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* Supplied herewith.

Notice of Appeal.

(Filed Sept. 10, 1910.)

IN CHANCERY OF NEW JERSEY.

Between
ALEXANDER L. A. MACKIE,
Complainant,

and

LUCIUS F. DONOHUE, et als.,
Defendants.

The Complainant hereby appeals from so much the final decree made in this court in the above stated cause, dated June 21st, 1920, as orders the amended bill of complaint dismissed as to the defendants John J. Cain and Michael M. Keshen and wife, with costs, and allows counsel fees to said defendants and awards execution to said defendants therefor, to the Court of Errors and Appeals in the last resort in all causes.

Dated Sept. 2nd, 1920.

FRANK W. HASTINGS, JR.,
Solicitor and of Counsel with Complainant.

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

FRANK W. HASTINGS, JR.,
Of Counsel with Complainant.

(Acknowledgments of service endorsed thereon.)

Petition of Appeal.

(Filed Sept. 22, 1920.)

N. J. COURT OF ERRORS AND APPEALS.

Between
ALEXANDER L. A. MACKIE,
Complainant-Appellant,

and

LUCIUS F. DONOHUE, et als.,
Defendants,

JOHN J. CAIN, MICHAEL M. KESHEN and his wife,
Respondents.

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

The Petition of Alexander L. A. Mackie, the appellant, in the above-stated cause, respectfully shows:

That your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date 21st day of June, 1920, wherein the said Alexander L. A. Mackie, was complainant, and Lucius F. Donohue, John J. Cain, Michael M. Keshen and wife, et als., were defendants, in this respect, to wit:

That the said decree adjudged that the amended Bill of Complaint be dismissed as to the defendants, John J. Cain, Michael M. Keshen and wife, with costs and allows counsel fees to said defendants and awards execution to said defendants therefor.

And your petitioner humbly appeals from that part of the decree of the Chancellor, which de-

crees as aforesaid, upon the ground that the same is erroneous for that:

1:—That Chancellor should have granted complainant the relief prayed for as against said defendants, upon the pleadings and proofs in the cause.

2:—The Chancellor should have decreed, upon the pleadings and proofs in the cause, that said defendants, John J. Cain, Michael M. Keshen and wife, and each of them, have no estate, interest in, or encumbrance upon the lands and premises to which said defendants, or either of them, made claim; and that in respect to all said lands and premises, so far as relates to any claim thereon, by or on behalf of either of said defendants, the title of the complainant in and to the same and every part thereof, is determined, fixed and settled, and declared to be good; and that said defendants should pay to complainant his costs of suit; and that execution might issue therefor.

Your petitioner therefore prays that the said decree of the said Chancellor may be, and in the particulars aforesaid, reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

FRANK W. HASTINGS, JR.,
Solicitor for and of Counsel
with Appellant.

Answer of John J. Cain, Respondent, to the Petition of Appeal of the Appellant.

(Filed Oct. 30, 1920.)

N. J. COURT OF ERRORS AND APPEALS.

Between

ALEXANDER L. A. MACKIE,
Complainant-Appellant,

and

LUCIUS F. DONOHUE, et als.,
Defendants,

JOHN J. CAIN, MICHAEL M. KESHEN and his wife,
Respondents.

The answer of the above named respondent, John J. Cain, to the petition of appeal of the above named appellant:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the 21st day of June, 1920, last past made and entered in the Court of Chancery, in the cause, for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto, when the same shall be produced; and this respondent is advined and believes, that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

HAMILL & CAIN,
Sol'rs of Respondent, John J. Cain.
JOHN FRANCIS GOUGH,
of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ALEXANDER L. A. MACKIE, Complainant-Appellant, and LUCIUS F. DONAHUE, et als., Defendants, JOHN J. CAIN, MICHAEL H. KESHEN and *his wife*, Respondents.	On Bill, etc. Answer of Michael M. Keshen and wife to the petition of Appeal of Complainant-Appellant.

The answer of the above named respondents, Michael M. Keshen and wife, to the petition of appeal of the above named appellant.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true for answer thereto, nevertheless, say and admit that a decree was made and entered in the Court of Chancery of New Jersey on the 21st day of June, 1920, last past, in the cause mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto, when the same shall be produced; and this respondent is advised and believes, that the said decree is agreeable to equity and pray that the same may be affirmed with costs to be adjudged to respondents.

MAX LEVY,
Solicitor for and of counsel with Respondents Michael M. Keshen & Wife.

Amended Bill of Complaint.
Original filed Dec., 1916.

IN CHANCERY OF NEW JERSEY.

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

Your orator Alexander L. A. Mackie of the City of New York, County of New York and State of New York, by leave of the court first had and obtained files this his first amended bill humbly complaining unto your honor that:

1. On or about the first day of September, 1868, Catherine G. Mackie, wife of Robert Mackie, died intestate at Bergen Point, Bayonne Township, New Jersey, owing certain lands described as follows:

All that certain lot, tract or parcel of land messuage and premises situate lying and being at Bergen Point in the County of Hudson, in the State of New Jersey, which in and by the last Will and Testament of Jasper Zabriskie to whom it formerly belonged is described and devised as the house commonly called the Red House, and lot of land owned by me and which may be more particularly butted, bounded and described as follows, viz: Beginning at a stake in the Northwesterly corner of a lot or tract hereby conveyed standing in the line of lands of the heirs of Jasper Garretson, deceased, thence to run, 1., South seventy-one degrees forty-nine minutes East along the line of lands of said heirs of Jasper Garretson, deceased, two hundred and ninety-two feet to lands of A. D. Mellick, thence, 2., along his line South twelve degrees and eleven minutes West one thou-

sand five hundred and sixty-seven feet four inches to Kill Van Kull, thence, 3., along Kill Van Kull, North about sixty-eight degrees and four minutes West three hundred and eighty-seven feet seven inches, 4., North fifteen degrees and thirty-eight minutes East one thousand five hundred and thirty-six feet—1536—to the place of beginning containing twelve and twenty-nine thousands of an acre, 12.29/1000 acres, bounded northerly by the lands of the heirs of Jasper Garretson, Easterly by the lands of A. D. Mellick, Southerly by Kill Van Kull, Westerly by the lands of the heirs of Jasper Garretson, deceased, together with all and singular the shore and shore right and lands under water in Kill Von Kull in front and adjacent to said tract of land above described and hereby conveyed and appertaining thereunto being the same premises conveyed by Albert M. Zabriskie and Ann his wife, Andrew D. Mellick and Elizabeth his wife and others to said Robert Mackie by deed bearing date April 1st, 1859 and recorded in the office of the clerk of the County of Hudson May 5, 1859 in Book 73 of Deeds page 161, etc., and being conveyed to the said Catherine G. Mackie by John Duer unmarried by Deed dated November 29, 1867 and recorded in Liber 173 of Deeds for Hudson County on pages 677 etc.

2. Said Catherine G. Mackie left surviving her husband Robert Mackie and the following children and heirs at law, C. T. O. Mackie, E. E. W. Mackie, A. L. A. Mackie, R. J. D. Mackie and S. F. Mackie, S. L. Mackie and G. B. Mackie.

3. In 1876 a petition was filed in this said court of Chancery petitioning the division of the

Estate of the said Catherine G. Mackie and the said commissioners who were appointed to partition said estate awarded to Simon F. Mackie the lots in tract described on a certain map, a copy of which designating the lands in question is hereby attached and made a part hereof of the property of the estate of said Catherine G. Mackie as lots Numbers G 1, G 2, G 3, in Block 502, G 1, G 2, G 3, and G 4 in Block 519, G 1, G 2, G 3, G 4, and G 5 in Block 535 and G 1, G 2, in Block 554. Said report was duly confirmed by the Chancellor of the State of New Jersey on the Sixteenth day of January 1879.

4. The said lots allotted to the said Simon F. Mackie enumerated above were known and designated on the assessment map of the City of Bayonne, a copy of which designating the lands in question is hereby attached and made a part hereof as lots numbered 7, 11, 12, 13 and 31 in Block 502, lots numbered 1, 21, 27, and 31 in Block 519, lots numbered 3, 6, 9, 21, 27 and 28 in Block 535 and lots numbered 6 and 8 in Block 554 respectively.

5. On or about the Seventeenth day of July 1887 commissioners to adjust arrearages of taxes, assessments and water-rents were appointed under and by virtue of the provisions of Chapter 112 of the laws of 1886, commonly known as the Martin Act, with supplements thereto and Amendments thereof, by the Circuit Court of the County of Hudson, to adjust said arrears of taxes and assessments in the City of Bayonne.

6. The lands of the Estate of Catherine G. Mackie, including those allotted to Simon F. Mackie were in arrears for taxes.

7. Said Commissioners of Adjustment filed a report which was numbered No. 5, in which the taxes on the said lands of the Estate of Catherine G. Mackie and Simon F. Mackie were adjusted. This report was filed on or about September 20, 1888 and a time was fixed for the filing of objections of said Report No. 5.

8. On the Twenty-seventh of October 1888 the said Circuit Court of Hudson County confirmed said Report No. 5 in all things and ordered said Report No. 5 to be filed with the Collector of Revenue of the said City of Bayonne.

9. Upon the filing of Report No. 5 with the Collector of Revenue with the City of Bayonne the taxes, assessments and water rates became a valid and binding lien in lieu of and instead of all outstanding claims of the said City for arrearages of taxes, assessments or water-rates levied or assessed prior to the making of said report. No sale was ever held under Report No. 5.

10. On the Twentieth day of June 1889 the said commissioners of adjustment appointed as above stated filed another of their reports, No. 10 in which taxes and assessments on the Mackie lands hereinbefore set forth were for the second time adjusted.

11. The said Circuit Court of Hudson County ordered that objections to the filing of report No.

10 be made on or before the Thirteenth day of July 1889 and said Circuit Court of Hudson County confirmed said report No. 10 in all things and said Report Number 10 was filed with the Collector of Revenue of the City of Bayonne, New Jersey.

12. Later and after the date of the filing of said report No. 10 with the Collector of Revenue this notation in red ink was marked on said report No. 10, wherein said report referred to the Mackie lands as follows, "Readjusted by Order of the Court".

13. Later and after the date of the filing of the report No. 5 with the Collector of Revenue and after filing report No. 10 a notation in red ink was marked on said report No. 5 wherein said report referred to the Mackie lands as follows: "Readjusted by Order of the Court", see report No. 10.

14. No order is on file ordering the readjustment of said Report No. 5 as required by law, and said Report No. 5 was confirmed by order of the Circuit Court of Hudson County and it is a valid report binding on the said City of Bayonne and all persons claiming any estate, right, title to or in the lands as set forth in said Report No. 5 and is the only valid report of the adjustmnet of the liens on the Mackie lands, including the lands of the said Simon F. Mackie.

15. Said Report No. 10 embraces (a) taxes previously adjusted by Report No. 5, which was confirmed by the Court; (b) it includes taxes of

the year 1888 which were levied since the confirmation of the said Report No. 5 and not previously presented to the court for adjudication; (c) said report also includes an assessment placed on land on the estate of Catherine G. Mackie in Block 502; (d) part of an assessment placed on the land of Alexander L. A. Mackie, namely, lots 1 and 37 in said Block 502; and on other lots in said block; (e) also taxes and assessments of other owners of lands in different parts of said City not previously adjusted and not previously presented to said Court for adjudication were included.

16. The Collector of Revenue advertised the following lots of land numbered 11, 12, 13, 31 in Block 502, 21 and 31 in Block 519, and lots 3, 6, 9, 27 and 28 in Block 535, assessed and standing in the name of Simon F. Mackie on the books of the assessor of taxes for the City of Bayonne, and on the books of the Collector of Revenue of said City, for unpaid taxes as adjusted by the Commissioners of Adjustment in their Report No. 10, and all advertisements and all notices of every kind of nature whatsoever, either personal, or by publication were issued and served under and by authority of this said Report No. 10.

17. The said Collector of Revenue sold said lots, 11, 12, 13 and 31, in Block 502, said lots 21 and 31 in Block 519 and said lots 3, 6, 9, 27 and 28 in Block 535 under and by virtue of said Report No. 10.

18. The Collector of Revenue of Bayonne sold said lots 11, 12, 13 and 31 in Block 502, said lot

21 and 31 in Block 519, and said lots 3, 6, 9, 27, 28, in Block 535, and issued a certificate of such sale to the Mayor and Council of the City of Bayonne and the Mayor and Council of said City of Bayonne purchased said above mentioned lots on the 14th of September, 1892.

19. Said sale to the Mayor and Council on the City of Bayonne was without consideration.

20. The Mayor and Council of the City of Bayonne advertised the said lots 11, 12, 13, 31 in Block 502 said lots 21 and 31 in Block 519, and said lots 3, 6, 9, 27 and 28 in Block 535 for sale as owner of said lots to be sold on the 15th of December 1896, at public auction without reserve and to the highest bidder and said lots were so sold as advertised on said date.

21. The certificates of sale for sai dlots 11, 12, 13 and 31 in Block 502, lots 21 and 31 in Block 519, and lots 3, 6, 9, 27 and 28 of Block 535, were issued by the Collector of Revenue without consideration.

22. The said lots 11, 12, 13 and 31 in Block 502, lots 21 and 31 in Block 519, and lots 3, 6, 9, 27 and 28 in Block 535 were assessed by the tax-assessor of the City of Bayonne in the name of Simon F. Mackie and the said Collector of Revenue for the City had rendered tax-bills to the said Simon F. Mackie, for the year 1877 to and including the said year 1896, and in the year 1896 the Mayor and the Council had resolutions and other notices sent to the said S. F. Mackie

designating him as the owner of the above described lots.

23. The City of Bayonne carried said taxes as an asset on the books of the Collector.

24. Simon F. Mackie was the owner of record of the hereinbefore mentioned lands on the 15th of December, 1896. The deeds of the Collector of Revenue of the City of Bayonne to the Mayor and Council of said city were not recorded until December 23, 1896. The Mayor and Council of said City sold the said land in question as owners of said lots on the 15th day of December, 1896.

25. The Collector of Revenue for the City of Bayonne had rendered tax bills to and in the name of the owner of record of said lots in question, to Simon F. Mackie, computing interest to the said Fifteenth of December, 1896, and with the costs added. The considerations expressed in the deeds for the land in question, as recorded, are less than the amounts in the tax bills rendered to the said Simon F. Mackie. The amounts herein stated are taken from the deeds as recorded and from the tax bills as rendered, to wit:

Lot	*Block*	*Consideration*	*Amount due*
11	502	$60.	$108.04
12	502	60.	109.54
13	502	60.	108.04
31	502	75.	108.04
21	519	50.	113.25
31	519	50.	113.25
3	535	30.	125.65

6	535	30.	111.37
9	535	95.	153.59
27	535	50.	139.28
28	535	50.	194.95

26. The deed for lot 31, Block 502 from the Collector of Revenue to the said Mayor and Common Council of the City of Bayonne, New Jersey is without corporation seal. In the deeds given the following lots were also inaccurately described as they were given fronting on different streets than on those on which they actually fronted, viz:

Lot	*Block*	*Described as fronting on*	*Actually fronting on*
31	502	Fourth Street	Zabriski Av.
11	502	" "	Av. Q (Newman Av.)
12	502	" "	" " "
13	502	" "	" " "
21	519	" "	Second Street
31	519	" "	Av. Q (Newman Av.)
3	535	" "	Second Street
6	535	" "	" "
9	535	" "	2nd & Zabriski Av.
27	535	" "	Av. Q (Newman Av.)
28	535	" "	" " "

27. Lots known on the Catherine G. Mackie Map as G 3 in Block 502, known and designated on the City Tax Map as 11, 12 and 13 in Block 502 and lot designated as G 1 in Block 519 on Map of the Estate of Catherine G. Mackie and on the Tax Map of the said City of Bayonne known as lot 21 on Block 519 are now claimed under Report No. 10 by one Lucius F. Donohue. The said Lucius F. Donohue claims under the second

report of the commissioners, namely No. 10 and not under the first report of the commissioners, namely No. 5, but claims title to the same through mesne conveyances since the conveyance from the Collector of Revenue to the Mayor and Common Council which alleged conveyance is recorded in Liber 659 of Deeds for Hudson County on pages 506 &c., to which reference is made for more particular description of the said property.

28. The lot known and designated as G1 on Block 502 on the Map of the Estate of Catherine G. Mackie and designated on the Tax Map of the City of Bayonne, New Jersey, as lot 31 on Block 502 is now claimed under Report No. 10 by the American Cotton Oil Company of New Jersey. The said American Cotton Oil Company claims under the second report of the commissioners, namely No. 10 and not under the first report of the commissioners, namely No. 5, but claims title to the same through mesne conveyances since the conveyance from the Collector of Revenue to the Mayor and Common Council which conveyance is recorded in Book 658 of Deeds for Hudson County on pages 516, &c., to which reference is made for more particular description of the said property.

29. The lot known and designated as G3 in Block 519 of the Catherine G. Mackie Map and designated on the City Tax Map of Bayonne, New Jersey, as lot 31 in Block 519 is now claimed under Report No. 10 by one Michael Keshen. The said Michael Keshen claims under the second report of the commissioners, namely No. 10 and not under the first report of the commissioners,

namely No. 5, but claims title to the same through mesne conveyances since the conveyance from the Collector of Revenue to the Mayor and Common Council which conveyance is recorded in Book 661 of Deeds for Hudson County on pages 393, &c., to which reference is made for more particular description of the said property.

30. The lots known and designated as G2, G3, and G4 in Block 535 on Map of the Estate of Catherine G. Mackie and designated on the City Tax Map of Bayonne, New Jersey, as lots 27, 28, 3 and 6 respectively on Block 535 are now claimed under Report No. 10 by one John J. Cain. The said John J. Cain claims under the second report of the commossioners, namely No. 10 and not under the first report of the commissioners, namely No. 5, but claims title to the same through mesne conveyances since the conveyance from the Collector of Revenue to the Mayor and Common Council which conveyance from the Collector of Revenue to the Mayor and Common Council are recorded in the following books, viz.:

Lot	Block	Book						Page
3	535	661	of	Deeds	for	Hudson	Co.	396 &c.
6	535	661	"	"	"	"	"	399 &c.
27	535	661	"	"	"	"	"	405 &c.
28	535	661	"	"	"	"	"	408 &c.

To which reference is made for more particular description of the said property.

31. That the said lot known and designated as G5 on Block 535 on the Map of the Estate of Catherine G. Mackie and designated as lot 9 on Block 535 on the Tax Map of the City of Bayonne,

New Jersey, is now claimed under Report No. 10 by the Duryea Manufacturing Company, a New Jersey corporation. The said Duryea Manufacturing Company claims under the second report of the commissioners, namely No. 10 and not under the first report of the commissioners, namely No. 5, but claims title to the same through mesne conveyances since the conveyance from the Collector of Revenue to the Mayor and Common Council which conveyance is recorded in Book 661 of deeds for Hudson County on pages 402, &c., to which reference is made for more particular description of the said property.

32. And your orator further shows that the said Lucius F. Donohue, American Cotton Oil Company of New Jersey, Michael Keshen, John J. Cain and Duryea Manufacturing Company are not in possession of the lands in question, but that your orator is in peaceable possession thereof, having cultivated the land, pastured cattle and otherwise tilled the soil, having been enclosed by a fence.

33. No orders appear on record or on file in the office of the Clerk of the Circuit Court of Hudson County confirming the said deeds aforementioned from the Collector of Revenue to the Mayor and Common Council of the said City of Bayonne, New Jersey, nor from the Mayor and Common Council to the various individuals to whom said respective lots were sold.

34. That the said Simon F. Mackie departed this life intestate on or about the Twenty-third day of December, 1902, and that his said wife

Clara Ella Mackie departed this life on or before January 1, 1912, that they left them surviving their sole heir at law, a daughter Marguerite Mackie, that on the Eleventh day of May, 1912, the said Marguerite Mackie, unmarried, conveyed unto your orator the said Alexander L. A. Mackie all her right, title and interest in and of all estate real or personal which was of the late Catherine G. Mackie, deceased mother of the said Simon F. Mackie, which may, could or would have belonged, or may or did belong, to the said Simon Frazer Mackie as heir of the said Catherine G. Mackie, also all her right, title and interest, claim and demand as the only surviving heir of the said Simon F. Mackie, which deed is recorded in Liber 1120 of Deeds for Hudson County on page 295, &c.

35. That the said deed is in your orator's possession and ready to be produced and proved as may be directed; and that your orator, has, ever since the recording of said deed respectively, been in the peaceable possession of the lands therein and above described; and that at the time of purchasing said lands and taking said deed, he believed and yet believes he bought and acquired a good title to said lands in fee simple, and he has always claimed and does now claim to own the same accordingly.

36. That your orator's title to said lands, or some part thereof, is denied and disputed by Lucius F. Donohue and wife, Frances W. A. Donohue, American Cotton Oil Company, Michael M. Keshen and wife, Mrs. Michael M. Keshen, John J. Cain and Duryea Manufacturing Company, a New Jersey corporation, who are the defendants

in this suit; and they, said defendants, claim and are claimed and reputed to own said lands, or some part thereof, or some interest therein; and no suit or action of any kind whatever is pending to enforce or test the validity of such title or claim; and your orator charges that such claims so made by defendants are utterly without foundation, unjust and vexatious.

37. That by reason of such claim your orator's property in said lands is greatly affected, and the same cannot be sold as they otherwise could.

38. That your orator has applied to said defendants, or some of them, to release and relinquish their said claim or to bring in some court of law a suit which would test the validity thereof, and the said defendants refuse to do either. And your orator hoped that said defendants would have complied with such reasonable request, as in justice and equity they ought to have done.

39. In consideration whereof, and for as much as your orator is relievable only in a court of equity, where matters of this sort are properly, and according to the statutes of this state in such case made and provided, cognizable and relievable:

40. To the end, therefore, that said defendants, and every of them may, upon their several and respective oaths or affirmations, to the best of their respective knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid; and more particularly that they, and every of them, may, in manner aforesaid, answer and set forth specifically what title or claim to said lands, or any part thereof, or any interest therein, they, or

either of them, make or claim, and to what part or what interest; and further, how and by what instrument such title or claim is derived or was created; and that by the determination and final decree of this court, the rights of all the parties to this suit in and to the lands hereinbefore set forth, and every part thereof, may be fixed and settled; and that your orator may be decreed to have a perfect title thereto, and the defendants to have no estate, interest in, or encumbrance on, said lands, or any part thereof; and that their claims to the same are unjust, vexatious and void; and that your orator may have such other or further relief in the premises as the nature of the case may require and as he shall be entitled to, pursuant to the statutes in such case made and provided.

41. May it please your Honor, the premises considered, to grant to your orator a writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said defendants, commanding them and each of them at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honor in this honorable court, then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide by and perform such order, direction and decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

JAS. L. GARRABRANT,
Solicitor for and of Counsel with Complainant.

Answer of John J. Cain.

IN CHANCERY OF NEW JERSEY.

Between
ALEXANDER L. A. MACKIE,
Complainant,

and

LUCIUS F. DONOHUE, et als.,
Defendants.

The answer of the defendant, John J. Cain, to the amended bill of complaint of Alexander L. A. Mackie:

This defendant, John J. Cain, reserving all his legal rights and respectfully objecting to the exercise of jurisdiction by this Honorable Court in the premises, answering the said amended bill of complaint, says that:

1. Paragraphs 1 to 4 inclusive, and 20 and 36 are admitted.

2. Paragraph 30 is admitted, except the allegations therein regarding the title of this defendant to the lots therein mentioned, to which his title is hereinafter set forth.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements of paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33, 34.

4. Paragraphs 19, 21, 32, 35, 37, and 38 are denied.

5. All and every of the matters in said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant, having a plain, adequate, and complete remedy in the courts of common law, is not entitled to any relief in this court, which is without jurisdiction in the premises.

6. This action was not brought before the expiration of two years from the date of the execution of the deeds or conveyances referred to in the same amended bill of complaint as having been made by the Collector of Revenue of Bayonne to the Mayor, and Common Council of Bayonne as set forth in paragraph 30 of the bill of complaint.

7. If the complainant ever had any such claim or demand as he sets up in his said bill, the same has long since been barred by the laches of the said complainant and his long delay in the premises, and he should not now be permitted to assert such claim in a court of equity.

8. It appears by the said bill that the same is brought against this defendant and several other persons therein named as defendants for distinct matters and causes, in none of which other matters and causes this defendant is in any matter interested or concerned.

9. The defendant hereby specifies and sets forth that he claims to be and is the owner in fee simple absolute and in peaceable possession of the following described lands and premises, re-

ferred to in the said amended bill of complaint, and designated as follows upon the map of Bayonne, annexed to the said bill of complaint: In Block 535, lots 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 18, 19, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35; in Block 554, lots 5, 6, and 7½; and in Block 519, lots 33, 34, and 35; and this defendant hereby states and sets out the manner in which and the sources through which he claims to have derived his title in fee simple absolute to the premises mentioned in paragraph 30 of the said bill of complaint; this defendant claims an absolute estate in fee simple in all of said lands by virtue of the instruments, of which abstracts follow, which instruments are all recorded in the office of the Register of Deeds of Hudson County:

A. As to lot 27 in Block 535, in the City of Bayonne:

1. Cyrillus L. Robinson, Collector of Revenue, of the Mayor and Council of the City of Bayonne, a municipal corporation, etc.	:	DEED Dated Jan. 31, 1895, Ack. Feb. 15, " Rec. Dec. 23, 1896, Liber 661, p. 405.
TO The Mayor and Council of the City of Bayonne.	:	
.....		
2. The Mayor and Council of Bayonne, TO Edward L. Preston.	:	DEED Dated Dec. 15, 1896, Prov. Jan. 15, 1897, Rec. Jan. 30, " Liber 666, p. 16, etc.
.....		

3. Alice R. Preston, widow and Special Guardian of Henry Leighton Preston, Thomas Russell Preston and Florence Templeton Preston,	:	DEED Dated July 18, 1903, Ack. July 28, " Rec. Aug. 13, " Liber 849, p. 17, etc.
TO	:	
John J. Cain.	:	

10 .....

B. As to lot 28 in Block 535, in the City of Bayonne:

1. Cyrillus L. Robinson, Collector of Revenue of the Mayor and Council of the City of Bayonne, a municipal corporation of the County of Hudson,	:	DEED Dated Jan. 31, 1895, Ack. Feb. 15, " Rec. Dec. 23, 1896, Liber 661, p. 408.
20 New Jersey,	:	
TO	:	
The Mayor and Council of the City of Bayonne.	:	

.....

2. The Mayor and Council of the City of Bayonne,	:	DEED Dated Dec. 15, 1896,
TO	:	Prov. Jan. 15, 1897,
Edward L. Preston.	:	Rec. Jan. 30, 1897,
.....		Liber 666, p. 19, etc.

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3. Alice R. Preston, widow and Special Guardian of Henry Leighton Preston, Thomas Russell Preston and Florence Templeton Preston,	:	DEED Dated July 18, 1903, Ack. July 28, " Rec. Aug. 13, " Liber 849, p. 17, etc.
TO	:	
John J. Cain.	:	

.....

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C. As to lots 3, in Block 535, in the City of Bayonne.

1. Cyrillus L. Robinson, Collector of Revenue of the Mayor and Council of the City of Bayonne, a municipal corporation County of Hudson, State of New Jersey, TO The Mayor and Council of the City of Bayonne.	DEED Dated Jan. 31, 1895, Ack. Feb. 15, " Rec. Dec. 23, 1896, Liber 661, p. 396.
2. The Mayor and Council of the City of Bayonne, TO Edward L. Preston.	DEED Dated Dec. 15, 1896, Prov. Jan. 15, 1897, Rec. Jan. 30, " Liber 666, p. 22, etc.
3. Alice R. Preston, widow and Special Guardian of Henry Leighton Preston, Thomas Russell Preston and Florence Templeton Preston, TO John J. Cain.	DEED Dated July 18, 1903, Ack. July 28, " Rec. Aug. 13, " Liber 849, p. 17, etc.

D. (1) As to lot 6 in Block 535, in the City of Bayonne:

1. Cyrillus L. Robinson, Collector of Revenue, of the Mayor and Council of the City of Bayonne, a municipal corporation in the County of Hudson, State of New Jersey, TO The Mayor and Council of the City of Bayonne.	DEED Dated Jan. 31, 1895, Ack. Feb. 15, 1895, Rec. Dec. 23, 1896. Liber 661, p. 399.

2. The Mayor and Council of the City of Bayonne,	:	DEED
	:	Dated Dec. 15, 1896,
TO	:	Prov. Jan. 15, 1897,
Edward L. Preston.	:	Rec. Jan. 30, 1897,
.....	:	Liber 666, p. 19, etc.

3. Alice R. Preston, widow and Special Guardian of Henry Leighton Preston, Thomas Russell Preston and Florence Templeton Preston,	:	DEED
	:	Dated July 18, 1903,
	:	Ack. July 28, "
	:	Rec. Aug. 13, "
	:	Liber 849, p. 17, etc.
TO	:	
John J. Cain.	:	
.....		

10. The lands described in paragraph 30 of the said bill of complaint are unimproved lands which have been in the actual peaceable possession of this defendant, who is the owner thereof, for upwards of twenty years; he claims to own the same by the aforesaid deeds, duly recorded in the office of the Register of Deeds for Hudson County, New Jersey; the said lands have been assessed to this defendant and his grantors for five consecutive years immediately prior to the commencement of this suit, and during said periods this defendant and his grantors have paid the taxes upon said lands; no other person, but this defendant, is or has been in possession of said lands during such periods of time aforesaid; and the complainant is not, and never has been, in possession, peaceable or otherwise, of said lands.

HAMILL & CAIN,
Sol'rs of the defendant, John J. Cain.

Replication to Answer of John J. Cain, Defendant.

IN CHANCERY OF NEW JERSEY.

Between
ALEXANDER L. A. MACKIE,
Complainant,

and

LUCIUS F. DONOHUE, et als.,
Defendants.

The complainant joins issue on the answer of the defendant John J. Cain.

WILLIAM VAN BUSKIRK,
Solicitor and of Counsel with Complainant.

Answer of Keshin & Wife.

IN CHANCERY OF NEW JERSEY.

Between ALEXANDER L. A. MACKIE, Complainant, and LUCIUS F. DONOHUE, et als., Defendants.	On Bill, etc.

The joint answer of Michael M. Keshin and Mrs. Michael M. Keshin, his wife, defendants, answering, says:

1. These defendants have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1 to 15 of the bill of complaint, and therefore put the complainant to his proof.

2. These defendants deny the allegations set forth in paragraphs 16, 17, 18, 19, 20 and 21 of the bill of complaint.

3. They have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 22 of the bill of complaint.

4. They deny the allegations set forth in paragraph 23 of the bill of complaint.

5. They have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 24 of the bill of complaint.

Answer of Keshin & Wife.

6. They deny the allegations set forth in paragraph 25 of the bill of complaint.

7. They have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 26, 27 and 28 of the bill of complaint.

8. They deny the allegations set forth in paragraph 29 of the bill of complaint.

9. They have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 20, 31 and 32 of the bill of complaint.

10. They admit paragraph 33, but deny that they are in possession, as set forth in the bill of complaint.

11. They have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 34, 35 and 36.

12. They deny the allegations set forth in paragraph 37 of the bill of complaint.

13. They have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 38, 39, 40 and 41 of the bill of complaint.

14. These defendants, Michael M. Keshin and Mrs. Michael M. Keshin, admit paragraph 42 in so far as it relates to them, but they have no knowledge as to the other parts of said paragraph.

15. They have no knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 43 of the bill of complaint.

16. They deny the allegations set forth in paragraph 44 of the bill of complaint.

These defendants further answering say that at a public auction held by the City of Bayonne for the sale of certain lots situated in the City of Bayonne and claimed to be owned by the said city, this defendant, Michael Keshin, bid the sum of $50.00 for Lot 31 Block 519 on the Tax Map of the City of Bayonne, and as he was the highest bidder the lot was struck off to him for said amount, and he has paid to said city in addition to the said sum of $50.00 the sum of $3.00 auctioneer's fee. This defendant, Michael Keshin, has further paid to the said city of Bayonne taxes for the years 1897 to 1916 inclusive, amounting to the sum of $125.79.

These defendants further say that they purchased this lot in the regular and usual course from said city under an announcement made by the collector of revenue of said city at that time that the sale was to be conducted under the Martin Act and that the purchasers would be guaranteed against all sums paid by them to the said city on account of any lot that would be purchased by the bidder, and they therefore claim that they hold good and legal title to said lot.

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

MAX LEVY,
Solicitor of Defendants, Michael M. Keshin and Mrs. Michael M. Keshin.

Answer of Keshin & Wife.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

MICHAEL M. KESHIN, and MRS. MICHAEL M. KESHIN, the above named defendants, being duly sworn on their respective oath, say each for themselves: The matters and things set forth in the above answer as far as they relate to our own acts are true, and so far as they relate to the acts of others, we believe them to be true.

MICHAEL M. KESHIN.
DORE KESHIN.

Sworn to and subscribed before me }
this 16th day of April, 1917. }

LOUIS M. BLOCK,
(Seal) Notary Public,
New York Co. No. 169.

Replication to the Answer of Defendants Michael M. Keshen and Mrs. Michael M. Keshen.

IN CHANCERY OF NEW JERSEY.

Between
ALEXANDER L. A. MACKIE,
Complainant,

and

LUCIUS F. DONOHUE, et als.,
Defendants.

The complainant joins issue on the answer of the defendants Michael M. Keshen and Mrs. Michael M. Keshen.

By way of replication complainant states that he has no knowledge or information sufficient to form a belief as to the matters set forth in the answer of the said defendants, and therefore puts the said defendants upon their proof.

WILLIAM VAN BUSKIRK,
Solicitor and of Counsel with Complainant.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between
ALEXANDER L. A. MACKIE,
Complainant,
and
LUCIUS T. DONOHUE, et als.,
Defendants.

Submitted April 3d, 1920; decided April 22d, 1920.

MR. WILLIAM VAN BUSKIRK and MR. FRANK W. HASTINGS, of Jersey City, for Complainant.

MESSRS. HAMILL & CAIN and MR. JOHN F. GOUGH, of Jersey City, for Defendants John J. Cain and Duryea Manufacturing Co.

MR. MAX LEVY, for Michael M. Keshin, Defendant.

GRIFFIN, V. C.:

The bill in this cause is filed to quiet title to lands in the City of Bayonne. The defendants' titles are derived from sales under the Martin Act (4 Comp. Stat., p. 5205).

The complainant asserts: 1. That the titles of defendants under the Martin Act are void; 2. That complainant and his predecessors in title have been in peaceable possession for upwards of forty years.

1. The facts upon which the complainant claims the defendants' titles are void are as follows:

Opinion.

The taxes and other municipal liens were attempted to be adjusted in Report No. 5 of the Commissioners of Adjustment, dated September 20th, 1888, confirmed October 27th, 1888. By this report the Commissioners adjusted the taxes against a great number of lots and parcels of land, but instead of adjusting the liens against each lot or parcel year by year, as theretofore assessed, separately, erroneously grouped several lots in one parcel and adjusted the liens in a single sum for each year against the group.

This method of assessment is erroneous. *Hayday* vs. *Ocean City*, 67 N. J. Law (38 Vr.) 155 (1901); *Nichols* vs. *Older*, 78 N. J. Eq. (8 Buch.) 101 (1910).

Within eight months after the confirmation of Report No. 5 Report No. 10 was filed and confirmed. This latter report covered lots in Block 519 and Block 535, which included the premises in question as well as lots in many other blocks, and adjusted the liens on the several lots in the manner provided by law, not only from 1877 to 1887, both inclusive, which were included in Report No. 5, but also the liens for the year 1888.

In Report No. 10, at the beginning of the adjustment against Blocks 519 and 535, are the words "Readjusted by order of the Court."

It seems quite apparent that the error in the adjustment in Report No. 5 was discovered, and thereupon the matter was referred back to the Commissioners for re-adjustment; that the Circuit Court had power to make this order of reference is clear. In the case of *Erie Elevator Co.* vs. *Jersey City*, 84 N. J. Eq. 176, in affirming the decree of the Court of Chancery (83 N. J. Eq. 71),

Opinion.

Mr. Justice Bergen, speaking for the Court of Errors and Appeals (p. 182) said "We think that "the Circuit Court has the power to set aside "such an order if it appears to have been im- "providently made, or where the appellate court "has determined that the adjustment has been "made upon illegal principles, and to send the "report back to the commissioners to make a legal "adjustment; and that it has the power to con- "firm, in the manner prescribed by law, the new "adjustment such commissioners may report."

But complainant insists that there was no order for readjustment made by the court because none can be found of record. In this he cannot prevail. The words "re-adjusted by order of the Court" above mentioned were in the report when presented to the Court, and confirmed, and clearly demonstrate that such order had been made.

The complainant and his predecessors in title either had actual knowledge, or were charged with knowledge of this recital, and having failed to object to the confirmation of the report, it is now too late, after a lapse of more than thirty years, during which time the order may have been lost, to assert that this recital is untrue. *Erie Elevator Co.* vs. *Jersey City, supra,* p. 182.

I therefore find that the proceedings under the Martin Act contained in Report No. 10 were regular. If it were otherwise, the complainant had his remedy by certiorari, and this Court is without authority to entertain his bill, simply because the time within which to sue out his writ has passed. But I found my opinion principally upon the point that the proceedings were regular. From

this, it follows that the deeds made by the Collector of Revenue of the City of Bayonne vested in the grantees the fee simple in accordance with their terms.

The second claim made by the complainant is that he and his predecessors in title were in peaceable possession of the lands for more than forty years down to the filing of the bill.

The premises in question and other contiguous property were purchased by the father of the complainant about 1858. Subsequently it became vested in his mother, Catherine G. Mackie, who died, seized, on or about September 1st, 1868. She left her surviving her husband, Robert, and children C. T. O. Mackie, E. E. W. Mackie, A. L. A. Mackie (the complainant), R. J. D. Mackie, S. T. Mackie, S. L. Mackie and G. B. Mackie as her only heirs-at-law.

In 1876 a bill was filed in this court to partition said premises. A final decree was entered confirming the Commissioners' Report on January 16, 1879.

By this decree the lots numbered and preceded with the letter G, as shown on the Commissioners' Map offered in evidence, were set off in severalty to Simon Frazier Mackie. Of these lots G,2, G,3, G,4 and G,5 in Block 535 and G,3 in Block 519 are in controversy. These lots are also shown on the City Assessment Map as follows: G,2 as Lots 28 and 27—27 being nearest to First Street; G,3 as Lot 3; G,4 as Lot 6, and G,5 as Lot 9, in Block 535, and G,3 in Block 519 is known as Lot 31, Block 519.

The parents of the complainant lived in the homestead, located on Lots E,2, A,2 and C,2, sit-

uated on the northeast corner of First Street and Newman Avenue. Lot E,2 was set off to Schuyler L. Mackie; A,2 to Chas. T. O. Mackie, and C,2 to the complainant. There was also a stable located partially on G,2 and D,3 (Lots 29 and 28), D,3 having been allotted to Robert J. D. Mackie and afterwards acquired by the defendant Cain in 1902. There were no other buildings on the land.

After the partition, and after the death of their father, which occurred in 1880, the complainant says the family agreed to keep the property together as a homestead, and the unmarried members occupied it. His best recollection is that the last of the family to reside there were his brothers, Schuyler L. Mackie, Charles T. O. Mackie, and his sister, Mrs. Gilchrist, who moved away sixteen or eighteen years ago (1901 or 1903). He says that Simon Frazier Mackie, to whom the premises in question were allotted, resided in Salt Lake City, Utah, from 1881 to 1902, when and where he died; that after the family left, the homestead was rented, and the tenants, with permission of S. L. Mackie and himself, gardened Lot 28 and occupied Lot 27. He also says that tenants occupied the stable on Lot 28. (The fact is that the stable is on Lots 28 and 29). He says nobody used the stable after the family moved away. He found Stringham had fenced off part of Avenue Q (Newman Avenue), and his horses had the run of the stable. He did not lease to him, and never leased Lots 3, 6, 9, 27 and 28, and he never paid taxes on them. After Stringham left someone else occupied the stable.

Edward Botsworth rented the homestead only from Schuyler Mackie, who was one of the owners,

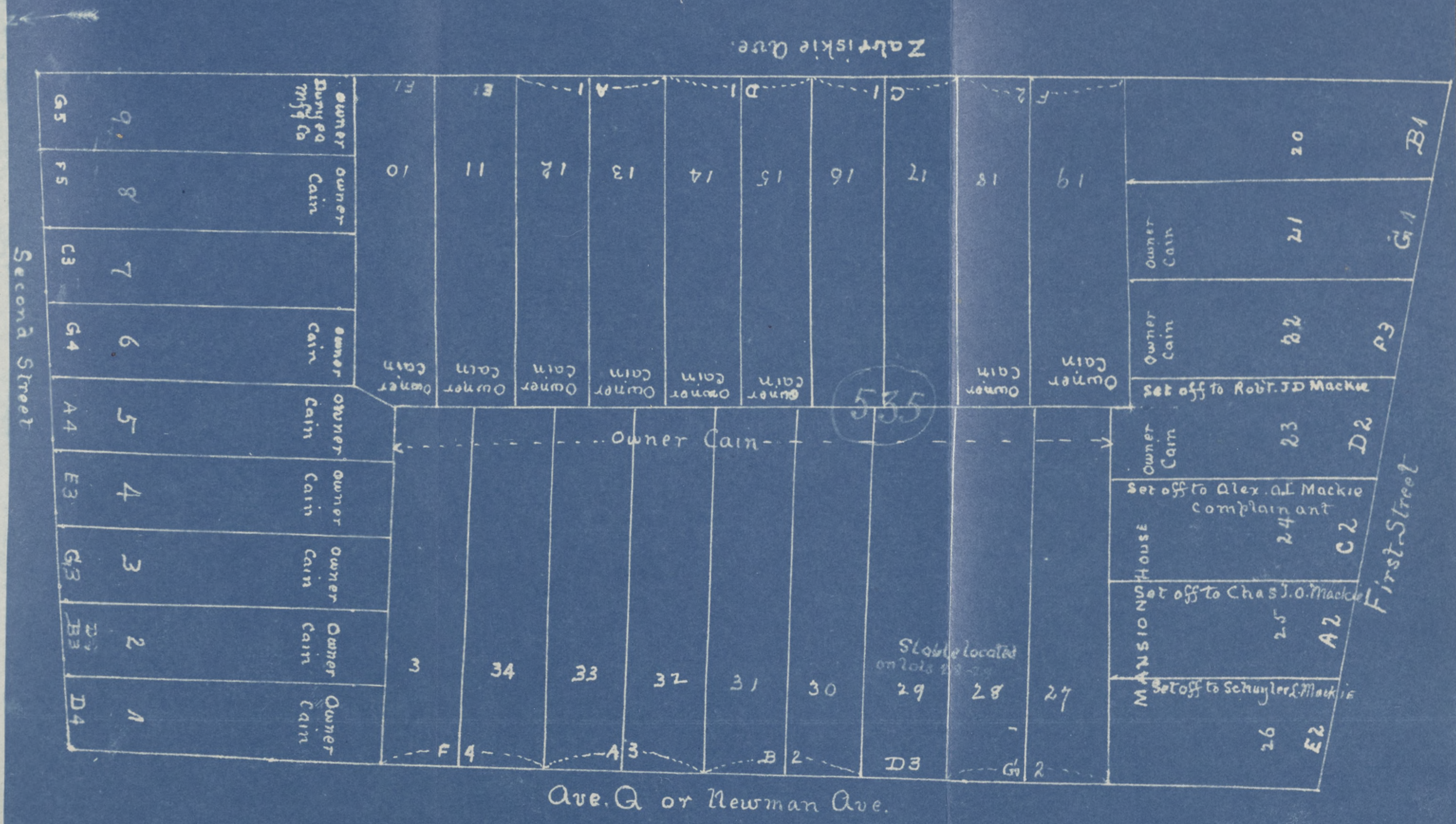
in 1906, and used the property in the block generally for farming. After he left his father-in-law rented the homestead, and left it in 1914, after which Mrs. Hermanos rented the homestead.

