

New Jersey Court of Errors and Appeals

Between

RICHARD A. MOTLEY,

Appellant-Complainant, } On Bill etc.,

and } On Appeal.

HENRY I. DARLING, *et al.*,

Respondent-Defendants.

BRIEF

This is an appeal from an order of the Court of Chancery dismissing complainant's bill. No opinion is filed other than that the order recites as follows:

“The Court being of opinion that the complainant has a full, complete and adequate remedy at law, under the statute.”

Printed case, p. 15, lines 16 to 19.

(1)

The bill was filed to have declared and established two promissory notes, one for \$500 and the other for \$700, which had been destroyed by the defendants and that a decree be made that the notes were and are the property of the complainant, and (2) that it be ascertained how much is due on said two notes, and that the defendants be decreed to pay to the complainant the amount so found to be due.

Facts

The facts are set out in the bill. Briefly, the bill sets forth.

That the complainant had title to certain personal property and a certain lease of a garage.

That the defendant, Henry I. Darling, entered into negotiations for the purchase of said goods and lease and desired to obtain control and possession of the same.

That a bill of sale and assignment of lease was drawn and defendant, Darling, directed that the defendant, Flynn's name be inserted in said documents.

That defendant, Darling, agreed with complainant that the purchase price of complainant's interest in said chattels and lease was to be \$1479.44. Two notes for \$500 and \$700 were signed by defendant, Flynn, and endorsed by defendant, Darling, and a check for \$279.44 was drawn.

Complainant and defendant, Darling, agreed that said two notes and check were to be delivered to complainant when the contents of the garage and possession of the garage and the bill of sale and assignment of lease should be delivered to defendant, Flynn. Delivery was made and two notes purporting to bear the endorsement of Darling and the check for \$279.44 were handed to complainant. The endorsements to these notes were forged.

Suit was brought on the \$700 note resulting in the finding that the endorsements to the notes were forgeries. The defendant, Darling, in June, 1913, induced the defendant, Flynn, to deliver to him, Darling, the notes having Darling's genuine endorsement, and Darling destroyed the notes.

Forged notes had been substituted and delivered to the complainant for the genuine notes. This was a fraud against the complainant. It was also a fraud for Darling to get possession of the notes and destroy them. Darling knew that notes with his original signature were to be delivered to complainant and that two notes bearing his, Darling's signature had been delivered to complainant and negotiated.

Argument

A reference to the state of the case shows that notes with Darling's genuine endorsement bore date May 2, 1912. The bill fixes the time when Darling destroyed the notes as in June, 1913.

I respectfully submit as a proposition of law that had the complainant at any time after May 2, 1912 and before the notes were destroyed by defendant Darling, filed a bill in the Court of Chancery of New Jersey to compel Flynn to deliver to the complainant the notes with defendant Darling's genuine endorsement thereon, a decree of specific performance would have been made in favor of complainant and the notes delivered to complainant. I cannot see how it makes any difference in this case that the relief is prayed for now that the notes have been destroyed. Equity will consider as done that which ought to have been done.

Even if there be a remedy at law, a case of fraud is made out and a Court of Equity has concurrent jurisdiction to take cognizance of the issues raised. The relief sought for in this cause was part of the original jurisdiction of the Court of Chancery of New Jersey.

A Court of Equity is not ousted of any part

of its original jurisdiction by the fact that a Court of law exercises the same or a similar jurisdiction.

Force v. Elizabeth, 27 E., 408.

There are two parts to the relief sought by this bill. One is the establishment of destroyed, and therefore to the complainant, lost notes. The other is the ascertainment of the amount due on the notes and a decree therefor.

Even if the order below be affirmed, I hold that this cause should be transferred from the Court of Chancery to a Court of law.

This power is vested in this Court by the amendment to the Transfer of Causes Act, which provides as follows:

“Upon an appeal being taken in any such cause that had not been so transferred the Appellate Court, may, subject to rules, hear and decide such appeal and direct the appropriate decree or judgment pronounced thereon, to be entered in the Court to which such cause ought to have been transferred.”

Laws of 1915, p. 39, Chap. 13, Sec. 2.

It seems to me that the foregoing statement of the facts and of the principles involved is sufficient.

The matter was presented, with other argument, to the Court below, in the following form and sub-divisions:

1. Statute governing negotiable instruments.
2. Power of Court of Chancery over the whole matter.
3. That the notes are not negotiable.
4. That two actions were brought in the law Court.

5. That the element of specific performance is involved in this suit.

1. See Section 203 of Negotiable Instrument Act, Page 3758 of Compiled Statutes of New Jersey. The citations under this section show that this refers only to negotiable instruments.

In this *Motley* case, the notes were made payable to the order of Richard A. Motley and endorsed by Henry I. Darling.

2. This subject is dealt with in the following cases.

Force vs. Elizabeth, 27 N. J. E., 408.

Moore vs. Durnam, 63, N. J. E., 96,
affirmed, 69 N. J. E., 828.

Pomeroy's Equity Jurisprudence.

3. The Motley notes would only become negotiable by Motley's endorsement. It seems to me that Motley held the equitable title only. In the *Durnam* case, where a check was drawn to the order of Durnam and should have been delivered to the complainant, it was held that the fact that there was no endorsement of the check delivered to Sheriff Bergen, and therefore only an equitable title passed to him, was an additional reason for retaining jurisdiction in a Court of Equity.

Moore vs. Durnam, 63 N. J. E., page
96 at bottom of page 97.

Affirmed on appeal in 69 N. J. E., page 828.

4. Two actions were brought in the law Court on the \$500 and \$700 notes, respectively; one in the Supreme Court and one in the Hudson Circuit Court. The suit on the \$700 note was tried and resulted in a verdict in favor of the defendants on the issue of forgery. Of course, the jury could only render a general verdict and found for the

defendants. The suit on the \$500 note in the Supreme Court was discontinued. It follows that there has been no trial whatever of the right to maintain an action on the \$500 note.

