudulent abuse of the lapse  
“of time.”

I submit that it ought not to be assumed that the defendants in this case will make a fraudulent use of the lapse of time simply because it is to their interest to do so and they have the opportunity.

The Chancellor says that is laid down that there may be cases in which it will be sufficient ground for granting an injunction that there is probable ground for believing that unless it be granted there is danger of the act or acts being done which the bill seeks to restrain.

He cites in support of this

Joyce, Prin. Inj., 59.

The full text of the citation is as follows:

“To warrant the Court in granting or continuing  
“an injunction, it must be reasonably satisfied  
“that there is an intention on the part of the de-  
“fendant to do the act sought to be restrained, or,  
“at least, that there is probable ground for believ-  
“ing that, unless the injunction is granted, there  
“is danger of such acts being done, and it is not a  
“sufficient ground for granting an injunction that,  
“if there is no such intention, it will do the de-  
“fendant no harm.”

Joyce on Prin. of Inj., 59.

This text was taken entire from the syllabus of  
Dunn v. Bryan, 7 I. R. Eq., 143.

That was a case by a landlord against a tenant to enjoin the commission of waste.

The Vice Chancellor held that there was not sufficient evidence to warrant the belief that the defendant intended to commit waste.

The case is no authority whatever for the doctrine that interest and opportunity alone furnish a probable ground for believing that the defendant intends to do the act sought to be restrained.



“clear of all encumbrances, except said mortgage of six hundred dollars, and ordering that a reference be had to Joseph B. Alward, a master of this Court, to ascertain and report the value of said dower right and the amount of such unpaid taxes and assessments.”

No relief was or could have been granted to the defendants by that decree. No tender of a deed thereunder would have entitled them to the balance of the purchase money. The Court simply adjudged certain relief to the complainants and left them at liberty to avail themselves of it or not, as they elected.

It did not direct them to pay the purchase money, but only provided that they would become entitled to a deed upon paying it.

Under the circumstances the defendants could do nothing except to ask for a dismissal of the complainant's bill in case the latter failed to carry out the decree, and hence it was that the attempt made by the defendants to carry it out was declared improvident.

Upon the making of this decree it became the duty of the complainants to pursue one of three courses, viz: to accept the conditions of the decree and loyally carry them out, if the same was satisfactory to them, or, if it was not, either to dismiss their bill or take an appeal.

They, however, did nothing—nothing except to successfully resist the attempt of the defendants to carry out the decree themselves.

So matters were allowed to stand from April, 1877, until December, 1878. Then the now complainant, without dismissing her bill in equity or further proceeding thereon, brought an action at law against the executors to recover back the purchase money paid by her.

Thereupon the executors filed a petition in the equity suit and obtained an injunction restraining the action at law, upon the ground of the pendency of the suit for specific performance.

This injunction was obtained April 4th, 1879. But not even then, with her attention so forcibly called to the matter, did the complainant either move in her equity suit or dismiss her bill.

She remained perfectly inactive until one of the executors had died two years later, and the premises had been sold on the foreclosure of a prior mortgage two years later still. Then she dismissed her suit for specific performance and with it the defendants' injunction, and brought her present action.

I submit that under the circumstances she is entitled to no aid from a Court of Equity in prosecuting that action at law.

She claims that the injunction obtained by the executors prevented her from proceeding at law until the statute had run against her cause of action.

Such, however, I submit, is not the fact. The primary bar to her action at law was her suit for specific performance. While she was demanding a deed in Chancery upon the ground of the payment of the purchase money, she could not sue at law to recover back that money.

A plea in the action at law of the pendency of the Chancery suit would, probably, have barred that action as effectually as the injunction.

But whether this be so or not, the injunction was a proper thing and the complainant, not the executors, was responsible for its existence. She could have dissolved it any day she chose by simply dismissing her bill as she finally did.

What right then has she here?

In Kerr on Injunctions, p. 201, it is said: "A man who has by his own conduct put himself in the wrong, or who has by his own conduct brought about the state of things of which he complains, cannot invoke the aid of a Court of Equity."

In *Reeves v. Cooper*, 1 Beas., 226, Ch. Williamson declared (quoting an opinion of Ch. Kent), that

equity would not relieve against a judgment at law unless the defendant was prevented from availing himself of his defense by fraud or accident or by the act of the opposite party unmixed with negligence or fraud on his part.

In *Doughty v. Doughty*, 2 Stock., 347, the complainant had brought an action at law against the defendant's testator in 1845. The testator had thereupon filed a bill in chancery and restrained the action by injunction which had been continued until 1850 and then dissolved.

The testator had died in 1852, and in 1854 complainant had brought a new action against the defendant as his executor and filed a bill to restrain a defense of the statute of limitation.