Mr. Cain acquired title to Lots 3, 6, 27 and 28 in 1903, and to Lot 9 (sold to Duryea Manufacturing Company) in 1902, being the premises in question. He acquired other lots as follows: In 1901, Nos. 18 and 19; in 1902, Nos. 1, 5, 21 and 22; in 1903, Nos. 3, 12, 13, 14, 15, 23, 29, 30, 31, 32, 33; and in 1916, Nos. 2, 4, 10, 11, 34 and 35, all in Block 535, in all, twenty two lots, which he owned on and prior to 1909; and in 1916 owned twenty-eight out of a total of thirty-five lots in the block, all of which he purchased prior to the filing of the bill herein.

On the Commissioners' Map in partition each heir is given a letter which is prefixed to the lot numbers of lots set off to him or her, as follows:

Charles T. O. Mackie,	A
Euphemia E. W. Mackie,	B
Alexander L. A. Mackie,	C
Robert J. D. Mackie,	D
Schuyler L. Mackie,	E
George Barclay Mackiet,	F
Simon F. Mackie,	G

The following diagram shows the location of the lots in Block 535, the Mansion House and stable; the lots conveyed to Cain and Duryea Manufacturing Company, and the lots set off to the various parties in partition, by letter and number:



Zabriskie Ave.
Ave. Q or Newman Ave.
Second Street
First Street
Owner Duryea Mfg Co
Owner Cain
Owner Cain
535
Set off to Robt. J.D. Mackie
Set off to Alex. A.L. Mackie complainant
Mansion House
Set off to Chas. J.O. Mackie
Set off to Schuyler L. Mackie
Stable located on lots 28-29

Opinion.

As to the lots purchased prior to 1916, his vendors were persons other than the City, although the title to all the lots was derived through mesne conveyances from the City, who purchased under the Martin Act. The conveyance of the lots in 1916 was made by the sister of the complainant, Mrs. Gilchrist, as sole devisee and executrix under the will of her brother, Schuyler, by deed dated July 8th, 1916—five months before this bill was filed.

It appears clearly in the case that Mr. Cain has been in possession of these lands, since his purchase, as fully, openly and notoriously as could be expected in the case of lands so situated. He gave permission to one, Stringham, about 1907, to keep his horses in the stable and on his lots in the block. Stringham patched the old fence around three sides of the block. The First Avenue side he did not touch, because the homestead property and fences on that side were sufficient for the purpose. He does not recall if Stringham paid him for it. He also rented the stable to Mrs. Hermanos, about 1914, at $3.00 a month. She has continued in the possession, as his tenant, ever since. She lives in the homestead, which she rented from the Mackies.

About thirteen or fourteen years ago Cain leased part of Lots 27 and 28, 18, 19, 21 and 22 to one, Bernstein, for $60.00 for the season, to be used as an amusement park. Bernstein put up fences between Lots 17 and 18, which extended from 25 to 40 feet into Lot 28, and from thence across Lots 28 and 27 to the rear of Lot 23.

Mr. Mackie, the complainant, upon being recalled, said that the amusement park opened, he

thinks, in April, 1909 ;that he made measurements at the time, which he thinks are at his home, from which he made a map of the fenced area, and that it did not touch Lots 27 or 28, but was wholly to the east of the rear line of these lots, on Lots 18 and 19.

Turning to the conduct of the complainant, it appears that for upwards of thirty-five years it was his habit, every two or three months, to search the records of the County and communicate the facts disclosed to his brother Simon. Thus he acquired actual knowledge of the various deeds, and conveyances about the time of their record. He knew that Mr. Cain had deeds for these premises, was exercising acts of ownership over the same, and was paying the taxes year by year; yet he never made the slightest suggestion to Mr. Cain that his brother Simon, in his life-time, or his daughter after his decease, had any claim, estate or interest in these premises; nor did Simon, in his lifetime, nor his daughter after his decease, assert such claim. But, with full knowledge of the facts, complainant secretly went about the premises, apparently making measurements for the purpose, at some future day, of being prepared to combat the claim which the defendant Cain might assert that he was in possession. In 1912 he took a deed from Margaret, the daughter and only heir-at-law of Simon, and about four years lated filed his bill. Apart from the fact that the evidence is quite clear that Mr. Cain was in possession, a court of conscience, in dealing with the conduct of the complainant, should resolve against him on every doubtful question.

Opinion.

I find, as a matter of fact, that the complainant was not in possession, and that Mr. Cain was in possession from the date of the deeds to him, being about the year 1903; and I find, as a matter of law, that the deeds from the Collector of Revenue of the City of Bayonne to its grantees operated, under the Martin Act, to place the possession of the premises in question in the grantees, under the 119th Section of the Act respecting Conveyances, 1 Gen. Stat., p. 877, and cases in note, 2 Comp. Stat., 1536, Sec. 7. This counsel for complainant admits to be the law, in conveyances generally, but says that a tax deed stands on a different footing, and implies no livery of seizin; that the purchaser must take possession or lose his right by limitation, citing *Beatty* vs. *Lewis*, 68 Atl. Rep., 95. In that case a tax sale was made by the City of Hoboken for a term of years; under the charter, the owner had a right to redeem within two years after the sale, after which date, if not redeemed, the purchaser had the right to possession. Vice Chancellor Howell held that this tax certificate did not vest immediate possession, but only the right to possession at the end of two years; that something had to be done by the purchaser at the end of two years to obtain possession. This decision has no bearing on the present case. Under the Martin Act, Section 6, it is provided that the purchaser, after the sale and before receiving his deed, shall be entitled to possession of the lands immediately upon giving notice to the owner thereof, in case the same are unoccupied, or, if they are occupied, then within thirty days thereafter—appar-

ently following the spirit of the old tax acts such as are contained in the charter of the City of Hoboken. No such language is contained in the Martin Act as to the deed. In Section 5 it says "The purchaser, his heirs, legal representatives or "assigns, by his deed shall take a good and suffi- "cient title to the property sold, in fee simple ab- "solute, free from all encumbrances, etc., of which "the deed shall be presumptive evidence in all "places." This places a deed given under the Martin Act on the same footing as a deed given by an individual owner of property, thereby putting defendant in possession as fully as if there was livery of seizin.

At page 177 of the testimony Mr. Hastings made an objection, which apparently was abandoned in his brief (and I think properly so) that the lands in one deed are described as "fronting on Fourth Street in the City of Bayonne," whereas, in fact, they front on Newman Avenue. This part of the description may be rejected as false, the remainder being sufficient to identify the property conveyed.

The decree will be for the defendant, Cain, in the usual form.

As to Keshin: Lot 31, Block 519; lot vacant. There were no signs of occupancy by anyone. Certainly after Keshin became seized of the premises under his deed, no acts of ownership, open, hostile and notorious, are exhibited in this case by the complainant, or those under whom he claims, which would constitute an adverse possession, or any possession whatsoever. Keshin visited the premises occasionally, and paid the taxes thereon.

Opinion.

The decree, therefore, will be in favor of Keshin.

What has been said as to the above defendants applies with equal force to the Duryea Manufacturing Company (Lot 9, Block 535), with the additional remark that it is perfectly plain that the Duryea Manufacturing Company commenced the erection of its building on the land prior to the commencement of this suit, and, therefore, under no circumstances, could the complainant claim to have been in possession of this lot at the time of the filing of the bill.

The decree will be in favor of the Duryea Manufacturing Company.

Final Decree as to Defendants John J. Cain, Duryea Manufacturing Company, and Michael M. Keshen, and Wife.

IN CHANCERY OF NEW JERSEY.

Between
ALEXANDER L. A. MACKIE,
Complainant,

and

LUCIUS F. DONOHUE, et als.,
Defendants.

This cause coming on to be heard in the presence of Frank W. Hastings, Jr., Esq., and William Van Buskirk, Esq., of counsel with the complainant, and Messrs. Hamill & Cain, solicitors and John F. Gough, Esq., of counsel with the defendants John J. Cain, and Duryea Manufacturing Company, and Max Levy, Esq., of counsel with the defendants Michael E. Keshen and wife, and the pleadings having been read, the proofs having been taken, and the arguments of the respective parties aforesaid having been duly considered;

It is on this 21st day of June, 1920, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged, and decreed, and the said Chancellor by virtue of the power and authority of this Court, doth hereby order, adjudge and decree, that the amended bill of complaint in this cause be, and the same is hereby dismissed, as to the defendants John J. Cain, Duryea Manufacturing Company, Michael M. Keshen, and wife, with costs.

Final Decree as to Defendants, Etc.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that the complainant pay to the defendants John J. Cain, and Duryea Manufacturing Company, their costs of this suit to be taxed, together with a counsel fee of $800 dollars, and to the defendant Michael M. Keshen, his costs of this suit to be taxed, together with a counsel fee of $150 dollars, and that execution may issue therefor in accordance with the practice of this Court.

Respectfully advised,

E. R. WALKER,
C.

JOHN GRIFFIN,
V. C.

Case.

IN CHANCERY OF NEW JERSEY.

Between
ALEXANDER L. A. MACKIE,
Complainant,
and
LUCIUS F. DONOHUE, et als.,
Defendants.

Minutes of Final Hearing.

APPEARANCES:

MESSRS. HAMILL & CAIN and J. F. GOUGH, ESQ., for John J. Cain and Duryea Mfg. Co.

WM. VAN BUSKIRK and F. W. HASTINGS, ESQS., for Complainant.

MAX LEVY, ESQ., for Michael M. Keshin and wife, Defendants.

Before

HON. JOHN GRIFFIN,
Vice Chancellor.

Chancery Chambers, Jersey City, N. J.,
May 13th, 1919.

Mr. Hastings: I might just call your Honor's attention to the fact that, in court to-day, we only have the issue between the complainant and the defendants, John J. Cain, Duryea Manufacturing Company and Michael M. Keshin. Mr. Donohue, one of the other defendants, is in the

military service, and there has been an order made staying that; and the American Cotton Seed Oil Company matter has been settled, so those matters are not in court to-day; and to-day we are only involved with six lots, being the lots on the City Map known as 3, 6, 27, 28 in Block 535——

The Vice Chancellor: Well, whatever Mr. Cain and the Duryear Manufacturing Company are interested in?

Mr. Gough: You did not mention 9 in Block 535; does that go by?

Mr. Hastings: No, that is Duryeas. 3, 6, 7 and 28 are Cain's.

The Vice Chancellor: Well, whatever belong to the defendants that you are interested in now.

Mr. Hastings: Yes.

The Vice Chancellor: Before you proceed, as I recall it, there was one defendant who answered the original bill—what have you done about that?

Mr. Hastings: Oh, yes—that is Mr. Levy's client, Keshin . I think he filed an answer to the original bill; and then, after the bill was amended, there was a stipulation made that his answer should stand as the answer to the second bill.

The Vice Chancellor: Was that filed?

Mr. Van Buskirk: Yes, sir; that stipulation was filed.

THE CASE FOR THE COMPLAINANT.

ALEXANDER L. A. MACKIE, sworn.

DIRECT EXAMINATION BY MR. HASTINGS:

Q. Mr. Mackie, you are the complainant in this case? A. Yes, sir.

Q. And where do you reside? A. I reside in New York in Sheridan Avenue; I have resided there for the last twenty-five years; I have been a non-resident of Bergen Point for thirty odd years.

Q. What is your age, Mr. Mackie? A. I am in my seventy-first year.

Q. Mr. Mackie, your father was the owner of a tract of land in the City of Bayonne? A. Yes, sir.

Q. Do you know of your own knowledge when he purchased the tract? A. The tract of land was purchased at public auction in December, 1858; the deed was passed in 1859; and in 1859 we took occupancy of the property; we occupied the property in 1859; and from 1859 to the present time the property has been in our actual possession.

Mr. Gough: I object to that.

The Vice Chancellor: Strike it out.

Q. Wait a minute: After your father purchased this land, what did he do? A. The land had been a farm, originally; he continued to farm it.

Q. Was there any building on it? A. There was a homestead, a house there, that had been on there from 1800, still in existence.

Q. And any other buildings? A. And he built a brick stable and carriage-house.

Q. Now, what was the extent of the land, originally? A. The land, originally, was in the neighborhood of twelve acres—that is, the original tract of land.

Q. Now, for the purpose of identification, where did it lie, with reference to present streets in the City of Bayonne? A. It extended from the Kill von Kull up to Fourth Street, on the north and south, and on the east it was bounded by what is now Zabriskie Avenue, and on the west by what is now Neuman Avenue; but it was bounded originally by the land of Melick and by the land of Garretson—Melick and Garretson.

Q. At the time your father purchased this land were there any streets laid out across it? A. No, it was farm-land, and he kept it as such.

Q. Now, just describe how your father came to use that tract of land—first, the house, did he live in the house? A. We lived in the house, as a summer home, from the year 1859 to the year 1868; and then Father moved to New York, and returned again in 1874, and we lived in the house; and other members of the family have lived in the house up to sixteen or eighteen years ago—I cannot give you the exact date, but, as near as I can remember, it was sixteen years ago when we left the home.

The Vice Chancellor: One moment; there is no stipulation here on file, such as you have spoken of.

Mr. Hastings: Well, I think we can agree with Mr. Levy; I have a copy here, if your

Honor please. We can put on the record that it is stipulated between the counsel for the complainant and for the defendant Keshin, that the answer filed by Keshin to the original bill shall be taken and stand as the answer to the amended bill.

By the Vice Chancellor:

Q. Cannot you tell what members of the family lived there? A. Do you wish me to say, sir?

Q. Why, yes. A. Why, my father lived there, during his lifetime.

Q. When did he die? A. He died in April, 1880. My three brothers and a sister lived there up to the time the house was rented. I think it was rented sixteen years ago, I am not sure as to date; it certainly was not over eighteen years ago when the property was rented to tenants.

By Mr. Hastings:

Q. Who occupied it after the members of the Mackie family left the house? A. Well, my brothers rented the property, although I owned part of the house; they took charge of the property, and rented it, and I simply received my portion; but they rented it to a tenant—I cannot name the tenant's name.

Q. Did you know of the actual occupancy? A. There was actual occupancy. There is occupancy to-day.

Mr. Gough: I object to the answer, as not responsive.

The Vice Chancellor: Strike it out.

Mr. Hastings: He says he knows, of his own knowledge, your Honor.

The Vice Chancellor: Well, he doesn't show it.

Q. Do you know of your own knowledge, Mr. Mackie, that after the death of your father, and after your brothers and sister left the homestead, whether or not it was occupied? A. I do, positively, sir.

Q. For what period of time, do you knok of your own knowledge, that the house was occupied by tenants? A. For the past sixteen years.

Q. (By the Vice Chancellor) For the past sixteen years? A. Yes, sir; up to the time the bill was filed; it is occupied at the present time.

Q. (By Mr. Hastings) It is occupied at the present time? A. At the present time.

Q. Now, as to the stable on the property—do you know about when that was built? You said your father built it? A. That was built in—I can give you the month, but not the day—that stable was built in 1864, in August or September of 1864. It is a one-story building.

Q. And is that still standing? A. That is still standing.

Q. And do you know, of your own knowledge, whether or not that was used and occupied by your father? A. Always.

Q. And afterwards by your brothers and sister? A. Yes.

Q. Now, how was the land itself used from the time your father went into possession? A. The land was divided into three parts—I am not talking about the streets, I am talking about the actual farm.

A. L. A. Mackie. Called by Complainant. Direct.

Q. Yes, I am talking about the farm. A. The house occupied a part of the front of the farm; part of it was in meadow-land, and part of it was in a vegetable garden; then there came the orchard, in which my father planted trees, and that was used as meadow-land and orchard. Then, above that, came a meadow-land that was always used as meadow-land, and the cows were pastured in it prior to the cutting of the hay on the first lot—the lot now between First and Second Street.

Q. And, to-day, the land is the land included between the Kill von Kull, and from First to Second Avenue, or Second Street, and then a block between Second and Third Streets, and another block between Third and Fourth Streets?

Mr. Gough: Objected to, as leading; I do not see what it means yet.

Mr. Hastings: Well, if there is any dispute about the location, I want to prove the location, of course.

Mr. Gough: Have you got a map?

Mr. Hastings: We have got a map here (producing a map). There are a lot of things here (referring to the map now produced) merely to inform the Court of the location, that there is no dispute about.

Q. (Showing the map to witness) Mr. Mackie, I show you a map entitled "Map of the Mackie Estate, situated in the First Ward in the City of Bayonne, Hudson County, N. J., showing partition of same, etc., dated March 1st, 1876; Smith & Weston, City Surveyors," and ask you whether or not that map shows the laying-out of the origi-

nal farm land into lots and blocks? A. Yes, sir; it positively shows the original farm land, and the division amongst the several Mackie heirs. It is the original map, signed by the Commissioners.

Q. You speak about "the division"—when was that division made? A. Application for that division was made in March, 1876; the final decree was filed in 1878.

Q. And this map was prepared in the year 1876? A. 1876.

Mr. Gough: You are offering, Mr. Hastings, are you (referring to the map produced and identified by the complainant)?

Mr. Hastings: Yes.

(The Map was thereupon admitted, without objection, and is marked Exhibit C, 1.)

Q. Now, Mr. Mackie, will you point out, from this map, the lots known as Lots 3, 6, 27 and 28 in Block 535 of the City Map of Bayonne, on the Mackie Map? A. Lots G3, G4 and G5 are 3, 6 and 9.

Mr. Gough: You were not asked about 9, Mr. Mackie.

Q. Well, let me be more specific: Lot 3 on the City Map, is what lot shown there on the Mackie Map? A. It is G3.

Q. Lot 6 on the City Map is what lot there (referring to the Mackie Map)? A. G4.

Q. Lots 27 and 28 on the City Map are what, on that Map? A. G2.

Q. That is, that one lot on the Mackie Map comprises both lots on the City Map? A. Yes, sir.

A. L. A. Mackie. Called by Complainant. Direct.

Q. Will you point out on the Mackie Map the lot now known as Lot 9 in Block 535 on the City Map? A. G5—situated on the corner of Zabriskie Avenue and Second Street.

Q. And will you point out on the Mackie Map the lot known as Lot 31, in Block 519, on the City Map? A. G3.

Q. Now, those lots you have just pointed out,—in the partition which you speak of, to whom were those lots allotted? A. Those lots were allotted to my oldest brother, Simon Fraser Mackie.

Q. And that brother is now dead, is he? A. That brother is dead, sir.

Q. When did he die? A. In December, 1902, I think, as far as I can fasten the date.

Q. Did he leave any will? A. No.

Q. Who were his heirs-at-law? A. His only surviving child, a daughter, Margaret.

Q. Did he leave any wife? A. Yes, she survived him.

Q. Is she now living, or dead? A. No, she is dead; she died six years after he died.

Q. And he only had the one child? A. He had three children—two who died before his death.

Q. And were they married? A. No, they were single; they died in infancy.

Q. The only surviving child was the daughter? A. The only surviving child was an infant at his death,—Margaret.

Q. Margaret Mackie? A. Margaret Mackie.

Q. And do you now claim title to those lots?

Mr. Gough: Objected to.

The Vice Chancellor: I will overrule the question. You say the other people claim

title; if he, only, claims title, his bill is not properly filed.

Mr. Hastings: Well, I will also show possession.

Q. I show you a certain deed, dated the 11th day of May, 1912, between "Margaret Mackie, spinster, daughter and only surviving child of the aforementioned Simon Fraser Mackie, and Clara Ella, his wife, and Alexander L. A. Mackie," acknowledged May 11th, 1912, before A. G. W. Vermilyea, Notary Public of New York County, with the County Clerk's certificate of the County of New York attached, dated May 17, 1912, with certificate of record endorsed thereon, under date of May 18, 1912, of record of said deed in Book 1120 of Deeds, page 295, etc., certified by John J. McMahon, Register—where did you get that deed?

Mr. Gough: I object to the question.

The Vice Chancellor: The objection will be overruled.

A. I received this deed from my niece, Margaret Mackie. She gave it to me as her voluntary deed and act.

Mr. Gough: I move that that be stricken out as not responsive.

The Vice Chancellor: It doesn't make any difference; the acknowledgement recites it.

Q. What did you do with that deed when you got it? A. I had the deed recorded at once.

Mr. Hastings: I offer the deed in evidence.

Mr. Gough: I object to the deed being admitted in evidence, upon this ground,—that the preliminary inquiry in this case is the alleged peaceable possession of the complainant; and, until that be shown, no evidence ought to be admitted of the record.

The Vice Chancellor: I suppose, on the peaceable possession being shown, the defendant has a right to a feigned issue for a trial before a jury, but he must show both peaceable possession and that he has a claim of title by deed, or otherwise—or possession. The deed may be marked now for identification, and I will sustain the objection. You may then, after you prove peaceable possession, probably, offer it in evidence.

(The deed was thereup marked Exhibit A for identification.)

Q. Now, Mr. Mackie—

By the Vice Chancellor:

Q. Before you go into that: This map you produced does not show any buildings? A. No, sir; I can give you the reasons for that, sir.

Q. Well, you need not give the reasons; were the buildings on it at the time that map was made? A. Yes, sir; the buildings were on the property.

Q. When were the buildings located on the property? A. The house is located on part of Lot E, all of Lot A, and part of Lot C. That is the house.

A. L. A. Mackie. Called by Complainant. Direct.

By Mr. Hastings:

Q. Those are marked E2, A2, and C2, in Block 535, facing First Street? A. The brick building was located partially on Lot G2, and partially on Lot D3.

Q. In the rear of the homestead? A. In the rear of the homestead. The building is on a lot 30 feet on Newman Avenue, which is an unopened street, never been dedicated to public use.

By the Vice Chancellor:

Q. What do you want to do—run this case, or let your counsel do it? A. No, sir; I want to mention that fact.

Q. Well, that is not proof. You do not know whether it is dedicated, or not. Now, these lots on which these buildings are located were set off in partition to various owners, weren't they? A. Yes, your Honor.

Q. So, that when they partitioned Lots E2, A2 and C2, it divided the building into three ownerships? A. Three ownerships.

Q. And the same way with respect to G2 and D3? A. The same, your Honor.

By Mr. Hastings:

Q. And the lots where these buildings are located are not the lots which you pointed out previously as identifying them with the lots on the City Map of Bayonne? A. No; this is with reference to the home, and with reference to the stable.

A. L. A. Mackie. Called by Complainant. Direct.

By the Vice Chancellor:

Q. Well, none of these lots, as I understand the question, are in dispute? A. The Lot G2 is in dispute; the brick building is partially located on that; there is actually 28 feet by about 12 feet located on G2.

By Mr. Gough: That is the stable? A. That is the stable.

By the Vice Chancellor:

Q. And how much is on G3? A. On D3 there is 28 feet by about 12; it comes this way, your Honor (indicating).

Q. That is owned by someone else? A. This is owned by other parties.

By Mr. Hastings:

Q. And G2, on the Map, is 27 and 28 in Block 535 on the Tax Map? A. Yes.

Q. And that is the lot on which this brick building or stable is located? A. Partially on that.

By the Vice Chancellor:

Q. The other lots here in dispute are on Second Avenue, aren't they? A. On Second Street, your Honor. Those three lots are the lots in dispute, your Honor (indicating on the map).

Mr. Hastings: Then there is one lot in this other block that we are interested in

to-day; that is the Keshin Lot (indicating the location on the Map).

The Witness: That is the Keshin Lot.

Q. Well, those are the only buildings, now? A. Those are the only buildings.

Q. The buildings you refer to, the stable and house building, are the only buildings that are on all of this land? A. On all that land; with the exception, your Honor, of the property that has been sold here (indicating on the Map); this property has been sold, and the party has built his own building.

Q. But none of you or your ancestors had any building on the property? A. None, whatever, your Honor, except the house and stable.

By Mr. Hastings:

Q. Now, after this partition and division among the Mackie heirs was made, was any of the property sold off—I mean, in the whole tract, now? A. No, there was none of it immediately sold.

Q. I don't care about "immediately," but at any time? A. The whole tract—yes.

Q. Is the whole tract now in the possession of the Mackie heirs? A. No, no.

Q. Portions of the tract were disposed of? A. Have been disposed of.

Q. And, as to any other buildings upon this tract, then—than the old homestead, and the brick building or stable which you refer to,—they have been built by other persons? A. By other persons.

The Vice Chancellor: He said so. I asked him if any buildings were erected on this land by either he or his ancestors, other than the stable and the homestead, and he said "No."

Q. Now, Mr. Mackie, do you know when the streets were laid out through this property, in the City of Bayonne? A. The streets were laid out—I cannot give you the dates, I know approximately— I couldn't give you the exact dates.

Q. Well, about the dates? A. The City of Bayonne received its charter in 1869, and it commenced to lay out the streets at that time. When we moved back to the Point in 1874 First Street had been widened; Second Street had been cut through the property, and the fences were put back on the lines; Third Street had been cut through the property, and the fences had been put back on the lines.

Q. Then, before the partition of 1876 these streets had been opened, and dedicated to public use? A. Yes.

By the Vice Chancellor:

Q. That is, the streets with numbers? A. Yes, sir, the streets with numbers; the others are avenues, and they had not been opened at the time of the partition.

By Mr. Hastings:

Q. Now, after First and Second and Third Streets were opened and laid through this prop-

erty, what did your father or your brothers and sister do? A. They continued to occupy the farm —occupy the property and use it as a homestead, for grazing land, and picked the fruit off the orchard, cut the hay off of it, and gardened it.

Q. What, if anything, did they do to the lands included in the separate blocks? A. Why, between First and Second Streets was the vegetable garden and the meadow. The vegetable garden was in here (indicating).

By the Vice Chancellor:

Q. That was about 1876? A. That was after 1876. Prior to 1876 it was in the same condition.

Q. Are there any fences anywhere on this property? A. There were fences there originally.

Q. When were they put up, do you know, of your own knowledge? A. The fence on First Street was moved in the present position that it should occupy——

By Mr. Hastings:

The Vice Chancellor: That it should occupy?

A. Yes; it has all been torn down, your Honor.

By Mr. Gough:

Q. You say there is a fence on First Street now? A. There is still a part of a fence on First Street; that fence was originally moved and put there in 1869. The fence on the east side of the property was there.

A. L. A. Mackie. Called by Complainant. Direct.

By Mr. Hastings:

Q. You mean this Block 535, you are talking about now? A. I mean this Block 535—taking the fences that were actually moved: The fence on Second Street was moved, and it remained in the——

Q. (Interrupting) Where was it placed then? A. It was placed on the line of the street in 1868, or thereafter, when this street was opened.

Q. What is on the east and west side of Block 535? A. That was bounded by the old fences and old property sidelines as they originally stood. The street had not been opened at that time.

Q. Now, as to Block 519, lying between Second and Third Streets, were there any fences ever erected there, and when? A. The same condition applies to those parts, to those streets, as to between First and Second Streets. The fence on the northerly side of Second Street was put on the line of Second Street; and the fence on the southerly side of Third Street was put on the line of the street.

Q. And when was that done? A. That was done, I should think, in the year 1869; I was not then at the Point.

Q. And as to the east and west sides of the Block 519, were there any fences? A. Yes, there were fences—the original line fences.

Q. And do you know when they were erected, these side fences? A. They remained there from the time my father purchased the property up until Zabriskie Avenue was opened.

Q. And as to the block between Third and Fourth Streets—it is not involved to-day, but merely to cover the use of the property? A. The

fence on the northerly side of Third Street was moved to the line of the street. The fence on the southerly side of Fourth Street was moved to the line of the street. And the fences on the east and west line of the property were the old side-line fences between the old property as it was originally laid out.

Q. Now, as to the original fences built up by your father, before the streets were cut through, do any portion of them now remain, or did they at the time of the filing of the bill?

Mr. Gough: I object; there is no evidence that any of these fences were built by the father, at all.

The Vice Chancellor: He said his father built them; but I do not see how that is material; there has been a partition since then, and you are now claiming title under that partition.

Mr. Hastings: Yes; and this all has bearing on Mr. Gough's insistment about showing possession; we are tracing it down, and showing how it was done, and when it was done.

The Vice Chancellor: I will let you offer your deed in evidence.

(The deed was thereupon offered by Mr. Hastings, and admitted and marked Exhibit C-2.)

Mr. Gough: Well, I will renew my objection.

The Vice Chancellor: Yes, you may have your objection. Now (to Mr. Hastings), you can take the property that this gentleman says he owns by purchase from this lady, and

attempt to show his possession of that. By the way, is this lady living now?

The Witness: Yes, sir, she is living, and married.

Q. Now, this deed, Mr. Mackie, Exhibit C-2, describes the property conveyed as "all the right, title and interest——

The Vice Chancellor: Is it not the same as in the bill?

Mr. Hastings: No; this conveyance is rather general—of all her right, title and interest.

Q. (Resuming)——"of the party of the first part hereto, in and to all the estate, real or personal, which was of the late Catherine G. Mackie, deceased, mother of the beforementioned said Simon Fraser Mackie, father of the party of the first part, which might, could or would have belonged, or may, or did belong to the said Simon Fraser Mackie as heir of the said Catherine G. Mackie, and also all her right, title and interest, claim and demand as the only surviving child of the said Simon Fraser Mackie, to the property personal or real estate, mentioned in the foregoing deed of trust to said William Man"—will you point out in the deed the designation of that property——

The Vice Chancellor: Why, how can he? There is no designation there.

Mr. Hastings: Yes, there is, if your Honor please.

A. L. A. Mackie. Called by Complainant. Direct.

Q. (Resuming)——referred to as "in the foregoing deed of trust to said William Man?" A. Here is the recital.

Q. In the beginning of this deed, which contains long recitals of trust, the Man property is referred to as the property which, "by indenture dated the Eleventh day of December, One thousand eight hundred and seventy-seven, which said indenture is recorded in the office of the Register of Deeds for Hudson County, State of New Jersey, in Liber 344 of Deeds at page 158, between Simon Fraser Mackie of the City of New York, of the first part, and William Man," etc., and recites the conveyance by that deed of all the real estate and lands of the party of the first part in that deed, Simon Fraser Mackie, "which land is the share of the party of the first part at present undivided, in certain lands and real estate whereof Catherine G. Mackie, the mother of the party of the first part recently died seized, and which land is more particularly described in the deed thereof, from John Duer to said Catherine G. Mackie——

The Vice Chancellor: Why copy all of that in the record? You have your exhibit in.

Mr. Hastings: Well, I understand Mr. Gough is objecting to the identity.

The Vice Chancellor: Well, I permitted the deed to be offered.

Mr. Hastings: Well, all right.

The Vice Chancellor: But the mere recital here is not going to prove what has gone to Man.

Mr. Hastings: Oh, no; but the conveyance part of the deed says it conveys all the right,

title and interest in the before recited and described premises which, at the date of that conveyance, was undivided.

The Vice Chancellor: Go right ahead.

Q. Now, Mr. Mackie, after you received that deed from Margaret Mackie, and had it recorded, what did you do? A. I took possession of the property.

Q. Did you visit the property?

Mr. Gough: I object to that.

The Vice Chancellor (to the witness): How did you take possession of the property

A. Margaret Mackie was in possession of the property, and——

The Vice Chancellor: Strike that out; that is for the Court to decide, who was in possession.

Mr. Hastings: Why, it is a physical fact, too, as to who was in possession.

The Vice Chancellor: No, it is a legal fact. If I hold a thing in my hand I have it "in my possession." Now, let the man tell what he did to show his possession, and I will say whether he was "in possession." Go right ahead.

Q. Well, as to these lots apportioned to Simon F. Mackie by the partition, was Simon F. Mackie living on this tract in 1878, when this partition took place? A. Yes.

Q. Where was he living? A. He was living in the old homestead.

A. L. A. Mackie. Called by Complainant. Direct.

Q. And how was the land then being used? A. Used as a farm by my brothers and sister and my father at that time, and tilled and used in the regular way, as it had been in the previous time.

Q. And where were you living at that time, in 1876? A. I was living in Bayonne, but not in the homestead.

Q. Now, after this partition and the dividing up into lots, how did the various heirs deal with the tract? A. We came to an agreement amongst ourselves that the land should remain as a homestead.

Q. Well, did it? A. It actually did.

Q. How was it used, actually, after the partition? A. It was actually used as a homestead by the unmarried members of the family, and they lived there, occupied the property, farmed it, picked the fruit off of it, cut the hay off of it, pastured their cows on it; and each and every one of us knew where our own land was, and had the privilege of going there and using it separately, or as tenants in common.

The Vice Chancellor: Well, that is all nonsense.

Mr. Hastings: Your Honor will have to take some of the words in the proper sense; it is not a jury case, and your Honor knows what is proper and what is not.

Q. How long did the family live in this homestead—when did they move out?

Mr. Hastings: The last members of the Mackie family?

A. L. A. Mackie. Called by Complainant. Direct.

A. The last member of the Mackie family, so far as I can place it from memory, moved out in the neighborhood of sixteen or eighteen years ago —not over eighteen years ago.

Q. Who was that member of the Mackie family? A. My brother, S. L. Mackie; my brother, Charles T. O. Mackie, and my sister, Mrs. Jane Gilchrist.

By Mr. Hastings:

Q. Now, after the last of the Mackie family left the homestead, what did the tenants, that you say were put into the house by the Mackies, do on the land, do you know? A. Why, they occupied the land, the whole part of the land from First to Second Street, and used it as they pleased.

Q. How did they use it—what did they do on it? A. Well, they had a vegetable garden growing there; they had chickens there; they picked the fruit off of the property.

By the Vice Chancellor:

Q. Were they tenants under a lease? A. They were tenants, under a lease, of my brother's.

Q. Where is the lease? A. That is my brother's property, sir, not mine.

By Mr. Hastings:

Q. Do you know where the lease is? A. The lease would be in my brother's possession—my brother's or sister's possession. My sister succeeded to my brother's property, by will.

A. L. A. Mackie. Called by Complainant. Direct.

BY THE VICE CHANCELLOR:

Q. Well, just the homestead and stable—how was that leased—well, I don't propose to go into that; you have got the lease to show that.

Mr. Hastings: Your Honor, I do not think it is necessary to show the former lease; we show generally the possession, and lack of disturbance to the possession of members of the family.

The Vice Chancellor: What have members of the family to say for or against the disturbance to Lot 9, when one man owns it and another don't? Here you are trying to prove possession by renting a homestead after a partition, when the lots came to be held in severalty by the several heirs.

Mr. Hastings: Yes, and by a family arrangement, you heard him say, that they disregarded the lot lines.

The Vice Chancellor: Does the record show that they disregarded them?

Mr. Hastings: No, but the facts show they disregarded them; and they continued to occupy the homestead, the unmarried members of the family, down to sixteen years ago; and then they rented the house and tract to tenants who continued to use the tract.

The Vice Chancellor: How much was leased to the tenants? The tenants may have been trespassers as to the other part. There is a written lease in existence.

A. L. A. Mackie. Called by Complainant. Direct.

By Mr. Hastings:

Q. Well, as to the block between First and Second Street, Mr. Mackie, what portion of that block did these tenants use?

Mr. Gough: I object to it, as immaterial, unless it is shown to have been under some right of someone who had title to the lots in dispute.

The Vice Chancellor: I will sustain the objection. The witness has testified that there is a lease extant covering the right of possession of these tenants.

Mr. Hastings: I now offer to prove and ask to prove the physical fact of occupancy.

The Vice Chancellor: By whom?

Mr. Hastings: I do not care about the written lease, or anything but the physical possession by persons under permission of the Mackie heirs.

The Witness: It is not necessary to do that.

The Vice Chancellor: No, it is not. You want to prove that they are in possession by right, not as trespassers but as claiming under the person who owns these lots—not under the Mackie heirs.

Mr. Hastings: Well, I have a witness here who occupied the house; but I think I have a right by this present witness to show what the persons in possession of the house did on the land.

The Vice Chancellor: No, I won't permit it. You can put your witness on.

A. L. A. Mackie. Called by Complainant. Direct.

Mr. Hastings: Your Honor refuses to allow me to have this gentleman (the complainant) testify what the tenants did on the land?

The Vice Chancellor: Yes, until you first show that they had a right to the land by some authority from the person under whom the tenant leased.

Mr. Hastings: Why, a mere permissive right would be sufficient—by permission of the owner of the land. Doesn't that show peaceable possession?

The Vice Chancellor: I am asking you to show peaceable possession of the owner of the land.

Mr. Hastings: He says it was of his own knowledge.

The Vice Chancellor: No, he does not; he says they rented this property to tenants, and the tenants used the land.

Mr. Hastings: Well, will you allow me an objection to that ruling?

The Vice Chancellor: You may have your objection.

Q. Do you know the names of any of the persons who were in possession of the homestead after, you say, the Mackie family left? A. I do not; but I do actually know that my brother, Simon F. Mackie, was actually in possession of this property at the time that he lived on the property, and he personally used it himself.

Mr. Gough: I object to that, and move to strike it out.

The Vice Chancellor: I will strike it out. There was no such question asked; you did

not ask him that question. This witness has volunteered entirely too much.

Q. You have stated that your brother, Simon Mackie, some time ago, was actually there on the land—now, can you tell when he died? A. He died in 1902, in Salt Lake City.

Q. And ho wlong had he been there? A. He had been there from 1881, I think, or 1882.

BY THE VICE CHANCELLOR:

Q. Until his death? A. Until his death.

Q. In Salt Lake City? A. In Salt Lake City.

BY MR. HASTINGS:

Q. After you got the deed from Margaret Mackie, Mr. Mackie, what did you do in regard to that land? A. I used to go down and inspect the land to see if the fences had not been removed, or that nobody was trespassing on it.

Q. Did you ever observe any person in possession of any of these lots which were allotted to Simon F. Mackie, which you purchase from Margaret Mackie? A. I did not.

Q. And, specifically with regard to the lots designated as 27 and 28, in Block 535, on the City Map, was there anyone in possession of those two lots?

Mr. Gough: Objected to, as calling for a conclusion.

The Vice Chancellor: Strike the question out.

Q. Well, was there anybody physically in possession—on the land? A. No.

A. L. A. Mackie. Called by Complainant. Direct.

Q. And, as to Lots 3, 6 and 9, in Block 535, was there anybody physically in occupancy of that land? A. No; nobody occupied it, or used it.

Q. As to Lot 31 in Block 519 (in the block between Second and Third Streets), was there anybody in physical occupancy of that lot? A. There never has been.

Q. As to the block between First and Second Streets, in which lie five of the lots now involved, today, do you know of your own knowledge what the persons occupying the homestead, in that block, did with regard to the vacant lands in that block—what they physically did?

Mr. Gough: I object to that, as immaterial and irrelevant—what the persons occupying the homestead did; the homestead is not involved in this situation at all here.

Mr. Hastings: True, it is not; but here is a tract of land divided up among the heirs of the Mackie family—the farmstead was occupied, and there are a lot of these vacant lots, and I have to ask generally what the use of the whole block was, because it is not a built-up block, if your Honor please, and then we will get to the point as to the inclusion, or otherwise, of these particular lots. Where there is no physical marking on a vacant block in a city we must get at it from how the thing was actually entered upon, used and occupied.

The Vice Chancellor: I will sustain the objection. If these tenants went in there as lessees only of the building and stable, that gave them no right to trespass upon the other land; and trespass does not constitute pos-

session, unless continued for a certain period of years.

Mr. Hastings: Well, if your Honor please—

The Vice Chancellor: I have heard you, and I have ruled. You can show what the tenants went into possession of.

Q. Mr. Mackie, do you know, of your own knowledge, what part of the block between First and Second Streets the tenants actually used?

Mr. Gough: Objected to as immaterial and irrelevant.

The Vice Chancellor: I will sustain the objection. It is the same question, as I have pointed out, Mr. Hastings.

Mr. Hastings: I may ask what they actually used by occupancy?

The Vice Chancellor: I do not care what they used. You are trying to prove that you are in possession of certain property, the title to which is questioned by these defendants; now, why don't you prove you are in possession?

Mr. Hastings: Why, your Honor must know, from your experience, that when you have got a vacant block of land, you have got to prove such facts in a general fashion.

The Vice Chancellor: Prove your title to the lots.

Mr. Hastings: I have proved that.

The Vice Chancellor: I do not know that you have.

Mr. Hastings: There is the deed.

The Vice Chancellor: You have shown a deed here,, but that does not prove title.

Prove your possession. You say there were tenants—show you were in possession either by yourself, or by your tenants.

Mr. Hastings: Furthermore, a deed covering land presumes possession until the contrary is shown, or the actual pact of possession in some one else is shown.

The Vice Chencellor: Not under the law of this State; you have got to go back to the Proprietors, to prove possession by deed, unless you can show an actual possession.

Mr. Hastings (to the stenographer): Will you note an objection to the ruling, Mr. Black?

Q. Mr. Mackie, did any person, with your permission, use, after the Mackie family left the homestead, Lots 27 and 28 in Block 535, and Lots 3, 6 and 9 in the same block? A. No; they never used them without my permission, and never occupied them at all.

Q. You have stated previously that this block between First and Second Streets was used as a garden, and had been fenced in; you have also stated that some of the Mackie family had continued so to use that block until sixteen or eighteen years ago? A. I have.

Q. You have also stated that—

Mr. Gough: Well, what are you doing?

Mr. Hastings: I am trying to direct his attention to what I want.

Q. You have also stated that after the members of the Mackie family left the house, it was occupied by other persons? A. I have.

Q. Now, directing your attention to those facts that you have stated, I ask you whether, or not, after the Mackie family left the house, any persons ever used Lots 27 and 28, and 3, 6 and 9 in Block 535?

The Vice Chancellor (to the witness): Yes or no.

A. Pardon me, your Honor, I have to qualify my answer. As to Lots 3 and 6, no one has used, occupied or taken any possession of them. As to Lot 9, it was in my possession until the Duryea Company took it, which, I think, was after we commenced this suit. As to Lots 27 and 28, they were in my possession, but they have been trespassed upon by other people, who have occupied them. But Lots 3 and 6 have never been used or occupied by any person. They were fenced in, and they were never occupied by anybody.

By the Vice Chancellor:

Q. Do you mean that those lots were separately fenced in? A. The whole tract of land was fenced in, and the fences were not taken down, nor has anybody entered on the property to take those down, or to fence in the particular lots.

Q. Then, you say, the Duryea Company put you out of possession? A. The Duryea Company built on Lot 9; that is the corner lot.

Q. Well, they are in possession, aren't they? A. They are in possession at the present moment. At the time the bill was filed, I believe—

A. L. A. Mackie. Called by Complainant. Direct.

Mr. Gough: One moment; I object to anything like that. They are in possession, and have been before the suit started.

The Vice Chancellor (to Mr. Hastings): Then how can you maintain your suit as to them?

Mr. Hastings: Why, the question of the date is doubtful. I think Duryeas will have to show their possession.

The Vice Chancellor: He says that they are in,—that they put him out.

Mr. Hastings: Now, yes.

By Mr. Hastings:

Q. When did you consult Mr. Garrabrant, your former solicitor?

Mr. Gough: I object; that is all immaterial. What has that got to do with it?

The Vice Chancellor: I will let you show when he was put out of possession, as he says.

Q. Well, do you know, of your own knowledge, when they began building there, Mr. Mackie? A. I do not. As a resident of New York, I could not tell.

Q. When did you consult your former solicitor, Mr. Garrabrant, about filing this bill?

Mr. Gough: I object to that as immaterial, if your Honor please.

The Vice Chancellor: Well, he is only doing it to fix a time, I suppose.

A. In May, 1916.

A. L. A. Mackie. Called by Complainant. Direct.

Q. And did you inspect this block at, or shortly before, that date? A. I inspected it prior to that date. Q. And after that date? A. Yes.

Q. How long after that date? A. I was on the property in 1916, both in August and, I think, September—actually on the property.

Q. Well, now, at that time, had any building been begun on Lot 9? A. No, the lot was in the same state as it had originally been.

By Mr. Gough:

Q. By "that time," you mean August and September? A. In 1916—in August and in September.

By Mr. Hastings:

Q. After the Mackie family left the homestead was any portion of this block between First and Second Streets used for gardens?

Mr. Gough: I object to that question, upon the ground—

The Vice Chancellor (interrupting): At what time?

Mr. Hastings: Well, he said the Mackie family left sixteen or eighteen years ago; now, I just want to bring the fact out, whether or not, in his knowledge, it had been used in these same ways that he says the Mackie family did—I want to bring out whether or not he knows the fact, after that date?

The Vice Chancellor: I will let that question be answered. (To the witness) Yes or no, is your answer.