5. Specific Performance. The defendant, Darling, claimed that the endorsements of the notes received by Motley were forgery, and that he never endorsed the notes which were delivered to Motley, Darling claimed that on or about June 25, 1912, Flynn delivered the notes with the genuine endorsements and they were destroyed. Darling endorsed a new \$500 note for Flynn which he has since paid. The contention on behalf of the complainant, Motley, is that if it had been discovered that Motley held notes with forged endorsements before the notes with the forged endorsements came due, he could have filed his bill in equity to compel the delivery of the notes with the genuine endorsements on the ground that the notes were delivered to either Flynn or Warnke to be given to Motley, when he, Motley, delivered possession of the garage and the automobiles and other contents of said garage. Motley carried out his agreement and delivered the automobiles in the garage and the possession of the garage itself, and then learned that forged instruments had been substituted for the genuine notes. He really learned this and it was forced upon him by the verdict of the jury in the *Franklin* case, tried in the Hudson Circuit Court, before his Honor, Judge Speer.

The order appealed from should be reversed.

Respectfully submitted,

JOSEPH ANDERSON, SR.,
Of Counsel with Appellant-Complainant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

~~IN CHANCERY OF NEW JERSEY.~~

Between

RICHARD A. MOTLEY,
Appellant-Complainant.

and

HENRY I. DARLING, *et al.*,
Respondent-Defendants.

*Brief of Respon-
dent - Defend-
ant Henry I.
Darling.*

STATEMENT

The complainant filed his bill and the defendant Darling answered the same. The other defendant did not answer. The cause came on for hearing, but before taking of testimony, motion to dismiss the bill was made by defendant Darling at the request of the Court. This motion was granted and order was made dismissing the bill. From this order the complainant appeals.

The complainant sets out in his brief that his "*bill was filed to have declared and established two promissory notes, one for Five hundred dollars and the other for Seven hundred dollars, which had been destroyed by the defendants, and that a decree be made that the two notes were and are the property of the complainant and that it be ascertained how much is due on said notes and that the defendants be decreed to pay to the complainant the amount so found to be due.*" This is entirely a law question.

(1) Considering the first part of the relief sought. If the complainant had the notes all he would have to do would be to go to a Common Law

Court and sue upon them. If the notes had been in existence and had been destroyed, he could prove them by extraneous evidence. It was not necessary to go into equity for that purpose and to have a decree made declaring and establishing the notes. If the complainant could prove the notes, their ownership in him and the amount unpaid thereon, then the judgment which would necessarily follow, would be more efficacious than a decree in Chancery ascertaining the amount due and the directions of the defendants to pay. The resort of the complainant to a Court of Chancery was unnecessary and not warranted and was a denial to the defendant Darling of a right to trial by Jury.

Compiled Statute, page 3758, Section 203.

Bank vs. Stiger, 67 Equity, 522.

But the complainant did not receive the notes in question and although this defendant endorsed the notes, yet, through the negligence, laches or waiver of the complainant, the complainant accepted other notes. See bill of complaint, page 3, line 15. "That said notes were signed by Charles Flynn and endorsed by the said Henry I. Darling." See Bill of Complaint, page 4, lines 10, 11, 12, 13, 14, 15 and 16, "two notes, signed by Charles Flynn and purporting to be endorsed by the said Henry I. Darling, one for Five hundred dollars and one for Seven hundred dollars and a check for \$279.44 or some other sum for the cents, were delivered to your orator."

Continuing quoting from Bill of Complaint, page 4, lines 17 to 20:

"Your orator shows that he endorsed the note for \$500 due in four months (the note complainant accepted) and delivered the said note to one Traverse A. Spraggins."

Also page 4, lines 23 to 27:

“That your orator endorsed the Seven hundred dollar note (also note complainant accepted) due in six months and delivered the same to Traverse A. Spraggins, who endorsed the said note and delivered it to one Philip Franklin.”

From the above extracts from the Bill of Complaint, it can be readily seen that the complainant not only accepted substituted notes, but actually endorsed them away. The complainant could have refused to take the substituted notes, but once having taken them he is bound by their acceptance and cannot at this time pray to have something established, the acceptance of which he has waived.

(2) The second part of the relief of the complainant is “that a decree be made that the two notes were and are the property of the complainant.” Having had an opportunity to secure the notes for which he is praying and having waived it, the complainant cannot now ask to have the notes.

Cartun vs. Myers, 88 At. 14.

(3) The third part of the relief, the ascertainment of the amount due and enforcement of payment, the proper place to do this is in a court of law.

Stevenson vs. Morgan, 64 N. J. Eq. 219.

ANSWERING ARGUMENTS OF COMPLAINT SET OUT IN HIS BRIEF.