This latter bill was before the Court on a motion for injunction. The opinion of the Chancellor upon the question of defendant's *laches* is so applicable to the present case that I quote it entire. He said:

"But, secondly. The laches of the complainant have been great, and no excuse for them has been offered which can avail the party in a Court of Equity. Nathaniel Doughty died in November, 1852, two years and eight months after the injunction was dissolved. During this period the complainant took no steps to revive his old suit at law, or to institute a new one. He allowed two more years to pass after Nathaniel Doughty's death, and he then commences the existing suit, in aid of which this Court is asked to interpose. Here, then, was a delay of more than three years. The only excuse for it which is given in the bill is, that during this period the complainant was recovering from the effects of his loss of money and of time expended in his litigation in Chancery. Such an excuse cannot avail the complainant. If he has lost any legal rights the loss is to be attributed not to the injunction of this Court, but to the complainants' own inexcusable negli-

“gence and *laches*. The defendant has been greatly  
“prejudiced by this delay. The suit is brought  
“upon a running account of long standing and one  
“which requires the information which the party  
“himself only could give to explain. He is dead.  
“The cause might have been decided in his life-  
“time. The delay of the complainant has pre-  
“vented it. His own delay and negligence have  
“caused his present embarrassment.”

I submit that the *laches* of the complainant in the present case were far greater than in the Doughty case, and that the conclusion reached there should be adopted here.

Dated Nov. 16, 1885.

R. V. LINDABURY,  
of Counsel with Appellant.

In Chancery of New Jersey.

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To His Honor THEODORE RUNYON, Chancellor of the  
State of New Jersey :

Humbly complaining, showeth unto your Honor  
your oratrix, Bridget A. Lamb, of the City of Elizabeth, in the County of Union, and State of New Jersey :

That on the fifteenth day of October, eighteen hundred and seventy-four, William Kelly and John Ryan, executors of John Keighry, deceased, by their agents and auctioneers, at a public vendue held for that purpose, put up and exposed for sale certain lands and premises, situate and lying in the City of Elizabeth aforesaid, and known as 1,103 Magnolia avenue ; that before said sale the auctioneer announced that said premises would be sold free and clear of all encumbrances, except a mortgage for six hundred dollars (then an existing encumbrance on said premises) ; that ten per cent of the purchase money must be paid immediately after the sale, and the balance thirty days thereafter, to said executors, at the office of Thomas F. McCormick, when the deed for said premises would be delivered, said deed to convey said premises free and clear of all encumbrances, except a mortgage for six hundred dollars, as aforesaid ; that your oratrix bid for said premises the sum of thirty-nine hundred dollars, at which sum said premises were struck off to her, she being the highest bidder therefor.

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That she thereupon paid the sum of three hundred and ninety dollars, being ten per cent. of the purchase money bid by her as aforesaid, in accordance with said conditions of sale, and signed the conditions of sale, which were in substance as above stated.

Your oratrix further shows that on the fourteenth day of November then next ensuing, the date named in said conditions of sale for the payment of  
 10 the balance of said purchase money for said premises, and the delivery of the deed therefor, your oratrix called at the office of Thomas F. McCormick, the place named in said condition of sale, prepared and ready to pay the balance of said purchase money and to accept a deed for said premises; that she demanded a deed for said premises, and tendered and offered the balance of said purchase money unpaid by her, to wit, the sum of thirty-five  
 20 the said executors, then and there told her he could not give her a clear deed, but that the assessments due to the city had not been paid; that Elizabeth Keighry, the widow of said John Keighry, whose executors they were, had neither signed the deed, nor had released her dower right in said premises; and that said executors then and there refused to perform and keep the terms  
 30 and conditions of said sale on their part and behalf to be performed and kept, and to deliver your oratrix a deed for said premises free and clear of all encumbrances except said mortgage, for six hundred dollars, and to receive the balance of said purchase money, or to repay to her the sum of three hundred and ninety dollars so paid by her as aforesaid.

Your oratrix further shows that on the twenty-ninth day of May, eighteen hundred and seventy-five, your oratrix together with John Lamb, her husband, filed her bill of complaint in this Court,  
 40 praying, among other things, that said William

Kelly and John Ryan might be decreed to specifically perform their agreement for the sale of said premises, and deliver to your oratrix a deed therefor, an accordance with the terms and conditions of said agreement of sale.

That said William Kelly and John Ryan, executors as aforesaid, filed an answer denying that the complainants were entitled to the relief prayed for in said bill, or to a conveyance or deed for said premises, and prayed that said bill might be dismissed with costs. 10

Your oratrix further shows that such proceedings were thereupon had, that said William Kelly and John Ryan, executors as aforesaid, the defendants in said cause, on the twenty-fifth day of April, eighteen hundred and seventy-seven, procured and obtained on their own behalf and motion, an interlocutory decree in each cause, in substance decreeing, the specific performance of said agreement of sale, and that said complainants were entitled to a deed from said executors for said premises, upon payment of the balance of said purchase money, less an allowance to be made for said Elizabeth Keighry's right of dower, and the amount of unpaid taxes and assessments, which were liens on said premises, free and clear of all encumbrances, except said mortgage for six hundred dollars, and ordering that a reference be had to Joseph B. Alward, a master of this Court, to ascertain and report the value of said dower right and the amount of such unpaid taxes and assessments. 20 30

Your oratrix further shows that said defendants' solicitor caused said reference to be taken, and filed the report made by said Master thereon, and obtained an order confirming the same, which said last mentioned order was subsequently set aside as having been improvidently granted.