A. L. A. Mackie. Called by Complainant. Direct.

A. Yes, it was occupied—

The Vice Chancellor: Strike out "it was occupied." The answer is, yes, he knows.

Q. Up to what time, do you know of your own knowledge, was this block used for garden purposes?

Mr. Gough: I object to that question. Let me point out to your Honor—

The Vice Chancellor: I will sustain the objection. I have pointed out before, Mr. Hastings, that you want to show possession by this defendant, or those under whom he claims.

Mr. Hastings: Your Honor will allow me an objection to the ruling?

The Vice Chancellor: Yes.

Mr. Hastings: I don't know whether your Honor and I understand one another. By this witness, now, I merely want to prove the fact as to whether this land was used. Now, I can connect it up by other witnesses, how it came about, but I want to prove the fact of the use of the land.

The Vice Chancellor: What you are to prove under a bill to quiet title is that your client, at the time of the filing of this bill, was in peaceable possession, and it is claimed by other persons that they have some right, title or interest. Now, you are calling upon them to show their right, to show what right they have as against your peaceable possession. Now, prove your possession. You are not proving it by showing that every Tom, Dick and Harry—

Mr. Hastings (interrupting): Your Honor, in taking that attitude, seems to me to be looking at it as if this was a house on a whole block, and each one of these lots had a building on it, so that we could show that somebody was actually on the ground.

The Vice Chancellor: Oh, no, no.

Mr. Hastings: Well, how otherwise can vacant property be proved to have been occupied?

The Vice Chancellor: It is very simple: you show that this gentleman's ancestors were in possession of all this property; you show that the man under whom he claims made a lease to A. B. and C. who entered as tenants under the lease.

Mr. Hastings: But, you insist that I produce the lease?

The Vice Chancellor: No, I do not insist that you produce anything.

Mr. Hastings: Well, this man says that, of his own knowledge, he knows that members of the Mackie family, who were still occupying the homestead when they left sixteen or eighteen years ago, put other people in possession: Now, merely by permission was sufficient—if it was through the Mackie's permission.

The Vice Chancellor: Well, either you or I are very much at sea as to what this means. He says there was a lease made of this property. That lease shows that they were put in possession of it.

Mr. Hastings: In the case of Allaire vs. Ketcham, 55 Eq., 168 (at p. 170, bottom of page) Vice Chancellor Emery says, "So far

as possession is required by the "statute, I "think the proofs show that the complainant "was the actual possessor of the premises in "dispute, and that this possession has been "proved by acts of ownership such as were "required by the nature and situation of the "property. Has the possession been 'peace- "able,' under the statute? If by peaceable "is meant quiet and peacable as to every tres- "passer, whether claiming title or not, then "the possession cannot be said to have been "altogether peaceable, for the trespassers "whom the complainant ordered off disturbed "this peaceable possession. But I think the "true construction of the statute is that the "possession must be peaceable as against the "defendant. And further, it seems to me "that in determining whether the possession "as to the defendant is peaceable, the test "must be whether the defendant setting up a "claim of title has interfered with complain- "ant's possession by an act which is suable "at law, and suit upon which will or may "involve the title of the defendant. This is "the test applied by the courts to the term " 'peaceable' as connected with the acquiring "of easements by continued and peaceable "possession for twenty years."

The Vice Chancellor: I do not see anything in that that changes it. That is what I have been trying to point out to you—that you are to show possession.

Mr. Hastings: Well, I do not want to unduly argue the thing, but I would like to state once more, to be plain, that here we have shown that, by permission of the Mackie

family (who were living there), in which he acquiesced——

The Vice Chancellor: The Mackie family had nothing to do with this property; they had it partitioned, and it was set off in severalty.

Mr. Hastings: This witness tells your Honor that the family, as a family, disregarded that; that they each took vacant, enumerated properties, but agreed that the unmarried members of the family should continue to occupy and use the homestead (which, in fact, they did) and farm the tract afterwards; and that they continued to cultivate this garden, and, in the next block were the orchards, which they continued to use, and all that sort of thing. They disregarded this map. I am showing you the actual occupancy by the Mackie family by consent, under a family arrangement of all the Mackies.

The Vice Chancellor: Do you mean to say that they disregarded the partition, and avoided it, or did they only temporarily, as a family, use the property?

Mr. Hastings: In this way——

The Vice Chancellor: Oh, well, why don't you answer my question?

Mr. Hastings: I will, if your Honor will allow me.

The Vice Chancellor: Well, you can get to it better by answering the question: Did not the family, after the partition, while they lived there, simply use this property as if the partition had not been made?

Mr. Hastings: All in common, yes.

The Vice Chancellor: Now, after they departed, what did they do?

Mr. Hastings: The witness has testified that they put tenants there, and the tenants have lived down there to the present time, in the house.

The Vice Chancellor: They have?

Mr. Hastings: Yes, by a family arrangement—occupying it in common.

The Vice Chancellor: No, they did not occupy it in common after they left it.

Mr. Hastings: Oh, no, but they put tenants in, and the tenants were in possession.

The Vice Chancellor: But where is your lease?

Mr. Hastings: I am trying to argue to your Honor that it does not make any difference, if I show that it was by permission of the Mackies that these persons were in possession of the house.

The Vice Chancellor: Well, I won't permit the evidence, unless you show that it was by permission of either this complainant, or the persons under whom he claims. I do not care who else consented, you have got to show that they did.

Mr. Hastings: You will allow me an objection to the ruling of your Honor, then?

The Vice Chancellor: Yes.

Q. You have stated that after the Mackie family had left the homestead, about sixteen or eighteen years ago, that other persons were in possession of the house—was the occupancy of those persons with, or without your consent and agreement?

Mr. Gough: I object to that, as immaterial; this house does not come into the situation, at all.

The Vice Chancellor: He was not the owner at the time, was he?

Mr. Hastings: Not of the house, no; but I am showing you how this was used; it was not used as lot by lot.

The Witness: I was to the house.

The Vice Chancellor: Why don't you produce this lease?

Mr. Hastings: Why, I hadn't any idea that it was necessary, and did not anticipate any such attitude or ruling. I am showing the physical facts, the family arrangement; and I am showing that these defendants here (as Vice Chancellor Emery says) never have disturbed that family occupancy and agreement, by themselves or their tenants, down to the present date. Now, what more can I do? What good would it do to have the lease itself? All I need to show is that it was under some acquiescence, permission or consent of the family. They all owned it, and used it in common. It is not a question as to the title to any particular 25 or 100 feet, it is a question as to the family acting in common. The possession of one was the possession of the others, by acquiescence in the family arrangement. These defendants cannot complain or object. They have not entered. Under Vice Chancellor Emery's statement, that "peaceable possession" means as to the defendant. They will have their turn at the oar. If they can deny it, they can; they can show that they did go in, if they can.

But I am showing your Honor what actually occurred, what actually was done there, in regard to this block. Now, if the defendants can show that they have disturbed that possession of the family, that mutual arrangement and consent and holding in common, through themselves and, later, by their tenants, I am put out of court.

The Vice Chancellor: Well, I will let you go into it. It will save time. What it is worth is another question.

Mr. Gough: May I have an objection entered on the record as to that?

The Vice Chancellor: Oh, yes.

Q. Now, as to these persons who were in possession during the last sixteen or eighteen years, what did they do, if you know, actually, in the use of this block between First and Second Streets —what did they do on the ground? A. They have been actually in possession of Lot 28, and they have actually gardened it, to my positive knowledge, and with my permission since I have had the property; and they did it, further, with the permission of my brother, before. My brother, S. F. Mackie, used to occupy the property himself.

By the Vice Chancellor:

Q. What lot is that? A. Lot 27 is the lot I am speaking of.

By Mr. Hastings:

Q. Now, during the last sixteen or eighteen years, with regard to the lots still held by one

or the other of the Mackies, has any use been made of the vacant land in the block? A. No use.

Q. By the tenants in the house, occupying the land? A. The tenants in the house have occupied Lot 27, and continued to occupy it from the time they were tenants of the house—used it, gardened on it, and their possession has never been disturbed.

By the Vice Chancellor:

Q. Well, there is a building on the land now? A. It is only on part of the land; that is on No. 28, your Honor.

By Mr. Gough:

Q. That is the stable, is it not? A. No, sir; the stable occupied the Lot 28; the lots are 27 and 28. 27, to my knowledge, is the lot nearest to First Street.

The Vice Chancellor: This map shows it is built upon, that 27 and 28 are built upon. He says, or I understand him to say, that they are still in possession of them.

Mr. Hastings: Yes; and those were allotted to Simon Mackie by the partition.

The Vice Chancellor: I know, but he is not in possession if there is a brick building on it.

Mr. Hastings: No, but the tenants there use it.

The Witness: If your Honor will permit me to get another map, you will see exactly where that brick building is. There is another map which shows a survey of the prop-

erty; if you will permit it, I will get it, and your Honor can see exactly how the property is situated.

(A map was thereupon produced and handed to the witness, who exhibited it to the Court.)

The Witness: Those are the lots in question, your Honor (indicating on the map just produced). There are the buildings.

By the Vice Chancellor:

Q. Do you mean the building is out on the street? A. Thirty feet on the street; twenty-eight feet here (indicating); it is about twenty-four feet from here to there (indicating).

Q. "100 feet"—wheer is that measured to (indicating)? A. That measured from here to there, sir (indicating).

Q. Then it is 150 feet? A. Those lots are 25 feet apiece.

Q. Then these buildings are not on Nos. 27 and 28? A. Partially on Lot 28, your Honor.

By Mr. Hastings:

Q. Well, this brick building is on what lots, Mr. Mackie? A. It is on Lot 28—partially on 28—and Lot 29. It is not on Lot 27.

Q. No part of it is on Lot 27? A. No part of it is on Lot 27.

By the Vice Chancellor:

Q. Well, how far is the nearest wall to First Street, measured from First Street? A. From First Street to Lot 27 is 100 feet.

A. L. A. Mackie. Called by Complainant. Direct.

Q. No, I am asking you another question—how far is the sidewall of the building from First street? I am not speaking of the building erected on this lot you speak of. A. (After calculating.) To the best of my knowledge, it is 138 feet north of First Street.

Q. That is, the new building erected on those lots? A. The brick building erected on this Lot 28—partially on 28 and partially on Lot 29, which is not in dispute. Will your Honor permit me to explaint—

The Vice Chancellor: Oh, no, no; let your counsel ask the questions.

By Mr. Hastings:

Q. The building that you are referring to, is that the one that you said your father had erected? A. Yes; it is the one-story brick building.

By the Vice Chancellor:

Q. Well, have not new buildings been erected on those lots? A. No; those are the original buildings, your Honor.

The Vice Chancellor: I assumed, from the markings on the map, that new buildings had been erected on those Lots 27 and 28.

Mr. Hastings: Oh, no, not at all; the only new building on any of these lots is that Duryea building, here (indicating). These are the old original Father Mackie's construction (indicating on the map).

A. L. A. Mackie. Called by Complainant. Direct.

By Mr. Hastings:

Q. Now, Mr. Mackie, other than what you have stated as to Lot 9 in that block, of the Duryea Manufacturing Company erecting a building on it, as to any of these other lots now involved, 27 and 28, and 3 and 6 in that block, has any person done any act on the lands which in any way disturbs your possession? A. Not on 3 and 6. People may have trespassed on 28.

Q. Well, I mean other than trespassers? A. No; nothing but trespassers.

Q. Do Lots 27 and 28 stand in the same condition as when you acquired title to them? A. They stand exactly in the same condition as when my father bought them.

Q. Do Lots 3 and 6 stand in the same psysical condition? A. Actually in the same physical condition.

Q. And on the next block, 519, between Second and Third Streets, does the Lot 31 in that block stand in the same physical condition? A. Actually in the same physical condition as it was when my father bought it.

Q. Has any act been done on that lot to in any wise disturb your possession? A. Positively not.

Q. Now, we have been talking about the use of the block between First and Second Streets—you testified that the block between Second and Third Streets had been a portion of the old farmstead, used as an orchard? A. It was. The trees are still standing.

Q. How many of those orchard trees are still standing? A. I think there is one on Lot 31, that has not been blown down, or destroyed by

the boys—possibly two. On that whole piece of land there are some eight or ten trees still standing.

Q. And did you testify to the present condition of the fences that you say were originally put around that block, between Second and Third Streets? A. They are actually in the same place since they were moved when the streets were graded; and the fence on the east side was moved back when Zabriskie Avenue was opened and dedicated to public use, and since then the fences have never been disturbed. They have been kept in good repair and are actually in the same condition as they were when the property was occupied by us.

CROSS EXAMINATION BY MR. GOUGH:

Q. You say, Mr. Mackie, that the fences on Second Street are the same as in your father's time? A. Well, I say the fences between—

Q. Did you, or didn't you say they were the same as in your father's time—now, answer the question? A. Pardon me, will you allow me to add—

Q. No, it calls for an answer "Yes" or "No." A. As you put the question, I cannot answer it, because there are two sides to Second Street, the southerly side and the northerly side. If you will put your question so I can answer it, I will do it with pleasure.

Q. Well, the fences are either the same, or they are not; now, are they, or aren't they? A. Pardon me; I cannot answer that question as you put it.

A. L. A. Mackie. Called by Complainant. Cross.

BY THE VICE CHANCELLOR:

Q. Well, why not; was there a change on one side, and not on the other? A. No, the fences have been torn down and stolen within the last few months.

Q. Then they are not the same now. A. The fences have been stolen. If the people come and steal your fence you can only put it back again. That is on one side of the property.

BY MR. GOUGH:

Q. Did you see the fences torn down? A. Yes, I saw the fences torn down.

Q. Who tore them down? A. A man by the name of Bernstein entered on my property, trespassed on it, and tore my fence down, and tore the other fence down.

Q. When was that? A. That was in 1908.

Q. You said two months ago somebody tore the fence down? A. Not two months; I am wrong in that thing, but I was down there last April, a year ago, and there was parts of those fences remaining there. I was down two weeks after that, and part of those fences were gone; and I was down then in December, and every vestige of the fence was gone; it was stolen.

Q. On Second Street? A. On the southerly side of Second Street.

Q. So the fences that were there in your father's time are not there now, are they? A. No, they are not there now.

Q. And Bernstein pulled them down in 1908? A. He destroyed my fence in 1908.

Q. Then, why did you say they were in the same condition now as they were in your father's

time? A. That is the fence on the northerly side of Second Street.

Q. My question was directed to the fences on Second Street, and you so understood it, did you not? A. I did not, sir; I understood you to have reference to the question that I had just answered Mr. Hastings—on the northerly side of Second Street.

Q. Why, you said you could not answer the question because there were two sides to Second Street? A. There are.

Q. Then you must have known I meant Second Street, didn't you? A. I asked you to qualify your question, sir.

Q. As to Second Street? A. As to Second Street.

Q. Yes; then you knew I was talking about Second Street, and not about fences on the east or west side of the plot, did you not? A. Second Street, as I have said before, has two sides, and I have asked you to be specific with your question.

Q. Now, you say those lots, 3 and 6, on Second Street, are in the same physical condition as they were in your father's time? A. Yes.

Q. When did your father die? A. My father died in 1880.

Q. And there has been no change in the street there since that time? A. There has been no change in Second Street since that time.

Q. Hasn't there been a railroad put there since that time? A. Yes; but that doesn't—

Q. Well, why did you say there has been no change in Second Street since that time? A. There has been no change in the street; the street was dedicated to public use as it remains.

A. L. A. Mackie. Called by Complainant. Cross.

Q. And you do not call the construction of a railroad upon the street a change in the street? A. It does not change the surface of the street. The railroad occupied the biggest part of the street.

Q. When was that railroad constructed there, do you know? A. Not the actual date.

Q. When, about? A. I should think, about—I cannot refer to it by memory.

Q. You have no memory about that, at all? A. No, I could not give you the exact date.

Q. I see. How do you place the last possession of any of the Mackies in the house on First Street as eighteen years ago? A. By the age of my granddaughter.

Q. Well, how did you connect that up with their possession? A. Because they moved away from the house when she was about two years old.

Q. Were you there at that time, in the neighborhood; did you see them move from the house? A. Yes; I actually took my own property, which was stored in the garret of the house at that time.

Q. Now, what year was that? A. I have testified, in the neighborhood of sixteen or eighteen years ago.

Q. Was the railroad there then? A. No, not to my knowledge.

Q. Then it was before the railroad came in that the Mackies moved? A. I knew nothing about the railroad going through Second street.

By the Vice Chancellor:

Q. Well, then, cannot you tell whether it was before the railroad came there that they moved?

Don't you know whether the railroad was there when they moved? A. I do not, your Honor.

By Mr. Gough:

Q. Now, you lived in Bayonne until what year, Mr. Mackie? A. 1890, I think, I moved away from Bayonne.

Q. In what month in 1890? A. In October or November—in October.

Q. Where did you move to? A. To Henry B. Laidlaw's house, in Claremont.

Q. Is that in New York? A. Claremont is a station on the New Jersey Railroad as you go out of Greenville. You should notice it.

Q. How long did you live there? A. I lived there for six months—let me see—I lived there until the following 1st of May.

Q. And from there where did you go? A. I moved into a house on Belmont Avenue, Jersey City Heights, for three months.

Q. And from there, where? A. To 159th Street, New York.

Q. How long did you stay there? A. In the neighborhood of eighteen months—possibly two years.

Q. And since that time, where have you resided, Mr. Mackie? A. I have resided for a short time in 167th Street in New York City; and I will have resided, on the 1st day of November, this year, twenty six years in Sheridan Avenue.

By the Vice Chancellor:

Q. New York City? A. New York City.

A. L. A. Mackie. Called by Complainant. Cross.

By Mr. Gough:

Q. Now, then, who was the last of the Mackie family to live on First Street? A. My brother, Schuyler L.; my brother, Charles T. O., and my sister, Mrs. Jane Gilchrist.

Q. And Mrs. Gilchrist was the last of the family to leave that house, wasn't she? A. The last of the family to leave that house.

Q. And you say that was sixteen or eighteen years ago? A. To the best of my memory; I cannot positively testify to that, because I did not look into the date.

Q. Did she leave when your granddaughter was two years old? A. To the best of my knowledge.

Q. Do you mean eighteen years from 1919, or eighteen years from 1916? A. I have testified—let me understand you, please—eighteen years from 1919?

Q. From the present date, or from the beginning of the suit—how are you dating back, Mr. Mackie? A. I am dating back from the present age of my grandchild.

Q. I do not quite understand what you mean by that.

The Vice Chancellor: Why, he says his grandchild was about two years old when they moved away.

The Witness: No, pardon me, I will put it specifically, if I can: I should think, from memory, they moved away between 1903 and 1905, as far as my memory serves me.

Q. Did you call upon them just before they moved? A. I was frequently in the house, at all times.

Q. And you place the last time you were down there as 1905—to see them? A. Do you mean in that house?

Q. Yes. A. Prior to their moving? If you will allow me, I have no positive date that I can fix it by, except from memory, and for nineteen years to go back and fix the actual date is somewhat difficult, but from what occurred down there, I would place the date not earlier than 1903, and possibly 1905, when they left the property for good.

Q. That was from fourteen to sixteen years ago? A. Yes.

Q. How long before Mrs. Gilchrist left did your brothers leave? A. They occupied the house up to the time she left.

Q. Now, Mr. Gilchrist was in court this morning? A. Yes, sir.

Q. You asked him to come in? A. Yes, sir.

Q. Is he here now? A. No, sir.

Q. In your direct testimony you said that your brother Simon died without a will? A. Yes.

Q. Is that the fact, or is it not? A. It is a positive fact.

Q. You never heard anything of any will? A. I positively know he never made a will.

Q. You are quite sure of that? A. I am positive of it.

Q. Were you on friendly terms with your brother when he died? A. I supported him for several years; when he died I was on positively friendly terms.

Mr. Hastings: What is the object of this, Mr. Gough?

Mr. Gough: I want to get information as to his knowledge, or how he might know that there was not a will.

Q. Previous to 1912, when you got this deed from your niece, how often did you visit Bayonne, Mr. Mackie? A. I was down there from two to six, sometimes ten, times a year.

Q. I see. You owned property in Bayonne? A. I still own it.

Q. And how often during this period did you visit Block 535? A. I went over Block 535 every time I went down to see my sisters and brothers.

Q. Go on. A. And sometimes it was two and three times a month; I went down there every week's end for two or three years, and then it was probably once a month that I was down and over Block 535.

Q. And on Lots 27 and 28 is the stable? A. No, sir.

Q. On what lots are the stable? A. The stable is partially on Lot 28 and partially on Lot 29.

Q. Is there any other building there, too, alongside of the stable? A. Not at the present moment.

Q. Well, was there? A. There was until it fell into disuse.

Q. And how long has that been in disuse? A. It was almost in disuse when my brothers moved away from the home. It was a greenhouse, built by my father, and it has all been destroyed, long ago, by time.

Q. And that is on Lot 27? A. That is on part of Lot 27; it did not occupy the whole of Lot 27.

Q. But over on Lot 28? A. No, it did not go on Lot 28.

Q. Well, what other lot did it go on? A. It was partially on No. 27.

Q. You mean it was on part of Lot 27? A. Yes.

Q. It did not occupy all of it? A. Did not occupy all of it.

Q. But was wholly upon it? A. Yes, it was wholly upon Lot 27—no, not wholly upon Lot 27, no; by no means.

Q. Well, what other lot was it on? A. It only occupied 28 feet, actually, on Lot 27—only 28 feet in length.

Q. And what about width? A. Width? To my knowledge it was about 10 feet wide; it extended from the back of that stable 10 feet.

Q. And that fell into disrepair completely about sixteen years ago——from fourteen to sixteen years ago? A. Why, it was a gradual growing into disrepair, right straight along, from prior to the time, or, no, about the time my brothers moved away.

Q. Now, who occupied the stable? A. The whole family occupied the stable.

Q. After the family moved away? A. Nobody, to my knowledge.

Q. Nobody at all? A. Nobody, to my knowledge.

Q. Well, what knowledge have you about it, Mr. Mackie? A. Because I have been there continually on the property.

Q. And never found anybody using it? A. I found that Stringham had fenced off part of Avenue Q, and his horses had the run of the stable, but afterwards Mr. Stringham's horses did not have the run of the stable, because he would use certain of the land of the Garrettson property,

which belongs to the American Cotton Seed Oil Company at the present time.

Q. Well, when did you find out that Stringham had the use of the stable? A. That I couldn't say. He never "had the use" of the stable; he was merely a trespasser.

Q. He was in there with his horses, wasn't he? A. Yes.

Q. And you hadn't leased the property to him, had you? A. No, I had not.

Q. And for how long a period of time was he in there? A. He was occupying a part of Avenue Q, the unopened part.

Mr. Gough: I move that that be stricken oue as irresponsive.

The Vice Chancellor: It is stricken out.

(Question repeated.)

A. That I don't know.

Q. When did you first see him there? A. I don't know.

Q. How often did you see him there? A. I never saw Mr. Stringham there himself.

Q. How often did you see the horses there in the stable? A. Never saw them in the stable, in my life.

Q. Well, why did you say he occupied the stable with his horses? A. Because there were horses down there, and I saw horses in the field, and I drew the conclusion that the horses were occupying the stable.

Q. All right; how often did you see those horses there? A. I never saw them in the stable; they were in the fields.

Q. Well, I say there in the fields? A. Every time I went over the property, through the fields.

Q.From what date? A. I could not positively tell you.

Q. Well, approximately? A. I cannot give you an approximate idea.

Q. How often did you see them in the fields? A. Continually. When I went down there they were in the Cotton Seed Oil people's property. They were not on the Mackie property at all, they were on the Cotton Seed Oil people's property, the old Garrettson property, when I went down there.

The Vice Chancellor: Now, Mr. Mackie, you are not helping yourself.

The Witness: Well, what I want to do, your Honor—

The Vice Chancellor: What you want to do is answer the questions, and nothing more.

By the Vice Chancellor:

Q. You say the stable was occupied by horses, don't you? A. Yes.

Q. And you saw the horse manure outside of the stable? A. Yes.

Q. And you saw the horses running wild in this open enclosure? A. In this lot, yes.

Q. Now, do you know whether that was one or two years after your brothers and sister left home, or not? A. I could not positively say, your Honor.

Q. Can you say it was ten years after? A. No, I cannot say it was ten years.

Q. Can you say that you saw the horses in there since you bought this property? A. They have never been on the property since I bought this property, your Honor.

A. L. A. Mackie. Called by Complainant. Cross.

Q. Well, how long before were they in there? A. They may have been in there five or six years before; and then the stable fell into disuse; there was nothing in the stable.

By Mr. Gough:

Q. Can you state for how long a period of time, over what period of time, you saw horses there? A. Not positively. I have tried to fix it.

Q. Well, approximately? A. I should think that the horses were there for about three years; possibly they may have been there about three years, I should think.

Q. And how long was that before you got this deed of your niece? A. I cannot fix those dates in my mind, and I cannot answer your question.

Q. Can you fix any specific date in this matter, as to—

Mr. Hastings: I object to that.

The Vice Chancellor: Why, the witness has given months sixteen or eighteen years ago; now, it is strange he cannot give the date now, and cannot give years.

A. What date do you want me to fix?

Q. As to your seeing these horses at any time? A. Let me see: They were positively not there five years ago; they were positively not in the stable six or seven years ago.

Q. You are sure of that? A. I am positive that they were not in the stable; and what I want to say, also, is that they occupied the land which was an unopened street, and on each part of that stable, and the only entrance to that

stable that could be got through; and they were trespassers on that land, because that land belonged to the Mackie heirs, and still belongs to the Mackie heirs.

Mr. Gough: I move to strike that out.

The Vice Chancellor: Strike that all out. If that is true, then there is no necessity of your coming into this court.

By Mr. Gough:

Q. You have told us when you did not see these horses; you are positive you did not see them six years ago; now, tell us when you did see them, Mr. Mackie? A. Well—

The Vice Chancellor: Oh, answer the question; when did you see them?

A. Prior to what I have stated.

Q. For three years preceding six years ago? A. Do you mean from the present time?

By the Vice Chancellor:

Q. Did you see them in 1910? A. I did not, your Honor.

By Mr. Gough:

Q. You are positive of that? A. I am positive I did not see them in 1910—not in the stable.

Q. Did you see them about there? A. No.

Q. Can you tell us exactly when you did see them? A. I cannot fix any exact date or hour.

Q. Or month, or year? A. I can fix, approximately, a year.

Q. Well, will you do it? A. When I actually saw them there?

Q. Yes. A. Let me think—I should think that those horses were there in that meadow, well, positively I cannot fix a positive date, because I have nothing to go by.

Q. Who told you they were Mr. Stringham's horses? A. My brother, S. L. Mackie.

Q. Did you see Mr. Stringham? A. I have never seen Mr. Stringham.

Q. Can you state, Mr. Mackie, when the railroad was put along Second Street? A. I have stated that I do not know.

Q. And yet you continually visited this property? A. I continued to visit the property, yes.

Q. Didn't you see the railroad tracks being laid there? A. No, I did not see the railroad tracks being laid there, nor did the railroad ask me for permission to go there through the street. There was no petition presented to me, that I recollect, to allow the railroad company to go there—not that I recollect—asking me to permit the railroad company to go through Second Street. I am an owner, in my own right by descent, of land on Second Street.

Q. That is on the north side of Second Street? A. On the south side of Second Street, in Block 535.

Q. Yes—Lot 7? A. I believe it is Lot 7.

Q. And that is the only lot you own there? A. On that side of the property, yes—I own the other lots, but that is the only lot that has descended to me from my parents.

A. L. A. Mackie. Called by Complainant. Cross.

Q. Now, did you, at any time, execute any lease of Lot 3 in Block 535? A. It was not necessary for me to execute a lease.

Q. That is not the question. A. No, no.

Q. Did you execute any lease of Lot 6 in Block 535? A. No.

Q. Lot 9? A. No.

Q. Lot 27? A. No.

Q. Lot 28? A. No.

Q. Have you ever paid any taxes on that property? A. No. I don't know that it is necessary for me to state that.

The Vice Chancellor: Well, it is not necessary for you to comment. Just answer the questions.

Q. You do not intend to say, Mr. Mackie, that there were no other buildings upon that Block now except the Duryea building and the old homestead and the stable?

Mr. Hastings: You mean in the whole block?

Mr. Gough: Upon the whole block.

A. There has been a building, a small building, erected—there has been a building erected on one of Mrs. Gilchrist's lots. There has been a building erected on one of Mr. Cain's lots, which Mr. Cain had surveyed in 1909 by Clarkson, I think was the surveyor's name; he surveyed one lot for Mr. Cain in 1909.

Q. What lot was that? A. That lot I could not give you the number of.

Q. Where is it? A. It is situated on First Street, and if you will show me the map and

give me the Estate map, I will point out the lot to you.

(Estate Map handed to the witness.)

A. That is the lot (indicating on the Estate Map), as I recollect it.

By the Vice Chancellor:

Q. What lot?? A. Lot D2.

By Mr. Gough:

Q. Now, at any other time, have there been buildings on that block, Mr. Mackie, to your knowledge—on Block 535—except those we have now mentioned? A. Yes.

Q. And where were those? A. This fellow, Bernstein, erected a fence across Zabriskie Avenue, taking in and trespassing on my two lots—

The Vice Chancellor: Strike out the "trespassing."

The Witness: Pardon me, your Honor; it is part of my testimony; I will show you the connection in my testimony.

The Vice Chancellor: You need not do it. Just answer the question.

The Witness: Well, as the buildings were erected on my property without my permission, sir —

The Vice Chancellor: Now, I want you to stop that.

The Witness: Pardon me, your Honor, I do not want to dispute with you.

The Vice Chancellor: Well, you just say where the land is located; that is all you need do.

Mr. Hastings: I submit that he is trying to show that it was built on his lot.

The Vice Chancellor: I know he is doing it, and filling the record with all such stuff as that.

The Witness: Pardon me, your Honor—

The Vice Chancellor: Will you keep quiet. If you do not keep quiet, I will lock you up. Now, if you utter another word, I will commit you for contempt. Just make a memorandum, Mr. Black, when this case is closed, that I will consider the conduct of this man on the stand. (To the witness) Now, answer the question.

By Mr. Gough:

Q. Show us on this map of the Mackie Estate where Bernstein built the fence? A. As far as I can positively show you, he put it across here, extending it up there, and went into here (indicating on the map).

Q. That is, including all of F2, C1, D1, and A1? A. I believe so, so far as I can say.

Q. Now, along First Street were there any buildings erected? A. Pardon me, but which side of First Street?

Q. On the north side of First Street? A. I have testified there was a building erected here (indicating on the map).

Q. B1? A. B1. My sister owns that lot.

Q. That is, Mrs. Gilchrist? A. That is Mrs. Gilchrist.

A. L. A. Mackie. Called by Complainant. Cross.

Q. It is at the corner of First Street and Zabriskie Avenue? A. At the corner of First Street and Zabriskie Avenue.

Q. Now, are there any other buildings along there? A. There have been, lately, buildings erected on here (indicating on the map).

Q. On G1, F3 and D2? A. I could not positively state that they were there, but I believe so.

Mr. Hastings: I do not know the object of this, but if you will state your purpose in going into buildings on other lots, outside of the ones in question, with such particularity, I may have no ojection; but I cannot see the materiality at the present time. I do not want to object unnecessarily. What is your purpose?

Mr. Gough: My purpose is to cross examine this witness as to his knowledge. He has testified here as to a state of facts.

Mr. Hastings: He has knowledge as to the character of the property. If that is the object, I have no objection.

Mr. Gough: I say I am cross examining the witness on his direct testimony.

Q. For how long have you known buildings to have been erected along First Street, on the north side, Mr. Mackie? A. Not prior to 1909—that is, to the best of my knowledge and belief—not prior to 1909.

Q. When was Mrs. Gilchrist's building built? A. I have no positive knowledge of it.

Q. Did it precede 1909? A. I have no knowledge of when it was erected.

Q. I see. Now, of what other buildings along First Street did you have any knowledge after

1909? A. I have only paid attention to what was erected on my own land, and the land that I claim to own at the present time. After my family moved away, after 1908, the fences were all taken down, and I then, on First Street, paid no attention to anything except my own land.

Q. Now, in regard to the building by the Duryea people,—they have a plant there that runs the entire block between First and Second Street, have they not? A. No, no, no.

Q. In the block adjoining 535, to the east of 535—have they not? A. That is, to the east side of Zabriskie Avenue?

Q. Yes, and on Lots 8 and 9?

Mr. Hastings: That is not on this property, but adjoining it, to the east.

Q. On the block east of this property? A. Yes.

Q. They have their main factory structure there, have they not? A. I don't know whether it is the main factory structure, or not; but they have a large structure there.

Q. (By the Vice Chancellor) Does that cover the premises in question? A. No, your Honor.

Q. (By Mr. Gough) That main building does not. What is the building on Lot 9? A. I have never been in the building; I have only been outside of the buildings; I could not tell you what it is; it is a brick building, I should think two stories high, with a run that runs out on Second Street; and there are two tanks on the rear of the building. The Duryea Company have fenced in, with an iron fence, on the rear of their lot, taking up to that portion which the brick

building occupies. The brick building does not occupy the whole of these lots from Second Street down, it only occupies a portion of them; and these two tanks are behind them; and then within the last, or since last December, they have erected this iron fence, which is, I should think, six feet high.

Q. And that runs along the boundary of Lot 9, does it not? A. Yes, it includes Lot 9.

Q. And Lot 9 is completely fenced in by the Duryea Company? A. It was only fenced in since December.

Q. But it now is, Mr. Mackie? A. Yes, at the prosent moment it is.

Q. Now, then, you visited this place in the Fall of 1916? A. Yes.

Q. What months? A. I was there, to the best of my knowledge and belief, in August, and I think I was there again in September.

Q. And was the work of the Duryea Company under construction in August? A. Not to my knowledge.

Q. You would have seen it, if it were? A. I would have seen it, yes.

Q. Was it in progress in September? A. Not to my knowledge.

Q. When did you next visit it? A. I did not go down until the next year—down on that land.

Q. When was that, what month? A. Let me see—that was 1917.

Q. Yes,—but what month? A. The building had already been built and erected on the lot the next time I saw the lot.

Q. When was that? A. In the early part of 1917; I cannot give you the exact month.

A. L. A. Mackie. Called by Complainant. Cross.

Q. How do you place your second visit in the Fall,—as September? A. Because I went down there during—I was down there in May, 1916, and I then went down again.

Q. How do you fix that as May, 1916? A. Because I put my case in the hands of Mr. Garrabrant in May, 1916.

Q. And you went down to see Duryea in 1916? A. I was down over the property in 1916.

Q. You said something about going to see Duryea in 1916, didn't you? A. No, no; I did not see Duryea in 1916.

Q. Tell us in what month in 1917 you found the Duryea people had built this structure upon this land? A. I could not, without referring to correspondence with Mr. Garrabrant; I could not give you the actual month; but I notified Mr. Garrabrant that the Duryea Company had erected a plant since I had been down there.

Q. Well, place it approximately, Mr. Mackie? A. Well, I cannot place that approximately.

Q. You said early in 1917—what does "early in 1917" mean—does it mean before or after March? A. After March; I never went down in cold months, not until after the Spring opened.

Q. It was no later than April, then, was it? A. I should think it was in April, but I could not fix the dates in my mind; I am too busy a man to fix those dates in my mind. I would gladly testify and give you all I know—

The Vice Chancellor: Don't talk that way; you are merely encumbering the record, which, if written up, is going to cost someone a lot of money.

The Witness: Well, then, your Honor, strike it out.

The Vice Chancellor: Just answer the questions.

Q. But, if your memory is not good in the matter, you are, nevertheless, able to say that your first visits were in September and August? A. Yes.

Q. Of 1916? A. My first visit was in May, 1916.

Q. And your second was in August, and your third in September of 1916? A. I believe so.

Q. And up to the following Spring you did not go near the premises at all? A. Not on the Duryea property.

Q. Well, did you go on any of the property? A. I am not positive.

Q. Now, there are 32 lots on this Block, are there not, Mr. Mackie—in Block 535? A. I cannot answer that question without looking at the Map.

Q. Well, take the old map and let us find out.

Mr. Hastings: Oh, well, we will admit your map.

The Witness: Well, I will admit that fact, as far as I know.

Mr. Hastings: Mr. Mackie, just answer the questions.

A. I believe so.

Q. (Showing the witness map) This is the Block, 535? A. It is.

Q. And in it are 35 lots, are there not? A. Yes; the map shows 35 lots.

A. L. A. Mackie. Called by Complainant. Cross.

Q. Now, on Second Street there are nine lots? A. Yes.

Q. Of these nine lots, you own, in your own right, Lot No. 7, do you not? A. I own in my own right Lot 7; and I own in my right, by descent, Lot 7 and Lot—

Q. No, on Second Street? A. Lot 7.

Mr. Hastings: On the City Map?

Mr. Gough: On the City Map.

Q. Now, on Zabriskie Avenue, how many do you own? A. I own 16 and 17.

Q. Do you own any on First Street? A. I own No. 24.

Q. And, on Avenue Q, which is Newman Avenue, do you own any, in your own right? A. Not in my own right—that is, not by descent.

Q. The Gilchrists own Lot 20 at the corner of First Street and Zabriskie Avenue? A. Yes.

Q. And they own Lots 24 and 23? A. Lot 23? No, Mrs. Gilchrist don't own 23.

Q. Who owns Lot 23? A. I am not positive; I think Mr. Cain.

Q. Who owns Lot 24? A. A. L. A. Mackie.

Q. And 25? A. C. T. O. Mackie.

Q. And 26? A. C. T. O. Mackie.

Q. Now, do the Gilchrists own any other lots in that Block? A. Not at the present moment.

Q. Then, outside of your ownership, in your own right, of Lots 7, 16 and 17 and the ownership of Lots 24, 25, 26 and 20, all the other lots, so far as you know, are owned by Mr. Cain, are they not? A. At the present moment.

Mr. Hastings: Well, what is the object of this, or the materiality of it? I cannot see

what counsel is pursuing here. We have enough difficulty here on the question of title to these specific lots; now, why should we go into the ownership of all of these other lots?

The Vice Chancellor: What is the point, Mr. Gough?

Mr. Gough: I want to cross-examine this man as to his knowledge of the ownership here.

The Vice Chancellor: I will permit you to.

Mr. Hastings: Well, the question of ownership may involve many other questions. If it is a question of possession, or anything of that kind, I would not object to it as a matter of cross-examination.

The Vice Chancellor: I think I can see where it may be material. I will permit the testimony.

Q. Now, outside of those lots I have mentioned, so far as you know, Mr. Cain owns all the other lots, with the exception of Lot 9, which is owned by the Duryea Company—is not that so? A. At the present moment.

Q. And for how long have you known that Mr. Cain owned these other lots in the Block? A. I cannot state, without looking up the deeds.

Q. When did you first ascertain that Mr. Cain owned any of the lots? A. By looking at the records.

Q. When? A. I continually look at them.

Q. When did you first look at them to ascertain the date?

The Vice Chancellor: (To the witness) You say you "continually looked at them," now when did you first look at them?

A. Oh, your Honor, I have been examining the records there every two or three months—say every three months—for thirty-five years, to see what transfers were made on the properties.

Q. Have you made an examination in the office of the Register of Hudson County? A. I have.

Q. Personally, yourself? A. Personally, myself.

Q. And you have kept a record of all those conveyances during that time? A. I have not.

Q. But you have noted them? A. Noted them in my memory.

Q. And noted them elsewhere, have you not? A. Not of those lots that have been recently acquired, or that Mr. Cain has recently acquired.

Q. Well, take Lot 8, for instance,—that was acquired some time ago by Mr. Cain? A. Yes, I had to look that up; I looked up the title to Lot 9, I think, as far as I can remember, in 1906, when I made a positive search of it.

Q. And Lots 3 and 6 you examined into at the same time, didn't you? A. Yes.

Q. And Lots 27 and 28?

Mr. Hastings: One moment, Mr. Gough: Certainly this cannot be cross-examination, as to when he examined the title to these lots. You said your purpose here was to show his knowledge.

The Vice Chancellor: I think it will be important; I will permit it.

A. L. A. Mackie. Called by Complainant. Cross.

Q. The same is true of Lots 27 and 28? A. Yes—everything connected with the tax sale I examined in 1906.

Q. And you saw that Mr. Cain was the record owner of the title, by virtue of the tax deeds, did you not?

Mr. Hastings: I object to that, as immaterial and irrelevant.

The Vice Chancellor: I will overrule the objection.

(Question repeated.)

The Vice Chancellor: Well, Mr. Cain did not buy at a tax sale.

Mr. Hastings: You see the trouble is that there is so much complexity, when we go to try the question of the title; now, questiontions like this raise all the questions of conclusions—

The Vice Chancellor: Oh, no; he is asked if he found out, or knew, what the record disclosed as to them.

Mr. Hastings: Well, this last questions implies the conclusion that he knew Mr. Cain was the owner.

The Vice Chancellor: I am not taking it that way.

By the Vice Chancellor:

Q. Did you know that the record showed that it had been sold for taxes to Mr. Preston?

Mr. Gough: That Lots 3, 6, 27 and 28 had been sold to Mr. Preston?

A. I knew that, prior to examining the records.

A. L. A. Mackie. Called by Complainant. Cross.

By Mr. Gough:

Q. And that Lot 9 had been sold to Mr. Mahany? A. Yes.

Q. And when did you ascertain that? A. That was public property, published in the Bayonne Herald or Times at the date of the sale of the property by the City.

Q. That would be back about 1896? A. Yes.

Q. Your brother went to Utah in what year? A. My brother went to Salt Lake City in 1881.

Q. And you supported him until he died? A. I contributed to his support.

Q. And you were on friendly terms with him during all that time? A. Positively, during all that time.

By the Vice Chancellor:

Q. Did you communicate to him that the property had been sold for taxes? A. I did, sir; and he communicated with me on it.

By Mr. Gough:

Q. How often? A. Well, as we were writing letters continually, I could not tell you how often; I have written to him about the tax sales and things connected with it, and he answered my letters, and that was i n1902 when the tax sale first occurred; and in 1906, in December, I think it was, 1906, when they advertised the property again for sale.

Q. Do you remember the time Stringham left the stable? A. I do not.

Q. After he left did anybody else use it for anything? A. It was vacant; nobody used it for

two or three months; it fell into disuse; there was a period there when nobody occupied the stable, at all.

Q. Then, did someone come along and occupy it? A. I believe they did.

Q. Who was that? A. I don't know, of my own knowledge, who occupied it.

Q. What was it used for? A. Well, I saw it was the same thing as they were using it at the time that my brothers rented the property—to keep chickens in.

Q. Did you ever meet the person in charge of the chickens there? A. I have met them afterwards, yes.

Q. But not at the time? A. Not at the time.

Q. When did you first consult Mr. Garrabrant in this matter, Mr. Mackie? A. I have stated, in May, 1916. I consulted other lawyers prior to that.

Q. And you instructed him to begin a suit in Chancery to obtain for you a decree for those lands, did you not? A. Yes, I did.

Q. And you conferred with him constantly about the matter? A. Yes.

Q. You read over the bill of complaint that he prepared? A. I think I did—no, I did not read over the bill of complaint that he prepared, I did not read over the first bill of complaint that he prepared, nor the second bill of complaint; I positively did not read them.

Q. Well, why did you first say that you thought you did? A. Because I had consulted with him, and there had been a preliminary bill of complaint drawn up, just a schedule of a bill of complaint, a sketch of it; and he then said that he would draw up the bill of complaint;

and I don't know positively what he put in the second bill of complaint.

Q. There was a first bill of complaint, you saw the first bill of complaint when it was drawn up, didn't you? A. Not the bill of complaint that he presented to the Court. I furnished him with the facts, and he drew up the bill of complaint from the facts.

Q. I see. Now, as to the possession of these lots, you informed him that Mr. Cain was in possession of 3 and 6 and 27 and 28, did you not? A. I did not.

Q. You also informed him that the Duryea people were in possession of Lot No. 9, did you not? A. No, I informed him that Cain had conveyed to the Duryea people. That is what I informed him. I gave him a transcript of the transfers, that is all.

Q. When did you see, for the first time, the first bill of complaint? A. After it had been presented to the Vice Chancellor here; the first bill of complaint that was filed I never saw until after the Vice Chancellor ruled the bill of complaint out; the first bill of complaint was disallowed.