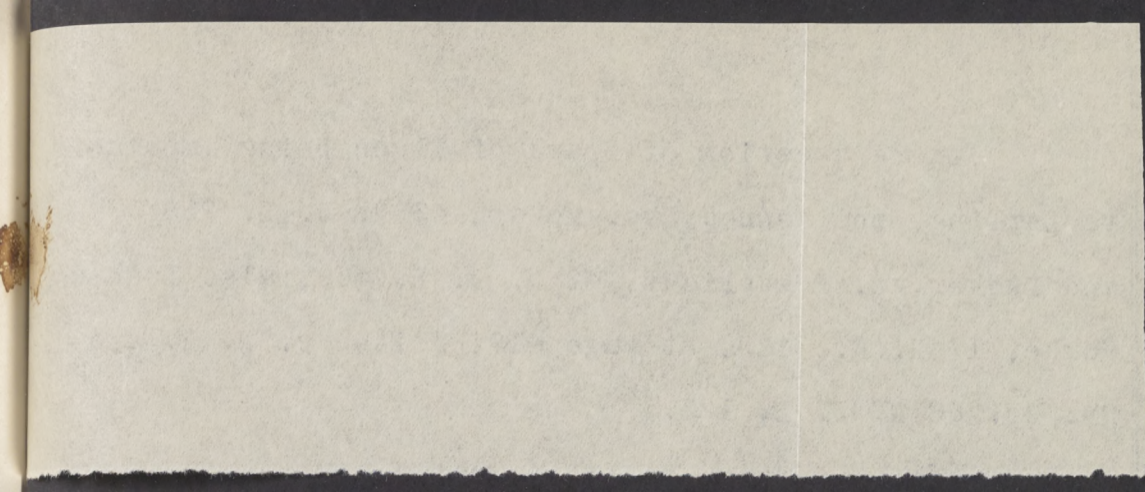
As complainant accepted substituted notes, he could not file his bill to compel delivery of other notes, therefore the proposition of law as enunciated in the complainant's argument is faulty.

The only reference in the bill to fraud by this defendant is a statement that the things which this defendant is alleged to have done concerning the destruction of the notes with his genuine endorsement, constituted a fraud against complainant. This is an inference without any facts special or otherwise to sustain it.

A Court of Equity is not ousted of its original jurisdiction by the fact that a Court of Law exercises the same or similar jurisdiction, but if the Court of Law has first obtained the jurisdiction of the action, the Court of Law will retain the jurisdiction.

15 *Cyc.* 244.

The Transfer of Causes Act provides that in no civil cause or matter hereinafter pending in any court which *has not jurisdiction* shall be dismissed for that cause only, but the cause or matter shall be transferred with the record to the proper court, which shall thereupon proceed therein as if the cause or matter had been originally commenced in that Court. This Statute was the subject of judicial consideration in *Commonwealth Roofing Company vs. Riccio*, 81 *N. J. Equity*, 487. The Court there says: "The reading of this enactment discloses at once that if the Court below was right in considering that it had jurisdiction of the subject matter of this litigation, the order appealed from (transferring the cause) cannot be justified for the statute permits the transfer of a cause from the Court of Chancery to a Law Court only when it has not jurisdiction of the subject matter." It will be noted that under the language of this statute the Court must be satisfied that there is a civil cause or matter. The Court must find justification for jurisdiction in the Bill of Complaint. The order appealed from in this cause does not set out that the complainant is not in the right forum, but the Court dismissed the bill because of want of equity.



In re question of fraud of Flynn being imputable to Darling, see Kennedy vs. McKay, 43 N. J. L. 288 and Decker vs. Fredericks, 47 N. J. L. 469, also Luse vs. Parke, 17 N. E., 415, at page 419, White vs. N. Y. and C. Ry. Co. 68 N. J. L. 123.

Answering argument 1 on page 5 of complainant's brief, section 203 of negotiable instruments relates to negotiable instruments; any instrument which comes within the designation of a negotiable instrument comes within the application of this section.

The cases cited by complainant on page 5 of his brief do not bear out his contentions.

DEFENDANT'S CONTENTIONS.

Complainant cannot maintain his bill for the following reasons:

1. Because he has adequate remedy at law and he selected that remedy.

See Bill of Complaint wherein it is set out that the complainant or his endorsees instituted action in Law Court.

An election of remedy is binding.

15 Cyc. 262.

Cox vs. Robbins, 9 N. J. L. 384.

If both a Court of Law and a Court of Equity have concurrent jurisdiction of the subject matter a party may elect as to the tribunal which shall determine the controversy.

15 Cyc. 244.

The complainant deliberately chose its forum in which it had, at least, the benefit of the judgment of fair judges of the Supreme Court, who dealt with the case on the merits, upon equitable principles, precisely as this court would have done had it come here in the first place. Having chosen that forum,

I think it is as much estopped in case no writ of error will lie to the judgment of that court as if it will.

West N. Y. vs. Laubsch, 30 *At.* 814, 53 *N. J. Eq.* 65.

2. Because the only equity which the bill shows would be estoppel to preclude the defendant from denying the signature upon the notes and that question has already been adjudicated in the Law Court, and complainant is barred thereby.

THE RULE IS WELL SETTLED THAT A JUDGMENT OF A COURT OF COMPETENT JURISDICTION, DELIVERED UPON THE MERITS OF A CAUSE, IS FINAL AND CONCLUSIVE BETWEEN THE PARTIES IN A SUBSEQUENT ACTION UPON THE SAME CAUSE, NOT ONLY AS TO ALL MATTERS ACTUALLY LITIGATED AND DETERMINED IN THE FORMER ACTION, BUT ALSO AS TO EVERY GROUND OF RECOVERY OR DEFENSE WHICH MIGHT HAVE BEEN PRESENTED AND DETERMINED THEREON. THIS RULE IS APPLIED BOTH AT LAW AND IN EQUITY. THUS, A COURT OF EQUITY WILL NOT GRANT RELIEF WHICH MIGHT HAVE BEEN HAD IN A PRIOR ACTION AT LAW; NOR ON THE OTHER HAND, WILL A COURT OF LAW ENTERTAIN AN ACTION FOR A CAUSE WHICH MIGHT HAVE BEEN TAKEN ADVANTAGE OF IN A PRIOR SUIT IN EQUITY.

page 781.

Am. and Eng. Enc. of Law, Vol. 24,
Embury vs. Connors, 3 *N. Y.* 511.

In an action upon the same claim or demand the former adjudication concludes parties and privies not only as to every matter offered and received to sustain or defeat the claim, but also to every matter which might and should have been litigated in the first suit.

Vol. 24 Am. and Eng. Enc. Law, 2nd Ed., 714 and cases cited.

A judgment on one of a series of notes given upon the same transaction and a consideration is conclusive in actions upon the other if the judgment be rendered upon some issue which involves the validity of the whole transaction.