Your oratrix further shows that no further steps having been taken by said executors in said cause, and no deed having been tendered by them in accord- 40

ance with the terms of their own decree, nor anything further done to carry out the same, notwithstanding which they still retained and kept the sum of three hundred and ninety dollars paid by her as aforesaid, and refused to repay her the same, that on or about the fifth day of December, eighteen hundred and seventy-eight, and over one year and seven months after the obtaining of said interlocutory decree as aforesaid, she commenced an action in  
 10 the Supreme Court of this State against the said William Kelly and John Ryan, Executors as aforesaid, to recover said sum of three hundred and ninety dollars so paid to and held by them as aforesaid, and damages for their non-performance of said conditions and agreement of sale on their part to be kept and performed, and their failure and neglect to keep the same.

That thereupon said William Kelly and John Ryan, Executors as aforesaid, filed their petition  
 20 and obtained an injunction in this Honorable Court bearing date the fourth day of April, eighteen hundred and seventy-nine, restraining your oratrix and her attorneys from further prosecuting her said suit in said Supreme Court.

Your oratrix further shows that John Ryan, one of said Executors and defendants, died on or about the thirteenth day of May, eighteen hundred and eighty-one, whereby he devised his lands and real estate to Margaret Ryan, his sister, and to his chil-  
 30 dren, Mary Ryan and John Ryan, who are infants under the age of twenty-one years.

Your oratrix further shows, that after obtaining said decree as aforesaid, and the setting aside the order confirming the Master's report in said cause, nothing whatever was done by said Executors toward carrying out the decree obtained by them as aforesaid, or to protect and keep intact the said lands and premises which they had agreed to convey as aforesaid : That they failed to pay the inter-  
 40 est on said mortgage for six hundred dollars, an ex-

isting lien on said premises at the time of sale, as aforesaid, and the taxes and municipal charges levied thereon.

Your oratrix further shows that said mortgage for six hundred dollars, an existing lien and encumbrance on said lands and premises at the time of sale to your oratrix and her husband, and subject to which the same were sold as aforesaid, was foreclosed by one Catharine Lamb, the mortgagee, and a decree obtained, and that said premises were sold, 10  
and bought in by one Samuel Pierce, and that Thomas Forsyth, Sheriff of the County of Union, by his deed dated the sixth day of October, A. D. eighteen hundred and eighty-three, conveyed said premises to said Pierce, whereby said William Kelly, the surviving Executor and defendant, lost all power of carrying out and performing the aforesaid decree.

Your oratrix further shows, that on the thirty-first day of December, eighteen hundred and eighty- 20  
three, your Honor, by an order dated on that day dissolved the aforesaid injunction restraining your oratrix from prosecuting her aforesaid suit in said Supreme Court; and on the seventh day of January, A. D. eighteen hundred and eighty-four, granted a further order, striking from the files of his Court the bill of complaint filed by your oratrix and her husband as aforesaid, and all proceedings thereon, and also said decree obtained in said cause, and all proceedings thereon. 30

All of which said several matters and things by reference to the said several suits and the proceedings thereon, and the several orders made therein, will more fully and at large appear, and to which or certified copies thereof your oratrix for greater certainty begs leave to refer if it be necessary so to do.

Your oratrix further shows that at the time that said injunction restraining your oratrix from prosecuting her said suit in said Supreme Court was dis- 40

solved as aforesaid, the said estate of John Keighry was insolvent, and that said William Kelly, the surviving Executor, was a person of no responsibility, and that to have prosecuted said suit already commenced against said Executors would have only put your oratrix to useless and unnecessary expense, and that if she had obtained judgment she could not have reasonably hoped to collect the same or any part thereof; that she therefore discontinued

10 said suit, and on the seventh day of May last past commenced a new action in the Supreme Court of this State against Margaret Ryan, Mary Ryan and John W. Ryan, heirs and devisees of said John Ryan, deceased, to recover the sum of three hundred and ninety dollars, paid by her as aforesaid to said John Ryan and William Kelly, and her damages sustained by her by reason of their non-performance of said conditions and agreements of sale on their part to be kept and performed.

20 Your oratrix further shows that she believes and charges that said injunction obtained by said John Ryan and William Kelly, Executors as aforesaid, restraining her from prosecuting her aforesaid action against them, was not obtained in good faith, and for the purpose of enabling them to carry out and perform the decree obtained by them as aforesaid, but for the purpose of protecting themselves, and to embarrass, delay and prevent your oratrix from obtaining the repayment of the money paid

30 by her to them as aforesaid and satisfaction for the damages she had sustained by reason of their failure to perform and keep said conditions and agreement, and which your oratrix would have been able to obtain by prosecuting said suit at law, but for said injunction.