Q. Will you state to me why the first bill of complaint contained an allegation that Mr. Cain was in possession of Lots 3, 6, 27 and 28, and another allegation that the Duryea people were in possession of Lot 9?

Mr. Hastings: I object to that, as immaterial and irrelevant, and as showing that the witness has testified as he never has testified; he says he never saw the original draft of the bill of complaint filed in Court,

and knew nothing about it until it came up in question in court here; and your Honor has heard that matter, and has written a memorandum on it, I think.

The Vice Chancellor: I will overrule the objection.

BY THE VICE CHANCELLOR:

Q. Do you know why that was inserted in the bill? A. Will your Honor permit we to state what happened in the hearing?

Q. Oh, this was before the paper was filed, not afterwards, that he is asking. What did you know about that?

(The last question by Mr. Gough was thereupon repeated to the witness, as follows: "Will you state to me why the first bill of complaint contained an allegation that Mr. Cain was in possession of Lots 3, 6, 27 and 28, and another allegation that the Duryea people were in possession of Lot 9?")

A. I never saw the bill, so I cannot state any facts.

Q. Then you do not know why it was put in there? A. I do not, your Honor.

BY MR. GOUGH:

Q. When did you first discover that those allegations were contained in the bill?

Mr. Hastings: He answered that question once, Mr. Gough:

Mr. Gough: Well, may I repeat it, if your Honor please?

The Vice Chancellor: What is that?

Mr. Gough: The question. Mr. Hastings said I asked it before.

Mr. Hastings: He did ask it, and it was answered, that it was on the motion here in court, on the motion to strike out before your Honor.

By the Vice Chancellor:

Q. When did you first learn that these allegations spoken of were in the bill? A. When I was asked to pay the court costs; when Chancellor Griffin (I think Mr. Garrabrant said to me) dismissed the complaint, with a rule stating that a new bill of complaint could be filed, and I was asked for Court costs, which I furnished Mr. Garrabrant. That is the first time I knew about it. I was in court at the time when the first bill was presented here; but the first time I knew those allegations were in there, and thrown out, was when Mr. Garrabrant stated it.

By Mr. Gough:

Q. You did not know, while the matter was before Vice Chancellor Griffin, after the argument to strike out the first bill of complaint, you did not know at that time that the bill contained those allegations, did you? A. I had never read the bill, and I only knew what was said at the Court there, and at that time I did not know actually what the bill of complaint contained.

Harry C. Jacobsen. Called by Complainant. Direct.

Q. But, as soon as the motion was made to strike out the first bill of complaint you knew that those allegations were contained in it, didn't you?

Mr. Hastings: I do not see the importance of this.

The Vice Chancellor: I do not see it, either; he retained counsel to attend to his case.

A. I cannot answer your question.

Mr. Gough: That is all.

Recess until 2 o'lock, p. m.

AFTERNOON SESSION.

Hearing of the cause resumed at 2 o'clock p. m.

HARRY C. JACOBSEN, sworn.

Mr. Gough: I understand that Mr. Hastings produces this witness with some records from the County Clerk's Office. If the testimony to be developed by Mr. Hastings turns out to be an investigation of the proceedings under which this property was sold, I object to the introduction of that testimony, upon the ground that this court has no jurisdiction to investigate any such proceedings.

Mr. Hastings: I suggest that I prove the records first.

The Vice Chancellor: Yes; the objection will be reserved until after the case is closed. I do this for the reason that the testimony is offered out of order.

DIRECT EXAMINATION BY MR. HASTINGS:

Q. Mr. Jacobsen, you are connected with the County Clerk's Office? A. Yes.

Q. And you are here in response to a subpœna to produce certain records of the County Clerk's Office? A. Yes, sir.

Q. Have you with you Report No. 5 of the Commissioners of Adjustment of the City of Bayonne? A. Yes, sir.

Q. And have you with you the order of the Hudson County Circuit Court confirming that report? A. Yes, sir.

Q. Have you with you Report No. 10 of the Commissioners of Adjustment of the City of Bayonne? A. Yes, sir.

Q. And have you the order confirming that report? A. Yes, sir.

Q. Will you produce those two reports and two orders confirming? A. I produce Report No. 5 and the confirming order, No. 5 (producing Book entitled "Commissioners of Adjustment, Bayonne, Report No. 5," dated September 20th, 1888, signed "Edlow W. Harrison, James F. B. Collins and D. W. Oliver, Commissioners of Adjustment").

The Vice Chancellor: They were the Commissioners of Adjustment; there is no question about that?

Mr. Hastings: No, there is none of us that dispute that.

The Vice Chancellor: You are offering them in evidence?

Mr. Hastings: Well, if Mr. Gough objects because it is out of order—

Mr. Gough: I am not objecting because it is out of order.

The Vice Chancellor: You are not objecting to it as to the order of proof?

Mr. Gough: No, sir.

Mr. Hastings: I offer in evidence this Report No. 5, with special reference to item on page 37, which reads as follows: "Third Street, Second Street, Avenue Q," under the heading "Street—

The Vice Chancellor: Why do you not get a copy of this and put it in?

Mr. Hastings: Well, I have a copy, except as to 31.

Mr. Gough: You haven't a copy.

The Vice Chancellor: Well, the tax adjusted was from 1877 to and including 1887, amounting, in all, to $181.23, against Block No. 519, Lots 1, 21, 27 and 31.

Mr. Gough: Now, in order that there may be no misapprehension afterwards, I want to call your Honor's attention at this time to the fact that the taxes are grouped against 1, 21, 27 and 31, year by year; there is no separation of the taxes as to each separate lot.

The Vice Chancellor: They are taxed as one plot.

Mr. Gough: You cannot even say that, if your Honor please.

Mr. Hastings: Well, your Honor can inspect the entry and make up your mind

whether the year 1877 means as to all of these lots, or not. I do not see any doubt about it, myself.

The Vice Chancellor: Well, it is made certain. "Certificate No. 81, index 368," (to the witness) what does that mean, do you know?

The Witness: I don't know what that means.

The Vice Chancellor (Turning to the map included in the book): That shows it. (After examining the map.) They are not grouped together; they are assessed together against the same owner.

Mr. Hastings: I also offer the Report No. 5 with special reference to the item on p. 39, Second and First Street, in Block 535, Lots 3, 6, and 9 and 21, showing assessments from 1877 to 1887, inclusive, aggregating $256.78.

The Vice Chancellor: Here, also, the assessment is levied against all the lots in one item for each year.

Mr. Hastings: And also with reference to item on p. 40 under street designation of "Avenue Q," Block 535, Lots 27 and 28, showing assessments for the same years, 1877 to 1887, inclusive, aggregating $142.65.

The Vice Chancellor: And the taxes are adjusted and assessed against both lots combined; there is no single assessment for each lot.

Mr. Hastings: I also offer in evidence the order of the Hudson County Circuit Court, signed by Manning M. Knapp, Judge of the Circuit Court of Hudson County, on the 27th of October, 1888, confirming Report No. 5. I also offer in evidence book marked

"Commissioners of Adjustment of the City of Bayonne, Report No. 10," dated June 20th, 1889, signed by the same Commissioners, with special reference to p. 21, under street designation of "Avenue Q (now Newman Avenue), Block 519, Lot 31," of adjustment of taxes from the years 1877, continuously to 1888, both inclusive, amounting to $50.66—

Mr. Gough: The assessments being made separately against each particular lot.

Mr. Hastings: Yes. And the item on p. 24, under street designation of "Second Street, Block 535, Lot 3," with adjustment of taxes from 1877 to 1888, inclusive, aggregating $57.60, against each lot, separately.

Also the item on p. 25, under streets designation of "Second Street, Block 535, Lot 6," with adjustment over the same years, from 1877 to 1888, inclusive, aggregating $49.60, each year's tax being separately assessed against the one lot.

Also the item on p. 26, under street designation of "Second Street, and Zabriskie Avenue, Block 535, Lot 9," adjustment of taxes from 1877 to 1888, inclusive, aggregating $73.65, also with each year assessed separately on the one lot.

Also the item on p. 32, under street designation of "Avenue Q, now Newman Avenue, Block 535, Lot 27," adjustment of taxes from 1877 to 1888, inclusive, aggregating $65.39, each separately assessed against said lot.

Also the item on same page, under street designation "Avenue Q, now Newman Avenue, Block 535, Lot 28, showing adjustment

of taxes for each year from 1877 to 1888, inclusive, aggregating $97.41, each year assessed against the lot, singly.

The Vice Chancellor: Well, is not Lot 29 in?

Mr. Hastings: No—3, 6, 9, 27 and 28.

The Vice Chancellor: And the order confirming this report, signed by M. M. Knapp, Judge of the Circuit Court of the County of Hudson, is dated the 13th day of July, 1889. Why don't you have a copy of these bills made against these parties, and put them in evidence as part of the record, and these books can go back?

Mr. Gough: Well, on Report No. 10, I want to call the attention of the Court to the entry on p. 1, as to Block 502: "Readjusted by order of Court";; and as to Block 519, on p. 13, "Readjusted by order of the Court"; and as to Block 535, on p. 24, "Readjusted by order of the Court"; and as to Block 554, on p. 35, "Re adjusted by order of the Court."

The Vice Chancellor: Taking the last year's tax (1888), just ascertain whether, by adding that year's tax to the adjustment on Report No. 5, it exceeds the amount found due in Report No. 10. You need not do it now.

Mr. Gough: Now, on Report No. 5 I want to direct the attention of the Court to the blue print annexed to that report of the Commissioners, which shows Blocks 519, 535, and 486. If your Honor please, the maps are different in the two reports. At this point, for convenience, I want to point out to your

Honor that on the second blue print, at the rear of Report No. 5, alongside of Block 535 is Block 486—

The Vice Chancellor: Well, Block 486 was not readjusted.

Mr. Gough: No, but I am simply pointing this out, so your Honor may remember what is on this Map, which is part of Report No. 5, that First Street, which is the southern boundary of Block 535, on this map runs into Fourth Street, which is Block 486.

Mr. Hastings: No, but there is a distinct break.

Mr. Gough: There is a break, but I am calling attention to the fact that at th southern end of Block 535 is written "First Street," and at the southern end of Bloc 486 is written "Fourth Street." There is a break there, and it will be apparent later why I am calling attention to that situation.

The Vice Chancellor: I see what the situation is,—the properties on the right hand side of that line of lots were not readjusted.

Mr. Gough: Yes, but what I am getting at is, looking at the map casually, First Street and Fourth Street are in continuation, one of the other. That is the only point I am making in regard to it.

The Vice Chancellor: I do not see anything in that, because it was a matter of convenience to the draughtsman—

Mr. Gough: Well, I will state now, so your Honor may see why I refer to it: The deed describes the property properly in Block

535 by the proper Lot Number, but calls it "Fourth Street" instead of "First Street."

The Vice Chancellor: Well, it is located in 535, is it not?

Mr. Gough: Oh, yes.

The Vice Chancellor: Is there anything further with this witness, now?

Mr. Hastings: Well, all I want to ask Mr. Gough is this: We have here copies, but I would like him to satisfy himself that they are the correct figures; and this report shows them lumped together in the two blocks. I want him to satisfy himself, so that we can dismiss these original records.

Mr. Gough: Well, I have not seen them, but I will, subject to the right to correct, permit them.

The Vice Chancellor: Well, counsel should have had copies of those.

Mr. Hastings: We had, but Mr. Gough was not satisfied.

Mr. Gough: I want your Honor to understand that Mr. Hastings, for the first time, presented them to me five minutes ago.

The Vice Chancellor: Well, unless it is a certified copy, you have not the right to ask counsel to admit it.

Mr. Hastings: Well, if these is any trouble in the figures, I would like to reserve the right to present it.

By the Vice Chancellor:

Q. Did you find any order on file referring back any part of this Report of the Commissioners for readjustment? A. Why, I don't think

so, your Honor. There is something else here in the matter (referring to the subpœna), I don't know what they refer to—petitions and proofs and things of that kind (handing to the Court a number of papers).

The Vice Chancellor (Upon an inspection of the papers): Well, this is only the order appointing the Commissioners and the original petition.

By Mr. Gough:

Q. Let me ask you,—did you search these papers out, yourself, in the County Clerk's Office? A. No, sir.

Q. You did not make any search? A. Oh, No; Mr. Wilkie told me to bring them here.

Q. He handed them to you, and told you to come down here this morning, and that is all you know about it? A. That is all I know about it.

The Vice Chancellor: He simply finds these papers there, and brings them along; he does not know whether there are any other orders there, or not.

A. L. A. Mackie, recalled.

Direct Examination resumed by Mr. Hastings:

Q. Mr. Mackie, in answer to questions by Mr. Gough about your seeing the horses—

Alexander L. A. Mackie. Recalled. Cross.

Mr. Gough: One moment; I don't know but that the orderly way would be to have Mr. Mackie cross examined now by Mr. Levy for Mr. Keslin, would it not?

Mr. Hastings: Oh, I did not understand that. Go ahead, Mr. Levy.

CROSS EXAMINATION BY MR. LEVY:

Q. Mr. Mackie, have you paid any taxes on Lot 31, Block 519?

Mr. Hastings: I object to that as immaterial and irrelevant.

The Vice Chancellor: Objection overruled.

A. No.

Q. Have you, at any time, executed any lease in connection with that lot? A. No.

Q. Were there any orchard trees on that lot at any time? A. Yes.

Q. When? A. My father planted the trees on that lot in the neighborhood of, as far as I can trace back, 1861, or 1862; he planted it as an orchard.

Q. That included the entire Block, 519? A. No, that is only part of the Block 519.

Q. But these orchard trees were entirely on Block 519? A. They were in the lot there.

Q. Has there been any physical change with reference to that particular lot since that time—Lot 519? A. No.

Q. Are there any orchard trees on that block now—to-day? A. I believe there is one or two.

Q. On Lot 31, Block 519?

A. I cannot say positive, but I believe there are.

Alexander L. A. Mackie. Recalled. Cross.

Q. Well, I want the exact facts? A. I cannot answer the question.

Q. Do you personally know? A. No.

Q. You don't know. You did state this morning that there never has been a physical change, or a change in physical condition, and, of course, that included Lot 31 in Block 519—is that so—in connection with this particular lot? A. Well, that lot remains as meadow land and as part of the original tract of land as it remained when the orchard was placed there, the trees were placed there.

Q. Have you been in physical possession of that land, that lot, at any time, personally? A. Yes.

Q. When? A. At the present time.

Q. In what way? A. It is fenced in, between the fences.

Q. Lot 31 is fenced in? A. Is fenced in.

Q. By what sort of fence? A. There is a regular post there—it is a post, and there are pieces of scantling nailed on the outside, that goes all around Second Street, Zabriskie Avenue and Third Street, with the exception of property that has been sold on the corner of Third Street and Newman Avenue; that property is not in question, but that property has been built on, and the owners of that property have fenced in their own property.

Q. Then what you mean to convey is this—that there is some sort of a fence surrounding the entire land there, which would include the fencing in of that lot, is that it? A. Yes.

Q. You do not mean to convey this impression—that Lot 31 of Block 519 is fenced in, of itself?

A. No; it remains in the same condition it always has been.

Q. As it was in 1877——is that the same fence you have reference to?

BY THE VICE CHANCELLOR:

Q. Well, it is fenced in with the other property? A. It is fenced in with the other property.

Q. It has not its own, independent, fence? A. No, it is part of the old property, and the fence extends all around the property, your Honor.

BY MR. LEVY:

Q. In fact, the family did not own any adjoining lands to Lot 31, Block 519, is that it—I mean immediately adjoining it? A. No, they did not.

Q. In reference to the Tax Sale, the Martin Act Sale in Bayonne, do you know that Lot 31, Block 519, was also one of the lots sold? A. Yes.

Q. And did you, as you stated this morning, examine the conveyances of record? A. Yes.

Q. And you noticed that this lot was also one of the lots sold? A. This Lot 31, Block 519, was sold.

Q. And did you communicate with your brother, out West, with reference to it? A. Yes.

Q. And did he call your attention to anything particularly concerning the sale? A. I called his attention in reference to the sale, and what had been done.

Q. But he never wrote you with reference to it? A. He wrote me with reference to it.

Q. In what way? A. He wished me to see whether I could sell the property, the whole of his property, to any person who might buy it.

Alexander L. A. Mackie. Recalled. Cross.

Q. When was that?

The Vice Chancellor (to the Witness): Just finish it up. Was there anything else?

A. No, I am done, sir.

Q. Did he say "for the purpose of paying the taxes"? A. His idea was to free the property.

By Mr. Levy:

Q. When was this? A. After the tax sale.

Q. When—what year? A. The original tax sale was in 1902, I think.

The Vice Chancellor: No, 1892.

A. Yes, 1892.

Q. It was at that time? A. It was at that time.

Q. And that was the time that he called your attention to trying to dispose of it in order to raise some money? A. Yes.

Q. And since then has there anything been done with reference to raising money by sale, or otherwise, to pay off those taxes? A. No.

Q. I want to call your attention once again to this deed marked Exhibit C,2; it has reference to a deed between Simon Fraser Mackie of the first part and William Man of the second part? A. Yes.

Q. Who was this William Man? Did you know William Man? A. I knew him personally.

Q. Where is Mr. Man now? A. He is dead.

Q. When did he die? A. I cannot give you the date; he has been dead for several years. If you will permit me to examine papers in my pocket, I can give you the exact date.

Alexander L. A. Mackie. Recalled. Cross.

Q. Yes, let us have it. A. (Producing and examining data.) The 22d of January, 1906.

Q. And where did he die? A. In the City of New York.

Q. Now, this deed recites that William Man was a trustee of this property—

The Vice Chancellor: For this property?

Q. For this property—is that true? A. That is true.

Q. And have you that deed, or do you know where the deed is? A. It is recorded in Hudson County; you have the Liber and Page there, sir.

Q. No, I mean have you the original, the actual deed? A. It is in the possession of the Estate of William Man. I can produce it.

Q. That is, the deed from Simon Fraser Mackie to William Man—is that right? A. As trustee.

Q. And that deed conveys all of this Mackie property, including the lots involved in this lawsuit? A. Yes.

Q. Did Mr. Man take possession under that deed, and act as trustee? A. Yes.

Q. Was there any conveyance made by Mr. Man with reference to this property? A. There was a conveyance to Robert Gilchrist. That lot was on the corner of Newman Avenue and Third Street.

Q. Did he make any other conveyance? A. He conveyed land to one—let me see—he conveyed land to one Jewell.

Q. And did he make any other conveyances? A. Not that I recollect.

Q. Then, according to your recollection, those are the only two conveyances that Mr. Man made, as trustee of this Mackie property? A. Yes, according to my recollection.

Alexander L. A. Mackie. Recalled. Redirect.

Q. And those two conveyances do not include any of the lots involved in this action to-day? A. No.

Q. And he certainly made no conveyance to you, whatever, did he, Mr. Mackie? A. No.

REDIRECT EXAMINATION BY MR. HASTINGS:

Q. Now, Mr. Mackie, Mr. Gough was questioning you this morning about seeing the Stringham horses grazing there—you used the expression that you saw "them grazing there"—what did you mean by "there"? A. They were grazing in the meadow to the west of the land in question, the property of the Cotton Seed Oil people.

Q. Well, now, with relation to this Mackie property, in Block 535 and Block 519, do you mean that you saw them grazing on that land? A. No, not Block 535.

Q. Well, where was the American Cotton Seed Oil land with reference to this land? A. Directly west of it; the side-line fence was the party fence between the two properties.

Q. As to this brick building, or stable, that has been referred to, was there more than one entrance to the building? A. Yes; but there was a brick partition that extended from the floor of the building right to the roof, so that you had to enter it from two different ways.

Q. Where was the front entrance to that building? A. On Avenue Q, now Newman Avenue.

Q. And that is the street that you stated this morning had not been opened by the City? A. Yes.

Q. And does the brick building extend into Avenue Q? A. 30 feet on Avenue Q.

Alexander L. A. Mackie. Recalled. Redirect.

Q. And the main entrance door, is that in that unopened street, or in the back of the property?

The Vice Chancellor: He said that it was in the unopened street.

Q. And, more particularly, where did you see these horses grazing—did you see them on any portion of the property, or the street as shown on these maps we have produced? A. No.

Q. Mr. Gough also questioned you this morning about certain lots in Block 535 owned by Mr. Cain, not the ones in question in this suit, and with reference to such lots indicated by him, which appear to be lying upon this unopened street, Avenue Q—will you state how, and what means of access there are to those lots with reference to your property, or lots 27 and 28, to be specific? A. At the present time, or when the action was commenced?

Q. Well, at the time of the commencement of this suit? A. The fence extended across the top of the street, and joined the Cotton Seed Oil people's fence.

Q. Across what street? A. Newman Avenue—the fence extended right across Newman Avenue, and joined the Cotton Seed Oil people's fence.

Q. That is, as shown by this Map, the so-called Avenue Q was fenced off along Second Street; is that it? A. That is right.

Q. And what was the condition on First Street? A. Also fenced.

Q. Right across the so-called Avenue Q? A. Yes.

Q. And what is there now, if anything, along this ground designated as Avenue Q—is there

any road? A. No, there is no actual road, and never was.

Q. Well, is there a path?

BY THE VICE CHANCELLOR:

Q. Are the fences down? A. They have been stolen and removed, your Honor, within the last few years.

Q. Has the road been graded? A. No, sir.

Q. It is in a state of nature? A. It is in a state of nature, and never has been used as a street.

BY MR. HASTINGS:

Q. But have persons used the land in that so-called Avenue Q in coming to or from these other lots in Block 535, from First to Second Street? A. That I have no knowledge of.

RECROSS EXAMINATION BY MR. GOUGH:

Q. How did the people get through from Second Street to First Street? A. Zabriskie Avenue is an open street, and they go that way; and, the fences being down now, they go across the lots at the present moment; but the fences were not down at the time when Mr. Hastings asked me that question. Now, at the present time, the fences are all down.

BY MR. HASTINGS:

Q. Mr. Mackie, how many of your brothers and sisters are now living? A. Two brothers, and one sister.

Alexander L. A. Mackie. Recalled. Recross.

Q. What are your brothers' names, please give their names? A. George Barkley Mackie—

Q. Where does he live? A. Lord Avenue.

Q. What city? A. Bayonne; and Charles T. O. Mackie; I think he is living in Eighty-first Street, maybe Eighty-second, City of New York; and my sister, Mrs. Jane Gilchrist, lives at Maplewood, N. J.

Q. And your other brothers and sisters are all dead? A. My three other brothers are dead.

By Mr. Gough:

Q. Did you say George Mackie is still alive? A. Still alive, and living in Bayonne; he was when I last heard from him.

Q. When was that? A. I should have known if he were dead; I have not heard from him in six months; I haven't heard from him directly.

Q. Now, Mr. Mackie, how many entrances are there to that stable on Lots 27 and 28? A. There is but one entrance to the stable proper.

Q. Well, to the stable improper? A. Now, to the other building, which is used as a carriage house, there are two entrances.

Q. And they are on the side of Mr. Cain's lot, 29, are they not? A. They are on Lot 29.

Q. Did you take up with Mr. Man the question of paying these taxes on these lots?

Mr. Hastings: I do not see the materiality of that. The matter he refers to is a question of possession, and not a question of title.

The Vice Chancellor: I know, but payment of taxes, for this purpose, is evidence of ownership.

Mr. Hastings: No, not payment of taxes.

The Vice Chancellor: Well, you do not agree with the decisions, then; it is some evidence of it.

Mr. Hastings: You can never acquire title by the payment of taxes, itself. There must be something more than that.

The Vice Chancellor: I will permit it.

A. I furnished Mr. Man the information, all the information I possibly could, about them; and Mr. Man paid some of the taxes on the property, but not on these individual lots.

Q. And when did you furnish him with that information? A. When the property was first sold, in 1892; and property was afterwards sold by Mr. Man, and taxes paid on it.

Q. That is, other property was sold? A. Yes; other property was sold.

Q. Not the property involved in this suit? A. No, no, no, no.

EDWARD BOTSWORTH, sworn.

DIRECT EXAMINATION BY MR. HASTINGS:

Q. Mr. Bosworth, where do you live? A. 161 Broadway, Bayonne.

Q. Where were you born? A. In Bayonne.

Q. How old are you? A. Sixty-six.

Q. You lived in Bayonne all your life? A. Well, I didn't live there all my life; I left there in 1876 and went to California, and returned in 1896.

Q. Did you know the father of Mr. A. L. Mackie, here? A. Well, in my younger days I remember him.

Q. And did you know his family and his children? A. I went to school with them, in my younger days.

Q. Are you familiar with the old farmstead? A. Well, yes, partly.

Q. Do you know now, with reference to the City streets, where it lay? A. I do.

Q. Just tell us. A. It was bounded south by First Street, north by Second Street, east by Zabriskie Avenue, and west by Newman Avenue—now called "Newman Avenue."

The Vice-Chancellor: Well, I do not believe it is disputed that the ancestor of the complainant owned all of this land.

Mr. Hastings: I just wanted to satisfy the Court of this man's familiarity with the locality, that is all. There is no dispute about the actual location.

Q. Do you recall when Robert Mackie and his wife and children were living upon the Mackie farm, as I suppose it was then called? A. Well, no; I remember of them, but, then, I couldn't recall anything that I could make any remark in reference about them in any way; I remember of them; to be sure, I was a young man, small.

Q. No, but do you remember them living there, that is all? A. Yes, I remember that; yes.

The Vice Chancellor: Robert Mackie was whom—a brother?

Mr. Hastings: He was the father.

Edw. Botsworth. Called by Complainant. Direct.

Q. Now, from your first memory, will you tell us how the land was occupied and used—going back as far as you recall? A. Well, going back, as I can remember, take that whole block—

Q. (Interrupting.) Well, can you recall before the City streets were put there? A. Yes.

Q. How was it occupied then, and used? A. Well, to the best of my knowledge, it was occupied by this same Mr. Mackie.

Q. What did he do on the land? A. Well, he raised fruit, I know—cherries, apples, grapes—and farmed in general; he had a cow, I think, or two; cut grass or hay.

Q. Then, do you remember when he died? A. No, I can't remember. I remember his death.

Q. Well, you remember the fact of his death, don't you? A. Yes, I remember of it, you know.

Q. Then, after that, do you recall who lived on the property—after Mr. Mackie's death? A. What do you mean?

Q. After Robert Mackie's death? A. After they moved away?

The Vice Chancellor: No, after the father died.

Q. After the father died, who lived there? A. Why, his children.

Q. His children? A. Yes.

By the Vice Chancellor:

Q. Was his wife living at the time? A. If my memory is right (not that I can swear to it, but giving my remembrance), I think Mr. Mackie died first; I am not confident; I would not say; I am not positive. I am here to do the best I can.

Q. Now, you have got to the stage where Mr. Mackie's children were living there? A. Yes.

By Mr. Hastings:

Q. Now, down to what time do you recall that any of the Mackie children were living there in the old home? A. Well, let me see—I couldn't say; it strikes me that they moved away from there a while, and a man of the name of Munn, Charlie Munn, rented the place for a while; that is pretty well back, I guess. Then they came back again, the Mackies came back again.

Q. Oh, well, I do not want to go into all the fine detail, Mr. Botsworth, but take it when they came back again, then how long did the children continue to live there, do you remember—down to what time? A. Until 1905—no, 1903.

Q. Then, who next lived in the property, in the house? A. That I could not say, to give the names. They were there for two years.

Q. Do you know, of your own knowledge, whether somebody did go into possession of the house, and live there? A. After Mr. Gilchrist left—that was Mr. Mackie's brother-in-law and his sister—in 1903, yes.

Q. And after that first party, which you say lived there a couple of years (that would bring it up to about 1905— A. 1905.

Q. Now, do you know who lived in the house after that? A. I did, myself.

Q. And how long did you live there? A. Well, I lived there in the neighborhood of two years. I was married in the house.

Q. That would be about 1907, then? A. 1907.

Edw. Botsworth. Called by Complainant. Direct.

BY THE VICE CHANCELLOR:

Q. Did you say you got married in the house? A. Yes; it was something unusual; I got married in the same room my mother did.

BY MR. BOTSWORTH:

Q. You were married in what year, Mr. Botsworth? A. 1906—January 17th.

Q. And after you were married, who were the members of your family there? A. My mother-in-law and my father-in-law.

Q. And after you left in 1907, do you know who lived in the house? A. I certainly do—my father-in-law and my mother; my father-in?law, he rented it.

Q. How long did they live there? A. Well, they lived there about 1914, I think it was; they bought a house on Second Street about that time.

Q. And after 1914, down to the present time, do you know whether anybody has been living in that house? A. Well, when my father-in-law gave it up a lady by the name of Hermano took it. She is there now, at the present time.

Q. Now, after the death of Father Mackie, as I call him—Robert—you say that the children, for a considerable number of years, lived there—how did they use and occupy the land? A. Why, they cultivated it, the same as anybody would; they farmed the whole thing, as far as I know of.

Q. Did they have a garden there? A. They had a garden all fenced in properly.

Q. And did they have an orchard? A. An orchard and vineyard.

Q. Did they keep any cattle? A. It strikes me they had a cow.

Q. And when you were there, what use did you make of the land in that Block, 535? A. Well, like an ordinary person would do—kind of farming in a home style, you might say—raising vegetables and fruit, taking care of the trees and orchards, all the way back to Second Street.

Q. And, with reference to the brick building or stable, as it has been called, did you make any use of that? A. Well, no, I had no occasion to.

Q. You did not have a horse, or cow, or anything? A. No, I had no horse and cow, and I had no occasion to use it.

Q. Did your mother-in-law and father-in-law have any horse and cow? A. No.

Q. After 1907, and up to 1914, while your mother and father-in-law were living there, did you visit the house there, too? A. Oh, I went down occasionally and saw them. I was doing business right across the street from there, you see. In 1907 I left the shore and went up to the place I own now.

Q. How did your mother-in-law and father-in-law use the vacant land there in the block? A. Well, about a stand-off with me.

Q. The same way you did? A. The same way I did, yes, they cultivated the vegetables there.

Q. Now, when you went into possession of the house there, and the use of the land that you have described there, between First and Second Street, with whom did you make the arrangements for occupation of the property? A. Well, principally with Mr. Mackie—Schuy Mackie.

Q. Do you mean Schuyler Mackie? A. Yes, Schuyler Mackie; we generally called him "Schuy" for short. He is dead now, poor fellow.

Q. He is dead now? A. Yes. He simply came to me—I had the water front, you see; all the rest of the land of this property—

Q. (Interrupting.) Well, I just wanted to know who he was. A. Well, yes, that was it.

BY THE VICE CHANCELLOR:

Q. Did you pay rent? A. No, I paid Annett rent.

Q. They were real estate agents? A. Yes.

Q. Did they rent it to you, or did Schuyler? A. Well, Schuyler came to me; I had the water front, and he came to me and said "Ed, you have got all the rest of my land, why not take the rest of the land, and take that?" I told him I would.

BY MR. HASTINGS:

Q. What did he mean by "you had all the rest of the land"—tell us about that; what land was that, that you had before you went into the house? A. Well, that was on the water front, south of First Street.

Q. In front of this block, 535? A. Blame if I know. Is that the number of the block?

Q. Between Newman Avenue and Zabriskie Street? A. Yes.

BY THE VICE CHANCELLOR:

Q. No, it is right in front. A. It is right on the water front, south of First Street.

BY MR. HASTINGS:

Q. Between Newman Avenue and Zabriskie Street? A. Yes.

Q. And with whom did you arrange for the use of the property, of the river front? A. Mr. Schuy Mackie, for the whole thing.

Q. And are you still down right in the neighborhood of these premises? A. Yes, I have a place down there.

Q. And you have seen and observed the present occupants since 1914? A. Well, I have been down there the last three years now. I left the shore for a while and went up to the place for a while, and three years ago I went down there, and this is my third year now. I was five years on the shore, but not down where I am now—three years where I am now.

Q. And what portion of these premises have Hermanos occupied? A. Well, they occupy the premises that I had—the house.

Q. Mr. Botsworth, how far back do you recall any fences about this Mackie farm? A. What do you mean by the "fences"—up or down?

Q. Well, either way—take it up and down first—north and south. A. Well, I remember a time when it was all up, and I remember the time when they were down; and they are all pretty much down now, at the present time.

Q. In your memory, how long have those fences been there, on the up and down, north and south sides? A. Well, I think in 1909, in June, or, at least, Bernste in—

Q. Interrupting) Wait a minute—how far back do you remember those fences? A. That is the first remember of the fence going down,—when Mr. Bernstein came.

Q. That is not what I asked you—how far back do you remember there being any fence around the property? A. Well, as far back as I

can remember, and that is a number of years ago—when I was a kid, you might say.

Q. Do you remember, before those streets were put through by the City, about the fences being there—before the City put the cross streets there? A. I remember the fences being there.

Q. Do you remember, at the time the streets were put through, what, if anything, was done about fences at that time? A. Well, no; I have an idea that that fence—

Mr. Gough: Never mind.

By the Vice Chancellor:

Q. Do you recollect when the streets were put through? A. No, I do not.

Q. Then your recollection of the locality is with the streets existing? A. At the present time, yes, sir. Excuse me for speaking that way, Judge, but I think the streets were put through when I was away; that is what I think, and I wouldn't say positively.

By Mr. Hastings:

Q. Well, then, after the streets were cut through, from east to west, do you know anything about any fences, in an east and west direction, on the property? A. Why, on the east and west? East and west is Second Street—there was always a fence back there, as well as I know.

Q. There was a fence in the rear of that block, from First to Second Street? A. Yes.

Q. That was the block that you were on? A. Yes.

CROSS EXAMINATION BY MR. GOUGH:

Q. Mr. Botsworth, you went to California in 1876? A. In 1876.

Q. Where did you go in California? A. All over—San Francisco.

Q. Did you go directly to California in 1876? A. I certainly did; I had to, because I went by way of a steamer.

Q. And you were there for twenty years? A. I was there twenty years, five months and nine days.

Q. And during that interval you did not return to Bayonne, at all? A. I did not.

Q. At no time? A. At no time.

Q. And know nothing about the property during that interval? A. Not during that interval.

Q. All right. Now, then, when you rented the house in which you lived, which was on First Street, as I understand it— A. Facing First Street.

Q. You rented the house, did you? A. Yes, I did.

Q. Did you have a written lease? A. Yes, for a year.

Q. You had a written lease? A. Yes.

Q. Do you know where that lease is? A. No; I wouldn't say whether I have destroyed it, or not.

Q. You simply rented the house? A. Simply rented the house, and Annett has the record of it, anyhow.

Q. The property on the other side of First Street, on the Kill von Kull, was not included in that lease, was it? A. It was not.

Q. Was any other property but the house included in that lease? A. No, I simply took a lease; I couldn't tell you whether I leased the whole block, or the house, or what I leased; I simply got the lease, and paid the rent.

Q. Never mind, you have answered the question, Mr. Botsworth. Now, Mr. Botsworth, you said something about cultivating the property in this neighborhood—where was the property that you cultivated,—alongside of the house? A. Why, all the way; I had taken the privilege all the way back to Second Street—from the house on First Street to Second Street.

Q. And where did you do the cultivating—did you do any cultivating on the plot on which the house stood? A. In front of the house?

Q. In front of the house, yes? A. No, nothing in front of the house.

Q. And how far behind the house did you do any cultivating A. Well, pretty much to Second Street.

Q. Now, you know Mr. John Cain? A. I certainly do.

Q. And you moved into this house in 1907? A. No, I moved out of it.

Q. You were out of it in 1907 after having been there two years? A. Yes.

Q. Now, how many years did you cultivate it? A. Well, I cultivated it the two years that I was there.

Q. And did you see Mr. Cain in regard to the use of any land there? A. No. I did not know at that time that Mr. Cain owned any property there.

Q. When did you know that Mr. Cain owned it, at first?

Mr. Hastings: I object to the form of that question, as implying a conclusion.

The Vice Chancellor: I will overrule the objection. I do not see that it makes any difference.

Q. When did you first know that Mr. Cain owned that property?

Mr. Hastings: Which property do you mean?

Mr. Gough: In back of the house, running from back of the house to Second Street.

A. Well, now, you will say I am talking too much if I tell you, but you are asking me, and the only way I can do is to explain it to you : Mr. Schuy Mackie came to me and told me something about Mr. Cain, that he wanted to trade off the inside lot for the outside lot, and he said, "Well, I am giving you the west side; now," he said, "we have got lots in there." However, that was all fenced off; he couldn't get to it. It was in the center.

Q. Was that before you rented from Mr. Mackie, that you had this conversation with him?

A. No, afterwards.

Q. How long afterwards? A. Oh, that was after I gave it up, Mr. Schuy Mackie came to me. He used to come to me quite frequently.

Q. How much of the plot have you cultivated? A. Well, here and there, all over; I cultivated, oh, you might say, all the way through—that is, not all the way through, for there was part of it a pasture. Let me explain it to you. Here—

Q. (Interrupting) How much ground did you cultivate? A. Well, that is what I am trying to explain and you won't let me.

By the Vice Chancellor: Well, try to do it.

A. Here is Zabriskie Avenue; here is Newman Avenue, here (indicating), and one-half of it was pasture, and this part of it (indicating) was a vineyard and orchard, and one thing and another; and that there (indicating) was what I looked at, but this part (indicating) I did not bother with.

Q. Did you cultivate in the orchard? A. Yes.

Q. You cultivated in the orchard? A. Yes.

Q. And you did not cultivate between the orchard and First Street? A. Not between the orchard and Zabriskie Avenue.

Q. You did not cultivate between the orchard and Zabriskie Avenue? A. No.

Q. What was growing near Zabriskie Avenue? A. Nothing but pasture.

Q. Pasture? A. Pasture for the cows.

Q. Then the orchard took up about half the width of the block, did it? A. About half, you might say.

Q. And you cultivated only in the orchard? A. Only in the orchard.

Q. That lay next to Newman Avenue? A. Next to Newman Avenue—it joined Newman Avenue.

Q. Then it did not extend down to First Street, did it? A. Not all the way. But the house took in the back, and there was part of the barn.

Q. Then you cultivated on the corner of Second and Newman Avenue for about one-half the width of the block and half the length of the block? A. About that; that is about it.

Edward Botsworth. Called by Complainant. Cross.

BY MR. GOUGH:

Q. You say you cultivated in the orchard? A. Yes.

Q. Where was that orchard, which side of Second Street, north or south? A. South side of Second Street.

Q. What did that orchard consist of? A. Oh, you would call it an orchard—there was grapes, a few pears, quinces, peaches.

Q. And where were those trees? A. In the ground.

Q. Yes, of course, not in the sky; but how far from the house? A. Oh, scattered along between the house, or the barn, you might say, to Second Street.

Q. All right; was the yard in back of the house shut off? A. No, you could go right through any part of it.

Q. How near Second Street were the trees? A. Well, I don't know how deep it was—about two-thirds of the way to the road, you might say.

Q. And did you gather fruit there? A. I did.

Q. What did you do with the fruit? A. Ate it—gave it away.

Q. Did you sell any? A. Mr. Gilchrist's children, after he moved out, used to come down and ask if they could have some of it; we would give it to them. And if anybody came along and wanted it, we gave it away.

Q. You did not have any use for the stable there, had you? A. No, no use for the stable, at all.

Q. What did you cultivate? A. Potatoes.

Q. Anything else? A. Tomatoes, onions, parsley—oh, I couldn't tell you—the same as you would yourself if you had a little garden.

Q. Did you sell any of that stock? A. No, only very little.

Q. Used it all for your family? A. Well, what we didn't use, why, we gave it away.

Q. That did not amount to anything? A. No; there were only patches, here and there, that we cultivated, you know.

Q. Tell us what you saw, about 1909, in regard to the fences; when Bernstein came along, what did he do? A. Well, he took the fences down, all the way from Washington Park plumb through to, well, I would say where this line of the orchard was, right across.

Q. That is, from Zabriskie Avenue through to Newman Street? A. No.

Q. How far? A. I say about half of the way to the joining of this orchard—you might say joining the orchard—from there to here, see (indicating on the Map).

Q. Tell us what you saw him do? A. Well, I didn't see him doing anything, personally, excepting bossing; it was at his expense he was doing it; and joining this orchard here (indicating) he had a large platform, a dancing platform, and an entrance, too.

Q. That platform was entered from First Street? A. No.

Q. From where? A. Zabriskie Avenue.

Q. And how far back from Zabriskie Avenue did it run? A. Well, you can tell better than me; if you knew the width of the lot, you must know. I say it is about half-way.

Q. It came down First Street, too? A. No, nothing to do with First Street, at all.

Q. In the middle of the block, was it? A. It went through from Zabriskie Avenue to, well, I would say in the middle of the block.

Q. How wide was that platform? A. Oh, I don't know,—50 x 50, something like that; it might be 40 x 45), something like that.

BY THE VICE CHANCELLOR:

Q. What was it used for? A. Dancing.

BY MR. GOUGH:

Q. What year do you judge, that was? A. Why, the year Bernstein was there.

BY THE VICE CHANCELLOR:

Q. You won't find that in the calendar; what year was it? A. I have an idea it was about 1909.

BY MR. GOUGH:

Q. How long did he stay there? A. Well, I don't think he stayed the season; I think there was some trouble about the property, and one thing and another, and they attached him and closed him up.

Q. Did you do any cultivating west of the stable? A. We could not do any cultivation west of the stable, because west of the stable was Newman Avenue, and Newman Avenue was closed.

Q. Did you do any north of the stable? A. That is what I am telling you—north of the stable, between the stable and Second Street.

Q. Did you cultivate there? A. I certainly did. That is where the orchard was, what I am speaking about—the orchard.

Edward Botsworth. Called by Complainant. Cross.

CROSS EXAMINATION BY MR. LEVY:

Q. That orchard, and the cultivation of it took place on the block between First and Second Street, is that right? A. Yes.

Q. And not at all on the block between Second and Third Streets? A. Between Second and Third, did you say?

Q. Yes. No, not between Second an dThird.

Q. Now, was that the same orchard that the Mackies had been running and cultivating all the time since the time you came back in 1896 until the time you got this property? A. No, previous to that. They owned it.

Q. And they cultivated that same orchard in that same block? A. Yes.

Q. Before you left for California did they cultivate an orchard at any other place, or in any other block, outside of the block between First and Second? A. Well, I think they owned all the way through.

Q. I am not asking you that—what they owned—but what they cultivated?

BY THE VICE CHANCELLOR:

Q. Did they have an orchard at any other place? A. I think between Second and Third.

Q. They did? A. I think they owned all that property.

Q. No, no, no, no—did they have an orchard between Second and Third? A. Well, I think they had.

Q. But you don't know? A. I wouldn't swear to it.

BY MR. LEVY:

Q. You do not recall that? A. No.
Q. You don't know that? A. No.

RE-DIRECT EXAMINATION BY MR. HASTINGS:

Q. Well, do you know that there was an orchard between Second and Third Streets? A. Yes, there was one there, I know.

Q. Now, this Mr. Bernstein that you speak of, what kind of a place did he run? A. Well, a kind of theatre.

Q. It was a sort of amusement place, wasn't it? A. Yes.

Q. And did he occupy other premises beside this Mackie farm? A. Oh, yes,—what they call the "old Washington Park" now.

Q. And that adjoined the Mackie premises on which side? A. Zabriskie Avenue—it was in between.

Q. And on which side of this property was it that he had his theatre, as you call it? A. (Indicating on the Map) This is Zabriskie Avenue; here is Newman Avenue.

Q. And the fence that he extended into this Mackie block, between First and Second Streets —did he extend it across this place marked Zabriskie Avenue on the map, that is, from where his theatre was, across the street itself, Zabriskie Avenue? A. Yes, from this side, across there (indicating on the Map).

Q. And then he ran his fence, a portion of it, into that block between First and Second? A. Yes.

Q. How long was he there? A. If my memory is right, he was only there one season.

Q. And after that, did anybody else run it, or occupy it, so far as it affects this block? A. No.

THOMAS W. DOBSON, sworn:

DIRECT EXAMINATION BY MR. HASTINGS:

Q. Where do you live? A. 83 Trask Avenue.

Q. In Bayonne? A. Yes, sir.

Q. And how long have you lived in Bayonne? A. From the year 1857.

Q. And you have lived there continuously since that time? A. In Bergen Point, yes.

Q. Did you know Robert Mackie and his wife and family? A. Yes, I knew his old residence.

Q. Do you remember the farm that he bought down there? A. Yes, sir.

Q. Which was running from First to Fourth Street? A. Up to Fourth Street, and bounded by what is now Newman Avenue and Zabriskie.