24 Am. and Eng. Enc. Law, 2nd Ed. 779.

The doctrine of *res adjudicata* rests on strong reasons of public policy and also of private right. If, after decree in equity, a party shall proceed at law for the same matter, equity will restrain him by injunction. Such suit at law is treated as contempt of court, for it is gross oppression to vex another with a double suit for the same cause of action.

Putnam vs. Clark, 34 N. J. Eq. 534.

In *Putnam vs. Clark*—the facts were reversed to what they are in this suit. The plaintiff sued in equity to recover on a mortgage. The decree in equity was against her. She then started suit at law to recover the mortgage. She was restrained by injunction.

3. There is no question of lost instrument in this suit. See *Maddock vs. Connelly*, 91 *At.* 735, affirmed by Court of Appeals, 90 *At.* 314. The bill of complaint of this action is not framed to establish a lost instrument. There was no lost instrument. The bill does not state there was a lost in-

strument. Even if there were, Motley can sue at law under a statute specifically giving that right as above shown.

4. The complainant is estopped from insisting upon this defendant giving new notes, because complainant accepted other notes when he had the opportunity to insist upon securing the good notes. Complainant put it in the power of Spraggins and Franklin to put the defendant in jeopardy, therefore he cannot come into a Court of Equity and disaffirm what he enabled to be done.

Cartun vs. Myers ⁸²~~88~~ *Atlantic* 14.

Estoppel must be mutual.

This defendant could not have come into Equity to set aside a judgment rendered in favor of Franklin, therefore Motley, his privy is barred. *Sbarbero vs. Miller*, 72 *Eq.* 248. If the contention of the complainant is to prevail, then if Spraggins and Franklin had recovered on those notes, Motley could also recover, which would be leading to the inequitable situation of permitting Motley to collect Twelve hundred dollars for himself and Twelve hundred dollars for his assignees and require the defendant to pay Twenty-four hundred dollars when at the most he was only required to pay Twelve hundred dollars.

5. That the notes destroyed were never delivered to or owned by Motley, Franklin or Spraggins. The Bill of Complaint sets out specifically that the complainant never received the notes upon which this suit is instituted, but in effect waived the delivery of these notes and accepted others.

SPECIFIC PERFORMANCE.

Specific performance of the alleged contract by Darling to deliver the note to Motley cannot be decreed in equity under the rule: "It is only when the remedy at law will not put the party in a situation as beneficial to him as if the agreement were specifically performed that equity will interfere," *Brown vs. Brown*, 33 *N. J. Eq.* 650. It is also held that "a court of equity will not under the guise of a bill for specific performance entertain a suit for compensation or damages which might be received at law," *Borden vs. Curtis*, 48 *N. J. Eq.* 120; *Peeler vs. Levy*, 26 *N. J. Eq.* 330.

Moreover equity will not decree specific performance of a contract where there is an adequate remedy by action at law for breach of the contract, *Young Lock Nut Company vs. Brownley Manufacturing Company*, 34 *Atl.* 947. Where the remedy at law is employed a court of chancery will not interfere to compel specific performance of a decree of another suit, *Bennett vs. Bennett*, 63 *N. J. Eq.* 306.

In the case at bar there is an adequate remedy at law for the complainant can sue on the notes without having the notes specifically delivered. Moreover there can be no decree for specific performance as against the defendant Darling for he has no control over Flynn to get Flynn to make notes for him to endorse. If Darling is at all liable it is for failure to deliver the notes in existence to Motley. The unreasonable nature of the whole claim is illustrated in this, that there can be no allegation that Darling was to secure Flynn's signature to notes and yet there is an attempt to compel Darling to deliver notes of Flynn with his endorsement. The admitted engagement was that Flynn was to deliver his own notes with Darling's endorsements. On such a situation as that Flynn could not be compelled to specifically perform if Darling refused

to endorse the notes as Flynn's accommodation endorser. So, if the contract is Darling's, it cannot be enforced against him because it is impossible for Darling to compel Flynn to make the notes.

The bill is not framed as a bill for specific performance.

This defendant respectfully submits that the order made by the Court of Chancery be affirmed.

GEORGE J. McEWAN

CHARLES E. S. SIMPSON

Of Counsel with Defendant,

HENRY I. DARLING.

New Jersey Court of Errors and Appeals

Between	}	On Appeal.
RICHARD A. MOTLEY,		
Appellant-Complainant,		
and		
HENRY I. DARLING, <i>et al.</i> ,		
Respondent-Defendant.		

REPLY TO RESPONDENT'S BRIEF

The respondent in his brief has claimed that the doctrine of *res adjudicata* is involved in this cause. The bill of complaint sets out that suit was brought to recover the amount due on the \$500 note and also that suit was brought to recover the amount due on the \$700 note. The bill, by inference, shows by whom this suit was brought. The suit was actually brought on the \$700 note by Philip Franklin, as holder of the note, against Henry I. Darling, as endorser, and the suit on the \$500 note was brought by Traverse A. Spraggins as holder of the note against Henry I. Darling as endorser. The complainant, Motley, was not a party to either of these suits. This is admitted in the brief of respondent, on page 8. It is also shown by a close reading of the bill that the notes

were delivered to Spraggins and Franklin, respectively, and it was not until after the suits had been brought by Spraggins and Franklin, respectively, that the complainant, Motley, obtained an assignment of any interest that Franklin and Spraggins might have on the notes.