Your oratrix further shows that said suit against said Margaret Ryan, Mary Ryan and John W. Ryan, heirs and devisees of said John Ryan, deceased, is for the same cause of action as said suit

40 against said John Ryan and William Kelly, execu-

tors as aforesaid, and she most respectfully claims and insists that it would be inequitable and unjust that said Margaret Ryan and Mary Ryan and John W. Ryan, heirs and devisees of said John Ryan, should be allowed to take advantage of the delay necessarily caused by the injunction granted by this Court, or that your oratrix should be embarrassed and prevented from enforcing her rights, by her obedience to said injunction, and through no fault or laches of her own.

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But now so it is, may it please your Honor, your oratrix verily believes and fears that unless restrained by your Honor, and enjoined from so doing, that said Margaret Ryan, Mary Ryan and John W. Ryan will plead the statute of limitations to the suit brought against them by her as aforesaid, and thereby prevent your oratrix from obtaining repayment of said sum of three hundred and ninety dollars so paid by her as aforesaid, and her damages for the wrongful acts and unconscionable doings of said John Ryan, deceased, together with William Kelly as aforesaid.

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All which actings, doings and pretences of the said defendants would be contrary to equity and good conscience and tend to the manifest wrong and injury of your oratrix.

In tender consideration whereof, and for as much as your oratrix is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this Honorable Court where matters of this nature are properly cognizable and relievable.

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To the end, therefore, that the said Margaret Ryan, Mary Ryan and John W. Ryan, and their confederates when discovered, may, without oath, your oratrix waiving the same pursuant to the statute, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and parti-

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cularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and that the said Margaret Ryan and Mary Ryan and John W. Ryan and their attorney and attorneys, and the guardian and the guardians of said Mary Ryan and John W. Ryan and his or their attorney or attorneys, may be restrained by the order and injunction of this Honorable Court from pleading the statute of limitations in and to  
 10 the suit so as aforesaid commenced against them by your oratrix, and that your oratrix may have such further and other relief in the premises as the nature of the circumstances of this case may require and to your Honor shall seem meet.

May it please your Honor, to grant to your oratrix not only the most gracious writ or writs of injunction of the State, issuing out of and under the seal of the Honorable Court, to be directed to the said Margaret Ryan and Mary Ryan and John W.  
 20 Ryan and their attorney or attorneys, and the guardian or guardians of the said Mary Ryan and John W. Ryan and his or their attorney or attorneys, and each and every of them, restraining them and each of them, from pleading the statute of limitations to the action brought by your oratrix in the Supreme Court of this State against the said Margaret Ryan, Mary Ryan and John W. Ryan, heirs and devisees of John Ryan, deceased, but also the  
 30 State's writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said Margaret Ryan, Mary Ryan and John W. Ryan, commanding them, and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall seem agreeable to equity and good conscience.

And your oratrix, as in duty bound, will ever pray, etc.,

WILLIAM C. SPENCER,  
Solicitor of Complainant.  
GILBERT COLLINS,  
Of Counsel for Complainant.

State of New Jersey, }  
County. } ss.:

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BRIDGET A. LAMB, the complainant named in the above bill of complaint, being duly sworn according to law, on her oath saith that she has read the foregoing bill of complaint, and that the several matters and things therein stated and alleged so far as they relate to her own acts are true, and so far as they relate to the acts of others she believes them to be true; deponent further saith that she attended a sale of real estate at auction of certain real estate 20 of which one John Keighry died seized, made by John Ryan and William Kelly, his executors, on the fifteenth day of October, eighteen hundred and seventy-four, said sale taking place on the premises to be sold, known as 1103 Magnolia street, in the City of Elizabeth; that said premises were put up for sale at auction by said executors and then and there sold and struck off to deponent for the sum of thirty-nine hundred dollars; that prior to said 30 sale it was announced by said executors that said premises would be sold on the following conditions, viz: that the premises would be sold free and clear of all encumbrances except a mortgage of six hundred dollars, that ten per cent of the purchase money must be paid in cash immediately after the sale; and that the balance was to be paid in thirty days thereafter to the executors, at the office of Thomas F. McCormick, when the deed for said premises would be delivered, said deed to convey the premises free and clear except said 40

mortgage for six hundred dollars; that deponent immediately after said sale did pay to John Ryan, one of said executors, the sum of three hundred and ninety dollars, received a receipt therefor from said executors, and then and there signed the conditions of sale, which were in substance as above stated, but that she received no copy of said conditions; that on the fourteenth day of November, the date named for the payment of the balance of said purchase money, and the delivery of a deed for said premises, deponent called on said executors at the office of Thomas F. McCormick, the place named in said conditions of sale, with the money necessary to pay the balance of said purchase money then in her possession, prepared and ready to perform said conditions of sale on her part, and to accept a deed for said premises; that she demanded a deed of said executors, both of whom were there present, and tendered and offered to them the balance of said purchase money, thirty-five hundred and ten dollars; that thereupon John Ryan, one of said executors, stated that he could not give her a clear deed, that the assessments due the city had not been paid, and that Elizabeth Keighry, the widow of said John Keighry, had not signed the deed or released her dower right in said premises; that said executors then and there refused to deliver her a deed for said premises, or to return the sum of three hundred and ninety dollars paid by her as part of said purchase money, although she demanded the same of them; and that no deed for said premises has ever been tendered or delivered to deponent, nor has the money paid by her as aforesaid ever been repaid her.