Q. And you knew the old homestead there? A. Yes, sir; I was familiar with it.

Q. And do you remember the brick building, or stable? A. Yes.

Q. Do you remember any other buildings that were over there? A. There was one or two other little sort of shed-like buildings and a greenhouse right near that building, but nothing else beyond that.

Q. How far back do you recall the Mackie family residing there on the farm? A. From away back in the earliest times.

Q. And you knew of the death of Robert Mackie, the father? A. Well, I couldn't place that.

Q. Well, I don't mean the time, no, but you know when he died, you remember that? A. Oh, yes.

Q. And after his death who resided there? A. Well, that I am not much familiar with. I know Mr. Munn was there for a season or two.

Q. Then after Munn was there did the Mackies come back again? A. I am hazy on that subject after 1900; in the last twenty years I am not familiar with that, with who did live there in turn.

Q. Well, after the father's death there, didn't you serve the family there with milk? A. Well, no, not much after that.

Q. Not after that? A. I ran a paper out there, and served them for perhaps two or three years, but I do not recall the families after the Mackies.

Q. No, but when were the last Mackies living there, do you recall,—about when? A. About twenty years ago, as far as I can recall.

Q. About twenty years ago from the present date? A. Yes.

Q. Now, after the last of the Mackie children left the old homestead there, has it been occupied? A. Yes; the house apparently has been continuously occupied by somebody—the old residence.

Q. Is it occupied to-day? A. Yes.

Q. Now, when the father, Robert Mackie, lived there, how did he use the land there in connection with the homestead?

The Vice Chancellor: I would like to know what difference it made how he used it? It is admitted that Mackie, Sr., died seized of the property, being the owner in possession. Now, what difference does it make how he used it?

Q. Do you know of any fences around the property there, Mr. Dobson?

Mr. Gough: One moment. Does this relate to the old situation, when Mr. Mackie was alive, or to what situation, Mr. Hastings? Because the witness has testified that he knows nothing in the last twenty years.

Mr. Hastings: Oh, he doesn't mean that.

The Vice Chancellor: Well, just get the time.

BY THE VICE CHANCELLOR:

Q. Do you know anything about the property in the last twenty years? A. Well, yes, in a casual way; I have not been on the property.

Q. Well, do you know anything about the fences of the property in the last twenty years? A. Why, yes, I know they were set back, on the opening of those streets there, on the lines they occupy now; I know the old line; ;on the western side there has been no change in the line of the fence the fence is down, but the old cherry trees that were right in the direct line are there yet.

Q. That is on what street? ? A. On the westerly side.

Thos. W. Dobson. Called by Complainant. Direct.

Q. What street is on the westerly side? A. That is Newman Avenue. It has never been graded out.

Q. How is it on the easterly side? A. It was moved back half-way from the half of the street where it stands now.

Q. From Zabriskie Avenue? A. Yes, sir.

By Mr. Hastings:

Q. How much of it has been moved back? A. The half of the street.

Q. Well, I know, but north and south, how far? A. Why, the whole line.

Q. Now, with particular reference to the second block, between Second and Third Streets, Mr. Dobson, what did you know about the use of that property, and its present condition to-day—what is there there now on the land? A. Well, it was used as a garden, a flower garden and vegetable garden; not for anything else, as I observed.

By the Vice Chancellor:

Q. Do you mean that is so to-day? A. It has been so right along, in those years.

By Mr. Hastings:

Q. Give your attention, now, to the block from Second Street to Third Street? A. Yes.

Q. I mean the block in the rear of the house or homestead, the next block—what was that used for? A. That was an orchard;; it carried back there away up to Fourth Street.

Q. How long back do you recall it as an orchard? A. Oh, away from the earliest years.

Thos. W. Dobson. Called by Complainant. Direct.

Q. Are there any of the orchard trees there to-day? A. Yes, quite a number of the old pear trees are there yet.

Q. Are there any fences around that block? A. Well, there is a fence on the east side, the Zabriskie Avenue side.

Q. Well, going back in your memory, were there fences around that block? A. Oh, yes.

Q. And up to what time, then, do you recall that there were fences around the block between Second and Third? A. Well, that pasture was actually there up to 1885, right adjoining the Griggs Estate; then we moved away, and I did not have so much to do with it after that.

By the Vice Chancellor:

Q. Well, are there fences around it now? A. Not on the west side.

By Mr. Hastings:

Q. Is there any fence on Second Street, in that block? A. Yes.

Q. Is there any fence on Third Street? A. Yes.

Q. And fences on the east? A. Well, the old line is there; I judge the fence was pulled down a dozen years ago, more than that, on the western side.

Q. Well, it is the old original fence, except as it has fallen away, or been taken away?

Mr. Gough: I object to that, as leading.

The Vice Chancellor: I do not see that it makes any difference, because he has already stated it.

Thos. W. Dobson. Called by Complainant. Cross.

A. Yes; one or two of the old posts are still standing.

CROSS EXAMINATION BY MR. GOUGH:

Q. How old are you? A. Sixty-six.

Q. Where was the Mackie orchard? A. What?

Q. Between what streets was the Mackie orchard? A. It ran away up to Fourth Street.

Q. From what other street? A. From back of his house, all the way up there, it was an orchard.

Q. And from Second Street up to Fourth?

The Vice Chancellor: No, he said from the back of the house.

A. Well, it ran all the way back there—shrubbery and plants and orchard.

Q. The back of the house faces on Second Street? A. Yes.

Q. How far from Second Street was the back of the house? A. Well, the house is very near First Street, and I could not say the number of feet in the block.

Q. I see. And the orchard began to the north of the house, did it? A. Yes, back to where they cultivated a garden and flowers there.

Q. Now, when was Second Street cut through, do you know? A. No, I have lost the date when those streets were cut through. It was soon after the City, I think, was inaugurated.

Q. Has there been any change in that neighborhood in regard to the street—is Second Street paved? A. No, sir; only the railroad runs through.

Q. When was that railroad put there? A. I should think about ten years ago.

Q. Are you sure of that? A. No, I am not sure.

Q. Why aren't you sure, Mr. Dobson? A. Well, I haven't lived there; I lived further away in the town, and I haven't taken particular notice on that;; it has been there a number of years, I know.

Q. How recently have you been down on the property? A. Well, occasionally, back and forth, during the year; there is not much travel down that way.

Q. When were you last there? I was there a month ago.

Q. How often did you go down there? A. Very seldom. My business takes me up town, and I very seldom get down to the shore.

Q. Well, how often each year? A. Each year?

Q. Yes; do you go down surely every year? A. A. Oh, yes, yes; several times a year I go down.

Q. And that is your recollection of when the railroad was put there, ten years ago? A. Yes, several years.

Q. But your judgment is ten? A. Well, yes; it is up to that, I should think.

Q. You do not think that it has been there fifteen years, do you? A. No, I do not.

Q. Well, take the period of about ten years ago, you used to go down there regularly then? A. Yes, at hap-hazard I would go down.

CROSS EXAMINATION BY MR. LEVY:

Q. Is there any orchard in the block between Second and Third Street, Mr. Dobson, to-day? A. Between Second and Third?

Q. Yes,—between Newman and Zabriskie? A. Oh, yes.

Q. There is an orchard? A. Yes.

Q. On the entire block? A. Yes, it runs pretty well through it.

Q. Pretty well through the entire block? What does the orchard consist of—what kind of an orchard is there to-day? A. Well, it is mostly pear trees.

Q. How many pear trees? Is there more than half-a-dozen pear trees in the entire block? A. Oh, yes, there is; there might be a couple of dozen.

Q. A couple of dozen on the entire block? A. Yes.

Q. Do you know what part of the block those pear trees are on? A. Well, they are towards the west—towards the western boundary.

Q. Well, tell us, with relation to the street? Are they near Zabriskie Avenue or Newman Avenue? A. Newman Avenue, more.

Q. Are they nearer Second Street, or nearer Third Street? A. Well, they go through.

Q. Are they distributed through the entire block? A. Yes, except at the upper end, they are cut down more where that house is.

Q. Well, you don't know on what particular spot those trees are, do you? A. They are pretty well towards the western side; they run from what you might call the western center, up north and south.

Q. Can you tell us, from looking at this map, showing the block between Second and Third Street, Zabriskie Avenue and Newman Avenue, where those pear trees are? This is Second Street, and there is Third Street (indicating on

the Map)? A. They are right along up here, I should say (indicating on the map).

Q. Now, could you say there are any pear trees on this particular block? (Indicating on the map.) A. No, I could not.

Q. Could you tell us whether there are any pear trees on C3, here? A. No, I could not tell.

Q. You do not know at just what particular point the pear trees are? A. No.

Q. But you know there are pear trees along Newman Avenue? A. Yes.

Q. Is that same situation to-day as it was twenty years ago? A. Yes.

Q. Has there been any change, with reference to that block, between to-day and twenty years ago? A. No, there has been no change at all.

Q. No change whatever? A. Only that it has fell into disuse.

Q. There have been no new trees placed on that block? A. No.

Q. No new fences erected on that block? A. No, except where they were set back.

Q. Excepting that they were set back? A. Yes.

By Mr. Hastings:

Q. Mr. Dobson, has there been anything done on that property by anybody, to your knowledge, in that block between Second and Third Streets to change the old conditions that you say have remained? A. No, nothing whatever.

By Mr. Gough:

Q. Don't you mean to say the railroad is a change, Mr. Dobson?

The Vice Chancellor: Well, that is not in the block. He is not dealing with the street, he is only dealing with the property between the street lines.

Recess until Wednesday, May 14, 1919, at ten o'clock a. m.

Chancery Chambers, Jersey City, May 14, 1919.

Hearing of the cause resumed, pursuant to agreement, at 10 o'clock a. m., in the presence of the counsel of the respective parties.

Mr. Hastings: I offer in evidence Deed, dated December 11, 1877, from Simon Fraser Mackie to William Man, acknowledged December 11, 1877, before John J. Louth, Commissioner for the State of New Jersey in the State of New York; recorded in Hudson County Register's Office on March 19, 1880, in Book 344 of Deeds, p. 158, etc.

(Admitted without objection, and marked Exhibit G. W. B, 1 of May 14, 1919.)

JEROME G. ATKINSON, sworn.

DIRECT EXAMINATION BY MR. HASTINGS:

Q. Mr. Atkinson, where do you reside? A. Brooklyn, N. Y.

Q. And on the 8th day of October, 1918, were you a Notary Public in and for the State of New York? A. I was, sir.

Q. Are you acquainted with William S. Man? A. Yes, sir.

Jer. G. Atkinson. Called by Complainant. Direct.

Q. I show you a paper purporting to be a deed, signed by the said William S. Man, as only surviving son and common law heir of William Man, Trustee, to Alexander L. A. Mackie, dated October 8, 1918, and ask you if that is your signature subscribed there? A. Yes, sir; it is; and that is Mr. William S. Man's signature.

Q. Did you know William Man, the father of William S. Man, who signed that paper? A. I knew him from 1862 until the date of his death.

Q. Had you any knowledge or familiarity with the affairs of the Estate of William Man?

Mr. Gough: Objected to as incompetent, immaterial and irrelevant.

The Vice Chancellor: What do you want to prove?

Mr. Hastings: I just want to prove the fact (unless counsel has no question about it) that this William S. Man is the common law heir of the trustee.

The Vice Councellor: Oh, well, do not bother with that. (To the witness) Was this William S. Man, who signed this deed, the son of the William Man mentioned as Trustee in that deed?

The Witness: He was, sir, to my own knowledge. If you want to know how I know that, Counselor, I can tell you.

The Vice Councellor: You need not tell how you know it, if you know it.

Q. After seeing William S. Mann sign that deed, and you subscribed the same as witness, did you sign, and is this your signature to the certificate of acknowledgment? A. That is my

signature, and that is my notary's stamp; he acknowledged it before me on that date.

Q. Do you know anything about the delivery of the deed? A. No, sir; I do not know anything about that.

CROSS EXAMINATION BY MR. GOUGH:

Q. When did the elder Mr. Man die? A. I cannot give you the accurate date, but he died about ten or eleven years ago; I could have easily ascertained that, if I had known.

Q. Well, about ten or eleven years ago? A. Yes.

Q. Where did he die? A. He died in New York.

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

Q. You knew the family? A. Oh, yes, sir; I knew him, and I know all of his brothers, and I knew his father.

Q. And where does young Mr. Man live, do you know? A. I cannot tell you whether he lives now in New York, or whether he lives in New Jersey. He has moved several times.

Q. Do you know where he lived at the time he made this deed? A. No, I could not say positively, sir.

Q. You have not seen him for some time? A. Oh, I see him at intervals of a few weeks, or a few months, as the case may be. He comes into the office where I am.

Mr. Hastings: I have not offered the deed yet, your Honor.

Mr. Gough: Oh, I did not know that.

Mr. Hastings: No. The court told me to show it to you.

Jerome G. Atkinson. Called by Complainant. Cross.

By Mr. Hastings:

Q. Are you connected with the office of Wingate & Cullen, Attorneys and Counselors at Law, in New York City? A. Yes, sir.

Q. How long have you been connected with that office?

The Vice Chancellor: What is the object of all of this? You have proven your deed.

Mr. Hastings: I have not proven delivery yet.

The Vice Councellor: Why doesn't the acknowledgment prove delivery—and its being found in your possession?

Mr. Hastings: Yes, if it is in our possession, I suppose that is right. I offer the deed in evidence.

Mr. Gough: I object to this deed being offered as evidence, upon this ground: It is given according to its terms, pursuant to a deed that has just been admitted in evidence, and that deed specifically provides that no conveyance, either of the funds arising out of this land, nor of the land itself, is to be made to this present complaint.

Mr. Hastings: Here are instruments, made, executed and delivered. Now, what their legal effect is—

The Vice Chancellor: Just one moment: Where did that estate pass on the death of the father and mother?

Mr. Gough: It remained in the trustee—oh, the beneficial interest?

The Vice Chancellor: Yes.

Mr. Gough: According to the testimony, in the daughter.

The Vice Chancellor: Now, the daughter made a deed to this complainant?

Mr. Gough: Yes.

Mr. Hastings: This is merely really confirmatory.

The Vice Chancellor: One moment: The daughter made a deed to the complainant; that certainly vested the title, in equity, in the complainant; and why would not the complainant then have the right to insist that this trustee put the legal title in him?

Mr. Gough: Because the trust deed itself provided that no conveyance was to be made by Man to this complainant. It named him. It said that in no event is any part of the funds arising from the sale of this land, or any part of the land itself, to be conveyed to this complainant; and neither Man nor—

The Vice Chancellor: After the death of the wife, was it not the duty of the trustee to convey to this daughter?

Mr. Gough: Yes.

The Vice Chancellor: Well, he did not do it.

Mr. Gough: He did not do it.

The Vice Chancellor Suppose he had conveyed to the daughter—then the daughter could have conveyed the legal and equitable estate to this man.

Mr. Gough: Yes.

The Vice Chancellor: Now, because the trustee has not done his duty, by making the conveyance, do you think that defeats the rights of the daughter to convey to anyone she pleases?

Mr. Gough: No, but it defeats the right of the trustee, or his heir, to convey to this named complainant.

The Vice Chancellor: How does it defeat his heir?

Mr. Gough: Well, it doesn't defeat the heir; Mackie, who takes from the daughter, takes subject to the operation of the exact words of the trust deed.

The Vice Chancellor: I do not see it. The trustee, in the absence of a conveyance by the cestui-que-trust, was precluded from selling to these two parties; but when the cestui-que-trust, for a valuable consideration, conveys to a person who is prohibited, after the estate has fallen in, then it is the duty of the trustee to convey, at least to the daughter, so that the daughter can fulfill her contract contained in the deed to Mr. Mackie. I will admit the deed in evidence.

Mr. Gough: But this deed, you know, goes directly to the complainant.

The Vice Chancellor: I know;; but the trust has closed; the trust has fallen in at the time of the death of the wife; and, having fallen in, every use for which it was created devolves upon the daughter; and the mere fact that the trustee did not convey to the daughter prior to this time does not affect the rights of the parties. I think it is the duty of the trustee now to convey directly to the complainant. I will admit the deed in evidence.

(The deed was thereupon market Exhibit G. W. B, 2.)

The Vice Chancellor: That deed (Exhibit G. W. B, 2) was given after this suit was filed?

Mr. Gough: It was given after the suit was filed.

Mr. Hastings: We only offer it as confirmatory.

Complainant rests.

THE CASE FOR THE DEFENDANTS.

JOHN J. CAIN, sworn.

DIRECT EXAMINATION BY MR. GOUGH:

Q. Where do you live? A. Bayonne, New Jersey.

Q. How long have you lived in Bayonne? A. About twenty-five years.

Q. Will you state to the Court, inclusive of Lots 3, 6, 27 and 28, what lots you own in Block 535 on the City Map of Bayonne?

Mr. Hastings: I object to that as immaterial and irrelevant.

The Vice Chancellor: Objection overruled.

A. I think I own about 23 lots in that block.

Q. (Showing the witness Map) Now, starting with Lot 1, at the corner of Second Street and Newman Avenue, what lots did you purchase there together?

Mr. Hastings: Will you note my objection again to the question, as immaterial and

irrelevant; ;and to all questions on the line of his title to the lots other than those in question in this suit?

The Vice Chancellor: The objection will be overruled. I do not know where it is going to lead to.

A. From 1 to 6. I did own 8 and 9, sold to the Duryea Manufacturing Company.

The Vice Chancellor: No. 9 is part of the lots in dispute?

Mr. Gough: Yes.

The Vice Chancellor: Is 8 in dispute, too?

Mr. Gough: No.

The Witness: I own from 10 to 15, inclusive; I own 18 and 19, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34 and 35.

Mr. Hastings: I move to strike out that answer, particularly with regard to Lots 27 and 28, if your Honor please, as it is a statement of a conclusion.

The Vice Chancellor: If he does not follow it up with proof it amounts to nothing. I will overrule the objection; it is a mere preliminary.

Q. Now, from whom did you purchase that Lot 1, Mr. Cain? A. From, I think, Mr. Weber, I believe; it is so long ago I cannot just say now; I can tell by looking at the deed, right away.

(Deed shown the witness.)

A. Yes, Weber.

Q. You bought that from Frank A. Weber? A. Yes, sir.

Q. By deed recorded the 31st day of July, 1902, in Book 819 of deeds for Hudson County, at page 217—

Mr. Hastings: One minute: In order to clear this matter up, if your Honor please, I will raise no objection to the question of formal proof of deeds; but I do think that it is fair that counsel should state at this time what they propose, and why they are proceeding with the question of title to lots not involved in this suit; and if there is any purpose that counsel can state to your Honor which is material, I shall allow the deeds to be put right in, without any formal proof whatever, of these various lots.

The Vice Chancellor: Counsel may state it, or not, as he pleases. He might simplify it to state it; ;but if the evidence, when finally offered, is immaterial, I will strike it out. But I do not know what he is going to prove now. It is not before a jury where it cannot be controlled.

Mr. Hastings: Well, it is a question of immateriality, rather.

The Vice Chancellor: Oh, well, the record has been encumbered with immaterial matter, so far. It is not going to hurt you.

Mr. Hastings: (To Mr. Gough) You can put in all of these deeds, if you want to, under the Court's ruling;; I mean that I shall raise no objection that they are valid. Just put them in, if you have got the deeds.

Mr. Gough: I offer this deed in evidence, and ask to have it marked.

Mr. Hastings: I object to it for immateriality and irrelevancy, as I do to all the deeds of these other lots.

Mr. Gough: It covers property in Block 535.

The Vice Chancellor: Suppose you just make an omnibus offer (you have all of the deeds on Block 535), of property not covered in this suit, and let them be marked in evidence.

Mr. Gough: I offer that deed in evidence, of that lot, and other lots.

The Vice Chancellor: Well, is there other property in this?

Mr. Gough: Yes, sir.

The Vice Chancellor: Just state what is in 535.

Mr. Gough: This deed covers the following lots in Block 535: Lot No. 1, Lot No. 5, Lots Nos. 12, 13, 14, 15, 23, 29, 30, 31, 32, and 33.

(The deed was thereupon marked Exhibit D, 1.)

Mr. Gough: I offer in evidence deed from Euphemia Elsie W. Gilchrist, individually, etc., and John Gilchrist, her husband, to John J. Cain, recorded July 17th, 1916, in Book 1237 of Deeds for Hudson County, p. 67. This deed covers Lots 31, 35 and 10 in Block 535, Lot 2 in Block 535, and Lots 4 and 11 in Block 535.

(The deed is admitted and marked Exhibit D, 2.)

Mr. Gough: I offer in evidence deed from David A. Jewell and wife to John J. Cain, recorded December 4, 1902, in Book 816 of

Deeds for Hudson County, at page 541, which deed covers the following lots in Block 535: Lot 21.

(The deed was admitted and marked Exhibit D, 3.)

Mr. Gough: I offer in evidence Deed from National Realty Company to John J. Cain, recorded October 14, 1902, in Book 821 of Deeds for Hudson County, at p. 274; dated October 10, 1902; which deed covers Lot 22 in Block 535.

(The deed was admitted and marked Exhibit D, 4.)

Mr. Gough: I offer in evidence Deed dated January 6, 1906, from Joseph J. Duggett an dwife to John J. Cain, recorded January 9, 1906, in Book 922 of Deeds for Hudson County, at page 601, covering Lot 8 in Block 535 on the City Map of Bayonne.

(The deed is admitted and marked Exhibit D, 5.)

Mr. Gough: I offer in evidence Deed dated September 26, 1901, from Emma Gerard to John J. Cain, and recorded on the 15th day of October, 1901, in Book 785 of Deeds for Hudson County, at page 413, covering Lots 18 and 19 in Block 535 on the City Map of Bayonne.

(The deed is admitted and marked Exhibit D, 6.)

Q. Since the delivery of those deeds, Mr. Cain, you have been in possession of the land they cover? A. Yes, sir.

Q. And nobody else has claimed any possession of any part thereof? A. No, sir.

John J. Cain. Called by Defendants. Direct.

Q. Now, I ask you, Mr. Cain, for how long have you been paying taxes on Lots 3, 6, 9, 27 and 28 in this Block?

Mr. Hastings: I object to that, as immaterial and irrelevant.

The Vice Chancellor: Objection overruled.

A. Why, since the day I obtained them, the date I purchased them.

Q. I produce the tax bill on Lots 3, 6, and 9 for 1910; did you pay that tax bill at the office of the Collector of Taxes in Bayonne? A. I did; yes, sir.

Q. And those lots are on this bill? A. Yes.

Q. And that was for the year 1910? A. Yes.

Mr. Gough: I offer that tax bill in evidence.

Mr. Hastings: Objected to, as immaterial and irrelevant.

The Vice Chancellor: I will overrule the objection. Your objection goes to the materiality of the offer; you do not dispute the payment, do you?

Mr. Hastings: No.

The Vice Chancellor: Then you have it in evidence that Mr. Cain paid the taxes on all these properties ever since he acquired them by deed down to date. The objection goes to the materiality of the offer, but it is not disputed that he did pay them.

Mr. Gough: All right, sir. I offer in evidence Deed from the Collector of Revenue of Bayonne to the City of Bayonne, dated January 31, 1895, and recorded December

23rd, 1896, in Book 661 of Deeds for Hudson County, at page 405, covering Lot 27 in Block 535. The deed I offer is a certified copy.

Mr. Hastings: Let me look at it, please.

(The deed was thereupon handed to Mr. Hastings for his inspection.)

The Vice Chancellor: Well, counsel knows what is in that deed, don't you?

Mr. Hastings: I will object to the offer of the deed as not complying with the requirements of the statute of the Adjustment Act Commission.

The Vice Chancellor: In what respect?

Mr. Hastings: In the first place, this deed does not certify (although it recites certain Martin Act proceedings and the certificate of sale, which have been returned to the Collector; and this is a deed purporting to be in fee) what report of the Commissioners the deed is based upon; nor does it set out, as required by the statute, the year for which the taxes had been assessed, on which the tax sale and this deed are based. Furthermore, the deed describes land as "fronting on Fourth Street in the First Ward in the City of Bayonne," and the premises in dispute here aer situated on Newman Avenue.

Mr. Gough: The deed describes the block as fronting on Fourth Street.

Mr. Hastings: I also object to the offer of the deed because, at this time, there is no proof by the defendant of the adjustment of taxes and sale under the lien for taxes, under the statute of Adjustment Commissioners, Martin Act.

The Vice Chancellor: Well, the recitals in the deeds, under the Tax Act, as I recall it, are *prima facie* evidence of their contents.

Mr. Hastings: I might state now, your Honor, that these proceedings under which the defendants here claim title are based upon Report No. 10, that it was advertised and sold for the taxes adjusted by Report No. 10. We have produced in Court here, and shown to your Honor, that, previously, Report No. 5 was filed, in which these taxes were adjusted, and that an order had been made confirming Report No. 5. Now, under the statute, your Honor is well aware that it says that when a report comes up for confirmation before the Circuit Court, after a hearing, the Court may either refer it back to the Commissioners of Adjustment, or confirm it; but that when once confirmed, it is final and binding upon the City, and a lien; and, consequently, we consequently, we contend that any proceedings subsequent to that, by way of a second report, is an absolute nullity. The statute makes the effect of the confirmation of Report No. 5 final and binding.

The Vice Chancellor: And nothing else can be done under it—no future adjustment can be made under it?

Mr. Hastings: No, sir (citing *Rutherford* vs. *Meginnis,* 72 N. J. Law, 444, and reading to the Court the whole of the opinion of the Court by Swayze, J.). Now, there is one other objection that I may state: It shows that the taxes for 1887 were also included. Now, this Martin Act as to cities of the Bayonne class was passed in 1886, and

your Honor knows the case of *Jersey City* vs. *Speer,* that held that they had no right to adjust taxes assessed or levied after the passage of the Act. True, that was later, in 1891, but these proceedings were had in 1888.

The Vice Chancellor: Let us see: No taxes could be adjusted under the Martin Act, unless there were taxes a lien prior to the supplementary act of 1892; and, therefore, they affirmed the adjustment against all the properties where there had been taxes accrued prior to 1892, and set them aside as to the rest.

Mr. Hastings: What I mean is that, in that case, they held that, until the amendment of the statute, in the interval between the passage of the Act and until the statute was amended, the original Act gave no power at all to the Commissioners to adjust taxes accrued after the date of the passage of the Act.

The Vice Chancellor: Oh, no—unless they were liens prior to the passage of the Act.

Mr. Hastings: Oh, no.

The Vice Chancellor: Oh, yes. That Jersey City case held that the jurisdiction of the Commissioners to adjust taxes depended upon whether there were taxes in arrears prior to the passage of the original Martin Act; and, under the supplement, taxes in arrears prior to the passage of the supplement; because the supplementary act extended the Martin Act down to that date, and not afterwards.

Mr. Hastings: That is an additional point; but this case of *Rutherford* vs. *Meginnis* is the case that holds—

The Vice Chancellor: There they undertook, without a second report of the Commissioners,—a second adjustment,—to act upon the first report, didn't they?

Mr. Hastings: To amend it.

The Vice Cahncellor: There were no two reports there.

Mr. Hastings: No, I know that; but I will refer you to the section there of this statute, I think it is—

The Vice Chancellor: Well, to save time, I will let you argue that later. I will admit it in evidence now, because it has been a common practice here in Jersey City to have one, two and three adjustments of the same property.

Mr. Hastings: They may do that, yes, but the trouble is they have not done it here.

The Vice Chancellor: Well, I will hear you on the argument later. I will admit it in evidence now.

(The deed was thereupon marked Exhibit D7).

The Vice Chancellor (to Mr. Gough): In view of the fact that this does not refer to the report, you may have to tie that up to the report under which it was sold.

Mr. Gough: I offer in evidence certified copy of a deed from the City Collector of Bayonne to Edward L. Preston, dated December 15th, 1896, and recorded January 30, 1897, in Book 666 of Deeds for Hudson County, at p. 16, covering Lot 27 in Block 535. This is the deed of the City to the purchaser.

(The deed is admitted and marked Exhibit D8.)

Mr. Hastings: Might I suggest that you offer all of these things, and I put in the same objection to them?

The Vice Chancellor: Yes, it may be done.

Mr. Gough: I offer in evidence certified copy of a deed from the City Collector of Bayonne to the City of Bayonne, dated January 31st, 1895, and recorded December 23, 1896, in Book 661 of Deeds for Hudson County, at p. 408, covering Lot 28 in Block 535.

(The deed is admitted and marked Exhibit D9.)

The Vice Chancellor: Your objection will be the same to all of these, Mr. Hastings, so you need not object to every one.

Mr. Hastings: Yes; one minute—to make that clear, I also, in connection with the deeds subsequent to the deeds from the Collector to the City, which does not recite the report (the subsequent deeds in their chains of title do recite Report 10), so as to those deeds I made the additional objection—

The Vice Chancellor: Well, wait until you come to them.

Mr. Hastings: He is offering them.

The Vice Chancellor: No, he is only offering deeds from the City.

Mr. Hastings: The deed from the City to Preston recites Report 10, and I object to it, because it appears by the record that that very tax was a nullity and void, because Report No. 10 has no validity.

Mr. Gough: I offer in evidence certified copy of deed from the Mayor and Council of

the City of Bayonne to Edward L. Preston, dated December 15, 1896, and recorded January 30, 1897, in Book 666 of Deeds for Hudson County, at page 24, covering Lot No. 28 in Block 535.

(The deed is admitted and marked Exhibit D10.)

The Vice Chancellor (examining the deed Exhibit D8): Well, Mr. Hastings, you were right on that. This is not a tax deed, this is a deed from the Mayor and Council (having become purchaser) to Preston (referring to the deed Exhibit D8). Now, your objection is what, to that?

Mr. Hastings: Well, the main objection is that it shows on its face that it is based upon proceedings of Report No. 10 of the Martin Act for adjustment, and that, by the record of the proceedings, it appears that there is a previous report, No. 5, including the same years, of taxes adjusted, with the addition of the report of another year; but it includes most of the same taxes; and there is an order confirming Report No. 5, which, under the statute, is final and conclusive, and a lien binding on the party, and that no further adjustment can be made.

The Vice Chancellor: When did Adjustment 10 go through?

Mr. Gough: In September, 1889.

Mr. Hastings: And the other went through in 1887, or '88.

The Vice Chancellor: I will overrule the objection.

Mr. Gough: I offer in evidence certified copy of a deed from the City Collector of

Bayonne to the City of Bayonne, dated January 31, 1895, recorded December 23, 1896, in Book 665 of Deeds for Hudson County, at page 396, covering Lot 3 in Block 535.

(The deed is admitted and marked Exhibit D11.)

Mr. Gough: I offer deed from the City of Bayonne to Edward L. Preston, a certified copy, dated December 15, 1896, recorded January 30, 1897, in Book 666 of Deeds for Hudson County, at page 22, covering Lot 3 in Block 535, City of Bayonne.

(The deed is admitted and marked Exhibit D12.)

Mr. Gough: I offer in evidence certified copy of a deed made by the Collector of Bayonne to the City of Bayonne, dated January 31, 1895, recorded December 23, 1896, in Book 661 of Deeds for Hudson County, at page 399, covering Lot 6 in Block 535.

(The deed is admitted and marked Exhibit D13.)

Mr. Gough: I offer in evidence certified copy of deed from the City of Bayonne to Edward L. Preston, dated December 15, 1896, recorded January 30, 1897, in Book 666 of Deeds for Hudson County, at page 719, covering Lot 6 in Block 535.

(The deed is admitted and marked Exhibit D14.)

Mr. Gough: I offer in evidence certified copy of deed from the Collector of Bayonne to the City of Bayonne, dated January 31, 1895, recorded December 23, 1896, in Book 661 of Deeds for Hudson County, at page 402, covering Lot 9 in Block 535.

(The deed is admitted and marked Exhibit D15.)

Mr. Gough: I offer in evidence original deed from the Mayor and Council of the City of Bayonne to Jeremiah Mahoney, dated December 15, 1896, and recorded January 20, 1897, in Book 663 of Deeds for Hudson County, at page 64, covering Lot 9 in Block 535.

(The deed is admitted and marked Exhibit D16.)

Mr. Gough: I offer in evidence deed dated September 15, 1902, and recorded October 14th, 1902, from Jeremiah Mahoney and wife to John J. Cain, recorded October 14, 1902, in Book 821 of Deeds for Hudson County, at page 269, covering Lot 9 in Block 535.

(The deed is admitted and marked Exhibit D17.)

Mr. Gough: I offer in evidence deed from Alice R. Preston, Special Guardian, etc., to John J. Cain, dated July 18, 1903, and recorded August 13, 1903, in Book 849 of Deeds for Hudson County, at page 17, etc., covering Lots 3, 6, 27 and 28 in Block 535.

(The deed is admitted and marked Exhibit D18.)

Mr. Gough: I offer in evidence deed dated July 3, 1916, from John J. Cain to Duryea Manufacturing Company, recorded July 5, 1916, in Book 1234 of Deeds for Hudson County, at page 288, covering, among other lots, Lot 9 in Block 535.

(The deed is admitted and marked Exhibit D19.)

Mr. Hastings: I may have my objection to all of these offers, as I have stated?

The Vice Chancellor: Yes.

Q. You have lived continuously in Bayonne for the last twenty-five years, Mr. Cain? A. Yes, sir.

Q. And near this property? A. Yes.

Q. How far from this property? A. Well, not at any time further than ten blocks away.

Q. And where did you live when you purchased the property—where did you live when you bought the Preston property? A. I think I lived on First Street.

Q. And that was the same time you bought the lot from Mr. Mahoney? A. Yes, sir.

Q. Now, then, that was about twenty years ago, was it not? A. In that neighborhood.

Q. Were there fences along Second Street at that time? A. Well, there was a post here and there, and a piece of a slat on a board—nothing more than to keep a cow out.

Q. What about Newman Avenue? A. Well, Newman Avenue was about in the same predicament; but in the last ten years Mr. Stringham put up wire and an odd piece of timber to keep his horses out of the different properties there.

Q. Where did Stringham keep his horses? A. At that time?

Q. Yes.

Mr. Hastings: What time are you referring to?

Q. When did Stringham keep his horses there, Mr. Cain? A. Oh, he has kept them there, on and off, in that lot, for the last twelve years.

Q. And what lot was that? A. Well, it is all open—the Cotton Seed Oil lot, and part of my lots between Second and Third Street, which is

claimed is an orchard in this thing, in this suit, and all around that vacant property there.

Q. The stable that Stringham used was on parts of Lots 28 and 29, was it not? A. Yes, sir.

Q. And did you give Stringham permission to use that stable? A. I did.

Q. Did he pay you for that? A. I don't recollect; I asked him last night about that, and he said he could not recollect whether he paid me, or not; but I gave him permission to use the property.

Q. And who uses the stable now? A. Why, there is a lady by the name of Hermano, who lives on the Mackie property.

Q. And how long has she been using that stable? A. Well, I think about five years; I may be mistaken; I did not keep very close tab on that.

Q. Does she pay you anything for that? A. She sometimes pays me three dollars a month.

Q. And how far back does her first payment go? A. Well, she really pays for it; it goes back to the time that she occupied it first.

Q. She lives in the old Mackie homestead, doesn't she? A. She does.

The Vice Chancellor: What is the testimony as to the time when Mrs. Hermano went there?

Mr. Gough: Mrs. Hermano went there, I think, about five years ago?

By the Vice Chancellor:

Q. Now, you say Stringham put a wire fence around there? A. He put some barbed wire there, to keep his horses out.

Q. Well, around the whole plot, or how much of the plot? A. Well, he fenced in the entire block; that is, where it needed it. There was a post and a piece of a board nailed where they had it, and then he secured the whole block between boards and wire.

Q. In other words, the Mackie homestead served to keep the horses in at one end, and all around the residue, wherever there was an opening, he put in barbed wire? A. Yes, your Honor.

By Mr. Gough:

Q. Did he put that barbed wire up along Newman Avenue? A. He did.

Q. And along West Second Street, too? A. He did.

Q. And along Zabriskie Street? A. Yes, sir.

Q. How about First Street—did he put any along there? A. No, he didn't have to put any along there.

By Mr. Hastings:

Q. One minute, Mr. Cain. You are speaking from personal knowledge, that you know he put that up? A. Yes, sir; Mr. Stringham told me last night.

The Vice Chancellor: No, do you know of your own knowledge?

Mr. Hastings: If he cannot tell of his own knowledge I object, and I ask to have that stricken out, then.

The Vice Chancellor: I will strike out that part of it, unless he says he knows it himself.

A. I have been visiting there you might say once a week, or twice a week, and I have seen Stringham and his men putting it up, from time to time, enclosing that place so that some of his old horses could pasture there; that was a common occurrence, from year to year, with Mr. Stringham.

By Mr. Gough:

Q. Now, Mr. Bernstein had a dancing platform there, hadn't he? A. Yes, sir.

Q. Where was the entrance to that platform? A. Why, he crossed the street from the Dempsey estate, which is Avenue C, and walked across Zabriskie Avenue into his place; and he could go in through First Street; some went in through First Street.

Q. Now, on what lots, Mr. Cain, was the platform? A. On Lots 27—a part of it on 27—and 28, 18, and 19, 21, 22 and 23 is what I leased to him for that purpose.

Q. For how long did you lease that to Bernstein? A. For the season.

Q. When was that? A. I judge that was thirteen or fourteen years ago, about.

Q. And he paid you rent? A. He did.

Q. How much did he pay you for the season? A. My recollection is that he paid me sixty dollars for the season.

Q. Is any of this property leased at present? A. Yes, sir.

Q. What lots? A. All the lots I own in that block.

Q.And to whom are they leased? A. To Meyerhoff and some amusement company—I don't know

the name—Meyerhoff; I have the lease right here (producing the lease)—Henry Meyerhoff.

Q. When did you lease that property? A. April 1st.

Q. Of this year? A. Yes.

Mr. Hastings: I object to that as immaterial and irrelevant; of course, that is since the commencement of this suit, and in no way can affect the question of possession.

The Vice Chancellor: He is showing continuity. He shows he leased all of this property.

Mr. Hastings: The point in issue is at the time of the filing of the bill.

The Vice Chancellor: Certainly, he has shown that he leased all this part; that he rented the stable and collected the rent.

Mr. Hastings: I mean this Meyerhoff lease, which was last April.

The Vice Chancellor: It is a continuation only.

Q. Meyerhoff has paid you rent under that lease? A. He has; yes, sir.

Q. Now, on First Street, have you rented any property, from time to time? A. Yes, sir.

Q. What rentings have you made along First Street? A. Well, I rented that to a man named Lahey, and a man named McCann.

Q. How long ago was the renting made? A. Well, it has been going on for the last fifteen years; for frankfurther stands and merry-go-rounds.

Q. And on what lots were they? A. Well, they were on 21 and 22 and 23, 18 and 19.

Mr. Hastings: Not the lots involved in this case.

By the Vice Chancellor:

Q. Well, what did these tenants do when you made the leases—what use do they make of the property? A. Well, one man had a merry-go-round; another man had a peanut stand and a frankfurter stand—a kind of an amusement park; they used it for that purpose for the season.

Q. Well, on all of these lots where you made the leases was there some structure put upon it, indicating a use by some one that was apparent to the public at large? A. In the early days, in the lease to Bernstein, there was quite an extensive dancing pavilion put there, and there was considerable fencing put up. He fenced my property in, independent of Mr. Mackie's property, so he would not be trespassing.

By Mr. Gough:

Q. That was between Lots 17 and 18, I suppose? A. Between 17 and 18.

By the Vice Chancellor:

Q. Well, did that fence run into First Street? A. It ran to Zabriskie Avenue, and crossed Zabriskie Avenue.

Q. Well, how about your lots on First Street? A. Well, the lots on First Street, there was an old fence up there, and part of it is there in front of the Mackie estate today; and the old fence was there when I obtained the property.

Q. Well, now, what use was made of your property on First Street? A. Well, for the same purpose—of amusement privileges.

Q. Was that fenced in to connect with the amusement privilege? A. It was at that time, but they have taken it down at the present.

Mr. Hastings: That was not connected with Bernstein, your Honor.

The Witness: Yes, it was connected with Bernstein.

Q. That is what I understood—there was an entrance from First Street and an entrance from the other street? A. Yes.

Q. Well, now, did they fence a way for people to go into First Street from the Bernstein amusement place? A. They fenced the dancing platform—no, they didn't; the dancing platform stood by itself, and they came through First Street into the dancing platform, from First Street, or from Zabriskie Avenue, which led into Bernstein's main amusement ground, which was at Avenue C and First Street.

Q. Then there were two entrances? A. There were two entrances.

Q. Now, was that entrance fenced in laterally —that is, the sides of the way leading into the amusement place? A. Yes, your Honor.

Q. That was fenced? A. Yes, your Honor.

By Mr. Hastings:

Q. The entrance from First Street was entirely over your own lots, not involved in this suit? A. Yes, the entrance was entirely over my lots.

By Mr. Gough:

Q. Now, Bernstein put a fence between 17 and 18? A. He did.

Q. Now, how far back did that fence run? A. Well, I think the lot is 119 feet deep, and, oh, it must have run 169 feet, altogether.

Q. 169 feet from Zabriskie Avenue? A. Yes.

Q. And then that ran into Lot 28, didn't it? A. Into Lot 28.

Q. About from 25 to 40 feet beyond the middle of the block? A. Well, it was some part of it went over, I don't know just how much.

Q. Well, that fence then went south along Lots 28 and 27 to the rear of Lot 24, didn't it? A. 23.

Q. To the rear of Lot 23? A. 23.

Q. And then it took a turn there, and went east towards Zabriskie Avenue, didn't it? A. No; it was only fencing in my part.

Q. Are there any fruit trees on Lots 27 and 28, Mr. Cain? A. No.

Q. Have you ever seen any fruit trees there? A. No, I have not.

Q. Are there any on Lots 3, 6 or 9? A. There ain't any on that block, that entire block; and there has not been since I obtained them, for twenty years.

Q. Now, do you remember the Duryea people beginning to build? A. Yes, sir.

Q. When was that? A. Well, I believe that was in September, if I recollect right, three years ago.

Q. And that would be September, 1916? A. 1916.

Q. A few months after you gave them the deed? A. Well, right away, as soon as I gave them the deed.

Q. And they built on Lot 9? A. 8 and 9.

Q. And what did they build? A. Well, they have got a brick structure.

Mr. Hastings: Is there any need of going into that?

The Vice Chancellor: There is only one thing—it shows that your bill is improperly filed against them.

Mr. Hastings: As to the time I have no objection; but he asked him what they built there; I say we do not need to go into that, do we. There is a building there, we admit it; it is only a question of when it was started, as far as this suit is concerned.

The Vice Chancellor: Then your suit would not lie against the Duryea Company.

Mr. Hastings: Not at all, if they show they were in possession there before the filing of this bill.

The Witness: There is a very substantial brick building there.

Mr. Gough: I have my own reasons for bringing this out.

The Vice Chancellor: Go ahead.

Q. Just describe that building, Mr. Cain?

Mr. Hastings: The complainant has testified to that, and it is admitted as a fact. Unless counsel can show some materiality, I object to it as immaterial and irrelevant.

The Vice Chancellor: I do not know what he is going to show. Your only objection to it can be as to Mr. Duryea. As far as I know, it may have some effect on the other. But, so far as Mr. Duryea is concerned, evidently

your suit would not lie, because he was in possession before the commencement of this suit, and you were not.

Mr. Hastings: That is the only thing to be determined as to Duryea—the date.

The Vice Chancellor: I will overrule your objection, because I do not know where it is going to lead to; if it does not lead to anything, then it is immaterial and I won't regard it.

(Question repeated.)

A. It is a one-story building, and I judge it is a building about 35 feet or 40 feet in depth, and probably 40 feet square. It has a railroad siding to it.

Q. You saw the excavation there? A. I did.

Q. That was how soon after you delivered this deed? A. Well, I saw the material on the railroad track, unloaded there, within a month after I delivered the deed.