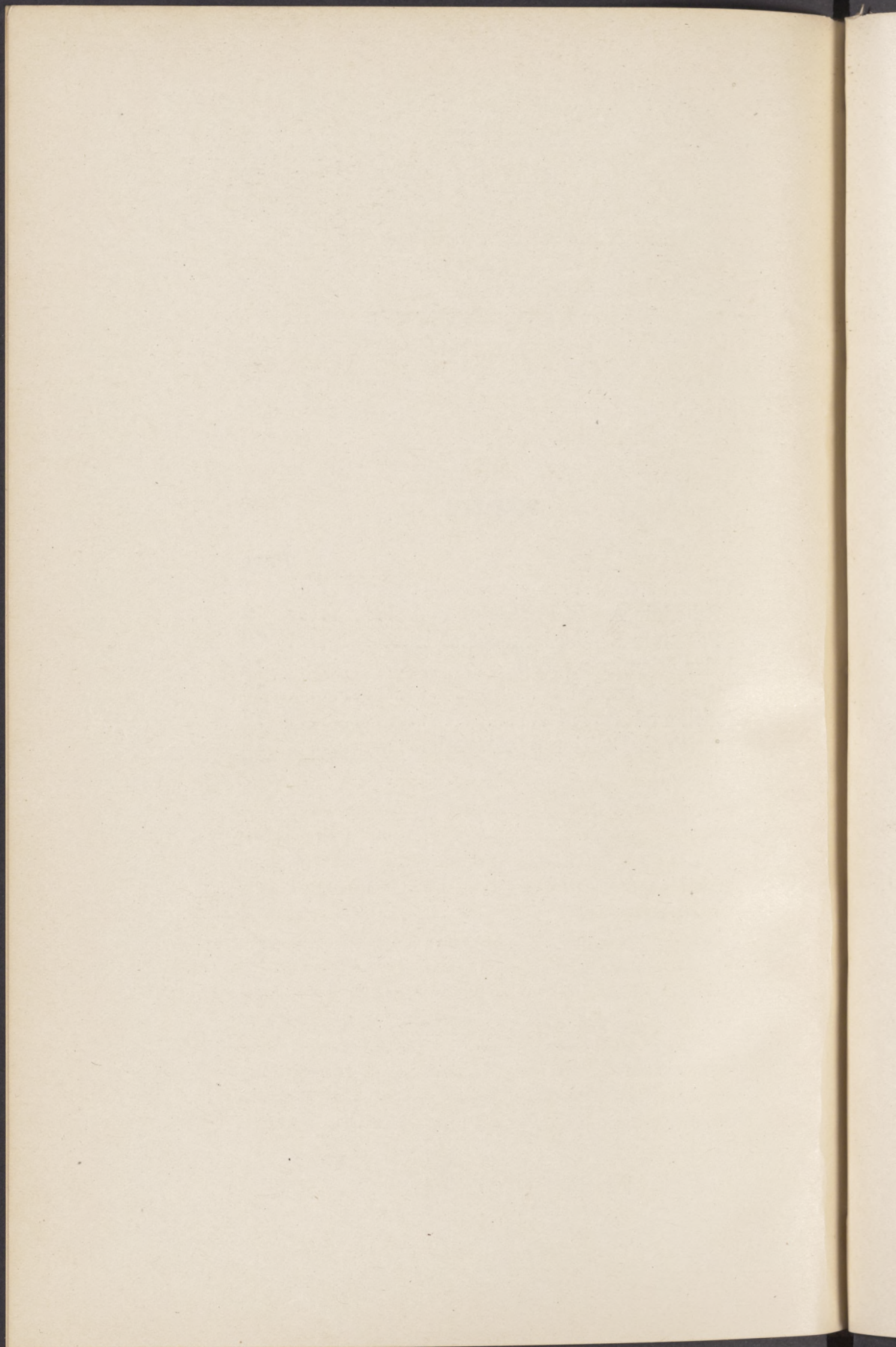
This explanation, I hope, will aid in the consideration of the case.

Respectfully submitted,

JOSEPH ANDERSON, SR.,
Of Counsel with Appellant-Complainant.

INDEX

	Page
Bill	1
Schedule A—Bill of Sale	9
Schedule B—Assignment of lease	12
Order Dismissing Bill	14
Notice of Appeal	16
Petition of Appeal	17
Answer to Petition of Appeal	19



New Jersey Court of Errors and Appeals

Bill

(Filed, Nov. 21, 1913)

IN CHANCERY OF NEW JERSEY

*To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:* 20

Complaining shows unto your Honor your orator, Richard A. Motley, of Jersey City, in the County of Hudson and State of New Jersey. That your orator had title to certain automobiles and other personal property comprising one 1912 Oakland Touring car, one Buick Touring Car, one Oakland car, one Cadillac Car, one Pope-Hartford car and all other goods and chattels contained in the premises No. 2395 Hudson County Boulevard, Jersey City, N. J., and your orator was also assignee of the lease of said premises No. 2395 Hudson County Boulevard, aforesaid. 30

That the said personal property was in the possession and used by one Cecelia Bock, who was also in possession of said premises under said lease. That one Henry I. Darling of Jersey City aforesaid had certain dealings and transactions concerning said goods and chattels and lease with 40

Bill

the said Cecelia D. Bock, apart from your orator's interest in said goods and chattels and the lease of said premises. That in and about the month of April, nineteen hundred and twelve, the said Henry I. Darling entered into negotiations for the purchase or other disposition of said goods and chattels and lease, which culminated in the said Henry I. Darling desiring to obtain possession and control of the said goods and chattels and lease. That a bill of sale for said goods and chattels was drawn to be executed by your orator at the request of the said Henry I. Darling. That the said Henry I. Darling directed that the space for the name of the purchaser be left blank when said bill of sale was drawn. That accordingly a bill of sale was drawn, bearing date the twenty-sixth day of April, nineteen hundred and twelve, wherein your orator was named as party of the first part and the name of the party of the second part was omitted. That your orator, with his attorney, on or about the second day of May, nineteen hundred and twelve, met the said Henry I. Darling in the office of the attorney of the said Henry I. Darling. That the said Henry I. Darling, or his attorney in his behalf, directed that the name of one Charles Flynn be inserted as the party of the second part, and the same was done, and your orator executed a bill of sale for the aforesaid personal property, a copy of which is hereto annexed and made part hereof, and marked Schedule "A." That an assignment of the lease of the premises was executed by your orator, a copy of which is hereto annexed and made part hereof, and marked Schedule "B."