And this deponent further says that on the twenty-ninth day of May, eighteen hundred and seventy-five, she, together with John Lamb, her husband, filed her bill of complaint in the Court of Chancery of this State, praying, among other things, that said William Kelly and John Ryan might be

decreed specifically to perform said conditions of sale, and deliver a deed for said premises in accordance therewith. That said William Kelly and John Ryan filed an answer denying that the complainants were entitled to the relief prayed for in said bill, or to a conveyance of said premises, and prayed for a dismissal of said bill. That subsequently said William Kelly and John Ryan, executors as aforesaid, obtained and procured on their own motion, on the twenty-fifth day of April, eighteen hundred and seventy-seven, an interlocutory decree in said cause, in substance decreeing the specific performance of said agreement of sale, and that said complainants were entitled to a deed for said premises upon payment of the balance of said purchase money, less an allowance for the value of said Elizabeth Keighry's right of dower, and the amount of unpaid taxes and assessments, subject to a mortgage for six hundred dollars, and referring the same to Joseph B. Alward, Esq., a Master of this Court, to ascertain and report the value of said right of dower, and the amount of said unpaid taxes and assessments. That said reference was moved and was caused to be taken by the solicitor of the defendants who filed the report made thereon, and obtained an order confirming the same, which said order she was informed by Mr. William C. Spencer was subsequently set aside. Deponent further says, that she caused an action to be brought in the Supreme Court of this State, against said William Kelly and John Ryan, executors as aforesaid, in the month of December, eighteen hundred and seventy-eight, to recover said sum of three hundred and ninety dollars paid by her to them as aforesaid, and still retained by them, and her damages for the non-performance of said conditions of sale on their part; that she was served with an injunction issued out of the Court of this State, bearing date the fourth day of April, eighteen hundred and seventy-nine, and obtained by Thomas F. McCormick, the solicitor of

said William Kelly and John Ryan, executors as aforesaid, restraining her from the further prosecution of said suit, in said Supreme Court. Deponent further shows, that John Ryan, one of said executors, died on or about the thirteenth day of May, eighteen hundred and eighty-one, leaving two children, Mary Ryan and John W. Ryan, both of whom are infants, and under the age of twenty-one years. Deponent further saith that from the time

10 of obtaining said interlocutory decree, no deed was ever tendered to this deponent, nor has said sum of three hundred and ninety dollars paid by her as aforesaid, ever been repaid to her; that within a year, said mortgage for six hundred dollars which was an existing lien on said premises at the time when the same was sold, and subject to which said premises were sold, has been foreclosed and sold, and a deed given therefor to one Samuel Pierce, and that said William Kelly, surviving executor of

20 John Keighry deceased, has no longer any power to deliver a deed, or any interest in said premises; that on the thirty-first day of December, eighteen hundred and eighty-three, by an order of the Court of Chancery, said injunction, restraining this deponent from prosecuting her aforesaid suit was dissolved; and that on the seventh day of January, eighteen hundred and eighty-four, by a further order of said Court said bill of complaint, and all proceedings thereon, and also said decree and all proceedings

30 thereon were stricken from the files of said Court of Chancery; deponent further saith that said estate of John Keighry is insolvent, and that there was no property belonging to said estate; that said William Kelly, surviving executor of said estate, is a man of no property, and that she could not have collected said judgment when obtained on said suit commenced by her as aforesaid, after said injunction was dissolved; that she therefore caused a new suit to be brought after said order, striking from

40 the files of said Court of Chancery the bill of com-

plaint, and all other proceedings subsequently taken in said suit for specific performance had been made, against Margaret Ryan, Mary Ryan and John W. Ryan, heirs and devisees of John Ryan, deceased, which action is now pending and undetermined in the Supreme Court of this State, which said last mentioned suit is for the same cause of action as the aforesaid action against William Kelly and John Ryan Executors as aforesaid, and against prosecuting which she was restrained by the injunction of said Court of Chancery as aforesaid. 10

her  
BRIDGET ADELIA X LAMB.  
mark

Sworn to and subscribed before me this 2d day of August, A. D. 1884. }

NICHOLAS DABB,  
Justice of the Peace.