Q. You saw the material on Lot 9? A. On Lot 9.

Q. And when was the building completed? A. I believe, to the best of my knowledge, it was finished in April; they were in a big hurry with it; they worked all winter on it.

By Mr. Hastings:

Q. April, 1917? A. 1917.

By Mr. Gough:

Q. Now, Mr. Cain, did you have anything to do with the putting in of the railroad through Second Street? A. Yes, sir.

Q. Just tell us what you did in that matter? A. Well—

Mr. Hastings: I object to it, as immaterial and irrelevant.

The Vice Chancellor: The objection I will overrule; I do not know where it is going to lead to.

Mr. Hastings: May I say to your Honor, of course, if this record had to be reviewed it would be an awful burden on either side.

The Vice Chancellor: I know it would, but, Mr. Hastings, I pointed out to you what your line of proof was; you utterly ignored it, and you have loaded up this record with matter that is absolutely immaterial. The Fittechauer case shows precisely what you ought to prove, and you have gone beyond it and offered a lot of other matter. Now, I am not going to limit the other side. I will strike it out, if it is immaterial.

Q. What did you do, in regard to getting that railroad through there, Mr. Cain? A. Why, I got in touch with Mr. Besler.

Q. Who was Mr. Besler? A. The President of the Central Railroad of New Jersey; and he wanted to run a railroad up Second Street to—

The Vice Chancellor: How is this going to connect up with this case?

Mr. Gough: I want to show that, acting as owner of the lots along Second Street there—the lots in dispute, 3, 6 and 9—Mr. Cain went about getting a railroad through that street.

The Vice Chancellor: Well, I do not suppose the other side will object to that.

Mr. Hastings: No, I don't see why we want it in this record.

The Vice Chancellor: I don't know.

Mr. Hastings: That is my objection to it.

The Vice Chancellor: Do you deny that Mr. Cain sought, as owner of these lots, to have the railroad go through the street?

Mr. Hastings: I object to the question of "ownership." I do not have any objection, and I undoubtedly know that he was interested in getting it through; but the question of who was the owner of these lots is for the Court.

The Vice Chancellor: That does not prove ownership.

Mr. Hastings: I therefore see no relevancy in taking this testimony.

The Vice Chancellor: Did not Mr. Cain have to sign some petition to the Mayor of Bayonne?

Mr. Hastings: All right—assume that he did.

The Vice Chancellor: Mr. Cain, I assume, pretending to be the owner, applied to the City of Bayonne to give permission to the Central Railroad Company to lay its tracks through the street; now, whether he was owner or not is a different question, but it is an attempt to exercise some dominion over the property.

Mr. Hastings: Well, right on that point—and that is the only thing I want to argue—

The Vice Chancellor: Well, I won't listen to it now; go ahead with the case.

Q. Tell us exactly what you did, Mr. Cain? A. Well, at that time I owned out where the Cotton

Seed Oil people are, some fourteen acres, on both sides of the street, from First to Fourth Street; I was in partners with a friend, and we owned the entire fourteen acres there; and I also owned, I think it was twenty lots between First and Second Streets; and the idea was—or not the idea—but we had a purchaser for that property—

Mr. Hastings: I ask to strike that out.

The Vice Chancellor: I will overrule the objection. I will strike it out when we hear the testimony, if it is not material.

A. (resuming) —we wanted a railroad there, for we had a purchaser.

The Vice Chancellor: Now, Mr. Gough, where is any of this connected up with the matter here?

Mr. Gough: Well, I won't press it.

The Vice Chancellor: You may strike all of this testimony out. If you can show he signed a petition, pretending to be the owner, in a legal form, or show that the attention of this witness was called to it, it is all right.

Q. Did you sign any petitions to any public bodies, as the owner of these lots?

Mr. Hastings: I object to that as immaterial and irrelevant, and not the best poof.

The Vice Chancellor: I will sustain it, on the ground that it is not the best proof.

Q. This woman who has the stable, what does she use Lots 27 and 28 for? A. For raising chickens.

Q. And has been using that for that purpose for how long? A. I believe, about five years.

The Vice Chancellor: Is this stable wholly on the lots purchased by Mr. Cain?

Mr. Hastings: Both of them testify that it is on Lot 28, partly (which is a lot in dispute), and partly on Lot 29 (which is not in dispute, Mr. Cain's lot).

The Vice Chancellor: Mr. Cain owns 29?

Mr. Hastings: Yes.

The Vice Chancellor: So the whole stable is on property that Mr. Cain claims to own?

Mr. Hastings: Claims to own.

Mr. Gough: And part of which he admittedly owns.

The Vice Chancellor: I understand that.

CROSS EXAMINATION BY MR. HASTINGS:

Q. Mr. Cain, how many times did you see Mr. Stringham putting up wire fence, yourself? A. Well, I seen his men there at three times, to my knowledge.

Q. Covering a period of how many years? A. Covering a period of ten years.

Q. What was the date of the first time you saw him? A. Well, in the Spring of the year. I don't—

Q. Well, what year was it? A. Well, I ride up and down through there on the machine, and I would see his men working there putting up these fences.

Q. Well, you say three times in ten years—when was the first time? A. Why, it was in the Spring of 1909 or '10.

Q. And when was the second time? A. Well, I am sure I seen them there in 1916, fixing it.

Q. And when was the third time? A. Last Spring; he was fixing it to keep some cows in there.

Q. On either of these three occasions was Mr. Stringham there? A. No, his men were there—his foreman, whom I am acquainted with.

Q. How much fence did you personally see Mr. Stringham's men put up? A. Well, as I rode by they were working there; and later I saw the place enclosed.

Q. You just saw this as you rode by, is that it? A. Well, I stopped to look at what was going on.

Q. Well, how long did you stop? A. Oh, five minutes.

Q. On each of these three occasions? A. Probably.

Q. Do you mean to say that the whole of that block, so far as these interior vacant lots are concerned, had been strung with wire fence by Mr. Stringham? A. No; partly; mostly board fence.

Q. Do you mean to say that Mr. Stringham put up any wire fence in front of or around the boundaries of Lots 3, 6 and 9, 27 or 28, in this block? A. Yes, sir.

Q. Which ones did he put it on? A. Partly 27 and 28; partly from 29 to Lot No. 1.

Q. Well, now, the lots in dispute here, 3, 6 and 9 and 28 and 27—that is all I asked? A. Well, what there was of 27 and 28, yes; that is where one of his entrances was to the stable.

Q. And you saw him put wire fence there? A. I saw him put some fence there; I don't know

whether it was wire there, or board; I didn't pay that much attention to it; but he was doing it.

Q. Do you mean to say that at the time of the commencement of this suit there was any wire fence around Lots 27 and 28? A. I do; it was mesh wire put up, that part of it, inside, by the chicken woman.

Q. Well, I am asking you what you saw Mr. Stringham do; I am only asking you about the fence that you have described that you saw Mr. Stringham's men putting up? A. I saw the fence there, and I saw Mr. Stringham's men working there.

Q. When was it that you saw them working there around the Lots 27 and 28—out of these three occasions, which one was it that you saw that? A. Well, I wouldn't say; I don't know exactly, because they were fixing the entire plot to keep his horses from going in there.

Q. Well, answer the truth, Mr. Cain; is it not that you went up there and saw some fence put up—you do not mean to say that you can tell positively that this was put on Lots 27 and 28? A. But I seen it afterwards there.

Q. Well, how much barbed wire fence is there around Lots 27 and 28? A. I said on the start that there was boards and wire fence; there was a piece of board and a piece of wire, here and there, as it may be worked in. You would have to have specifications to follow the fence that is there at the present time, or ever was there for the last twenty years.

Q. But the wire which confines the chickens that are kept on Lots 27 and 28 was put up by Mrs. Hermano? A. Yes.

Q. Now, as to Lots 3, 6 and 9, was there any wire fence around or in front of those? A. No, there is pieces of board there, and there may be a piece of wire stuck in here and there. Lot No. 9 was fenced in with an iron fence.

Q. Well, that is the Duryea lot. We don't mean that. A. Yes.

Q. You do not mean that Lots 27 and 28 are fenced around, do you—clear around the lots? A. No.

Q. It is only right along the street line, the front line? A. Why, it runs from Lot 24—

Q. No, I mean just 27 and 28.

The Vice Councellor: He is answering your question.

A. I am trying to describe how that runs. Why, the wire netting put up by Mrs. Hermano is fixed on the interior of the lots.

Q. Yes, on the inside? A. Inside, and it takes in different lots; I could not tell, without measuring that, what lots it was really on, but I know it protects the stable and her house, which makes the combination of the chicken farm.

Q. Now, as to this Bernstein Amusement Park, Mr. Cain—Bernstein was there about two months, wasn't he? A. He put in a season down there.

Q. Well, the summer season? A. Yes, June, July and August.

Q. Then he left, and the Park was abandoned, wasn't it? A. Well, they all leave in September.

Q. Well, it was just that one season, wasn't it, he was down there? A. That is all; ;I think he spent one season there.

Q. And did I understand you to testify that you claim that any part of the fence included in the Bernstein Park touched on Lots 27 and 28? A. Yes, it went over at least 21 feet, according to this map; it went to the line of Lot 23.

Q. Well, that is merely a map of lots, it don't show any fence. A. No, but it shows the lines where his fence was. I remember what I leased to him.

Q. Well, now, wait a minute: Did you measure that fence, with reference to the depth to which it extended into Block 535? A. No; but I leased it to him, and I know—

Q. No, never mind; did you measure it; that is the only question I want? A. No, I didn't measure it.

Q. Then, personally, you don't know the exact dimensions or extent of the fence into Block 535? A. His understanding with me was—

Q. Wait, now; what I am asking you is your knowledge of the actual location? A. He fenced in my property.

Q. Well, your property is very extensive in this block. You answered a moment ago, however, that the entrance from First Street into the park was entirely over lots owned by you which are not involved at all in this suit, didn't you; and that is true? A. Why, yes.

Q. And do you recall the rear line of the fence of that park runs out to First Street? A. It don't.

Q. So, your testimony as to the extension of the fence is entirely from memory, is it not? A. Entirely from memory.

Q. Now, as to the Meyerhoff lease that you spoke of, just made this last month, did that lease

any of the lots in dispute in this case, 3, 6, 9, 27 or 28? A. That includes all the lots I own in there—27 lots.

Q. Well, have you got that lease, Mr. Cain? A. Yes, I have (producing the lease).

Q. Does it specify the parts, or is it just general? A. Yes, it specifies the parts.

Q. Mrs. Hermano, though, has been using Lots 27 and 28 and that portion of 29 on which the stable is? A. Yes.

Q. For the last five years, has she not? A. Yes, sir.

Q. And she is in possession there still? A. Yes.

Q. You say that you leased, then, Lots 27 and 28, to Meyerhoff, a month ago? A. Yes, sir; I do; and he leased to Mrs. Hermano, or sublet it.

Q. That is a transaction that occurred April 1st of this year? A. Yes; they had some understanding between themselves.

Q. Now, the Lahey and McCann lease, does that include any lots in dispute in this case? A. No; M. Lahey is also subletting from Mr. Meyerhoff.

Q. Can you fix, with any definiteness, from your own knowledge, Mr. Cain, when the Duryea excavation began on Lot 9? A. No, I cannot, positively.

Q. Is it not a fact that they first began in 1916 to build their main factory building across the Avenue—they first started construction there, didn't they? A. Well, I don't know where they first started construction; I simply seen material lying on different parts of the ground.

John J. Cain. Called by Defendants. Redirect.
John J. Cain. Called by Defendant. Recross.

REDIRECT EXAMINATION BY MR. GOUGH:

Q. Mr. Cain, there was a main entrance to the dancing platform from Zabriskie Avenue, wasn't there? A. Yes, sir.

Q. That was the chief entrance, wasn't it? A. Yes.

BY MR. LEVY:

Q. Just a question: Are you familiar with the block between Second and Third Streets? A. Yes, sir.

Q. Do you know of any large orchard being in that block? A. There are a few trees, but they are on my property; there is not ten trees in the whole thing.

Q. And those that are in the block are on your property? A. Well, there is a great number of them on my property, on three lots there; that happens to be where the orchard is.

RECROSS EXAMINATION BY MR. HASTINGS:

Q. Did you say that the main entrance to the Park was on Zabriskie Avenue? A. The main entrance. They came from the other Amusement Park into that--came across the street, right into it.

Q. The main entrance to the whole amusement proposition was on the other block adjoining this property, wasn't it? A. Well, on Avenue C; but they came right through, right across; it was one continuous park.

Q. Do you mean to say there was any entrance on Zabriskie Avenue into the Park? A. Yes.

Q. Whereabouts? A. On Lots 18 and 19. If you step up here I will show you just how that worked (indicating). Now, they had all this property in here; here is where the main amusement ground was; they had all this property in here up to this point (indicating on the map).

Q. That is on the block to the east? A. Yes. This is Avenue C. Then he fenced in across the street here, across Zabriskie Avenue; then 17 and 16 was cut out, not to intrude on Mr. Mackie's property there. He put his dancing platform there (indicating). Now, they went across through there (indicating), or they went through there (indicating).

Q. Yes, but where was there any entrance on Zabriskie Avenue? A. Well, right there (indicating on the map), on Lots 19 and 18.

Q. Well, wasn't there a fence across Zabriskie Avenue? A. Why, they fenced up—

Q. Wasn't there a fence across Zabriskie Avenue? A. I think not.

Q. Did not Mr. Bernstein extend his fences clear around the whole Amusement Park, the boundaries of the whole park? A. He did put up some other fences in this location, but I don't know whether they came down here or not (indicating).

Q. Well, what kind of an entrance is this you are talking about on Zabriskie Avenue? A. I am talking about the vacant lot, 50 feet wide.

Q. Do you mean there was a gate to it? A. No, no gate.

Q. Do you mean there was a door there? A. No, no door; no gate or no door; just the fence to keep off of Mr. Mackie's property.

THE CASE FOR DURYEA, DEFENDANT.

BENJAMIN L. DURYEA, sworn.

DIRECT EXAMINATION BY MR. GOUGH:

Q. Where do you reside? A. Jersey City.

Q. What is your calling—what is your business? A. We are manufacturers of belting and specialties in kindred lines—oils, greases.

Q. And your plant, at present, is in Bayonne? A. Yes, sir.

Q. Did you negotiate the purchase of Lot 9 from Mr. Cain? A. I did.

Q. Did you oversee the erection of the building in the neighborhood of Lot 9? A. I did.

Q. Will you state to the Court when the excavation began on Lot 9 in Block 535? A. I cannot state positively the date, but the building contract was signed October 26th.

Q. What year? A. 1916, although the contractors had already started some work prior to that. They knew that they were going to get the contract, but the final contract was signed on October 26th.

Q. Had the work on Lot 9 begun before October 26th? A. No, sir.

Q. When did it begin? A. Why, that followed the clearing and some excavation on the main part of the property; just the date I don't know, but it followed immediately afterwards.

Q. That is, the excavation of Lot 9 was completed before the building began on the main structure?

Mr. Hastings: I object to that, as there is no such intimation by the witness.

Benj. L. Duryea. Called by Defendant. Cross.

BY THE VICE CHANCELLOR:

Q. When did you begin work on Lot 9, about—did you begin before December? A. Yes, sir; but the exact date I cannot tell.

Q. But it was before the month of December, 1916? A. I should say it was, to the best of my recollection. Now, the contractor probably has official records as to just the process that he followed.

Q. Where is he? A. The contractor was James Mitchell.

BY MR. GOUGH:

Q. You saw the structure going up on Lot 9? A. Yes, sir.

Q. And when was it completed? A. Well, we moved in in June, 1917.

Q. And the building on Lot 9 was complete at that time, was it? A. It was completed sufficiently to move in; there may have been some minor adjustments, etc.

BY THE VICE CHANCELLOR:

Q. Can you tell whether work had begun on Lot 9 before Election Day? A. That is in November—no, I cannot state positively.

CROSS EXAMINATION BY MR. HASTINGS:

Q. Mr. Duryea, do you intend by your testimony to state that you are positive that any work whatever began on Lot 9 before December 14th, 1916? A. To the best of my recollection, there was.

Benj. L. Duryea. Called by Defendant. Cross.

Q. But it is entirely a matter of recollection? A. Entirely a matter of recollection.

Q. The first work under that Mitchell contract, however, was done on the large tract to the east, wasn't it? A. Yes.

Q. And how extensive was that work, Mr. Duryea? A. Why, he did no excavating there; he had to grade the property, and, of course, make some excavation for his pier foundations, but that was not very extensive.

Q. Was there a construction there? A. Why, that was all cleared before Mitchell started—that is, the old houses.

Q. I mean, he did construction work, though, on the main part of your plant, didn't he, under this contract made in October? A. Oh, yes.

Q. And that was the most extensive part of the work done under the Mitchell contract, wasn't it? A. Yes, that is the main building.

Q. Yes, that is the main building, and the main construction? A. Yes.

Q. And when was that work completed on the main plot, not this Lot 9? A. They were all completed at the same time, in June.

Q. In June, 1917, was it? A. Yes.

By the Vice Chancellor:

Q. Well, do I understand you to say that there was a clearing made on the premises of Lots 8 and 9 before the contract was signed by Mitchell? A. Not on 8 and 9; that land was clear.

Q. When did you clear it? A. Why, it was clear; that was vacant. On the other part of the property there was some old buildings that had to be cleared off.

Q. That was across the street? A. Across Zabriskie Street.

Q. Now, dealing with this property alone, can you say, that is, with reasonable certainty, that any work was done on this property before December 14, 1916, whether it was excavating, clearing or doing anything in the nature of preparatory work to go on with the construction of this building—that is, work that would be openly visible to a person walking along that street? A. With reasonable certainty, I would say that the excavation was started at least in November; and in the winter the cellar had been excavated, and the foundation beds, the concrete foundation beds, had already been laid. We know that because the thing was full of water all winter, and it froze, and we had an awful time getting it out.

By Mr. Hastings:

Q. Where is Mr. Mitchell, Mr. Duryea? A. On Montgomery Street.

Mr. Gough: That is the case for Duryea.

THE CASE FOR KESHIN, DEFENDANT.

Michael M. Keshin, sworn.

Direct Examination by Mr. Levy:

Q. Where do you live? A. Rockaway Beach, N. Y.

Q. Are you the owner of any property in Bayonne? A. Yes, sir.

Q. Where? A. Lot 31 in Block 519, I believe.

Q. I show you a deed from the Mayor and Council of the City of Bayonne to Michael M. Keshin, conveying Lot 31, Block 519, fronting on Newman Avenue; recorded December 20, 1897, in Book 691 of Deeds for Hudson County, page 90, and ask you from whom you got that deed? A. From the City of Bayonne—the Bayonne Council of the City of Bayonne.

Q. At that time? A. Yes, sir.

Q. Did you pay the sum of fifty dollars for it at that time? A. Yes, sir.

Q. Did you attend the sale at the City Hall at that time? A. Yes, sir.

Q. And after you got the deed, what did you do? A. I had the deed recorded, and went over to look at the lot.

Q. Did you see the lot? A. Yes, sir.

Mr. Levy: I offer the deed in evidence.

Mr. Hastings: I object to the offer, on the same grounds that I have stated before, in that this deed particularly refers to Report No. 10 of the Commissioners of Adjustment of Bayonne, and by the proof in the record of the proceedings—

The Vice Chancellor: Do you think I am trying this title to land, Mr. Hastings?

Mr. Hastings: Yes, sir.

The Vice Chancellor: I do not.

Mr. Gough: No; he has no jurisdiction.

The Vice Chancellor: I am trying the question, purely, as to whether you are in peaceable possession. I have to find the jurisdictional fact first that you are in peaceable possession of the property.

Mr. Hastings: Yes; but when that is found you try the title; and the statute says you shall settle the title unless there is a jury demanded.

The Vice Chancellor: Unless there is a jury demanded; so the only question here is which one shall sue at law, really.

Mr. Hastings: No.

The Vice Chancellor: Well, never mind that. The deed is admitted.

(The deed was thereupon marked Exhibit K1.)

Q. You say you went down to the lot after you bought it? A. Yes, sir.

Q. Where is it located, on what street? A. On Newman Avenue, between Second and Third Streets.

Q. Did you have anyone with you at the time? A. I had two of my friends—they were working there in Bayonne City at that time—go down with me and point it out to me.

Q. Did you see any trees on that lot? A. No, sir.

Q. Were there any trees, or any vegetables, or any fruit trees growing there? A. Not on that lot.

Q. Has there been any trees on that lot at any time since the time you purchased it, up to the present day? A. No, sir.

Q. Is there any fence around that lot? A. Not around the lot; no, sir.

Q. At no time since the day you became the owner of it? A. No, sir.

Q. How often have you visited that lot? A. Oh, probably twice a year.

Michael M. Keshin. Called by Defendant. Direct.

Q. Were you down to it? A. Yes, sir.

Q. Did you go on it? A. Yes.

Q. For what purpose? A. I have got friends and relations living in the City of Bayonne that I visit; and before that I used to go down and pay the taxes every year; and I used to go down and visit it, because, at that time, it was all the money in the world that I owned, the fifty dollars that I paid for that lot; and I went to see where my money was.

Q. Have you paid the taxes to the City of Bayonne? A. Yes.

Q. All the years since you owned it? A. All the years since I owned it, yes.

Mr. Levy: Mr. Hastings and I have agreed on this: I have not the deed from the City Collector, and Mr. Hastings will admit, subject to his other objections, that there was a deed or certificate, or whatever it was.

The Vice Chancellor: What is that?

Mr. Levy: That there was a deed from the City Collector to the City of Bayonne for the same lot, reciting the Martin Act law and proceedings.

The Vice Chancellor: Do you want to offer that?

Mr. Hastings: No, but I want to show that that deed contained the same recitals as the deed marked Exhibit D7 in this case, excepting that the lot in question is Lot 31, Block 519; and that the consideration is $50.00 instead of $82.03.

The Vice Chancellor: That is all right, is it, Mr. Hastings?

Mr. Hastings: There is such a deed of record.

The Vice Chancellor: And you admit it in evidence, subject to the same objections as before?

Mr. Hastings: Subject to the same objections as to showing title.

Q. Is there any fence around any of this property of yours? A. Not around that lot particularly; there was some fence in that vicinity at the time I bought it.

Q. Is there a fence on the street, in front of your lot? A. I believe there is some kind of a fence; it was there when I bought it, too.

Q. Is there any fence there now? A. I believe there is some kind of a fence on the street, not particularly fencing up the lot.

Q. Was that fence there twenty years ago? A. Yes, sir; it was there twenty-two years ago, when I bought it.

Cross Examination by Mr. Hastings:

Q. There is a fence along the front of the block, is there? A. Yes, some kind of a fence, yes.

By Mr. Levy:

Q. Was any claim made upon you, at any time, Mr. Keshin, by anyone representing Alexander Mackie? A. Not that I can remember before I was served with the papers; that is all I know.

Q. In this case? A. In this case; otherwise, never.

Michael M. Keshin. Called by Defendant. Cross.

By Mr. Hastings:

Q. You have negotiated with Mr. Mackie, haven't you, trying to settle the matters in difference here?

Mr. Levy: I object to that as immaterial.

The Vice Chancellor: I will sustain the objection. Offers of compromise cannot be shown.

The Witness: I have never seen—

The Vice Chancellor: One moment. It is perfectly plain that such evidence is inadmissible.

Mr. Hastings: Well, it is not for that thing, but simply in cross examination of the last question asked him, to show whether any claims have been made on our behalf—not because it has any effect otherwise.

The Vice Chancellor: I see.

Q. Didn't you see Mr. Garrabrant, the attorney. A. Never in my life.

Q. Didn't you receive a communication from Mr. Garrabrant? A. I never did.

Mr. Hastings: All right; that will do.

Mr. Levy: I rest.

COMPLAINANT'S REBUTTAL EVIDENCE.

ALEXANDER L. A. MACKIE, recalled.

DIRECT EXAMINATION BY MR. HASTINGS:

Q. Did you ever make a measurement of the fence lines of the Bernstein Amusement Park, so far as they affected Block 535? A. I positively did.

Q. And did you make a diagram or memorandum at that time, showing the measurements? A. I did.

Q. I show you a card, and ask you if that is the diagram you made from the measurements which you made? A. It positively is. I made it for a purpose.

Q. Can you state, without reference to the diagram, what those measurements were? A. I cannot. I took them myself; I measured them with a tape measure, and took them purposely, for a specific purpose.

Q. Then, by reference to the diagram, will you state how far into Block 535 the Bernstein fences extended—taking, first, the southerly line?

Mr. Gough: One moment: Is he going to use his diagram?

Mr. Hastings: Yes.

Mr. Gough: I want to cross-examine him in regard to that.

Mr. Hastings: All right, go ahead.

BY MR. GOUGH:

Q. When did you make that diagram, Mr. Mackie? A. When Bernstein opened that Amusement Park.

Q. When was that? A. The dates are all there; I think it was 1909, April, 1909.

Q. For what purpose? A. For the purpose of ejecting Mr. Bernstein off my property. I complained to the City at that time, and the objection was that Bernstein had put a fence across Zabriskie Avenue, fencing my property in, and I had no entrance from Zabriskie Avenue, an open street, into my property.

Q. That is, your property on the corner? A. No, on Zabriskie Avenue, where he actually had his amusement stands. I went there and made it.

Q. Did anybody make this with you? A. No. My brother, T. B. Mackie. made another map which could be verified by that. I personally went there and made the measurements.

Q. Where did you get the map from which you made this plan? A. That is an exact copy of a copy that I made of the City Tax Map, an exact tracing.

Q. When did you make this map? A. In 1909, when Bernstein was on my property.

Q. Where did you make it? A. I made it at my home in Sheridan Avenue, N. Y.

Q. Did anybody assist you in making the measurements? A. No, I made them positively myself.

Q. And was there anybody with you at the time? A. Nobody.

Q. Nobody to hold the tape, or run the tape? A. I took with me a brad awl, which I put in from one end of the structure to the other.

Q. There was nobody else with you at the time? A. Nobody was there at the time.

Q. Where is the memoranda that you jotted down at the time? A. That memoranda was all taken up home.

Q. Where is it? A. It may have been destroyed by this time.

Q. And you made this map from that memoranda? A. I made the map from that memoranda, which I took home.

Q. And you say that has been destroyed? A. I may have it home.

Q. You haven't it here? A. I haven't it here. I have the papers to show that I objected to it to the City.

Mr. Gough: I object to this memorandum.

The Vice Chancellor: I do not see that it is material, but I will admit it.

Mr. Gough: I object to the use of this plan, because the witness testifies that he has not the original memoranda.

Mr. Hastings: There is nothing to require the preservation of the original memoranda.

The Vice Chancellor: If he has got it, must he not produce it?

Mr. Hastings: No, absolutely not. We are perfectly willing to search and find it, but I am arguing the matter of law. The proof is that that was made at the time.

The Vice Chancellor: From data which he has now in his possession.

Mr. Hastings: No, he says he don't know.

The Vice Chancellor: He does not know—well, I will assume that he has it in his possession until he has searched; but I will admit it.

By Mr. Hastings:

Q. Now, by reference to the memorandum, Mr. Mackie, will you state how far the southerly line

of fence extends into Block 535? A. It would extend 101 feet from the westerly side of Zabriskie Avenue.

Q. And how far does the northerly line of the fenced enclosure extend into the block? A. 96 feet from the westerly side of Zabriskie Avenue.

Q. And what is the total length of the rear line of fence connecting those two side lines? A. From the southerly line of the fence to the northerly line of the fence is 210 ft. 5 inches.

The Vice Chancellor: Is there not testimony here that they had playgrounds and everything else around the back of this thing?

Mr. Hastings: No, if your Honor please.

The Vice Chancellor: I think there is.

Mr. Hastings: No, Vice Chancellor; on this corner of First Street (indicating) the single lots here had a pool parlor, and a carousel, and things of that kind; these lots are the First Street lots, which are not in dispute.

The Vice Chancellor: My impression is that the testimony of Mr. Cain was that this whole thing ran through here (indicating); my impression is that he said "back of the dancing platform."

Mr. Hastings: Oh, no; he never said so.

Mr. Cain: I said it extended 21 feet into those lots.

Mr. Hastings: Yes, Mr. Cain claimed they came into these lots, you see (indicating on the plan).

The Vice Chancellor: As I understood it, the back of the back of these lots was open and used by the people at that time as part

of the leasehold. (To Mr. Cain): What did you lease to him?

Mr. Cain: I leased the entire place to him that I owned.

Q. Now, by reference to the City Tax Map, did or did not the fence lines of this Bernstein Amusement Park touch or extend into Lots 27 and 28? A. Never touched Lots 27 and 28; never included them.

By the Vice Chancellor:

Q. What fence line? A. The line marked in red ink here.

The Vice Chancellor: Where was there any fence line in the rear of the Bernstein lot?

Mr. Hastings: It went clear around the Bernstein lot. Mr. Cain testified to it; and one of the other witnesses here yesterday spoke about that—that he had his main park over here, and then he got another fence and cut into this Block 535; and the only question that will become important at all is what Mr. Cain said this morning, that he claimed that this fence went back on these lots 27 and 28; that is the only thing we are speaking as to the Bernstein matter at all about. Now, it is a question of fact as to how far it did. There is no dispute about their being enclosed with fences.

By Mr. Hasting:

Q. And the lines of this fence, so far as they affect this block, are entirely within the lines of

Lots 11 to 19, inclusive, in that block? A. Yes; and never extended any farther.

Mr. Hastings: The City Map and others we have in evidence here, will verify those distances.

Q. Now, is it true, Mr. Mackie, that Mr. Stringham, or his men, from time to time, covering the period of some ten years past (ten or twelve years past) has strung up barbed wire fence all around this block, over these vacant lots? A. It is positively not true.

The Vice Chancellor: The witness did not say so; he said they "patched up the fence every here and there"; but you said "strung it around."

Mr. Hastings: Well, I mean, covering all around the course of the block.

Q. Is there any barbed wire in front of Lots 27 and 28? A. No, and never has been.

Q. Is there any barbed wire in the fence in front of Lot 3 or Lot 6? A. Never has been.

Q. And none in front of Lot 9? A. There never has.

Q. Did you ever have any communication or negotiations with Mr. Keshin regarding his lot? A. Never, never.

Q. Did your attorney, Mr. Garrabrant?

Mr. Levy: I object to that.

The Vice Chancellor: How does he know?

Q. Do you know? A. I don't know, except by hearsay.

Q. When you consulted Mr. Garrabrant, before the filing of the bill in this cause, Mr. Mackie, did you tell Mr. Garrabrant that Mr. Cain, or the Duryea Manufacturing Company, or Mr. Keshin, or any of the other defendants named in the bill, were in possession of the lots, or either of them, referred to in the bill? A. I said they were not in possession.

The Vice Chancellor: No, did you tell him they were in possession?

Q. Did you tell Mr. Garrabrant that these defendants were in possession of those lots? A. No, no.

Q. As to this Amusement Park, the Bernstein Amusement Park, since that one summer that he was there has that been in use, so far as it affects the Block 535? A. Never again.

CROSS EXAMINATION BY MR. GOUGH:

Q. You say that at no time was there any wire in front of any of those lots there? A. At no time was there any wire in front of Lots 27 and 28; at no time was there any wire in front of Lots 3, 6 or 9, except the wire that may have been stretched across those by my brothers.

Q. Well, you don't know anything about that, do you; you did not see them do it? A. I have seen them do it, work there and stretch wire themselves on those lots, and helped them do it.

Q. When? A. When I was down at Bergen Point.

Q. How long ago was that? A. I left Bergen Point twenty-five years ago; and I have been down

on the property since and have seen them working there, and have helped them, since that time.

Q. You swear that you helped them put wire in front of Lots 26 and 27? A. No, I will swear—

Q. One moment: Did you say you helped them put wire in front of Lot 9? A. No .

Q. Or Lot 3? A. No.

Q. Or Lot 6? A. No.

Q. Now, then, you said you did not tell Mr. Garrabrant that Mr. Cain and these other gentlemen were in possession of these lots, didn't you? A. Yes.

Q. How did you know that they claimed to own these lots? A. By the records.

Mr. Hastings: He explained all of that yesterday.

Q. By the records? A. Yes.

Q. And had you ever met Mr. Cain? A. Never.

Q. Had you ever gone to Mr. Cain and asserted any claim of ownership there? A. Never.

Q. You knew he was Mayor of Bayonne? A. I never knew the fact.

Q. But you knew he lived in Bayonne? A. I believed he did.

Q. You knew he did, didn't you? A. No, I did not.

Q. You saw in the deeds that he was named "John J. Cain of Bayonne," didn't you? A. Yes.

Q. Why did you say, then, that you did not know that he lived in Bayonne? A. Because I did not know of my own knowledge, further than from the deeds.

Q. Yes, but you knew it from the deeds? A. It was recorded as such.

Alex. L. A. Mackie. Recalled in Rebuttal. Cross.

Q. Your complaint to the City authorities was that somebody was trespassing on your lots? A. My complaint was that they had fenced off Zabriskie, a thing that they had no business to allow anybody to do.

Q. You said a few moments ago that your complaint was that they had trespassed on your lots? A. Yes.

Q. What lots were they? A. 16 and 17.

Q. And what had been the extent of the trespass?

Mr. Hastings: Is that material at all?

The Vice Chancellor: You have gone into it. I will permit it.

A. They had torn down the fences in front of my lots, 16 and 17, which was intact before they put up that fence.

Q. And what else did they do? A. They built a dancing pavilion on part of my lots.

Q. On which lot? A. 16 and 17.

Q. Did they put it on 17? A. Yes.

Q. How far over on 17? A. The diagram will show.

Q. Well, the diagram does not show anything. A. Pardon me—the diagram shows the dancing pavilion there.

Q. Where—on 17? A. 16; it is on 16.

Q. They did not put it on 17? A. No, they did not put it on 17.

Q. How long did that platform stay there? A. Until it was torn down and taken away by the people who stole it.

Q. Then you did not put them off of 16, did you? A. I tried to.

Alex. L. A. Mackie. Recalled in Rebuttal. Cross.

Q. And they wouldn't get off, would they? A. Bernstein left owing everybody in Bergen Point, and ran away.

Q. That is not the question. You tried to put him off of 16 and he would not get off? A. I did not try to put him off of 16.

Q. Well, it was your property he was on, why didn't you try to put him off?

Mr. Hastings: How far must we go on this, your Honor?

The Vice Chancellor: He has a right to cross examine on that.

Q. If he was on 16, which was your property, why didn't you put him off?

Mr. Hastings: I object to it as immaterial and irrelevant.

The Vice Chancellor: The objection is overruled.

A. If the City complied with my request, then he had to get off the property of his own accord; it was not necessary for me to do it.

The Vice Chancellor: You say these lots, 14, 15 and 16 are not in issue in this cause?

Mr. Hastings: No, sir; they have nothing, absolutely, to do with it.

The Vice Chancellor: This man built his platform entirely on lands that Mr. Cain did not lease?

Mr. Hastings: No, Mr. Cain owns some of these lots in here, but they are not in this case.

The Vice Chancellor: I do not care about that; what lots does Mr. Cain own?

Mr. Gough: Mr. Cain owns 10, 11, 12, 13, 14 and 15; he owns everything along there except 17 and 16, which Mr. Mackie owns in his own right.

Q. Why didn't you tell him to get off, if he was on your property? A. I have answered the question—if those fences were taken down the amusement park existed no longer; it was only by the aid of these fences that he could trespass on my property.

Q. Well, it was a matter of moment to you, so you went to the City authorities and complained about the situation? A. I did.

Q. And you knew at that time he was on your land? A. I did. I gave him no permission to go on it.

Q. And you made this complaint just as soon as he put up his place there? A. As soon as the fences were extended around the property.

Q. And the platform was on your property? A. The platform was partially on my property.

Q. And when was that? A. That was in 1909.

Q. What time of the year? A. May.

Q. You did not date this, did you (referring to the diagram produced by the witness)? A. No, but I have got the data.

Q. And that platform stayed there, you want us to believe, until September? A. No, the platform stayed there for two or three years.

Q. On your property? A. On my property.

Q. And why didn't you put it off? A. Because the man was not occupying it, an dthe people had forced an entrance through Zabriskie Avenue.

Q. Now, then, Zabriskie Avenue is not opened here, is it? A. It positively is.

Q. When was it opened? A. When was it opened?

Q. Yes. A. I cannot give you the positive date of its being opened; it is an opened street; the assessment has been made and paid; I received the money from the assessment of the land that I owned in Zabriskie Avenue; and it has been opened for at least thirty years.

Q. What maps did you use as the basis for drawing this plan? A. The City Tax Map.

Q. Did you use any other map? A. No.

Q. No other map at all? A. No.

Q. And all the data on this is from that? A. The data on that, as far as the measurement of the lot is concerned, is from that.

Q. That is not the question—is all the data on this map from the City Map? A. From the City Map.

Q. Everything? A. Everything.

Q. There is nothing from any other map? A. No.

Q. Where did you get these courses, "south 79 degrees," etc., on that sketch? A. That would be from the Estate Map.

Q. Then you did use another map, didn't you? A. I may have.

Q. Well, you did, didn't you? A. To get those courses, I may have.

Q. Well, why did you say you used no other map, if you used a second map? A. Not to make that diagram.

Q. That is not the question; you were asked specifically where you got the data, and you said you got it from the City Map alone; now why

did you say that, if you got it from the other map? A. I had reference to the measurements of the lots, not to the courses on this.

Q. Is that your only explanation of it? A. Yes.

Q. Now, you knew, when I asked you if you got any of your data from any other map, that that included all the information that you might have had, didn't' you? A. I did not.

Q. You do not understand a question when it is put that way? A. You did not put the question in that way.

Q. Well, the record will show that I did. How could you have made that map at all if you did not have a survey before you? A. It is not necessary for me to have a survey.

BY THE VICE CHANCELLOR:

Q. How did you get "71 degrees, 51 minutes"? A. That, your Honor, is on the Estate Map.

Q. On the Estate Map? A. On the Estate Map. That was taken from the Estate Map.

Q. Well, then, he fenced in down to and including Lot 19? A. He did, sir; and this is where his fence came, up here (indicating on the diagram).

Q. And none of those lots are involved in this suit? A. No, sir; and that is the only extent to which his fence extended; it did not extend any farther.

Both sides rest. Case closed.

The Vice Chancellor: Where have you shown, Mr. Hastings, that you have been in

peaceable possession of this property so as to justify the filing of the bill? Why aren't you driven to ejectment?

Mr. Hastings: As to Lot 9, of course it is a question of fact, your Honor, for your Honor to find when the Duryeas actually took Lot 9; and that your Honor will have to pass on—the date—whether it was before or after the filing of this bill. Now, you have heard the testimony. But they have not produced Mr. Mitchell, the man who did the work; and Mr. Duryea admittedly says that he is only testifying generally (I do not mean to imply that he is not honestly saying what he thinks, but he is not the best and most available witness). Here there was a contract, and a man actually doing the work. The main part of the contract was in connection with the main plant, etc.; and this ilttle bit of a corner, which is a mere nothing as to the Duryea plant—

The Vice Chancellor: Well, so far as that goes, I will find now that the Duryea building was commenced before this bill was filed, and the bill will be dismissed as to them.

Mr. Hastings: Now, as to Lots 3 and 6—on the same line, there is absolutely no proof or pretended proof, of any kind, on behalf of the defendant Cain.

The Vice Chancellor: What is your proof as to that, Mr. Gough?

Mr. Gough: Our proof is that we have been in peaceable possession of every bit of ground there to which we have a deed; and the proof is plenary. Lot 10, for instance, buts up on Lot 6—

The Vice Chancellor: Yes.

Mr. Gough: Lot 10 buts up on Lot 6; against Lot 3 is Lot 35. And as to 4 and 5, the testimony is plenary that we were in possession of all of that land; and, owning as we do Lots 4, 5, 2 and 1, all of which surround 3, if there is any proof by Mr. Mackie of possession of Lot 3 in this case, no one can guess it.

The Vice Chancellor: What proof have you as to Mr. Cain?

Mr. Gough: Why, his possession of the whole tract. His possession of the entire tract is undisputed.

The Vice Chancellor: Is this the place where the horses of Stringham pastured?

Mr. Gough: No, they were down on 27 and 28, except that the testimony is, generally, that he used all of those lots for the pasturage of the horses. But, more than that, there is a real, vital fact in the case, which is the efficacy of these deeds, and those are absolute proof in this court; they cannot be attacked, and there is absolutely no cavil to be passed upon them, and there is no attack to be made upon them in this court.

Mr. Hastings: Mr. Gough, you are neglecting a great many questions. There are a great many questions to be considered in this case.

The Vice Chancellor: I do not think there is but one question involved here, and that is the question whether you are in peaceable possession.

Mr. Hastings: That is the primary question, undoubtedly.

The Vice Chancellor (after argument by Mr. Hastings): My present view is that you

have not shown such a possession as justifies the filing of the bill. I think you have your remedy at law; and, as preliminary to the Court entertaining jurisdiction, you have got to establish all of these jurisdictional facts. And even after doing that, if you did show peaceable possession, that would not give you the right to a decision here if the other side demanded a trial by jury.

Mr. Hastings: Oh, yes; they have not pleaded it in their answer; they have gone to trial and hearing here without a demand for a jury trial, and are not entitled to it.

The Vice Chancellor: Oh, they are, because I have passed on the same question in the Lehigh Valley case the other day.

Mr. Hastings: Well, they do not ask it.

The Vice Chancellor: Well, they may not ask it.

Mr. Hastings: Well, the statute says you shall decide the title unless such demand is made. Well, do I understand your Honor wants us to brief now only the question of peaceable possession?

The Vice Chancellor: No, the jurisdictional facts I want you to brief.

Mr. Hastings: Peaceable possession as to each lot?

The Vice Chancellor: Well, peaceable possession, and these jurisdictional questions mentioned in the statute.

Mr. Hastings: Well, that does not include Lot 31 in Block 519; Mr. Keshin makes no pretense of any act of possession.

Mr. Levy: Yes, he does.

Mr. Hastings: What does he submit?

Mr. Levy: That he went to the ground twice a year; and when he purchased it went to the ground with two or three men. He paid the taxes.

Mr. Hastings: Well, is that any proof of possession?

Mr. Levy: Why, certainly it is proof of possession. What is "possession," if that is not possession?

The Vice Chancellor: Well, you can argue that, as well, in your brief. I will set the case down for oral argument on Monday, May 26th, 1919.

Case held for briefs and oral argument.

Exhibit C-2.

To all, to whom these presents shall come Greetings.