40 That it was agreed between your orator and the

Bill

said Henry I. Darling that the purchase price of your orator's interest in said garage and lease was to be the sum of One thousand four hundred and seventy nine dollars and forty-four cents. That two notes were drawn, payable to your orator's order, bearing date May second, nineteen hundred and twelve; one for five hundred dollars, payable four months after date and one for seven hundred dollars, payable six months after date. That said notes were signed by Charles Flynn and endorsed by the said Henry I. Darling. That the said Henry I. Darling also endorsed a note for the said Charles Flynn for the sum of three hundred dollars in order to make the account of the said Charles Flynn good at his, Flynn's, bank of deposit. That the said latter note was discounted, and a check was drawn to your orator's order for two hundred and seventy-nine dollars and some cents; as nearly as your orator can ascertain, forty-four cents.

That it was agreed between your orator and the said Henry I. Darling that said two notes and the said check for two hundred and seventy-nine dollars and forty-four cents or some other sum for cents, should be delivered to your orator when your orator delivered the bill of sale for the garage and the assignment of the lease thereof to the said Charles Flynn, and the said Henry I. Darling delivered the said two notes for five hundred dollars and seven hundred dollars, respectively, to his, Henry I. Darling's attorney, to be delivered to your orator when the contents of the garage, and possession of the garage, and the bill of sale and the assignment of the lease should be delivered to the said Charles Flynn. That your

Bill

orator and the said Charles Flynn, and one John Warneke, the attorney for Henry I. Darling, went to the garage on or about the second day of May, nineteen hundred and twelve, and the said Charles Flynn was put in possession of the garage, and its contents, and in consideration therefor, two
10 notes, signed by Charles Flynn, and purporting to be endorsed by the said Henry I. Darling, one for five hundred dollars, and one for seven hundred dollars, and a check for two hundred and seventy-nine dollars and forty-four cents, or some other sum for the cents, were delivered to your orator.

Your orator further shows that he endorsed the note of five hundred dollars due in four months and delivered the said note to one Traverse A. Spraggins. That said note became due on the
20 third day of September, nineteen hundred and twelve, and was presented for payment and was dishonored, and protested for non-payment. That your orator endorsed the seven hundred dollar note due in six months, and delivered the same to Traverse A. Spraggins, who endorsed the said note and delivered it to one Philip Franklin. That the note became due the fourth day of November, nineteen hundred and twelve, and was presented
30 for payment and was dishonored, and protested for non-payment.

That suit was commenced in the Hudson County Circuit Court to recover the sum of seven hundred dollars, being the principal of the note for that amount, payable to your orator's order, and endorsed by Henry I. Darling dated May second, nineteen hundred and twelve, and payable six months after date. That in said suit the said
40 Henry I. Darling claimed that the signatures of

Bill

H. I. Darling endorsed on said note were not in the handwriting of the said Henry I. Darling and that the said Henry I. Darling never wrote the signatures, and that the signatures were and are forgeries. That it was found on said trial that the endorsement "H. I. Darling" to the said ~~three~~ ^{seven} hundred dollar note was not the signature of the said Henry I. Darling, the defendant herein. Your orator has ascertained and charges the fact to be that Henry I. Darling obtained the notes for seven hundred and five hundred dollars, which were endorsed in the handwriting of Henry I. Darling by said Henry I. Darling, in your orator's presence, and destroyed the original notes. That in the month of June, nineteen hundred and thirteen, the said Henry I. Darling induced Charles Flynn to deliver to the said Henry I. Darling the notes of your orator, having the genuine endorsement of your orator. That how the said Charles Flynn obtained possession of said two notes having the genuine signatures of the said Henry I. Darling your orator does not know, other than that forged notes were substituted and delivered to your orator for the genuine notes; and your orator charges that the substitution of such forged notes was a gross fraud upon your orator, and that your orator on discovering the same was and is entitled to have said original notes delivered to your orator as the true consideration for the personal property delivered by your orator as hereinabove set forth. That it was likewise a fraud upon your orator for the said Henry I. Darling to obtain possession of said notes having his original endorsement thereon and to destroy the same. That the said Henry I. Darling knew that

10

20

30

40

Bill

the notes bearing his original signature were to be delivered to your orator in consideration of the delivery and as part of the purchase price of the personal property, garage and lease above mentioned, and that notes purporting to be the two
10 notes bearing the signature of the said Henry I. Darling had been delivered to your orator and had been negotiated.

That suit was likewise commenced to recover the amount due on the note for five hundred dollars, and after it was learned that the endorsement of H. I. Darling was a forgery, and that the note with the original endorsement of H. I. Darling was destroyed, the said suit was discontinued.

That since the trial of civil suit to recover the
20 amount due on the seven hundred dollar note, and the discontinuance of the suit to recover the amount due on the five hundred dollar note, your orator has obtained an assignment to your orator of all the right, title and interest in and to said notes of the said Philip Franklin and Traverse A. Spraggins. That your orator is advised that said assignments are unnecessary as forged notes were delivered to said Philip Franklin and Traverse A. Spraggins and the notes with the genuine endorsement of Henry I. Darling were never the
30 property of the said Philip Franklin and Traverse A. Spraggins, and the delivery of the forged notes did not pass any claim to the right of your orator to the notes having the genuine endorsement of H. I. Darling thereon. That your orator was advised to obtain said assignments in order to obviate any necessity for making said Philip Franklin and Traverse A. Spraggins parties to
40 this bill of complaint.

