

Clerks Table

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DAILY JOURNAL PRINTED AT ELIZABETH, N. J.

Court of Errors and Appeals

In the Last Resort in Civil Causes of Law.

Between

THE CITY OF ELIZABETH,

Appellant,

vs. Bill &c.

and

SAMUEL G. SOUTHMAY,

Respondent,

Appellee

ROBT E. CHETWOOD, Solicitor of Appellant

B. WILLIAMSON, of Counsel with Appellant.

F. ADAMS, Solicitor and of Counsel with Appellee.

1875

Court of Errors and Appeals.

THE CITY OF ELIZABETH,

Appellant,

and

SAMUEL G. SOUTHMAYD,

Respondent.

On Bill, &c.

On Appeal.

POINTS OF APPELLANT.

I.

The case made by the bill is not within the ordinary and general jurisdiction of a Court of Equity. If the relief sought is a special relief, by virtue of a special act of the Legislature, the bill must show it.

II.

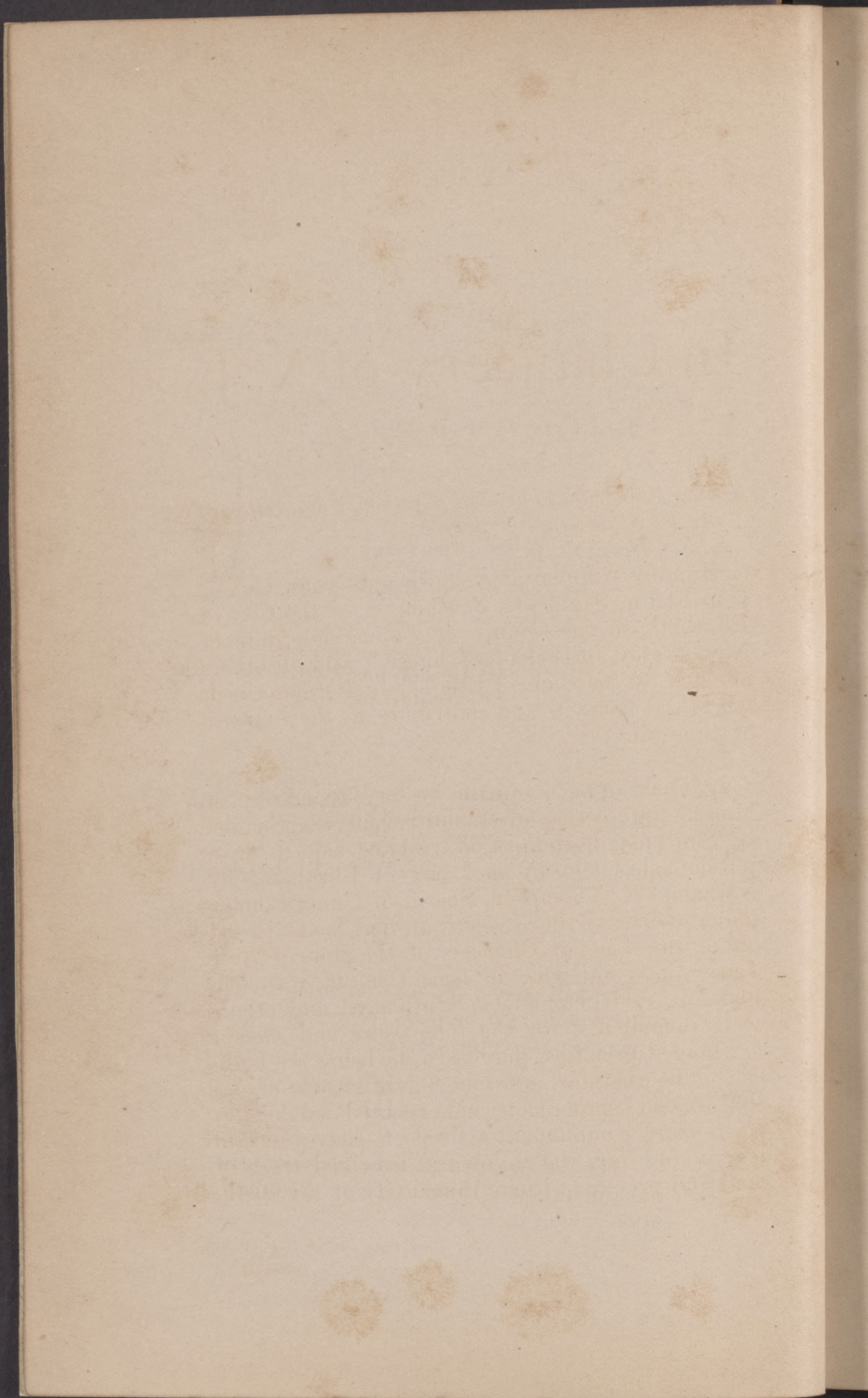
The bill sets out the defendant's title. The demurrer admits it, and therefore, no further pleading is necessary for the purpose.