Whereas by Indenture dated the Eleventh day of December One thousand eight hundred and seventy seven which said Indenture is recorded in the office of the Register of Deeds for Hudson County, State of New Jersey, in Liber 344 of deeds at page 158. Between Simon Fraser Mackie of the City of New York of the first part and William Man of the same City of the second part, reciting that; Whereas the said party of the first part is about to contract marriage with Clara Ella Cooper of New Ipswich in the State of New Hampshire, and desires to provide for her support and maintenance and for the support and education of the children, if any, of said marriage so to be solemnized, and the party of the second part has agreed to accept the trust hereby reposed in him for that purpose. Now in consideration of the premises and of one dollar to him the party of the first part in hand paid, the receipt whereof is acknowledged, he the said party of the first part has granted and sold, and doth hereby grant, bargain, sell, assign, transfer and set over to the said party of the second part, his heirs and assigns forever, All the real estate and lands of the party of the first part, situated at Bayonne City, formerly Bergen Point, Hudson County and State of New Jersey, which land is the share of the party of the first part, at present undivided in certain lands and real estate whereof Catherine G. Mackie, the mother of the party of the first part recently died seized, and which land is more particularly described in the deed thereof, from John Duer to said Catherine G. Mackie, which was dated

November twenty ninth one thousand eight hundred and sixty seven, and was recorded in the office of the Clerk of said Hudson County, on the First day of August 1868, in book of deeds 173 at page 677 etc., Also all the personal property specified in a bill of sale thereof, delivered by the said party of the first to the party of the second simultaneously herewith and which personal property is now contained in the dwelling house or buildings at Bayonne City standing upon the said lands formerly of Catherine G. Mackie, Also all the share right title and interest of the party of the first part in or to all property real or personal formerly of the said Catherine G. Mackie, which belonged to her at her decease, Together with all and singular the tenements, hereditaments and appurtenances to the said land belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof, And also all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described lands and premises and every part and parcel thereof, with the appurtenances. To Have and To Hold the above mentioned and described premises, with the appurtenances, and all the said personal property, with any income and increase thereof, unto the said party of the second part his heirs and assigns forever, Upon trust, nevertheless for the following uses and purposes, that is to say, To sell and dispose of said lands and premises, and to give good and sufficient deed or deeds thereof, provided that the same shall not be sold during the lifetime of the said party of the first part, and of the said Clara Ella Cooper without the consent of them, or the survivor of

them, and until such sale, to hold and manage the same, and to collect and receive the rents increase and profits thereof, and as to the said personal property, to convert the same into money and to invest and re-invest the same, together with the proceeds of any real estate that may be sold, and to collect and receive the income and increase thereof, and to pay all taxes, repairs, insurance, and all other necessary and proper expenses of administering the trust hereby created, and as to the residue of the income, to pay or apply the same as follows, viz. To said Clara Ella during her natural life, and upon her decease then to said Simon Fraser Mackie, if he should survive her, and during his natural life, and upon the decease of both said Clara Ella and Simon Fraser Mackie, then to pay the whole of the said trust fund in the hands of such Trustee, principal and income, and to grant and convey any of the said real estate that may remain unsold to the oldest surviving son of the said Simon Fraser Mackie and Clara Ella, his wife, if there should be no such son surviving, then to the surviving daughters of the said Simon Fraser Mackie and Clara Ella, his wife in equal shares. And whereas the marriage of the said Simon Fraser Mackie and said Clara Ella Cooper was solemnized at New Ipswich, in the state of New Hampshire, on the Eighteenth day of December, in the year one thousand eight hundred and seventy seven, and the said Simon Fraser Mackie, departed this life at Salt Lake City, in the state of Utah, on the Twenty third day of December in the year one thousand nine hundred and two, and was interred in Mount Olivet Cemetery, in Lot number 66, section O, of said Cemetery, in said Salt Lake City, and the said Clara Ella, wife of the said Simon Fraser

Mackie, departed this life at said Salt Lake City, on the Twenty fifth day of May, in the year one thousand nine hundred and nine, and was interred in aforesaid Lot number 66, section O, of said Mount Olivet Cemetery, reference to the records of the before mentioned Cemetery for the dates of the interments of the said Simon Fraser Mackie, and the said Clara Ella, his wife, will more fully appear, and the said Simon Fraser Mackie and the said Clara Ella, his wife, left them surviving only one child, a daughter, Marguerite.

Now, This Indenture made the eleventh day of May in the year one thousand nine hundred and twelve, Between Marguerite Mackie, spinster, daughter and only surviving child of the before mentioned Simon Fraser Mackie and Clara Ella, his wife, late of Salt Lake City, in the State of Utah, and now residing at Montclair, in the County of Essex and State of New Jersey, party of the first part and Alexander L. A. Mackie, of the City, County and State of New York, party of the second part.

Witnesseth, That the said party of the first part for and in consideration of the sum of one dollar lawful money of the United States of America to her in hand paid, and other good and lawful considerations, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors and administrators, forever released and discharged from the same by these presents, hath granted, bargained, sold aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain sell, alien,

remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, All the right, title and interest of the party of the first part, hereto, in, and to all estate real or personal which was of the late Catherine G. Mackie deceased Mother of the before mentioned said Simon Fraser Mackie, Father of the party of the first part, which might, could or would have belonged, or may, or did belong to the said Simon Fraser Mackie as heir of the said Catherine G. Mackie, and also all her right, title and interest, claim and demand as the only surviving child of the said Simon Fraser Mackie, to the property personal or real estate, mentioned in the foregoing deed of trust to said William Man, Together with all and singular the interest and income that has, or may accrue and all and every the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and reversion and reversions, remainder and remainders, rents, issues, and profits thereof, And also all the estate right title and interest in the hereinbefore mentioned and described property, personal or real, possession and right to possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of in or to the above described land and premises and every part and parcel thereof with the appurtenances and all rights, titles, and all choses in action in any way arising or growing out of the same or out of any right or interest therein or thereto, To Have and To Hold all and singular all the above mentioned and described premises, with the appurtenances, and also all the said personal property and including all choses in action, together with any income and increase thereof, unto the said party of the second part, his heirs and assigns, to his or their own proper

use, and benefit, and behoof forever, And the said Marguerite Mackie, for herself, and her heirs, executors and administrators doth covenant, grant and agree, to and with the said party of the second part, his heirs and assigns, that she has not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby, or by means whereof, the above mentioned and described property, personal or real, or any part or parcel thereof, now are, or at any time hereafter shall, or may be impeached, changed or encumbered in any manner or way whatsoever.

In Witness Whereof the said party of the first part hath hereunto set her hand and seal the day and year first above written.

MARGUERITE MACKIE.

Signed, sealed and delivered in the presence of

A. G. N. VERMILYS.

STATE OF NEW YORK, NEW YORK COUNTY, } ss.:

Be it Remembered, That on this Eleventh day of May in the year one thousand nine hundred and twelve before me, a Notary Public, duly commissioned and sworn personally appeared Marguerite Mackie, who, I am satisfied is the grantor in the within Indenture; and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

A. G. N. VERMILYS,
Notary Public,
New York Co.

Clerk's No. 13, Register 4019.

STATE OF NEW YORK, } ss.:
COUNTY OF NEW YORK, } No. 10565

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That A. G. N. Vermilya, whose name is subscribed to the Certificate of the proof or acknowledgement of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment a Notary Public in and for said County, duly commissioned and sworn, and authorized by the laws of said State to take acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 17 day of May 1912.

WM. F. SCHNEIDER,
Clerk.

(Seal)

Received in the office of the Register of the County of Hudson, N. J., at 9.36 o'clock A. M. May 18, 1912, and recorded in Book 1120 of Deeds for said County on page 295 &c.

JOHN J. McMAHON,
Register.

Exhibit

Extracts from Report No. 5 of Commissioners of Adjustment of City of Bayonne, relating to lots in question, filed Sep. 20, 1888. Hudson County Clerk's Office.

Street	Block No.	Lot No.	Cert. No.	Index	Taxes in Arrears: Year.	Taxes in Arrears: Amount fixed by Commrs.	Assessments in Arrears— Name of Impr'nt.	Total
Third Street	519	1	81	368	1877	24.20		
Second Street		21			1878	19.06		
Avenue Q		27			1879	16.24		
		31			1880	12.91		
					1881	14.15		
					1882	16.62		
					1883	17.41		
					1884	16.17		
					1885	15.51		

					1886	15.37	
					1887	13.59	
						181.23	181.23
Second Street	535	3	82	370	1877	30.05	
First Street		6			1878	23.69	
		&			1879	20.16	
		9			1880	19.36	
		21			1881	21.23	
					1882	24.93	
					1883	26.12	
					1884	24.25	
					1885	23.27	
					1886	23.06	
					1887	20.68	
						256.78	256.78

Avenue Q	535	27 & 28	82	371	1877	16.69	
					1878	13.15	
					1879	11.20	
					1880	10.76	
					1881	11.79	
					1882	13.85	
					1883	14.51	
					1884	13.47	
					1885	12.93	
					1886	12.81	
					1887	11.49	
						142.65	142.65

Exhibit

HUDSON COUNTY CIRCUIT COURT.

In the matter of the application of the Mayor and Council of the City of Bayonne for the appointjustment in pursuance of Chapment of Commissioners of Adter CXII of the Laws of 1886.	Order Confirming Report No. 5.

The Commissioners of Adjustment appointed in and for the City of Bayonne on the sixteenth day of July one thousand eight hundred and eighty seven under and by virtue of Chapter CXII of the Laws of 1886 entitled "An act concerning the settlement and collection of arrearages of unpaid taxes assessments and water rates or water rents, in the cities of this State and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof and to provide for the lands subjected to future assessment and taxation, passed March 30, 1886" having filed a Report of their proceedings and of the assessments, charges and liens fixed and certified by them, together with a map on which the lands so assessed and charged have been indicated by block and lot numbers; and due notice of an application to confirm the said report having been given and published according to the directions of an order of the Court made on the twenty second day of September one thousand eight hundred and eighty eight that all objections that may be made to the assessments, charges and liens fixed and certified by the said Commissioners as appears by their report be heard on the twentieth day of October one thousand eight hundred

and eighty eight at the Court House in the city of Jersey City at the hour of ten o'clock in the forenoon of that day or as soon thereafter as the Court could hear the same, and at the time and place fixed in said order and notice for hearing any and all matters that might be alleged against said report, assessments, charges and liens the Court having adjourned the hearing until the twenty seventh day of October one thousand eight hundred and eighty eight when the Court having heard all objections and matters alleged against the same and duly considered the said report and all objections and matters touching and concerning the same.

It is on the twenty-seventh day of October one thousand eight hundred and eighty eight Ordered that the said report and said assessments, charges and liens therein fixed and certified be and the same are hereby in all things confirmed and

Ordered that the Clerk of this Court do deliver the said original report of said Commissioners heretofore filed in his office to the Collector of Revenue of the City of Bayonne to proceeded with by him according to law.

Manning M. Knapp,
Judge of the Circuit of the
County of Hudson.

Exhibit

Extracts from Report No. 10 of Commissioners of Adjustment of City of Bayonne, relating to lots in question, filed June 20, 1889. Hudson County Clerk's Office.

Street	Block No.	Lot No.	Cert. No.	Index	Taxes in Arrears: Year.	Taxes in Arrears: Amount fixed by Commrs.	Assessments in Arrears— Name of Impr'nt.	Total
Avenue Q					1877	6.21	Readjusted by Order	
(now Newman Ave.)	519	31	157	871	1878	4.90	of Court (in Red Ink)	
					1879	4.18		
					1880	3.32		
					1881	3.65		
					1882	4.29		
					1883	4.50		
					1884	4.19		
					1885	4.02		
					1886	4.00		

						1887	3.59	
						1888	3.81	
							50.66	50.66
Second St.		535	3	158	874	1877	6.00	
						1878	5.54	
						1879	4.81	
						1880	3.88	
						1881	4.26	
						1882	5.00	
						1883	5.25	
						1884	4.88	
						1885	4.70	
						1886	4.66	
						1887	4.18	
						1888	4.44	
							57.60	57.60

Second St.	535	6	158	875	1877	5.14	
					1878	4.86	
					1879	4.23	
					1880	3.32	
					1881	3.65	
					1882	4.29	
					1883	4.50	
					1884	4.19	
					1885	4.02	
					1886	4.00	
					1887	3.59	
					1888	3.81	
						49.60	49.60

Avenue Q now Newman Ave.	535	27	158	882	1877	6.86	
					1878	5.41	
					1879	4.61	
					1880	4.43	
					1881	4.87	
					1882	5.72	
					1883	7.34	
					1884	5.58	
					1885	5.37	
					1886	5.33	
					1887	4.79	
					1888	5.08	
						65.39	65.39

Avenue Q now Newman Ave.	535	28	158	882	1877	10.29	
					1878	8.11	
					1879	6.91	
					1880	6.65	
					1881	7.30	
					1882	8.58	
					1883	10.34	
					1884	8.38	
					1885	8.05	
					1886	8.00	
					1887	7.18	
					1888	7.62	
						79.41	79.41

Exhibit

HUDSON COUNTY CIRCUIT COURT.

In the matter of the application of the Mayor and Council of the City of Bayonne for the appointment of Commissioners of Adjustment in pursuance of Chapter CXII of the Laws of 1886.	Order Confirming Report No. 10.

The Commissioners of Adjustment appointed in and for the City of Bayonne on the sixteenth day of July one thousand eight hundred and eighty seven under and by virtue of Chapter CXII of the laws of 1886 entitled "An act concerning the settlement and collection of arrearages of unpaid taxes and assessments and water rate or water rents in the cities of this State and imposing and levying a tax assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof and to provide for the lands subjected to future assessment and taxation, passed March 30, 1886" having filed a Report of their proceedings and of the assessments, charges and liens fixed and certified by them, together with a map on which the lands so assessed and charged have been indicated by block and lot numbers; and due notice of an application to confirm the said report having been given and published according to the directions of an order of the Court made on the twenty second day of June one thousand eight hundred and eighty nine that all objections that may be made to the assessments charges and liens fixed and certified by the said Commissioner as appears by their report be heard on the thirtieth day of June one thousand eight hundred

and eighty nine at the Court House in the city of Jersey City at the hour of ten o'clock in the forenoon of that day or as soon after as the Court could hear the same and at the time and place fixed in said order and notice for hearing any and all matters that might be alleged against said report, assessments, charges and liens; the Court having heard all objections and matters touching and concerning same at the time and place fixed in said order.

It is on this thirteenth day of July one thousand eight hundred and eighty nine Ordered that the said Report and the said assessments, charges and liens therein fixed and certified be and the same are hereby in all things confirmed, and

It is Further Ordered that the Clerk of this Court deliver said original Report filed with him as aforesaid to the Collector of Revenue of the City of Bayonne to proceeded by him according to law.

Manning M. Knapp,
Judge of the Circuit of the
County of Hudson.

Exhibit GWB-1.

May 14, 1919.

AN INDENTURE made this Eleventh day of December one thousand eight hundred and seventy-seven

BETWEEN SIMON FRASER MACKIE of the City of New York of the first part and WILLIAM MAN of the same City of the second part: WHEREAS, the said party of the first part is about to contract marriage with Clara Ella Cooper of New Ipswich in the State of New Hampshire and desires to provide for her support and maintenance and for the support and education of the children, if any, of the said marriage so to be solemnized and the party of the second part has agreed to accept the trust hereby reposed in him for that purpose, *Now in consideration* of the premises and of one dollar to him the party of the first part in hand paid, the receipt whereof is acknowledged, he the party of the first part has granted and sold and doth hereby grant, bargain, sell, assign, transfer and set over to the said party of the second part his heirs and assigns forever, ALL the real estate and lands of the party of the first part situated at Bayonne City (formerly Bergen Point) Hudson County, State of New Jersey, which land is the share of the party of the first part at present undivided in certain lands and real estate whereof Catherine G. Mackie the mother of the party of the first part recently died seized and which land is more particularly described in the deed thereof from John Duer to said Catharine G. Mackie which was dated November twenty-ninth, one thousand eight hundred and sixty-seven and was recorded in the office of Clerk of said Hudson Coun-

ty on the day of in Book of deeds page .. *Also all the* personal property specified in a bill of sale thereof delivered by the party of the first part to the party of the second part simultaneously herewith and which personal property is now contained in the dwelling-house or buildings at Bayonne City standing upon the said lands formerly of Catharine G. Mackie. *Also all the* share, right, title and interest of the party of the first part in or to all property real or personal formerly of the said Catharine G. Mackie and which belonged to her at her decease. *Together* with all and singular the tenements, hereditaments and appurtenances to the said land belonging or in anywise appertaining; and the reversion and reversions, remainder or remainders, rents, issues and profits thereof, *And also all* the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said part of the first part of, in or to the above described lands and premises and every part and parcel thereof with the appurtenances *To have and to hold* the above mentioned and described premises with the appurtenances and all the said personal property with any income and increase thereof unto the said party of the second part his heirs and assigns forever. UPON TRUST, nevertheless, for the following uses and purposes that is to say: To sell and dispose of the said lands and premises and to give good and sufficient deed or deeds therefor, provided that the same shall not be sold during the lifetime of the said party of the first part and of the said Clara Ella Cooper without the consent of them or the survivor of them; and until such sale to hold and manage the same and to collect and receive the rents, income and profits thereof and as to said personal property to con-

vert the same into money and to invest and reinvest the same together with the proceeds of any real estate that may be sold and to collect and receive the income and increase thereof and to pay all taxes, repairs, insurance and all other necessary and proper expenses of administering the trusts hereby created and as to the residue of income to pay or apply the same as follows, viz.: to said Clara Ella during her natural life and upon her decease then to the said Simon F. Mackie if he should survive her and during his natural life and upon the decease of both said Clara Ella and Simon F. Mackie then to pay over the whole of the trust fund in the hands of such Trustee principal and income and to grant and convey any of the said real estate that may remain unsold, to the oldest surviving son of the said Simon Fraser Mackie and Clara Ella his wife; if there should be no such son surviving then to the oldest surviving daughters of the said Simon F. Mackie and Clara Ella, his wife in equal shares. But if upon the death of the one first dying of the said Simon F. Mackie and the said Clara Ella there should survive no child of their marriage or such surviving child or children should afterwards die before the death of the parent so surviving then such surviving parent shall have power which is hereby declared and reserved for that purpose to dispose by Will duly executed of the principal and income of the trust fund hereby created and failing such disposition by Will in whole or in part then the trust fund or the part remaining undisposed of shall go and belong to Elsie W. Mackie sister of said Simon F. Mackie if she be then surviving, but if she shall have theretofore died then to the eldest survivor of the three hereinafter named

L. Mackie, Robert J. D. Mackie and Charles T. O. Mackie, and if no one of the persons aforesaid shall be then living then to the heirs male of said Simon F. Mackie and failing heirs male then to the heirs female, but in no event whatsoever shall George Barclay Mackie, or Alexander Lockhart A. Mackie, brothers of said Simon F. Mackie or either of them, or their or either of their wives or descendants receive or take the said trust fund or land or any share or part whatsoever of said fund or land. *The said party* of the first part hereby reserves to himself the right to alter by deed made during the life of said Clara Ella with her consent the disposition of the trust fund and premises hereby provided to take effect after the decease of both of them of said trust fund and premises and to make different disposition thereof. AND it is further hereby provided that said Trustee shall not be liable in any event for any of the property hereby granted or sold or transferred to him except the same actually come into his custody, possession and control and he shall not be compelled to pursue the same or any part of it or to take legal proceedings to obtain possession thereof or of its proceeds or in any way liable in default of so doing; and further it is hereby provided that he may at any time resign this trust and may grant, convey and assign the trust fund and the lands, if any, then remaining unsold to such new trustee or trustees or associate with him in this trust such persons as he may nominate with the consent of said Simon F. Mackie and Clara Ella his wife, or the survivor of them and upon such conveyance and transfer and upon accounting before a proper legal tribunal or to such new trustee or trustees the said party of the second part shall be thereupon

brothers of said Simon F. Mackie, viz: Schuyler and thereby discharged of his trust and of all liability therefor or arising therefrom.

IN TESTIMONY whereof the said parties have hereto set their hands and seals the day and year aforesaid.

Sealed and delivered in presence of

Simon F. Mackie (Seal)
Wm. Man. (Seal)

The words "in equal shares" interlined on fourth page and "oldest," striken out, one line interlined on sixth page and words "or Trustees" &c. interlined on seventh page.

Jno. J. Louth.

STATE OF NEW YORK, City and County of New York. } ss.:

I, John J. Louth, a Commissioner for the State of New Jersey, residing in the City of Brooklyn, County of Kings and State of New York, do certify, that on the eleventh day of December in the year one thousand eight hundred and seventy-seven, in the said City of New York aforesaid, personally appeared before me, Simon Fraser Mackie and William Man, who I am satisfied are the persons described in and who have executed the foregoing deed, and I having first made known to them the contents thereof, they severally acknowledged to me that they had signed, sealed

and delivered the said deed as their voluntary act and deed.

(Seal) In witness whereof I have hereunto set my hand and official seal at New York City in the County and State aforesaid, this eleventh day of December, one thousand eight hundred and seventy-seven.

Jno. J. Louth.

A Commissioner for the State of New Jersey

Ex'd B
Received in the Office of the Register of the County of Hudson, N. J., on the 19th day of March, A. D. 1880 at 9:30 o'clock A. M. and Recorded in Book 344 of Deeds for said County on Page 158 &c.

J. B. Cleveland.
Register.

Exhibit GWB-2.

May 14, 1919.

Whereas: Simon F. Mackie, of the City, County and State of New York, by a certain Indenture dated the eleventh day of December 1877, and recorded in book of deeds numbered 344 for Hudson County, State of New Jersey, at page 157, did grant, bargain, sell, assign, transfer and set over to William Man, of the same place, all his interest in the real estate and in the personal estate of his mother, Catherine G. Mackie, deceased, which real estate is situated in the City of Bayonne, County of Hudson and State of New Jersey, and, did constitute, make and appoint said William Man, trustee, and the terms of said

trust are fully set forth in the above mentioned Indenture, reference thereunto being had, will more fully and at large appear. And, Whereas; the said Simon F. Mackie, and Clara Ella, his wife, both departed this life in Salt Lake City, in the State of Utah, leaving them surviving, only one child, a daughter, Marguerite, an infant under twenty one years of age. And, Whereas; the said Marguerite Mackie, after reaching her majority, did, on the eleventh day of May, 1912, convey to Alexander L. A. Mackie, of the City, County and State of New York, all her right, title and interest in all or any of the real estate and of the personal estate of the said Catherine G. Mackie, deceased mother of the said Simon F. Mackie, which conveyance is recorded in book of deeds for Hudson County, State of New Jersey, numbered 1120, at page 295.

And, Whereas; the said hereinbefore mentioned William Man, Trustee, departed this life in the City of New York, on the twenty-second day of January, 1906, and no guardian having been appointed for the said hereinbefore mentioned infant, Marguerite Mackie.

Now this INDENTURE made the 8th day of October in the year of our Lord one thousand nine hundred and eighteen, BETWEEN William S. Man of the City of Plainfield, County of Union and State of New Jersey, only surviving son and common law heir of the said William Man, Trustee, party of the first part, and Alexander L. A. Mackie, of the City of New York, County and State of New York, party of the second part, WITNESSETH, That the said party of the first part, for and in consideration of the sum of one dollar, and other good and lawful

considerations, lawful money of the United States of America to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledge and the said party of the second part, his heirs and administrators, forever released and discharged from the same by these presents, hath remised, released and forever quit-claimed, and by these presents doth remise, release and forever quit-claim unto the said party of the second part, and to his heirs and assigns, forever all the share, right, title and interest of the party of the first part, as, heir at law of the said William Man, Trustee, in or to all the property real or personal, formerly of Catherine G. Mackie, deceased, which is set forth and described in the deed of trust, dated the eleventh day of December, 1877, and recorded in book of deeds 344, for Hudson County, New Jersey, at page 158, and which said share of real estate, was alloted to the said Simon F. Mackie, in the division of the real estate of the said Catherine G. Mackie, deceased, and is fully described in the report of the Commissioners appointed March 1st, 1876, by the Court of Chancery of New Jersey, to divide the real estate of the said Catherine G. Mackie, deceased, on file at Trenton, New Jersey, or any piece, part or portion of said real estate, lot or lots of land, or part or parts, portion or portions of any lot of land, or of any of the lots of land remaining unsold at the decease of the parties to the said deed of trust hereinbefore mentioned, TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. AND ALSO, all the estate, right, title, interest, property, posses-

sion, right of possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances, TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever. And this deed is given to effectuate and to terminate the hereinbefore mentioned trust to the said hereinbefore mentioned William Man.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM S. MAN. (Seal)

Signed, Sealed and Delivered in the presence of

J. G. ATKINSON.

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.:

BE IT REMEMBERED, That on this 8th day of October in the year one thousand nine hundred and eighteen before me Jerome G. Atkinson, a Notary Public, personally appeared William S. Man, who, I am satisfied, is the grantor in the within Indenture named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered

the same as his voluntary act and deed for the uses and purposes therein expressed.

J. G. ATKINSON,
Notary Public.

Kings County No. 79.
Kings County Register's Certificate No. 9018.
Certificate filed in New York County No. 63.
New York County Register's certificate No. 9069.
Commission expires March 30, 1919.

Exhibit D-11.

Liber 661 Page 396 Recorded 23 Dec. 1896.

Deed dated 31 Jan., 1895.

Bayonne City of, by Collector
To
Mayor, etc., etc., of the City of Bayonne

To all to whom these presents shall come I Cyrillus L. Robinson Collector of Revenue of the Mayor and Council of the City of Bayonne a municipal Corporation in the County of Hudson and State of New Jersey Whereas pursuant to an act of the Legislature of New Jersey passed March 30th, 1886 Entitled an act concerning the settlement and collection of arrearage of unpaid taxes assessments and water rates or water rents in cities of this State and imposing and levying a tax assessment and lien in lieu and instead of such arrearage and to enforce the payment thereof and to provide for the sale of lands subject to future taxation and assessment and the supplements and acts amendatory thereof upon applica-

tion duly and regularly made after lawful notice by the proper authorities of the said City to the Circuit Court of the County of Hudson and after due hearing as by said act provided said Court did appoint Commissioners of Adjustment in and for said City. And whereas said Commissioners of Adjustment after and upon due notice hearing and examination as in said act prescribed did fix adjust and determine as to each parcel of land hereafter described how much of the arrearages of taxes and assessments together with subsequent taxes and assessments as in said act defined remaining against said land ought in fairness equity and justice to be laid assessed and charged against and actually collected from said land and of all which said commissioners kept record wherein was entered their determination and the other matters required to be entered therein did make and file a map and report duly certified which after and upon due notice examination revision and hearing was by said Court confirmed upon which confirmation a certified copy of said report and assessment map filed therewith were duly transmitted to and filed by the Collector of Revenue of the said City whereupon the amount of said tax and assessment so fixed and certified became immediately due and payable but after the expiration of six months from the filing of the said certified copy of said report and assessment map still remained due and unpaid. And whereas after giving notice by advertisement as in said act required the said Collector of Revenue did on the Fourteenth day of September A. D. 1892 make sale at public auction to the highest bidder to the same to wit To the Mayor and Council of the City of Bayonne their successors or assigns of the following described land and premises to wit lot numbered three (3) in Block numbered Five hundred and thirty five

(535) fronting on Fourth Street in the First Ward of the said City of Bayonne New Jersey as laid down and shown on an assessment accompanying a report made by the Commissioners of Adjustment and filed with their report in the office of the Clerk of the County of Hudson a certified copy of which report and map transmitted to and filed by me the Collector of Revenue in my office for the sum of seventy two 47/100 dollars being a sum not less than the amount due from the same as appears by said report with interest and costs of which sale I the said Collector of Revenue did execute and deliver to the said purchaser a certificate setting forth the particulars thereof and containing a covenant on the part of the said City to refund to said purchaser his heirs devisees or assigns the said amount paid for said lands and premises according to the directions of said act without interest in case the title to the same should prove invalid.

And whereas said certificate of sale has been surrendered to me and proof has been duly made by the affidavits of Louis D. Ayres and Edward F. White said purchaser and his agents duly filed in the office of the City Clerk of Bayonne within one month after the date of service that notice of said sale in writing has been given in the manner prescribed by said acts by the said purchaser to every person who has an estate in or mortgage upon said lands and premises whose estate or lien appears of record in the County of Hudson, To wit To: William Man Simon F. Mackie Clara E. Mackie and whereas more than six months have expired since such notice was given to said persons and no person has redeemed said lands and premises in the manner set forth in said act or in any manner.

Now know ye that I the said Cyrillus L. Robinson Collector of Revenue of the Mayor and Council of the City of Bayonne under and by virtue of said acts of the Legislature and upon proceedings which have been taken under the authority of the same and for and in consideration of the said sum of money for which said lands and premises were sold the receipt whereof is hereby acknowledged. Have granted bargained sold assigned transferred conveyed and confirmed and by these presents do grant bargain sell assign transfer convey and confirm unto the said Mayor and Council of the City of Bayonne their successors and assigns forever the above described lands and premises with the appurtenances. To Have and To Hold the same unto the said Mayor and Council of the City of Bayonne their successors and assigns to its and their own proper use benefit and behoof forever in as full ample and beneficial a manner as by virtue of said acts and the proceedings had and taken in pursuance thereof I may can or ought to convey same.

In Witness Whereof I Cyrillus L. Robinson the Collector of Revenue as aforesaid have hereunto set my hand and seal and have caused these presents to be sealed and attested by the Clerk of the said City the thirty first day of January A. D., Eighteen hundred and ninety five.

CYRILLUS L. ROBINSON, (L. S.)
Collector of Revenue.

(Cor. Seal)

Attest
W. C. HAMILTON.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } SS.:

Be it remembered that on this fifteenth day of February in the year of our Lord one thousand eight hundred and ninety five before me the subscriber a Master in Chancery of New Jersey personally appeared William C. Hamilton who being duly sworn according to law on his oath says that he is (and who is known to me to be) the City Clerk of the Mayor and Council of the City of Bayonne and he says that C. L. Robinson is the Collector of Revenue of said City that deponent knows the seal of said City that the seal affixed to the foregoing deed is such corporate seal that he saw the said C. L. Robinson sign seal and deliver the said deed and heard him acknowledge that he signed sealed and delivered the same as his voluntary act and deed as such Collector of Revenue and as the voluntary act and deed of said City for the uses and purposes therein expressed and that deponent at the same time affixed the corporate seal of the said City thereto and attested the same and subscribed his name to said deed as witness.

DANIEL J. MURRAY,
M. C. C. of N. J.

Exhibit D-12.

Liber 666 Page 22 Recorded 30 Jan 1897.

Deed dated 15 Dec 1896.

Mayor and Council of the City of Bayonne
To
Edward L. Preston

This Indenture made this fifteenth day of December in the year of our Lord one thousand eight hundred and ninety six Between the Mayor and Council of the City of Bayonne a body corporate and public of the State of New Jersey of the first part and Edward L. Preston of the City of Bayonne in the County of Hudson and State of New Jersey party of the second part.

Witnesseth that the said party of the first part for and in consideration of the sum of thirty ($30) dollars lawful money of the United States of America to it in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the first part being therewith fully satisfied contented and paid hath given granted bargained sold aliened released enfeoffed conveyed and confirmed and by these presents doth give grant bargain sell alien release enfeoff convey and confirm unto the said party of the second part and his heirs and assigns forever. All that certain lot tract or parcel of land and premises hereinafter particularly described situate lying and being in the City of Bayonne in the County of Hudson and State of New Jersey which is known and designated as lot number three (3) in Block numbered Five hundred and thirty five (535) fronting on West Second Street as laid down and

shown on an assessment map accompanying Report number ten (10) made by the Commissioners of Adjustment appointed for the City of Bayonne under the provisions of Chapter XII of the laws of 1886 and the supplements thereto and filed with their said report in the office of the Clerk of the County of Hudson a certified copy of which report and map was transmitted and filed with the City Collector of the City of Bayonne.

Being said premises conveyed to said party of the first part by C. L. Robinson City Collector by deed dated January 31st, 1895 as sale number 778. This deed is given pursuant to a resolution of the Board of Council of said City adopted October sixth 1896 concurred in by the Committee on Finance on October sixth 1896 and approved by the Mayor October eighth 1896.

Together with all and singular the houses buildings trees ways waters profits privileges and advantages with the appurtenances to the same belonging or in any wise appertaining, also all the estate right title interest property claim and demand whatsoever of the said party of the first part of in and to the same and of in and to every part and parcel thereof To Have and To Hold all and singular the above described land and premises with the appurtenances unto the said party of the second part his heirs and assigns to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever and the said party of the first part doth for itself and its successors covenant and agree to and with the said party of the second part his heirs and assigns that it the said party of the first part is the true lawful and rightful owner of all and singular the above described land and premises and of every part and parcel thereof with the appurtenances thereunto belonging and that the said land and premises or any part there-

of at the time of the sealing and delivery of these presents are not encumbered by mortgages or limitations or by any encumbrances whatsoever by which the title of the said party of the second part hereby made or intended to be made for the above described land and premises can or may be changed charged altered or defeated in any way whatsoever.

And also that the said party of the first part now hath good right full power and lawful authority to grant bargain sell and convey the said land and premises in manner aforesaid and also that the said party of the first part will warrant secure and forever defend the said land and premises unto the said Edward L. Preston his heirs and assigns forever against the lawful claims and demands of all and every person or persons freely and clearly freed and discharged of and from all manner of encumbrances in whatsoever.

It is however expressly stipulated that the amount of the recovery upon the foregoing covenants and warrant or any of them shall not exceed the amount of the consideration money hereinbefore expressed.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed attested by its City Clerk and these presents to be signed and delivered by its Mayor the day and year first above written.

The Mayor and Council of the
City of Bayonne.
EGBERT SEYMOUR,
Mayor.

(Corp Seal)
Attest
W. C. HAMILTON,
City Clerk.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

Be it remembered that on the fifteenth day of January in the year of Our Lord one thousand eight hundred and ninety seven before me the Subscriber a Master in Chancery personally appeared W. C. Hamilton who being duly sworn according to law on his oath deposeth and makes proof to my satisfaction that he is and who is known to me to be the City Clerk of the Mayor and Council of the City of Bayonne the assignor within named that Egbert Seymour is the Mayor of said City that deponent knows the corporate seal of said City that the seal affixed to the foregoing deed is such corporate seal that he saw the Mayor sign seal and deliver the said deed and heard him acknowledge that he signed sealed and delivered the same as the voluntary act and deed of said City for the uses and purposes therein expressed and that deponent at the same time affixed the corporate seal of the said City thereto and attested the same and subscribed his name to said deed as witness.

W. C. HAMILTON.

Sworn and subscribed at the City of Bayonne this fifteenth day of January A. D., 1897, before me

DANIEL J. MURRAY,
Master in Chancery of New Jersey.

Note.

Defendants' other exhibits, D-1 to D-19 and K-1 inclusive are correctly described in transcript of testimony (pp. 175-185, 212-214) and all deeds from Collector of Taxes of Bayonne or from City of Bayonne are in same form and contain same recitals as D-11 and D-12, respectively, and are therefore not printed.

NEW JERSEY

Court of Errors and Appeals

BETWEEN

ALEXANDER L. A. MACKIE,
Complainant-Appellant,

and

LUCIUS F. DONOHUE *et als.*,
Defendants,

JOHN J. CAIN, MICHAEL M. KESHEN and his wife,
Respondents.

On Appeal from Chancery.

APPELLANT'S BRIEF.

STATEMENT.

Notwithstanding the badly drawn bill of complaint, to quiet title, prepared by former counsel, and the voluminous record of trial, containing much irrelevant and immaterial matter, the complainant's case can be simply stated. He claims he was in peaceable possession at time of filing complaint in December, 1916, and had good title to Lots 3, 6, 27 and 28 in Block 535 and Lot 31 in Block 519, on Assessment Map of City of Bayonne, and that the proofs establish his contention. The other lot referred to in bill and proofs are not involved in this appeal, which concerns only those claimed by defendant John J. Cain, the four in Block 535, and one Lot in Block 519, claimed by defendant Keshen; their claims being founded on alleged Martin Act Sale under Report No. 10 of Adjustment Commis-

sioners of the City of Bayonne (see recitals in Exhibit D 12, which is a sample of all defendant's deeds from city as noted on page 270 of case).

Complainant contends he has shown possession and title, and hence Court of Chancery erred in dismissing his complaint and awarding costs and counsel fees to these defendants, and in any event, complaint should have been retained as a bill *quia timet*, and the relief prayed for granted.

As to Peaceable Possession.

It is impossible to cite fully all the proofs as to character, use and possession of the premises in question, but it is undenied that complainant's father in 1859 purchased a tract (p. 48) in the name of his wife, Catharine G. Mackie, which included these lots, and the parents were in possession and enjoyment thereof during their lifetimes as a farm and orchard (pp. 50, 141); that streets were opened across the property about 1869 (p. 60); that their children afterward continued in such possession and use (pp. 49-50, 143); that in 1876 a partition proceeding was had among the children (pp. 52-53); as shown on map Exhibit C 1, whereby all the lots in question were set off to Simon F. Mackie (p. 54); that the partition did not affect the use of the premises by the heirs in common, who resided in mansion house(pp. 61, 67) except as to certain lots later sold by some of the heirs; but that various members of the family continued in possession and use of the homestead and unsold portions in the same way until about 1903 (pp. 50, 68, 142), after which tenants of the mansion house continued such use up to the present time (pp. 68-86, 144, 150, 160, 165); that mansion house is still intact (p. 48)- though the partition allotted the ground on which it stood to three separate heirs, including complain-

ant (p. 57); that there were no structures (p. 59) of lots in question at time of commencement of suit, except a portion of brick stable erected by father Mackie is on Lot 28 (p. 97), and fences originally built by him around the blocks (pp. 61-53, 159) still remain in front of the lots in question (pp. 90-92, 147, 159, 214), and some orchard trees (pp. 89, 161, 164); that Simon F. Mackie conveyed his interest in these and other lots belonging to his mother's estate to William Mann (Exhibit G. W. B. 1) in trust for himself and wife during their lives and after their deaths to convey to their children; that their sole heir was Margaret Mackie (p. 53), who deeded to complainant (Exhibit C 2), and confirmatory deed was also made after death of trustee by his heir at law to complainant (Exhibit G. W. B. 2); that complainant has never been disturbed in possession since acquiring title (pp. 72, 89, 165).

It is respectfully contended that defendants have utterly failed to show any physical possession on these lots nor any disturbance nor interference with complainant's possession existing at time of commencement of this suit in December, 1916.

McGrath v. Norcross, 70 N. J. Eq., 364; aff. 71 N. J. Eq., 763.

And their proofs fail to show any acts which would have made them subject to an action at law in trespass or ejectment. This is the test of complainant's possession required to maintain his suit.

Allaire v. Ketcham, 55 N. J. Eq., 168.

As to Lot 31, Block 519, the defendant Keshen (pp. 211-214) only says he visited and looked at his lot about twice a year, paid taxes on it and admits he saw fence in front of it when he bought and that the fence is still there and around the block.

As to Lots 3, 6, 27 and 28, Block 535, defendant Cain nowhere in his testimony shows any physical possession of these lots or interference with complainant at time of suit. Against objection, he was permitted to testify generally as to his ownership of other lots in the block and structures on other lots, as to signing consent for street railroad through Second street where he owned other lots; as to a lease in 1908 for one season to Bernstein, whose fence he thought touched Lots 27 and 28 but never measured it (p. 203) as complainant did (p. 216) and who testified it did not touch these lots (p. 220). Cain also testified someone had patched the fence around the block, "where it needed it" (p. 188); that he had rented the stable some years ago to one Stringham and about five years ago to Mrs. Hermanos, whom he thought had paid him some rent (p. 187); and finally that he had rented "all the lots he owned in the block" (p. 189) in April, 1919 (p. 190) after commencement of suit. It is admitted the Bernstein fence is now gone and Cain admits (p. 191, l. 21-23) Bernstein fenced Cain's property in, "independent of Mr. Mackie's property, so as he would not be trespassing." It is shown there were two entrances to the stable on the side of Lot 29, owned by Cain (p. 138, ll. 23-31) and nowhere is there any proof that Stringham ever used stable by any entrance on Lot 28 side and it does appear there was a brick partition in stable from floor to roof (p. 135, ll. 29-32).

We submit, all this testimony should have been rejected as too indefinite and immaterial and not directed toward proof of possession in December, 1916; especially as alleged tenant of stable, Mrs. Hermanos, who lives in the Mackie mansion, (p. 187, ll. 15 18) could have been produced to establish use of that part of stable on Lot 28, if true. Yet the

Court, on these proofs, not only holds (p. 41) complainant is not in possession but finds that defendant is in possession.

The fundamental error underlying this decision seems to be the idea that complainant was compelled, as against these defendants, to prove actual physical or adverse possessory acts even upon unimproved lands. This is not so.

Blakeman v. Bourgeois, 59 N. J. Eq., 473.

Numerous authorities to the contrary, holding practically that proof of title alone to vacant lands, is sufficient proof of possession, unless actual possession is shown to be in another, can be found under heading "Quieting Title" in Amer. Dig. (Dec. Ed.) Secs. 10 & 12.

Also Amer. Dig. (Key Number Ser.) Sec. 12, Vols. 2, 5, 11, 14.

Also 32 Cyc., 1337.

Under the Statute of Uses and our own Conveyance Act, Sec. 7, a conveyance of the use of land vests in the grantee full and ample possession to all intents and purposes.

Melick v. Pidcock, 44 N. J. Eq., 542.

But this is not true of involuntary transfers, however, such as tax sales, where possession must be taken, unless by force of and strict compliance with the statute.

Beatty v. Lewis, 68 Atl. Rep., 95.

Gosman v. Pfistner, 80 N. J. Eq., 432, 435.

Harrington Co. v. Horster, 89 N. J. Eq., 270, 273.

Jacobus v. Cahill, 87 N. J. L., 562, syl. 4.

The Trial Court recognized this principle and attempts to read such effect in the Martin Act, Sec. 5, which makes a tax deed presumptive evidence of good and sufficient title. This may be true, where the Commissioners had power and authority to act, but not otherwise, and we contend no such authority existed, to adjust these taxes under Report No. 10, as will be shown under discussion of our next point regarding title. The provisions and limitations of the statute apply only to legal tax proceedings.

Bounds v. Chester Tp., 89 N. J. L., 375.

Bogert v. Elizabeth, 27 N. J. Eq., 568, 572.

Evans v. Inhabitants, 39 N. J. L., 456.

The Trial Court also, in its opinion seems influenced by complainant's delay before bringing suit, and knowledge from the records of these tax proceedings and deeds thereunder, and his failure to pay taxes or assert claim against the tax title and says that, therefore, everything should be resolved against him (p. 40). It is respectfully submitted, that whatever may be our personal opinion regarding these matters, the complainant was within his legal rights and owed no duty to defendants, since no laches lies against one in undisturbed possession.

Beatty v. Lewis, supra.

Defendants also urged below that the statute presumed them to be in possession by reason of their payment of taxes for more than five years. This did not impress the Court and it seems only necessary to point out the fallacy of the argument, in defendant's mouth, in that the statute only

erects that presumption to enable "such person so presumed to be in possession to *bring* and maintain a suit in chancery to settle the title of said lands," and "provided no other person be in possession." Defendants were equally as able, under this presumption, as the complainant, to have brought suit long ago, and it is surprising they did not thus seek to avail themselves of such presumption, unless they lacked faith in their presently asserted rights.

According to the nature and condition of these lands, we submit complainant was shown peaceable possession, traced down from ancestral occupation as a farm, continued use in common after the partition, by the heirs and their tenants in the mansion house, and the existence still of fences and trees on the lots in question, placed there by his predecessors and no disturbance by defendants(p. 72, 76).

As to Title.

1. Complainant has established his title, derived from Simon F. Mackie, to whom these lots were allotted in partition in 1876, who conveyed to Man, in trust (Exhibit C 2, p. 233), and under the trust, title vested in his sole heir, Margaret Mackie, after her parents' death, and she conveyed to complainant (Exhibit G. W. B. 1, p. 252), and he received further confirmatory deed from deceased Trustee's legal heir (Exhibit G. W. B. 2, p. 257).

2. Defendants have not shown any adverse possessory or paper title.

A. No open, notorious or continuous possession was proven, as is demonstrated under first point, as to any of the lots, nor, in fact, did defendants contend at the trial that the proofs showed title by adverse possession.

B. Defendants rely upon succession, through mesne conveyances, from a Martin Act proceeding under Report No. 10 of the Adjustment Commissioners of the City of Bayonne and sales by Collector thereunder held September 14, 1892, at which the city bought in the several lots and afterwards sold the same at auction in December, 1896. All deeds trom the Collector to the city and from the city to various purchasers are alike in form and recitals (note p. 270) to the sample deeds Exhibits D 11 (p. 261) and D 12 (p. 266).

Complainant asserts, these deeds conveyed no title, because, based upon an adjustment under Report No. 10 (p. 245), filed June 20, 1889, which adjustment is void and illegal as to the lots in question, because of a previous adjustment of the same taxes (except one year) under Report No. 5 (p. 240), filed September 20, 1888, which report was confirmed October 27, 1888, by order of Circuit Court (p. 243).