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STATE OF NEW JERSEY, }  
Union County. } ss. :

WILLIAM C. SPENCER, being duly sworn according to law, on his oath saith, that he was the Counsel of Bridget A. Lamb and her husband, the complainants in the suit for specific performance against John Ryan and William Kelly, Executors, &c., of John Keighry, deceased, and another in the foregoing bill mentioned, after the filing of the bill and answer herein; that an interlocutory decree of the purport and effect in the foregoing bill stated was obtained on the motion of the counsel of said Executors on the twenty-fifth day of April, eighteen hundred and seventy-seven; that the reference therein directed to be taken was taken on the application and procurement of counsel for said Executors, who filed the report made thereon, and obtained an order confirming the same, which order on motion of deponent, as counsel for complainants, was afterwards set aside, as having been improvi- 40

dently granted ; deponent further saith, that after the setting aside of said order confirming said Master's report, nothing further has ever been done toward carrying said cause to a close, and obtaining a final decree therein ; that on the fifth day of December, eighteen hundred and seventy-eight, a suit was begun in the Supreme Court of this State against said John Ryan and William Kelly, Executors as aforesaid, by said Bridget A. Lamb, as in the

10 foregoing bill stated, and that the counsel of said John Ryan and William Kelly obtained an injunction in the Court of Chancery of this State, on the fourth day of April, A. D. eighteen hundred and seventy-nine, restraining the further prosecution of said suit ; deponent further saith that John Ryan died in the year eighteen hundred and eighty-one, leaving a last Will and Testament, devising his real estate to his sister, Margaret Ryan, and his infant children Mary Ryan and John W. Ryan, and ap-

20 pointing his brother-in-law, John Barton, of the City of New York and Patrick J. Ryan, of the City of Elizabeth, in this State, his Executors thereof, and guardians of said infant children, which Will has been duly admitted to probate, and the administration thereof taken upon themselves by said John Barton and Patrick J. Ryan ; deponent further saith, that he examined the records in the Clerk's office in and for the County of Union, that he finds

30 of record a deed executed by Thomas Forsyth, Sheriff of said County, to one Samuel Pierce of certain real estate, situate on Magnolia street in said City of Elizabeth ; that said deed recites, that said property was sold, by virtue of an execution issued out of the Court of Chancery of this State on the twenty-fourth day of May, eighteen hundred and eighty-three, by virtue of a decree of said Court dated March twenty-second, eighteen hundred and eighty-three, in a certain cause then pending in said Court, wherein Catharine Lamb was

40 complainant, and Bridget Waters and others were

defendants, and decrees, among other things, that there is due to said complainant the sum of ten hundred and forty-four dollars and fifty cents upon a mortgage given by John Keighry to said complainant, dated April 4th, 1868; deponent further saith, by an order of said Court of Chancery made on the thirty-first day of December, eighteen hundred and eighty-three, said injunction restraining said Bridget A. Lamb from prosecuting her aforesaid suit was dissolved, and that on the seventh 10 day of January, A. D. eighteen hundred and eighty-four, an order was made by said Court of Chancery striking from the files of said Court the Bill of Complaint filed by said Bridget A. Lamb and husband, and all proceedings thereon, and also said interlocutory decree and all proceedings thereon; that on the seventh day of May last past deponent, by direction of said Bridget A. Lamb, commenced a suit in the Supreme Court of this State against Margaret Ryan and Mary Ryan and John W. 20 Ryan, heirs and devisees of said John Ryan, deceased, and afterwards wrote to the Clerk of the Supreme Court requesting him to discontinue said suit against William Kelly and John Ryan, Executors as aforesaid, and against the further prosecution of which, said Bridget A. Lamb, as aforesaid; deponent further saith, that said suit commenced as aforesaid against said Margaret Ryan, Mary Ryan and John W. Ryan, heirs and devisees of 30 John Ryan is for the same cause of action as said suit commenced by her against John Ryan, deceased, in his lifetime, together with said William Kelly.

WILLIAM C. SPENCER.

Sworn to and subscribed before }  
me this 11th day of August, }  
A. D. 1884.

WM. T. NEWBOLD,  
M. C. C. of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Bet.—

BRIDGET A. LAMB,  
Complainant,*and*MARGARET MARTIN et al.,  
Defendants.

} On Bill, &amp;c.

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20 The demurrer of Margaret Martin, one of the defendants in the above-entitled cause, to the bill of complaint of Bridget A. Lamb, complainant: This defendant, by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and

30 alleged, doth demur thereto that the complainant hath not in and by her said bill made or stated such a case as entitles her in a Court of Equity to any relief against her, the said defendant, as to the matter contained in the said bill or any of such matters. Wherefore, this defendant doth demur thereto, and humbly prays the judgment of this honorable Court whether she should be compelled to make any further or other answer to the said

30 bill, and prays to be hence dismissed with her costs and charges in this behalf most wrongfully sustained.

R. V. LINDABURY,  
Sol'r of Deft. MARGARET MARTIN.

NEW JERSEY, }  
Union County. } ss.:

40 MARGARET MARTIN, of full age, being duly sworn, according to law, saith, that the foregoing demurrer

is not interposed for delay, but in good faith for the causes therein set forth.

her  
MARGARET X MARTIN.  
mark.

Sworn and subscribed before me, }  
this day of Jan., A. D. 1885. }  
ROBT. G. BELL,  
M. C. C. of N. J.