III.

The allegation that the defendant's title is illegal amounts to nothing. There are no grounds stated upon which it is illegal.

ROBT. E. CHETWOOD,
Solicitor of Appellant.

B. WILLIAMSON,
Of Counsel with Appellant



In Chancery of N. J.

*To the Honorable Theodore Runyon, Chancellor of
of the State of New Jersey.*

Humbly complaining shows unto your Honor, your orator, Samuel G. Southmayd, of the City of Elizabeth, in the County of Union, and State of New Jersey, on behalf of himself, and all others 20 affected by the claim of title hereinafter described, who shall come in and contribute to the expense of this suit.

1. That on or about the twenty-second day of March, Eighteen hundred and Seventy-six, Samuel G. Southmayd, complainant above named, at a public sale, held in said city of Elizabeth, by Nathaniel K. Thompson, Sheriff of Union County under and by virtue of a writ of fieri facias, issued 30 out of the Court of Chancery of the State of New Jersey, in a suit wherein Isaac Conklin, was complainant, and Samuel G. Southmayd and others were defendants, for the foreclosure and sale of mortgaged premises, purchased, he being the highest bidder therefor, and said Sheriff struck off and sold to said complainant, and executed and delivered to said complainant a deed of conveyance in fee simple for, the following described tract of land and premises situate in said city of Elizabeth 40

Beginning at the north-east corner of Monroe avenue and Julia street; thence running northerly along the easterly line of Monroe avenue, two hundred feet; thence easterly at right angles thereto one hundred and fifty feet; thence southerly parallel with said line of Monroe avenue two hundred feet to the northerly line of Julia street; and thence westerly along that line one hundred and fifty feet to the place of beginning.

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2. 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, 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 believes, and still believes that he bought and acquired a good title to said lands in fee simple, and that said complainant has 20 ever since claimed, and now claims to own the same.

3. That "The City of Elizabeth" claim to own some interest in said premises by reason of the pretended assessment and tax sales hereafter mentioned, or some of them, and that no suit is pending to enforce or test the validity of said pretended claims.

30 4. That on the twenty-second day of April, 1868, the City Council of the City of Elizabeth, did, by ordinance passed and approved on that day, order and cause Monroe avenue, from Julia street to Louisa street to be regulated, graded and curbed.

5. That afterwards, to wit, on the twenty-fourth day of March, 1869, an assessment of the whole amount of the cost and expenses of said improvement was made by the City Surveyor of said city 40 upon the owners of land and real estate on the line

of said avenue, which assessment was, on the first day of April, 1869, ratified by the City Council; that in and by said assessment there was charged to and assessed upon your orator's said lands the sum of two hundred and fifty two dollars and eighty-seven cents.

6. That on the sixth day of November 1872, the Comptroller of the City of Elizabeth proceeded to sell said lands of your orator for non-pay-¹⁰ment of said assessment and at said sale the said lands were struck off to said city for the term of fifty years or some other term, and that said Comptroller has made a certificate or certificates of said sale to said city.

7. That on the fourteenth day of October, 1868, the City Council of the City of Elizabeth, did, by ordinance passed and approved on that day, order and cause Julia street to be regulated, graded,²⁰ curbed and guttered from Madison avenue to Meadow street.

8. That afterwards to wit, on the ninth day of March, 1870, an assessment of the whole amount of the costs and expenses of said improvement was made by the City Surveyor of said city upon the owners of land and real estate on the line of said street which assessment was on the twenty-³⁰third day of March, 1870, ratified by the City Council; that in and by said assessment there was charged to and assessed your orator's said lands the sum of two hundred and sixty-nine dollars and ninety-seven cents.

9. That on the fourteenth day of November, 1872, the Comptroller of the City of Elizabeth proceeded to sell said lands of your orator for non-payment of said assessment, and that at said sale, the said lands were struck off to said city, for the 40

term of fifty years, or some other term, and that the said Comptroller has made a certificate or certificates of said sale to said city.