Section 3 of the Martin Act(C.S. 5208, Sec. 310), after directing the manner of preparing adjustment reports and filing with the Court and notice of hearing of objections, reads, "and, after hearing any matter that may be alleged against the same, the said Court shall, by rule or order, either confirm the said report or refer it to the same commissioners, or to other commissioners to be appointed by the said Court, to reconsider the subject matter thereof, and the said commissioners to whom the said report may be so referred, shall return the same corrected and revised, or a new report to be made by them in the premises, to the said Court, without unnecessary delay, and the same, on being so returned, shall be confirmed, or again referred by the said Court in the manner aforesaid, as right and justice may require, and so, from time to time, until a report shall be made

or returned in the premises which the said Court shall confirm; any commissioner who shall refuse to sign such report shall file with the same a statement of his reasons for so refusing, for the information of the Court; said report, upon being so confirmed, shall be final and conclusive upon the said city, and upon all persons owning or having any interest in or lien upon the said lands and against all persons whosoever, and the amounts so fixed, determined, certified and confirmed in each case shall thereupon become and be a valid and binding tax, assessment and lien on the lands so designated, in lieu and instead of all outstanding claims of the city for arrearages of taxes, assessments or water rates levied or confirmed, or attempted to be levied or confirmed, prior to the making of the said report, and shall be a valid lien on said lands, having priority over all other liens, claims or demands whatsoever, except taxes, assessments or water rates levied after the making of the said report." Then follows other matter.

No language can be conceived, to better express the intent to end the power and authority of commissioners and the Court under the act, over such taxes, when a report of adjustment is once confirmed and the finality of the proceeding. It expresses an evident intent to prevent attempts at readjustment after confirmation by providing for ample opportunity for revision of a report without limit before solemn confirmation.

Respondents contend, however, and the Trial Court agrees, that, after the confirmation of Report No. 5, the Circuit Court referred back the matter of adjustment on these lots among others, and the new adjustment thereof was included in Report No. 10, which was confirmed and that such action was authorized, citing Erie Elevator Co. v. Jersey City,

84 N. J. Eq., 176. No such order of reference has been found in the record or files of the Court but it is contended such order was made because there is a notation in red ink on Report No. 10, "Readjusted by order of the Court." There is no proof when, where or by whose authority such notation was made, yet the Trial Court holds it proves such order was made, and that complainant is chargeable with actual or constructive knowledge thereof, without any proof it was ever brought to his attention. This notation, if noticed at all, might lead the Court and parties interested to believe no previous confirmation had been made, but nowise indicates the setting aside of a previous confirmation.

The only difference between the two reports is that certain lots were grouped together in the first and separated in the second, with an additional year's tax added. Yet our Courts have held a sale under such a blending would not be disturbed unless upon certiorari, and is an irregularity only which is cured by statute after deed delivered.

Nichols v. Older, 78 N. J. Eq., 101.

Hayday v. Ocean City, 67 N. J. L., 155.

Booth & Bro. v. Bayonne, 85 N. J. Eq., 281.

Any inference, based upon that reason, is therefore unjustified and contrary to common experience. The order confirming first report recites opportunity given and consideration of objections made before confirmation and it is well known that such blended reports are confirmed almost as a matter of course unless objections are made. The inference of a lost order, drawn in the Erie Elevator case, was based upon an express admission by the defendant there that such order had been made and acted upon by such defendant (p. 183). Here, complainant was in

no way connected with the notation, nor with the making of the report itself, but has always denied the validity thereof and maintained his possession undisturbed by the purchasers at the tax sale there. under. The mere present existence therefore, of such notation, without any further proof regarding it, makes any inference therefrom pure speculation. Yet this is the sole basis for assuming a lost order.

If, then, the order on Report No. 5 was not set aside and report referred back, the Erie Elevator case has no bearing on this case and the absolute confirmation of that report made that adjustment final and conclusive.

McCarter v. Newark, 52 N. J. L., 341.

Moreover, we respectfully submit that the holding in the Elevator case that such order could be made, after a confirmation, is illogical and *obiter dicta*, though the decision was sound. The opinion (p. 179) acknowledges Chancery has no jurisdiction by injunction in matters of collection of taxes, in in the absence of specific equities, and the essential equity was found there to exist, namely, estoppel in pais, arising out of the acts and conduct of defendant, affecting rights of other parties, which was dispositive of the case, whether such an order existed or not. Such a holding necessarily rests upon the authority of a Court of General Jurisdiction to control its orders and decrees, but ignores the purely statutory jurisdiction of the Circuit Court in these matters and the express statutory effect given to an order of confirmation. The Legislature may limit a grant of power and here has clearly declared that all revision and correction of reports shall be made before confirmation. Similar power, furthermore, under other statutes, given to the Circuit, has been held to be administrative and not judicial, in the

decision of this Court, in East Orange v. Hussey, 70 N. J. L., 244. Hence any power of the Circuit to modify a confirmation once made, cannot arise out of its general judicial authority as a Court, but must be found in the statute prescribing the power.

Title Courts, 15 C. J., 726, Sec. 14 (2), also p. 831, Note 35.

This statute gives no such authority but on the contrary declares the act of confirmation to be final and conclusive.

Even if the Circuit Court here did attempt to disturb its absolute confirmation of Report No. 5, the effect of such confirmation is unchanged and the sale under Report No. 10, was a nullity.

Rutherford v. Meginnis, 72 N. J. L., 444.

Harrington Co. v. Horster, 89 N. J. Eq., 270, 273.

When the prescribed procedure had once been completed all further power of Court or Commissioners was extinguished.

As to Right to Relief.

Respondents contend complainant should be denied relief because of laches, the evidential value of a tax deed, and collateral attack.

1. No laches attaches to complainant because he owed no duty to respondents; they have relied upon illegal proceedings of which they had the same notice as complainant and have never attempted to disturb him in his possession. Until such attempt no duty arose. He merely rested upon his title and possession.

Bogert v. Elizabeth, 27 N. J. Eq., 568.

He was entitled to keep advised of the facts of record and rely upon the notice of illegality therein contained, which was notice to the world, and prepare himself to meet any hostile act. Laches lies upon the other side.

And lack of iurisdiction is always open to attack.

Trustees v. Stocker, 42 N. J. L., 115.

Meredith v. Perth Amboy, 63 N. J. L., 520.

2. A tax deed is only made presumptive evidence of title and such title has here been proven to be without support in law or fact. In so far as any statute may be argued to give conclusive effect to the deed in a proceeding respecting the title, it is clearly unconstitutional and deprives an owner of due process of law.

Devlin on Real Estate, (3rd Ed.) p. 2573, Sec. 1422.

McCready v. Sexton & Son, 4 Amer. Rep. 214.

The statuory effect, furthermore, cannot apply to a deed based upon a proceeding not warranted by the statute.

Bounds v. Chester Tp., supra.

Waterman v. Shrewsbury, 83 N. J. L., 286.

And the limitation clause itself (C. S. 5226, Sec. 347) only refers to deeds "given pursuant to the provisions of the Act."

3. An attack is not limited to certiorari when based upon an unconstitutional law or lack of authority or jurisdiction of commissioners or a court.

Walsh v. Newark, 78 N. J. L., 168.

Bogert v. Elizabeth, 27 N. J. Eq., 568, 572.

This principle is recognized in many of the cases cited below by respondents, at pages indicated.

Jersey City v. Lembeck, 31 N. J. Eq., p. 262, 268, 272.

Cleveland v. Essex, &c., 31 N. J. Eq., 474.

Smith v. Newark, 32 N. J. Eq., 5.

Roe v. Jersey City, 82 N. J. Eq., 644.

Many other cases unnecessary to cite, draw the distinction overlooked by respondents, between proceedings within the jurisdiction of authorities, though illegally or irregularly carried on and proceedings where there is no power to act; in the former, relief must be by direct review, in the latter, relief is available in other appropriate actions.

4. In any event, complainant's bill should not have been dismissed, but should have been retained as a bill *quia timet* to remove a cloud upon the title.

Cahill v. Harrison, 87 N. J. Eq., 524.

CONCLUSION.

For the reasons aforesaid, appellant prays that, as to these respondents, the decree of the Court of Chancery should be reversed with costs, including the award to them of costs and counsel fees, against which there was no stay of execution; and that said Court should be directed to grant the relief prayed for or such other relief as may be equitable and just:

Respectfully submitted,

FRANK W. HASTINGS, JR.,

Of Counsel with Appellant.

NEW JERSEY

Court of Errors and Appeals

Between

ALEXANDER L. A. MACKIE,
Complainant-Appellant,

and

LUCIUS F. DONOHUE, *et als.*,
Defendants.

JOHN J. CAIN, MICHAEL M. KESHIN and MRS. MICHAEL M. KESHIN, his wife,
Respondents.

On Appeal from Chancery.

Brief of Defendants, Michael M. Keshin and Wife.

FACTS.

The complainant brings his action to quiet title to Lot 31, Block 519, claimed by these defendants. The property in question is unimproved vacant land. The complainant's brother, Simon F. Mackie, became the owner of this lot and other lands by the division of the Mackie estate in 1876 (p. 8). He died in 1902 in Salt Lake City and had been there ever since 1882 (p. 72). The lands of Simon F. Mackie descended to his only heir at law, Margaret Mackie, (p. 54), who conveyed to this complainant without any consideration in 1912 (p. 55). The complainant moved away from Bayonne in 1890 and never returned to that city to live (p. 94).

Portions of the land had been cultivated as an

orchard about the year 1861 and fruit trees had been planted on what is now part of Block 519. The complainant cannot say positive but believes that there are one or two fruit trees on Lot 31, Block 519 (p. 130). The complainant's witness, Dobson, cannot tell if there are any trees on Lot C3 (intended for G3, the lot in question, p. 165). There has never been any physical change in this lot since 1861 (p. 130-165). There has never been anyone representing the complainant or those under whom he claimed in physical occupancy of this lot (p. 73). Complainant knew that Lot 31, Block 519, was sold by the Collector of the City of Bayonne for arrears of taxes in 1892 to the City and that subsequently in 1896, the City conveyed this lot to this defendant. This is evidenced by the complainant's testimony that every two or three months for the past thirty-five years he personally examined the records to see what transfers were made of the Mackie property (p. 114). He called his brother's attention to the transfer of this lot but nothing was done by either of them during the years of Keshin's ownership. This lot was not fenced in by the Mackie family although a fence surrounded Blocks 519-535 from ancestral times but were never replaced or repaired (pp. 131-132-133).

The defendant Keshin on the day of his purchase from the City visited the lot with two of his friends, and twice a year for the past twenty-three years went to look at it. During all of these years he paid taxes to the City. There were no trees on the lot and never had been since he first visited it in 1896 (pp. 211-212-213). His attention was never called to any claim of pos-

The complainant has failed to establish peaceable possession. His bill therefore cannot be maintained.

TITLE.

Simon F. Mackie by a division of the Mackie estate in 1876 secured title to Lot 31, Block 519, and other lands. He did not exercise any right of possession therein, nor did his grantee, William Man, Sr. The conveyance to Man contained a clause (after many recitals) . . . . . (p. 255) "But in no event whatsoever shall George Barclay Mackie or Alexander Lockhart A. Mackie, brothers of said Simon F. Mackie, or either of them or their or either of their wives or descendants receive or take the said trust fund or land, or any share or part whatsoever of said fund or land" . . . . Thus, this deed expressly restricted the conveyance of any share in the Mackie land to the complainant. The transfers to him in 1912 by Margaret Mackie and in 1918 by William S. Man (confirmatory deed) were futile and ineffective to convey good title.

Specifically, the complainant's case rests on the invalidity of the Martin Act sale by the City Collector, his contention being that the proceedings had thereunder by virtue of which the defendant claims were void. He relies upon the wording of Sec. 3 of that act (p. 8 of Appellant's Brief). If his theory were accepted, no act or thing could be done after the confirmation of a report by the Commissioners of Assessment, and the Circuit Court would be without any power or jurisdiction to order or refer back the adjustment in the event of any irregularity. He insists that the confirmation is final and conclu-

sive on the Circuit Court and that the readjustment and all proceedings subsequent thereto together with Report No. 10 and its confirmation were a nullity. Surely, such a construction is inconceivable and would practically make ineffective this section of the act. It could not have been intended that the Circuit Court before whom the proceedings are had should lack the power to correct any irregularity at any stage of the proceedings in order to carry out the purposes for which the act was passed.

We feel that the better and undoubtedly the correct version to be put on this section is that the Circuit Court is given such power and authority as would effectively complete all the proceedings including the correction of any irregularities discovered subsequent to the filing and confirmation of the report by the Commissioners. Such an irregularity in this case was discovered after the adjustment was reported and confirmed. The Circuit Court then ordered a readjustment, and although the order cannot be found in the record or files of the Court, the fact is established that a notation in red ink was written on the assessment sheets in words as follows : "Readjusted by Order of Court." Thereupon a new adjustment was made, reported (Report No. 10) and confirmed under which the City purchased and afterwards conveyed to this defendant. The complainant does not question the proceedings under this report.

Section 3 provides, inter alia, that the Commissioners' report may be corrected and revised from time to time or a new report submitted. It was therefore evident that an adjustment by the

session or ownership by any member of the Mackie family until served with the papers in this cause (pp. 214-221).

Lot 31, Block 519, was in arrears of taxes, and the Commissioners adjusted the taxes against this lot for the years 1877 to 1885 inclusive, but grouped the lot with others for each year (p. 240). The Commissioners filed their report No. 5 on September 20th, 1888, which was confirmed by order dated October 27th, 1888 (p. 243). Subsequently and on June 20th, 1889, the Commissioners filed their report No. 10 adjusting the same lot for the years 1877 to 1886 inclusive, but did not group any other lots with Lot 31 in this readjustment. An imprint in red ink is noted in this assessment in words as follows: "Readjusted by Order of Court" (p. 245). This report No. 10 was confirmed by order dated July 13th, 1889 (p. 250).

PEACEABLE POSSESSION.

The facts touching on Lot 31, Block 519, claimed by the defendant Keshin disclose that no one representing the Complainant or any member of the Mackie family was in actual possession or showed any insignia of occupancy for the past thirty years at least. The defendant, Keshin, however, after the conveyance by the City in 1896 formally took possession by going upon the lot and for at least twenty years twice each year visited it personally. His possession and right of possession were never interfered with by the complainant or anyone under whom he claimed.

Equity has no jurisdiction over a suit to quiet the title to lands of which the complainant is not in possession.

Haythorn vs. Mangarem, 7 N. J. E. 324. To enable one to file a bill to quiet title the complainant must be in actual peaceable possession.

Oberon Land Co. vs. Dunn, 56 N. J. E. 749.

Palmer vs. Sinninckson, 59 N. J. E. 530.

In the case of Sheppard vs. Nixon, 43 N. J. E. 627, the legal title to lands were in controversy, both parties claimed legal title to the strip of land in dispute. Justice Depue in writing the opinion of the court, said: "The bill was filed under the act entitled "An act to compel the determination of claims to real estate in certain cases and to quiet the title to the same." Rev. P. 1189. This statute confers on the equity court jurisdiction where the complainant is in peaceable possession of the lands, claiming to own the same, and his title thereto or to any part thereof, is denied or disputed. Under this statute, possession in fact as distinguished from that constructive possession which in ejectment cases arises in virtue of the legal title, is essential to the jurisdiction of the court. The bill contains the necessary jurisdictional averment of possession. But the defendant having in his answer made denial of possession by the complainant, it was incumbent on the complainant to establish that fact by proof. There being no proof upon that subject, I agree with the Chancellor that this act was designed for the relief of a class of persons who being in peaceable possession had no means of contesting the adverse claim by a suit in due course of law. Citing cases."

Commissioners would possibly, at times, be defective. The confirmation of the report under this section as final and conclusive could only mean a confirmation which was not qualified by any further procedure affecting it, viz: but not as in this case, by a reference back and a second report presented and duly confirmed.

"The term final as applied to a judgment or judicial award, has a technical, fixed and appropriate meaning. It denotes the essential character, not the mere consequences, of the order. It is used in contradiction to "interlocutory." It was insisted upon the argument that the decision of the court below was in the nature of a final judgment because the party aggrieved was thereby deprived of redress, having no other means of relief. But in this sense many interlocutory orders are final, as an order for bail; fixing amount of bail; refusing a new trial; refusing to open a judgment obtained by surprise or to correct an assessment. These and a multitude of orders of a similar character made in the progress of a suit which are merely interlocutory, and from which it is conceded no writ of error will lie, are final, in the sense used by counsel. They conclude the party. He has no other means of redress. But they are confessedly not final in the technical and appropriate sense of the term."

State vs. Wood 23 N. J. L. 561.

19 Cyc 532, 533.

State vs Lewis 22 N. J. L. 564.

Further, Sec. 5 of the act recites.....

"And such purchaser, his heirs, legal representatives or assigns, shall take a good and sufficient title to the property sold in fee simple absolute, free from all incum-

brances.....of which the said deed shall be presumptive evidence in all courts and places and in any proceedings or actions to be by such purchasers, his heirs, legal representatives or assigns taken, prosecuted or defended, for the recovery of the possession of the property so sold as aforesaid, or in the establishment or defense of his or their title shown as aforesaid by such deed, the title shall not fail or be defeated by reason of any irregularity or formal defect in the procedure taken under this act, upon which the sale shall have been made or the title conveyed as aforesaid, or by reason of any illegality in fixing and adjusting the tax, assessment and lien, to enforce which said sale was made or in the proceeding for collecting the same; provided the property sold was liable, at time such tax, assessment and lien was fixed and adjusted, to the imposition of a tax, assessment or lien in respect of the purchasers for which such tax, assesment and lien was fixed and imposed, and it does not appear that any substantial injury was done to the owner of the property by reason of the irregular or illegal manner or method of fixing, imposing or collecting said tax, assessment and lien;".....

It is undisputed that the lot in question was liable to tax liens. Moreover, the irregularity or illegality under the first adjustment did not impose any substantial injury to the complainant or those under whom he claims. On the contrary, Simon F. Mackie, William Man and Clara Ella Mackie, being all the persons who had an interest in said lands, were duly notified of the sale to the City which took place after the irregularity or illegality occurred. They all failed

to redeem the property within the time limited by the statute, and the notice served on them.

It would seem to this defendant from Sec. 5 just quoted that the first adjustment was at most a formal defect in the procedure, subsequently rectified and so could not affect this defendant's title.

Nichols vs. Older 78 Atl. 689.

The title being in the defendant, the complainant had no possession or right of possession through ownership upon which to base his bill.

RIGHT TO RELIEF.

The complainant's bill cannot lie for other reasons. First. His remedy was adequate at law. Secondly, he was in laches.

1. Justice Depue, in Sheppard vs. Nixon, supra, (p. 633) writes:....

> "Both parties claim the legal title to the premises, and the legal remedy is adequate. The foundation of the jurisdiction of the equity court is the inability of the complainant to obtain relief by an action at law or the inadequacy of the legal remedy. Hence, it is a settled law that where the estate is legal in its nature and the remedy at law is adequate and full and complete justice can be done thereby, the party will be left to his legal remedy. The exception to this rule is where the case presents some special ground for equitable interposition, such as fraud, accident or mistake, requiring the setting aside or reformation of deeds or instruments of conveyance. If these elements be wanting, a bill to establish the complainant's title is an ejectment bill pure and simple, and if the situation of the

parties be such that the complainant may have an action at law to establish his title, his remedy is in a court of law. Authorities and cases cited.

The action of ejectment under the act of 1855 (Rev. P. 326) has greatly circumscribed the necessity of resort to equity to establish or quiet titles.....

(P. 634) Sec. 3 of the act provides that the defendant in the action shall be the person in possession if the premises are occupied, or some person exercising ownership on the premises or claiming title thereto in case they are unoccupied.....

(P. 634) By the procedure established by the statute, a party claiming the legal title to premises and out of possession, may, by an action of ejectment put to a final determination the title of an edverse claimant who is in possession, if the premises are occupied, or who if the premises are unoccupied exercises ownership over the same or claims title thereto. In such a situation, there is no inadequacy of the legal remedy which will lay the foundation for a suit in equity to quiet the title. The suit at law will afford adequate means of putting the conflicting claims of title to the test.....

(P. 636) The question at issue is simply the legal construction of that deed, and the proper location of its boundaries, questions peculiarly cognizable in a court of law."

The complaintant's bill to quiet title was dismissed.

Our case is substantially similar to the one just quoted. The legal title merely is involved. Has the complainant good title or has this defendant. The defendant claims under his tax deed, the complainant disputes the title there-

Smith vs Newark 32 N. J. E. 1.

"That every real, possessory, ancestral, mixed or other action, for any lands, tenements or hereditaments, shall be brought or instituted within twenty years next after the right or title thereto or cause of such action shall accrue, and not after;".....

3 Com. Stat. 3169 Sect. 17.

The complainant's right or title to bring his action either at law or in equity arose in September 1892 when the City purchased. No action was taken by the complainant or any one under whom he claimed until in December 1916, more than twenty years after his right occurred. His bill cannot lie by limitations.

They not only failed and refused to pay taxes during all the years but came into equity without offering to pay any of such taxes. This bars the complainant to any relief.

Roe vs. Jersey City 86 Atl 815, 80 N. J. E. 35.

A tax title cannot be assailed collaterally, but must be attacked in a direct action.

37 Cyc 1490 Note 84.

Smith vs Newark, supra.

CONCLUSION.

These defendants pray that the decree of the Chancellor be affirmed with costs to be adjudged to respondents.

Respectfully submitted,

MAX LEVY.

Solicitor for and of Counsel with Respondents, Michael M. Keshin and wife.

under. There is no question of fraud, accident or mistake interposed. Consequently, the complainant in an action at law in ejectment proving his own title would thereby show his right of possession and his jurisdiction in said court. The defendant would be compelled to prove his title under his deed. The ejectment action would afford the complainant his full relief.

Smith vs City of Newark 32 N. J. E. 1.
Jersey City vs. Lembeck 31 N. J. E. 262.

2. The complainant is estopped to assert that the statute of limitations prevents him from suing at law, or that for this reason his legal remedy is inadequate. He cannot set up his own laches as a justification for his equity application for relief.

Excepting where plaintiff is in possession, laches is available as a defence to a bill to quiet title.

32 Cyc 1345.

Courts of equity while sometimes bound by statute and at other times following the analogy of statutes of limitations, also act independently of such statutes refusing relief to parties who have slept upon their rights or have been negligent in asserting them.

Dringer vs Jewett 43 N. J. E. 701.
Smith vs Duncan 16 N. J. E. 240.
Vanduyne vs Vanduyne 16 N. J. E. 93.

The question of laches is to be decided upon the particular circumstances of each case.

Obert vs Obert 12 N. J. E. 423.
Smith vs Drake 23 N. J. E. 302.
Dean vs Dean 9 N. J. E. 425.

Only certain existing circumstances excusing the delay, such as fraud, mistake or personal disability, will not bar relief.

Young vs Young 51 N. J. E. 491.

Foster vs. Knowles 42 N. J. E. 226.

Hendrickson vs Hendrickson 42 N. J. E. 657.

Every two or three months for the past 35 years, the complainant examined the records for transfers of the Mackie property. He knew of the transfer of Lot 31 Block 519 to the City and then to Keshin. He and those under whom he claimed did nothing for a period of more than 20 years to advise the defendant of their rights or claims to the lot. He is thus estopped to impeach or deny the validity of the tax title by his unreasonable delay in the assertion of his rights.

37 Cyc 1490 Note 91, 1494 Note 22.

Erie Elevator Co. vs Jersey City 84 N. J. E. 182.

Casselbury vs Piscataway Co. 43 N. J. L. 353.

Scott vs Jersey City 32 N. J. L. J. 47.

Cartum vs Myers 82 Atl 14, 78 N. J. E. 303.

Snyder Co. vs Burton 83 Atl 907, 80 N. J. E. 185.

Nichols vs. Older 78 Atl. 689.

The proceedings in the case of Bogert vs City of Elizabeth 27 N. J. E 568, 572, were absolutely void from beginning to end, and hence, laches could not be set up against complainant. Our case is different. The proceedings were merely irregular and subsequently corrected of which complainant had knowledge.

The Evening Post Job Printing Office, Inc., 154 Fulton St., N. Y.

New Jersey Court of Errors and Appeals.

Between—

ALEXANDER L. A. MACKIE,
Complainant-Appellant,

and

LUCIUS T. DONOHUE, *et als.*,
Defendants-Respondents.

March Term, 1921.
No. 22.
On Bill to Quiet Title.
On Appeal from Court of Chancery.

BRIEF FOR DEFENDANT-RESPONDENT, JOHN J. CAIN.

The defendant Cain controverts the complainant's statement of the case thus:

I. The original bill of complaint, filed December 14th, 1916, was dismissed on May 22nd, 1917; the present amended bill of complaint was not filed until September 17th, 1917. This original bill of complaint contained an allegation that *the defendant Cain was in the peaceable possession* of the premises (Case, pp. 117-118-119-120-121).

II. The costs and counsel fee assessed against the complainant were assessed not alone in favor of the defendant Cain but were assessed jointly in favor of Cain and another defendant, The Duryea Manufacturing Company, concerning whose decree, the appellant makes no complaint. The Duryea Manufacturing Company was the grantee of Cain, and together they defended this suit, because their titles had a common source.

III. The bill in this cause is filed to quiet title to lots 3, 6, 27, and 28 in block 535, in the City of Bayonne, in which Mr. Cain owns lots 1 to 8 inclusive, lots 10 to 15 inclusive, lots 18 to 23 inclusive, lots 27 to 35 inclusive, a total of 29 lots out of 35. At one time Mr. Cain owned lot 9, which he sold to the defendant, DURYEA MANUFACTURING COMPANY. Mr. Cain made all his purchases prior to the beginning of the suit. Upon lots 3, 6, 9, 27, and 28, since 1902, Mr. Cain has always paid the taxes (Case, p. 177). As Vice Chancellor Griffin says in his opinion: "It appears that for upwards of thirty-five years it was the complainant's habit every two or three months to search the records of the County and communicate the facts disclosed to his brother Simon (Case, pp. 113-114-115-116). Thus he acquired considerable knowledge of the various deeds of conveyance about the time of their record. He knew that Mr. Cain had deeds for these premises and was exercising actions of ownership over the same, and was paying the taxes year by year, yet he never made the slightest suggestion to Mr. Cain that his brother Simon, in his life-time, or his daughter after his decease, had any claim, estate, or interest in these premises, nor did Simon in his life-time or his daughter after his decease, assert such claim. * * * He (the complainant) took a deed from Margaret the daughter and only heir at law of Simon, and about four years later filed his bill."

All of the premises in question were alloted to SIMON FRAZIER MACKIE, upon the partition of the estate of KATHERINE G. MACKIE, on January 16th, 1879. Exhibit G.W.B.-1 (p. 252) is a trust deed between SIMON FRAZIER MACKIE and WILLIAM MAN, made December 11th, 1879, and recorded March 18th, 1880. It recites the approaching marriage of SIMON FRAZIER MACKIE. By this deed there is conveyed to the trustee, WILLIAM MAN, all

the right, title, and interest of SIMON FRAZIER MACKIE in the estate of KATHERINE G. MACKIE, upon certain trusts, and with the express provision (p. 255, lines 8 to 12) *"in no event whatsoever shall GEORGE BARCLAY MACKIE or ALEXANDER LOCKHART A. MACKIE* (the complainant) *or either of them or their or either of their wives, or decedents receive or take the said trust fund or land or any share or part whatsoever of said fund or land." This court will note that WILLIAM MAN made no conveyance under this deed.* But WILLIAM MAN (p. 262, lines 20 to 40) was given notice of the tax sale in writing, as provided by law, at the same time SIMON FRAZIER MACKIE, and his wife, were given notice. The Court will also further note that the deeds under which the complainant asserts his title to these lots are Exhibit C-2 (p. 233) whereby the surviving child of SIMON FRAZIER MACKIE is supposed to convey these premises, and deed G.W.B.-2 (p. 257) by which the only surviving son and common law heir of WILLIAM MAN is supposed, in 1918, after this suit was begun, to convey pursuant to the trust deed in which his father was named as trustee.

IV. The defendant's insistments have always been:

A. Equity has not jurisdiction.

B. The tax deeds are not subject to collateral attack in equity.

C. The defendant is in the peaceable possession of the premises.

D. The complainant has no title to the premises.

E. The complainant is in laches.

A. Equity has not jurisdiction.

1. In Lembeck *v.* Jersey City, 31 Equity, (4 Stewart), 255, the true construction of the act to compel determination to claims of real estate, was indicated by these words of Chief Justice Beasley (p. 272): "The inequity that was designed to be remedied (by the statute) grew out of the situation of a person in the possession of lands as owner, *in which land another person claimed an interest which he would not enforce;* and the hardship was that the *person so in possession could not force his adversary to sue, and thus put the claim to the test*". * * * "In the present instance, complainant had it in his power by one of the customary processes of the law, to bring to judgment, the claim he wished to control, and it would, therefore, seem to be going out of the way to maintain that this statute is applicable in aid of his inaction". Furthermore, in the cited case, Chief Justice Beasley adopts Chancellor Williamson's views, in Canal Company *v.* Jersey City, 12 Equity (1 Beasley), 256, that the authorities fully sustain the general principle that the Court of Chancery is not the proper tribunal to correct irregularities or errors, of inferior tribunals, and that the Court should not interfere with the ordinances of municipal corporations.

2. To the same effect are Lewis *v.* Elizabeth, 25 Equity (10 C. E. Green), 298; Dusenberry *v.* Newark, 25 Equity (10 C. E. Green), 295; Cleveland *v.* Road Board, 31 Equity (4 Stewart), 473; Smith *v.* Newark, 32 Equity (5 Stewart), 1; 33 Equity (6 Stewart), 554; and Watson *v.* Elizabeth, 35 Equity (8 Stewart), 345.

3. Roe *v.* Jersey City, 79 Equity (9 Buchanan), 654; 80 Equity (10 Buchanan), 35; 82 Equity (12 Buchanan), 641. In this case, commissioners

appointed in 1892, under the Martin Act, adjusted taxes upon the complainant's property, which, when sold in 1895, was bought by the City. In 1906, complainant filed her bill attacking the legality of the proceedings. Her bill was dismissed. This Court held, in 79 Equity (9 Buchanan), 645, that her *sole remedy was to apply for a certiorari to the Supreme Court,* and that her delay in applying for such a writ could not operate to vest the Court of Chancery with jurisdiction.

In Roe *v.* Jersey City, 80 Equity (10 Buchanan), 35, the same complainant filed a bill, not under the act to quiet title, but invoking the general jurisdiction of the court. She asked the court to go through the proceedings, pick out defects therein, and adjudge tax and assessments liens to be void. Vice Chancellor Stevenson held that the Court of Chancery would do no such work (p. 37); that the Court, for its own protection, might decline to determine purely legal controversies; and (p. 39) he was unwilling to create a precedent which would lead to applications to the Court of Chancery to investigate the validity of taxes and assessments.

Mrs. Roe again came into Chancery. It was the view of Mr. Charles Roe, as Special Master, in Roe *v.* Jersey City, 82 Equity (12 Buchanan), 641, that until proceedings were had in a court of law, whereby the deeds complained of would have been held nullities, equity had no jurisdiction, that the deeds of the defendants, then complained of, must be considered evidences of title, as against the complainant, for lack of jurisdiction, in Chancery, to attack the legality of the proceedings upon which they are founded. This court there affirmed the decree of dismissal advised by Mr. Roe.

4. Vice Chancellor Lewis has also taken the same position in White *v.* Cadmus, 84 Equity (14

Buchanan), 86. There the Martin Act purchaser filed his bill to quiet his title against persons who refused to proceed at law. Their defense was that the purchaser had failed (1) to give notice to redeem, and (2) to obtain an order from the Circuit Court for the delivery of the deed. The Vice Chancellor held that these were attempts to attack a deed collaterally, and could not be considered, as the proper remedy of the defendants was by writ of *certiorari* to the Supreme Court. He accordingly advised a decree against the defendants.

5. Other recent cases are Booth *v.* Bayonne, 85 Equity (15 Buchanan), 281, in which Chancellor Walker adopted the opinion of Advisory Master Buchanan refusing an injunction in a tax matter; Walton *v.* Society, 78 Equity (8 Buchanan), 263, in which this court held that since a tax deed under the Martin Act is within the provisions of the fifteenth section of the act covering sales of land (4 C. S. 4679) it is not subject to collateral attack; and Goodwin *v.* Millville, 75 Equity (5 Buchanan), 270, in which this Court held that Goodwin, who had too long delayed his application for a writ of *certiorari* against an assessment, admittedly illegal, had no standing in Chancery upon a suit to quiet title, the purpose of which was to remove the cloud cast upon his title by the assessments.

B. The tax deeds are not subject to collateral attack.

JUSTICE DEPUE, in Woodbridge *v.* Allen, 43 Law, 262 (266), said, for this Court:

> "By force of the fifteenth section (now 4 C. S. 4679) the recitals in deeds, declarations of sale and conveyances made by, or by authority of, any public or municipal authority authorized or empowered by any law of the State to make and execute, or to direct or procure the making and execution of any deed, declaration of sale or conveyance are *prima facie* evidence of the facts recited, wheresoever such proof becomes material or necessary, provided such deed, declaration of sale or conveyance has been duly acknowledged or proved. But in an action of ejectment, *or any other action in which the title is in issue,* the proceedings on which the deed, declaration of sale or conveyance is founded are not subject to be questioned, and the deed, declaration of sale or conveyance is made the evidence of the title. *If the deed, declaration of sale or conveyance is proper in form, and purports to have been made pursuant to a public or municipal authority competent to order or make a sale of lands for that purpose generally, and the deed, declaration of sale or conveyance has been executed with proper formalities, it is conclusive evidence, in such an action, of the title it purports to convey.* This, I think, is clearly the legal construction of this section, and it is a construction promotive of the policy which induced this legislation. It was found, in practice, difficult to sustain tax titles, by reason of the technical rules by which such titles were tried; and if the title was set aside in ejectment, the result involved a loss to the public of the tax for which the property was sold. *The legislature, therefore, provided a remedy for illegalities and informalities in the*

proceedings on which the sale, if irregular or illegal, may be set aside and proper steps be taken for the collection of the tax, if it was legally laid."

VICE CHANCELLOR GARRISON, in Nichols *v.* Older, 78 Eq. 101 (108), held this statute a bar to recovery by a complainant mortgagee, even if the appropriate section (453) of the Martin Act did not bar the complainant. Section 453 is now found in 4 C. S., p. 5212 as Section 312.

In Doremus *v.* Cameron, 49 Eq. 9, Chancellor McGill said:

"It is a familiar principle that the power to sell for the non-payment of a tax must be strictly pursued, or the sale will be void; and a party claiming title under a corporation tax sale must, unless the rule is varied by legislative enactment, show that every prerequisite to the exercise of the power has been complied with. No intendment will be made in favor of the legality of such proceedings. 2 Dill. Mun. Corp. 820; Hopper *v.* Malleson, I. C. E. Gr. 382; State *v.* Jersey City, 7 Vr. 188, 192; State *v.* Newark, 7 Vr. 288; Woodbridge *v.* Allen, 14 Vr. 262; Jones *v.* Landis Township, 21 Vr. 374, 379.

Under the rule thus stated, in the absence of statutory regulation, there can be no doubt that failure of the defendants to aver in their answer the performance of every essential prerequisite, would be fatal to them upon this hearing on bill and answer.

But we have a statute, the act of April 2nd, 1869 (Rev., p. 1045, Par. 15) (now 4 C. S., p. 4679, Sec. 15), which, according to the established construction, not only makes the recitals in deeds by municipal officers, acting under authority of law, evidence, *but also makes those deeds themselves conclusive, as to the transmission of title, until the proceedings upon which they are founded shall have been directly attacked and set aside.* In Woodbridge v. State,

14 Vr. 262, Mr. Justice Depue, in writing the opinion of the court of errors and appeals, after stating that rcitals in such deeds are made evidence, and that which is not recited must be proved *aliunde* where occasion may require, proceeds to state that the statute enacts that proceedings upon which deeds of municipal officers, declarations of sale and conveyances are founded, shall not be subject to be questioned collaterally, but may, at any time, be reviewed by *certiorari* or other proper proceedings in the supreme or circuit courts and then adds: But in an action of ejectment, or any other action in which the title is in issue, the proceedings on which the deed, declaration of sale or conveyance is founded are not subject to be questioned, and the deed, declaration of sale or conveyance is proper in form and purports to have been made pursuant to a public or municipal authority competent to order or make a sale of lands for that purpose generally, and the deed, declaration of sale or conveyance has been executed with proper formalities, it is conclusive evidence, in such an action, of the title it purports to convey.

Numerous decisions of the Supreme Court exhibit the settled adoption of this construction of the statute referred to.

In this case the title of the defendants, McKierman and Bergen, is in issue. The bill alleges that the proper municipal officer, vested by law with authority, sold and conveyed for unpaid taxes, and the answer, yet more specifically, avers the delivery of the deed and the general legal authority of the officer. The averments of the pleadings in failing to mention, assume the propriety of the form and execution of the deed. Here, then, under this statute, is an obstacle which forbids the inquiry into the regularity of the proceedings upon which the deed is based. *The deed itself is conclusive as to their regularity until a direct attack shall have been successfully made upon them. What more, then do the defendants*

need to establish their case than the mere production of such a deed? That production would be enough in ejectment and it is enough here. It established every prerequisite to the validity of the proceedings by which it was produced, and there can be no necessity for the answer to set out the proceedings that were had."

To the same effect are:

Walton *v.* Society, 78 Eq. (8 Buchanan), 263.

Walton v. Taylor, *Ibid,* 266.

Roe *v.* Jersey City, 79 Eq. (9 Buchanan), 645.

Same *v.* Same, 82 Eq. (12 Buchanan), 644.

C. The defendant Cain is in peaceable possession of the premises.

In view of the cases cited in support of contentions A and B, it seems unnecessary to discuss the evidence as to peaceable possession. We may safely rely, moreover, upon the opinion of the Vice Chancellor in this regard, although it seems he is conservative in his expressions. The complainant's predecessor in title, his brother, SIMON MACKIE, went to Utah in 1880 (p. 72), a few years after his conveyance to William Man, his trustee. There he remained until his death in 1902 (pp. 54, 72). The evidence discloses no possession during that period of twenty-two years either by him or his trustee, or any one in their behalf. The complainant's immediate predecessor, his niece, lived in Utah, and is not shown to have occupied any of the premises personally, or by representatives. Botsworth, produced by complainant, swears that he leased only the Mackie house (p. 148), which is on lots 24 and 25, facing First Street. He did no cultivating west of the stable (p. 154) but to the north of it (p. 155); he made no use of the stable (p. 144). Mr. Gilchrist, the husband of complainant's sister, who occupied the house before Botsworth in 1905, though in court (p. 96), was not called by the complainant to testify. No single act of anybody upon the premises in dispute can be shown which is indicative, however, slightly, of the possession of the premises by complainant or his predecessors.

On the other hand the defendant's possession is clearly proved. First, the record shows it, for there is in this regard no record assertion of title as to Simon Mackie or his successors, on the complainant's side, until after 1912, when complainant recorded the deed from his niece, which does not even cover specifically any of the lots in question. Meanwhile, by a series of deeds, recorded in 1896,

Simon Mackie's title was sold for taxes to the City which in turn sold to Cain's grantors, who, afterwards, by deeds recorded in 1902 and 1903, passed their title to Cain, who in turn latter conveyed lot 9 to the Duryea Company.

It is admitted by the complainant that Cain, since he acquired the tax titles has always paid the taxes upon the disputed property. Since the payment of taxes for five years upon unoccupied lands, such as lots 3, 6 and 27, raises the presumption of possession in Cain, who pays under the statute (4 C. S., p. 5399, Sec. 1), it is clear that the complainant is put to the burden of showing actual possession.

Again, see how clear the testimony is as to lots 27 and 28. There is the Bernstein lease (pp. 189-190-191-192-193; p. 220, lines 35-36), which included parts of these lots. There is Stringham's occupancy of the stable (pp. 58-97-98-99-101) and the fields under Cain's permission, as well as the fencing in of the whole property by Stringham, with the knowledge of the complainant, who stirred the matter in his direct-examination. Further there is Mr. Cain's direct testimony that Mrs. Hermanow has been renting from him and paying him for the past several years for lots 27 and 28 (p. 187). Can the complainant show a single bit of evidence in regard to his possession of any of these lots, reliable or unreliable?

Finally there is the proof of Mr. Cain's ownership of all the lots in this block except 16, 17 and 20, owned by the defendant, and a few others which do not touch upon any of the lots in dispute. Lot 3, which the complainant claims, is surrounded on all sides by lots which Cain owns; and no land of complainant touches it, and except from West Second Street he could have no entry upon it. Where is there any evidence of his possession of this lot? Lot 6, it is true, adjoins lot 7, which be-

longs to complainant. Here the payment of taxes by Cain, whose property surrounds it on all sides, except where 7 bounds it, makes it presumptively Cain's, according to the statute. Can Mackie who owns 7, and yet lets Cain pay taxes on 6, contend successfully he is in peaceable possession of 6 by simply saying he is?

It is respectfully submitted that the complainant has failed to show peaceable possession of any part of the disputed premises, and that Cain is by deeds, by statute, and, in fact, in possession of them all. This statement, it will be observed, is, in strict accord with the complainant's own statement, made in his original bill of complaint, and which he is unable to explain away (pp. 118-119-120).

D. The complainant has no title to the premises.

The lots in question, by the Mackie partition, were alloted to Simon Frazier Mackie, who divested himself of title by his deed to Man (G. W. B.-1). The provision against a conveyance to the present complainant is express (p. 55, lines 5-11). It will be noted that the grantor did not revoke this deed in his life-time. There is thus no efficacy to the instrument G. W. B.-2, for it is against the terms of G. W. B.-1. The rule is thus stated in Pomeroy:

> Sec. 920: "The jurisdiction of equity in this class of cases is based upon the principle that, in making an appointment under a power, the intention of the donor should be carried out as far as it has been expressed,—at least, that his intention should not be directly violated. All mere powers, from their very nature, give more or less discretion to the donee when, as is generally the case, the donee, although clothed with a discretion as to whether he will appoint at all, is restricted by the terms of the instrument with respect to the persons to or among whom he may make an appointment, or in respect to other material matters; an appointment made with the intention of violating and so made that it does violate, this restriction, is regarded by equity as a fraud upon the donor, and upon the persons who would be entitled to the property in default of any appointment, and will be set aside as nugatory."
>
> Sec. 1962. "Under the general obligation of carrying the trust into execution, trustees and all fiduciary persons are bound, in the first place, to conform strictly to the directions of the trust. This is in fact the corner-stone upon which all other duties rest, the source from which all other duties take their origin. The trust itself, whatever it be, constitutes the charter of the trustee's powers and duties; from it he derives the rule of his conduct; it prescribes the extent and limits of his authority; it furnishes the measure of his obligations.

> If the trust is express, created by deed or will, then the provisions of the instrument must be followed and obeyed. If the fiduciary relation is established by law and regulated by settled legal rules, then these legal rules must constantly guide and restrain the conduct of the one who occupies the relation. In this manner the acts, powers, duties, and liabilities of executors, administrators, guardians, and corporation directors are governed by a fixed system of legal rules which constitute their instrument or declaration of trust. A trustee can use the property only for the purposes contemplated in the trust, and must conform to the provisions of the trust in their true spirit, intent, and meaning, and not merely in their letter. If, therefore, through non-feasance, he omits to carry the trust into execution, or through misfeasance he disobeys the directions of the trust, he renders himself in some manner liable to the beneficiary whose rights have been thus violated."

As to C-2 (p. 233), the deed from Marguerite Mackie to the complainant, it need only be observed that as she does not pretend to convey any of the lots in suit, but only her right, title, and interest in whatever property her father once owned, this deed is meaningless *per se*. It was made in 1912. If there was any virtue in it, why should the complainant in 1918, after this suit began (pp. 171-172), obtain the equally ineffective G. W. B.-2?

E. The complainant is in laches.

This Court will observe from what has been already said that the complainant's contention is essentially thus:

> "Upon my brother's property taxes remained unpaid for the twelve years, 1877-1888 (p. 246, *et seq.*); appropriate proceedings were had to collect them, and I called his attention to them, repeatedly and continually (pp. 115-116); and I kept in touch with the record (pp. 113-114) every three months since 1880; and knew of the tax sales, even prior to examining the records (p. 115, line 40); and my brother, his daughter, and I have stood silently by and let Mr. Cain pay the taxes for more than twenty years, but yet now in the year 1921, I am not to be charged with laches regarding a situation which arose in 1889, about properties in which my brother was unwilling I should come to have any interest."

It is respectfully submitted that the decree should be affirmed.

HAMILL & CAIN,
Solicitors of John J. Cain,
Defendant-Respondent.

JOHN FRANCIS GOUGH,
Of Counsel.

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