I certify that I have perused the complainant's bill in the above stated cause, and that the above demurrer is well founded in point of law.

R. V. LINDABURY,  
Of Counsel with Demurrant.

10

May Term, 1885.

BRIDGET A. LAMB

*vs.*

MARGARET RYAN and als.

20

Bill for relief. On general demurrer.

Mr. R. V. Lindabury, for demurrants.

Mr. W. C. Spencer and Mr. G. Collins, for complainant.

The Chancellor :

30

This is a bill for an injunction to restrain the defendants from pleading the statute of limitations in a suit brought by the complainant against them as the heirs and devisees of John Ryan, deceased, to recover certain damages. Ryan and one William Kelly were the executors of John Keighry, deceased. As such they sold at auction to the complainant on the fifteenth of October, 1874, certain land in the City of Elizabeth, for \$3,900, fre<sub>e</sub> 40

of all encumbrance, except a mortgage of \$600 then upon the premises. They required her to pay at the sale, and she did pay accordingly, ten per centum of the amount of her bid. The balance was to be paid thirty days thereafter on the delivery of the deed, which was to be delivered at that time. At the time so appointed, November 14th, 1874, she attended at the place designated for the purpose, to receive the deed, and then and there demanded the deed,

10 tendering the balance of the purchase money; but the executors refused to deliver the deed, alleging that they could not give her a clear title, because of the existence of unpaid municipal assessments upon the property, and the fact that the widow of their testator had neither joined them in the deed nor released her right of dower in the premises. They refused to return to the complainant the \$390 she had paid on account of the purchase money. On the twenty-ninth of May, 1875,

20 she with her husband filed a bill in this Court against them for specific performance of the agreement. They answered denying her right to a conveyance of the property. On the twenty-fifth of April, 1877, they entered an interlocutory decree in the cause in substance decreeing that they should specifically perform the agreement, and that the complainant was entitled to a conveyance of the property subject to the mortgage of \$600, upon payment of the balance of the purchase money, less

30 an allowance to be made for the dower right and the unpaid taxes and assessments which were liens upon the property, and ordering a reference to a Master to ascertain and report the value of the dower right and the amount of the unpaid taxes and assessments. Their solicitor conducted the reference and filed the report and obtained an order confirming it. The latter order was set aside as having been improvidently granted. The executors took no other step in the cause. Nor did they

40 tender to the complainant a deed for the property

nor pay back to her the \$390. They having refused to return that money to her, she, in December, 1878, over a year and a half after the entry of the above mentioned interlocutory decree, commenced an action in the Supreme Court against them to recover damages (including the \$390) for their refusal to perform the contract of sale. They thereupon obtained an injunction from this Court in the suit for specific performance, on the fourth of April, 1879, restraining her from prosecuting that action. Ryan died May 10 13th, 1881. He devised his real property to his sister, Margaret Ryan, and his children, Mary and John Ryan, who are both minors. After the order setting aside the order confirming the Master's report was obtained, the executors neither proceeded in the cause, nor did anything to protect the property, but on the contrary let the interest upon the mortgage go unpaid, and also the taxes and municipal assessments which were liens upon the premises and the property was sold to Samuel Pierce under 20 foreclosure of the mortgage, in or about October, 1883. The executors thus lost all power of performing the decree. After this, and on the seventh of January, 1884, this Court, in view of the facts, on motion, on notice, struck the bill for specific performance, and all the proceedings thereon, from the files of the Court. When the injunction restraining the complainant from prosecuting her action at law against the executors was thus dissolved, the estate of Keighry had become insolvent, and Kelly, the 30 surviving executor, was of no pecuniary responsibility. The complainant then discontinued that action, and brought suit in the Supreme Court against the heirs and devisees of Ryan to recover damages (including the \$390 and interest) for the non-performance of the contract of sale. The bill states that it would be inequitable to allow them to take advantage of the delay caused by the before-mentioned injunction obtained by the executors, or that the complainant should be embarrassed in and 40

prevented from enforcing her rights by her obedience to the injunction, and through no fault or laches of hers. It also alleges that the complainant verily believes and fears that the heirs and devisees will, unless restrained from so doing by this Court, plead the statute of limitations in the action brought against them, and thus prevent her from recovering the \$390 and interest, and her other damages, for the recovery whereof that action is

10 brought.

The defendants' counsel insists that inasmuch as no declaration has been filed in the action at law this suit cannot be maintained ; for it does not appear by the record of that suit that it is brought to recover damages as alleged in the bill. There is obviously no substance in the objection. The complainant who brought the action at law states in the bill that it is instituted to recover those damages. This suit rests on that averment.

20 He also insists that the complainant has been at liberty at all times since she was enjoined from prosecuting the action at law against the executors to bring an action against them individually for damages for breach of the contract. It is quite enough to say on this point that such a suit would have been in violation of the injunction, which undoubtedly was granted upon the ground that in view of the decree for specific performance the prosecution of an action for damages was inequitable.