10. That on the second day of June, 1869, the City Council of the City of Elizabeth, did, by ordinance passed and approved on that day, order and cause Monroe avenue from Meadow street to Port avenue to be graded, curbed and flagged.

10 11. That afterwards, to wit, on the second day of April, 1871, an assessment of the whole amount of the costs and expenses of said improvement was made by the City Surveyor of said city upon the owners of land and real estate, on the line of said street, which assessment was on the first day of May, 1871, ratified by the City Council; that in and by said assessment there was charged to and assessed upon your orator's said lands the
20 sum of two hundred and ninety dollars and sixty-four cents.

12. That on the fifteenth day of January, 1873, the Comptroller of the City of Elizabeth proceeded to sell said lands of your orator for non-payment of said assessment, and that, at said sale, the said lands were struck off to said city, for the term of fifty years, or some other term, and that the said Comptroller has made a certificate or certificates of said sale to said city.

30 13. And your orator charges and insists that said assessments are, and each one of them is, illegal and invalid, and that said sales of your orator's land for the non-payment of said assessment are, and each one of them is, illegal and void and that by reason of the existence of said apparent assessments, and of the unfounded claim of said City of Elizabeth by way of said tax sales, your orator's rights in said lands are injuriously
40 affected, and his title disquieted.

In tender consideration whereof, and for as much as your orator is remediless in the courts of law, and can have adequate relief only in a Court of Equity.

1. To the end therefore that the said defendant, the City of Elizabeth, may, full, true and distinct answer make to all and singular the matters aforesaid, as fully as if the same were here repeated, and they thereto particularly interrogated, and that they may, in manner aforesaid, answer and set forth specifically what title to said land or any part thereof, or interest therein, or lien or encumbrance thereon they may claim to have, and may state how, and by what instrument the same is derived or created. 10

2. That your orator's title to his said land may be settled, and the aforesaid assessments and sales may be adjudged and decreed to be illegal and void. 20

3. That your orator may have such other and further relief as the nature as his case may require and may be agreeable to equity. May it please your Honor, the premises considered, to grant unto your orator the state's writ of subpœna, issuing out of and under the seal of this Court, to be directed to the said The City of Elizabeth, commanding them at a certain day, and under a certain penalty therein to be expressed to be and appear before your Honor in this Court then and there to answer the premises in manner aforesaid, and to stand to, abide by, and perform such order and decree as your Honor shall make therein. 30

F. ADAMS,

Solicitor and of Council for Complainant.

A true copy.

H. S. LITTLE, *Clerk.*

The defendant filed a general demurrer to the bill. 40

SAMUEL G. SOUTHMAYD,

v.

CITY OF ELIZABETH.

On Bill and Demurrer.

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Mr. B. Williamson for demurrant,
Mr. F. Adams, contra.

The Vice Chancellor:—

The demurrer in the case simply alleges want of equity. The bill is filed under the act to quiet titles, (*Penn. Laws*, 1870, p. 20.) which enacts, that when any person is in the peaceable possession of lands in this State, claiming to own the same, and his title
20 thereto, or to any part thereof, is denied or disputed, or any other person claims, or is claimed to own the same, or any part thereof, or any interest therein, or to hold any lien, or encumbrance thereon, and no suit shall be pending to enforce or test the validity of such title, claim, or encumbrance, it shall be lawful for such person so in possession, to bring and maintain an action or suit in this court, to settle the title of the lands, and to clear up all doubts and disputes concerning the same.
30 The act then directs what the bill shall contain; the bill of complaint in such suit shall describe the lands with certainty; and shall name the person who claims or is claimed, or reported to have such title, or interest in, or encumbrance on the lands, and shall call upon such person to set forth and specify his title, claim or encumbrance, and how and by what instrument the same is derived or created.

Besides giving a new remedy, this statute in the
40 portion just quoted, plainly prescribes three

things: First, the qualifications of the suitor: he must have the peaceable possession of land under a claim of ownership to which an adverse right or claim is asserted, or is reported to exist. Second, under what circumstances he may resort to this remedy: only when no prior suit is pending to test the adverse right. And third, what his bill must contain: it must describe the land clearly and name the person who asserts the adverse right, or who it is reported holds it, and must call upon him to 10 disclose it.