Bill

Your orator therefore charges that he has not at any time, nor has any one else received the said sums of five hundred dollars and seven hundred dollars, the principal of said two promissory notes, and that he is entitled to have delivered to him the notes for five hundred dollars and seven hundred respectively, hereinabove set forth, having the genuine endorsement of the said Henry I. Darling, and established and declared to be his property, and to have the amount due thereon ascertained and a decree made that the said Henry I. Darling and Charles Flynn, or one of them, pay to your orator the amount so found due. 10

That your orator has frequently and in a friendly manner applied to the said Henry I. Darling and Charles Flynn, to pay the amount due on said notes to your orator, but they have wholly refused so to do. 20

In consideration whereof and for as much as your orator is remediless in the premises at common law, and cannot have adequate relief except by the aid of this Honorable Court.

To the end, therefore, that the said Henry I. Darling and Charles Flynn, may, without oath, which is hereby waived, full, true and perfect answer make to all and singular the premises aforesaid, according to the best of their knowledge, information and belief, and that they set forth and discover whether two notes of the following purport and tenor were executed, to-wit: 30

\$500 00 Jersey City, N. J. May 2d, 1912

Four months after date I promise to pay to the order of Richard A. Motley Five hundred 00/100 Dollars at the JERSEY CITY TRUST COMPANY.

For value received

40

Bill

No. Due Charles Flynn

ENDORSED:

H. I. Darling

R. A. Motley

T. A. Spraggins

10 \$700 00 Jersey City, N. J., May 2d, 1912.

Six months after date I promise to pay to the order of Richard A. Motley Seven hundred 00/100 Dollars at the Jersey City Trust Company For value received

No Due Charles Flynn

ENDORSED:

H. I. Darling

T. A. Spraggins

Richard A. Motley

20 Philip Franklin

and whether the same were to be delivered to your orator, together with a check for two hundred and seventy-nine dollars and forty-four cents, or some other sum for cents, as and for the consideration and purchase price of the garage and its contents and the assignment of the lease as hereinabove set forth, and whether Henry I. Darling obtained possession of the two notes of the purport and tenor herein above set forth, and destroyed or caused the same to be destroyed, and that a decree may be made ascertaining and establishing said two notes, and that it be decreed that said two notes were and are the property of your orator and that he is entitled to the same, and that it be ascertained how much is due on said two notes to your orator, and that it be decreed that Henry I. Darling and Charles Flynn pay to your orator the amount so found due to your orator on said

30

40

Bill—Schedule A

two notes, and that your orator may have such other relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor the premises considered, to grant unto your orator the state's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Henry I. Darling and Charles Flynn, commanding them, and each of them, at a certain day, and under a certain penalty, therein to be expressed, to be and appear before your Honor, in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor may seem meet, and as shall be agreeable to equity and good conscience.

And your orator will ever pray etc.

JOSEPH ANDERSON, SR.,
Solicitor for and of Counsel
with Complainant.

Schedule A

Annexed to Bill

KNOW ALL MEN BY THESE PRESENTS,

That I, RICHARD A. MOTELY, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the First Part, for and in consideration of the sum of Fourteen hundred and seventy-nine and 42/100 lawful money of the United States, to me in hand paid, at or before 40

Bill—Schedule A

the ensealing and delivery of these presents, by Charles Flynn, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the Second Part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the Second Part, heirs executors, administrators and assigns, ALL his right, title and interest in and to the goods and chattels particularly described and mentioned, One (1) 1912 Oakland Touring Car, One (1) Buick Touring Car. One (1) Oakland Car, One (1) Cadillac Car, One Pope Hartford, and all other goods and chattels contained in the premises No. 2395 Hudson County Boulevard, Jersey City, N. J.

20 TO HAVE AND TO HOLD the same, unto the said party of the Second Part, his heirs, executors, administrators and assigns forever. AND I do for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of the Second Part, to warrant and defend his right, title and interest in the sale of said goods and chattels hereby sold unto the said party of the Second Part, his heirs, executors, administrators and assigns, against all and every person and persons whomsoever.

30 In Witness Whereof, I have hereunto set my hand and seal the Twenty-sixth day of April, in the year of Our Lord, One Thousand Nine Hundred and Twelve.

RICHARD A. MOTLEY (L. S.)

Signed, sealed and delivered in the presence of

40 Eugene R. Hayne.

Bill—Schedule A

SCHEDULE

One 1912 Oakland Touring Car. All the goods and chattels consisting of Automobile Supplies, such as oils, gasoline, tools, the good will of the automobile business and the garage hereinabove sold; also one Cadillac Car. One Buick Car. One Pope Hartford. And all other goods and chattels now in the premises in which I have any interest whatever. 10

It is intended hereby to sell to the party of the second part, all the right, title and interest which was conveyed to me by two certain Bills of Sale, dated January 5th, Nineteen hundred and twelve, one from Bernard J. Crowley, for all of the goods above described, except one Oakland Car, 1912, which was purchased from George L. Bock. 20

It is only intended by this Bill of Sale to convey such property or the title thereof as was acquired or purchased by me at the time and by reason of the above Bills of Sale; and also to assign to the party of the second part all my right, title and interest, in and to a certain lease for said premises, which said lease was assigned to me by Cecilia D. and George L. Bock, and bears date of 5th day of January, Nineteen hundred and twelve. 30
RICHARD A. MOTLEY.

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

BE IT REMEMBERED, That on this Twenty-sixth day of April, in the year of our Lord, One Thousand Nine Hundred and Twelve, before me, the subscriber, a Master in Chancery of New Jersey, 40

Bill—Schedule B

personally appeared RICHARD A. MOTLEY, who, I am satisfied, is the grantor mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his
 10 voluntary act and deed, for the uses and purposes therein expressed.

EUGENE R. HAYNE,
 Master in Chancery of New Jersey.