30 The action was in fact against them individually. It was upon a contract made by themselves and not by the testator.

Nor is the objection that according to the statements of the bill, the complainant herself is responsible for the delay, because she did not proceed with the suit for specific performance, as she (as the demurrants insist) was fully at liberty to do, well taken. The bill states that she began the suit for specific performance because the executors

40 would neither convey the property to her, nor re-

pay to her her deposit of \$390; that they, after denying her right to relief in the suit, took a decree against themselves in her favor therein, and themselves proceeded to execute it by the reference to a master; conducted the reference and entered an order confirming the Master's report, but it was set aside as having been improvidently made; that they never took any other step in the matter, and never tendered a deed for the property, but refused to repay the \$390, and did not protect the property, but permitted it to be sold under foreclosure proceedings. It was the duty of the executors to carry out their contract. They did not do so, and even refused to repay the \$390. The fact that the complainant might have brought the suit for specific performance to a conclusion a long time ago does not debar her from a claim to protection against the interposition of the defence in question in the pending action at law. Under the circumstances the plea would be very inequitable. 10 20

It is urged also that the statements of the bill are not such as to warrant the issuing of an injunction, because it does not appear that the defendant's intend to plead the Statute of Limitations. It was indeed said in *Lutheran Church v. Maschop*, 2 Stock, 57, that this Court cannot grant an injunction to allay the fears and apprehensions of individuals; that they must show that the acts against which they ask protection are not only threatened, but will, in all probability, be committed to their injury. But it is manifest that in a case like this, where what is apprehended is the setting up of a defence in an action at law which it is entirely certain the defendants will interpose unless prevented by this Court from so doing, a threat, or even an expression of an intention to do the act is not necessary to justify the interference of this Court. It is laid down that there may be cases in which it will be sufficient ground for granting an injunction that there is probable ground for believing that 30 40

unless it be granted there is danger of the act or acts being done which the bill seeks to restrain.

*Joyce Prin., Inj.* 59.

This is a case of that character.

The demurrer will be overruled.

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IN CHANCERY OF NEW JERSEY.

Between—

BRIDGET A. LAMB,

Complt.,

and

MARGARET MARTIN, *et al.*,

20

Defts.

} On Bill, etc.

This cause coming on to be heard at the regular term of this Court, in the presence of Gilbert Collins and William C. Spencer, of counsel with the complainant, and R. V. Lindabury, of counsel with the demurrant, and the Chancellor having heard the arguments of the counsel of the respective parties on the demurrer filed in the above stated cause. It is  
30 on this 6th day of July, A. D. 1885, on motion of William C Spencer, of counsel with the complainant, ordered that the said demurrer be overruled with costs, and that the demurrant answer the complainant's bill within forty days, and that if he fail so to do the complainant's bill be taken as confessed against her.

THEODORE RUNYON,  
C.

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## IN CHANCERY OF NEW JERSEY.

Between—

BRIDGET A. LAMB,  
Complainant,*and*MARGARET MARTIN, *et al.*,  
Defendants.

On Bill, etc.

10

The defendant, Margaret Martin, hereby appeals from an order made by his Honor, the Chancellor, in the above entitled cause on the sixth day of July last, overruling the demurrer theretofore filed by this defendant to the bill of complaint of the complainant in said cause, to the Court of Errors and Appeals in the last resort in all causes.

20

Dated August 14th, 1885.

R. V. LINDABURY,  
Solicitor, and of Counsel with  
defendant, Margaret Martin.

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

R. V. LINDABURY,  
Of Counsel with defendant  
Margaret Martin.

30

40

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between—

MARGARET MARTIN,  
Appellant,

*and*

BRIDGET A. LAMB,  
Respondent.

On Appeal, etc.  
Petition.

10

The humble petition of Margaret Martin, the ap-  
pellant in the above stated cause, respectfully shows  
that your petitioner finds herself aggrieved by an  
order made in the Court of Chancery by his Honor,  
Theodore Runyon, Chancellor of New Jersey, bear-  
ing date the sixth day of July, in the year one  
thousand eight hundred and eighty-five, wherein  
20 the said Bridget A. Lamb was complainant, and the  
said Margaret Martin and others were defendants,  
in this respect, to wit :

That the said order adjudges, and it was therein  
ordered that the said demurrer (filed by your peti-  
tioner) be overruled with costs, and that the de-  
murrant answer the complainant's bill within forty  
days, and that if she fail so to do, the complainant's  
bill be taken as confessed against her. And your  
petitioner humbly appeals from the order of the  
30 Chancellor which orders as aforesaid, upon the  
ground that the same is erroneous, for that the said  
demurrer should have been sustained. Your peti-  
tioner therefore prays that the said order of the said  
Chancellor may be, in the particulars aforesaid, re-  
versed, set aside and for nothing holden. And that  
your petitioner may have such relief in the premi-  
ses as to this Honorable Court shall seem meet.

R. V. LINDABURY,

Solicitor for, and of Counsel  
with appellant.

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