It would seem to be clear then, if the bill conforms, in its premises, to the statutory formula, and also shows that it is brought by a suitor having the requisite qualifications to sue, and that his action was instituted at a time when, by the terms of the act, he was permitted to employ the remedy given by it, that a perfect case, under the statute, was made on the pleading.

Is such a case made by the bill in this cause? 20 It avers that the complainant is the owner by valid title, of a lot of land situated in the City of Elizabeth, which is described by metes and bounds; that he is in the peaceable possession of it, that the defendants claim to own some interest in it, under and by virtue of certain pretended assessments for local improvements, and sales made in enforcement of them, and that no suit is pending to enforce or test the validity of their claim; it then prays that the defendants may be required to 30 set forth specifically what title to said land, or any part thereof, or interest therein, or lien or encumbrance thereon, they claim to have, and also to state how and by what instrument the same is derived or created, and that the complainant's title may be settled, and the claim of the defendants declared to be illegal and void.

I think it would be difficult to suggest how a bill could be drawn more precisely in conformity to the directions of the statute. 40

On the argument a single fault was ascribed to the bill; that it does not show why the right asserted by the defendants is groundless, but simply declares it to be so by the most general averment. The statute does not require the complainant to do more than this. He is merely required to allege that it is claimed or reputed that there is an outstanding hostile right. He is in the peaceable possession of the land, claiming to be the
 10 owner, and has, therefore, a right of putting to the test, in every imaginable case, every thing which presents a suspicious appearance against his title, and having it freed from every lurking and unsubstantial claim.

Bogert vs. Elizabeth City, 12, C. E. Green
 568.

Under the old rule he would have been required to show, by his bill, that there was an outstanding title, apparently valid, though really void,
 20 which cast an injurious doubt upon his right, in order to present a case for equity cognizance, but the statute has changed this, and now according to the rule prescribed by the statute, he is simply required to show that it is claimed there is a hostile outstanding right. He is not even bound to show that the person in whom this right inheres, asserts it, but it is sufficient if it is alleged that it is reputed he holds it. The main design of the statute, as I understand it, is, to put it in the power of
 30 any person, who is in the peaceable possession of land as owner, to compel any other person, who asserts a hostile right or claim, or who it is reputed holds such right or claim, to come forth, upon demand by suit, and disclaim, or show his right or claim, and submit it to judicial determination.

I think the bill sufficiently makes the case required by the statute, to entitle the complainant to the defendant's answer. The demurrer will be overruled therefore, with costs.

IN CHANCERY OF NEW JERSEY.

Between

SAMUEL G. SOUTHMAYD,
Complainant;

and

THE CITY OF ELIZABETH,
Defendants.

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The counsel for the respective parties having been heard, on^d the demurrer filed in the above cause:

It is ordered on motion of Frederick Adams, of council with complainant, that the said demurrer be overruled with costs, to be paid by the defendants, and that the defendants file their answer to the complainant's bill within forty days; and if they fail to do so, that the said bill be taken as confessed.

Dated November 15, 1877.

THEODORE RUNYON, C.

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Respectfully advised.

A. V. VANFLEET, V. C.

A true copy.

H. S. LITTLE, *Clerk.*

COURT OF APPEALS IN THE
LAST RESORT IN ALL CAUSES
OF LAW.

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Between

THE CITY OF ELIZABETH,
Appellant;

and

SAMUEL G. SOUTHMAYD,
Respondent.

*On Bill &c.,
Petition of
Appeal.*

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To the Honorable the Court of Appeals in the last resort in all causes of law. The humble petition of The City of Elizabeth, the appellant in the above stated cause respectively shows, that your petitioner finds itself aggrieved by a decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the Fifteenth day of November, in the year of Our Lord one thousand eight hundred and seventy-seven. Wherein the said Samuel G. Southmayd³⁰ was complainant, and the said The City of Elizabeth was defendant in this respect, to wit, that the said decree adjudged that the demurrer filed in said cause be overruled with costs, to be paid by the said defendants, and that the defendants file their answer to the complainant's bill within forty days from the date of said order, and if they fail to do so, that the said bill be taken as confessed, and your petitioner humbly appeals from the said decree of the Chancellor, which decrees as⁴⁰

aforesaid upon the ground that the same is erroneous, for that the said demurrer should be sustained and the bill of complaint be dismissed with costs. Your petitioner therefore prays that the said decree of the said Chancellor may be 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.

10 ROB'T E CHETWOOD, *Solicitor of Appellant*,
B. WILLIAMSON, *of Counsel with Appellant*.
Dated March 12, 1878.