Schedule B
Annexed to bill

20 KNOW ALL MEN BY THESE PRESENTS, That I, RICHARD A. MOTLEY, of the City of Jersey City, in the County of Hudson and State of New Jersey, for and in consideration of the sum of One Dollar (\$1.00) and other consideration, lawful money of the United States to me in hand paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over and by these presents do sell, assign, transfer and set over unto
 30 CHARLES FLYNN, of the same place, a certain indenture of lease bearing date the Tenth day of August, Nineteen Hundred and Ten, made by John Nelson to Cecelia D. Bock, and all the message described therein, being the one-story building being known as premises 2395 Boulevard, Jersey City, New Jersey, which said lease has three years to run from the Tenth day of August, Nineteen
 40 Hundred and Ten, with the privilege of renewal

Bill—Schedule B

of an additional five years, which said lease was assigned by the said Cecelia D. Bock and George L. Bock, her husband, to the said Richard A. Motley, by deed of assignment of lease dated January Fifth, Nineteen hundred and twelve, with the appurtenances and also all my estate, right, title, term of years yet to come, claim and demand whatsoever of, in and to, or out of the same to have and to hold the same unto the said party of the second part, his executors, administrators or assigns, for the residue of the term therein mentioned, subject nevertheless to the rents, covenants, conditions and provisions therein also mentioned, and I hereby covenant and agree to and with the said Charles Flynn that the said assigned premises now are free and clear of and from all former or other gifts, rents, bargains, sales, leases, judgments, executions, back rents, taxes, assessments and incumbrances whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Second day of May, in the year of our Lord, One Thousand Nine Hundred and Twelve.

RICHARD A. MOTLEY (L. S.)

CHARLES FLYNN (L. S.)

Signed, sealed and delivered

in the presence of

John W. Warnke.

State of New Jersey, }
County of Hudson. }^{ss}:

BE IT REMEMBERED, that on this Second day of May, in the year of our Lord, One Thousand Nine Hundred and Twelve, before me, the subscriber, a Master in Chancery of New Jersey, personally ap-

10

20

30

40

Order Dismissing Bill

peared RICHARD A. MOTLEY, who, I am satisfied, is the individual mentioned in and who executed the foregoing Instrument; to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOHN W. WARNKE,
Master in Chancery of New Jersey.

Order Dismissing Bill

(Filed September 22, 1915)

20

IN CHANCERY OF NEW JERSEY

Between RICHARD MOTLEY, and HENRY I. DARLING, <i>et al.</i> , 	Complainant, Defendants.	}	On Bill, etc.
--	---------------------------------	---	---------------

30

This matter coming before the Court upon final hearing, in the presence of Joseph Anderson, Sr., of counsel with the complainant, and George J. McEwan and Charles E. S. Simpson, of counsel with the defendant, Henry I. Darling, and a motion being made on behalf of the defendant, Henry I. Darling, to dismiss the bill of complaint, herein,
 40 for want of equity, and said counsel entering into a

Order Dismissing Bill

stipulation agreeing upon the facts, which said stipulation being afterwards set aside because counsel for the complainant alleged that he inadvertently entered into the same, and to bring the matter properly before the Court for decision, the said complainant and said defendant, Henry I. Darling, by their respective solicitors being in open Court, and the complainant waiving formal notice of motion to strike out the bill of complaint in this cause, and the said defendant moving to dismiss said bill of complaint, for want of equity, and upon hearing the argument of counsel therein; and the Court being of the opinion that the complainant has a full, complete and adequate remedy at law, under the statute: 10

It is on this Thirteenth day of September, one thousand nine hundred and fifteen, on motion of George J. McEwan and Charles E. S. Simpson, of counsel with the defendant, Henry I. Darling. 20

ORDERED AND DECREED that the bill of complaint herein be and the same is hereby dismissed for want of equity, and it is further

ORDERED that the replication of the complainant be stricken out, and that the defendant have leave to withdraw his answer from the files of this Court.

E. R. WALKER, C. 30

Respectfully advised
 Vivian M. Lewis, V. C.
 A true copy.
 Robert H. McAdams,
 Clerk.

Notice of Appeal*(Filed, October 15, 1915)*

IN CHANCERY OF NEW JERSEY

10	Between: RICHARD A. MOTLEY, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> HENRY I. DARLING and CHARLES FLYNN, <div style="text-align: right;">Defendants.</div>	}	On Bill, etc.
----	---	---	---------------

20 The complainant hereby appeals from the order made in the above entitled cause on the thirteenth day of September, nineteen hundred and fifteen, whereby the bill of complaint in the above entitled cause was dismissed for want of equity, and from the whole and every part of said order dated September thirteenth, nineteen hundred and fifteen, to the Court of Errors and Appeals, in the last resort in all causes.

Dated, October 14, 1915.

30 JOSEPH ANDERSON, SR.,
Solicitor for and of Counsel with Complainant.

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

JOSEPH ANDERSON, SR.,
Of Counsel with Complainant.

Petition of Appeal

(Filed, October 20, 1915)

NEW JERSEY COURT OF ERRORS AND AP- PEALS

10

Between: RICHARD A. MOTLEY, Appellant-Complainant, and HENRY I. DARLING and CHARLES FLYNN, Respondent-Defendants.	}	On Bill, etc.
---	---	---------------

*To the Honorable Court of Errors and Appeals, 20
in the last resort in all causes:*

The petition of Richard A. Motley, the appellant in the above stated cause respectfully shows that your petitioner finds himself aggrieved by an order made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the thirteenth day of September, in the year nineteen hundred and fifteen, wherein the said Richard A. Motley was complainant and the said Henry I. Darling and Charles Flynn were defendants, in this respect, to wit: That the said order adjudges that the bill of complaint in said cause be and was thereby dismissed for want of equity. 30

Your petitioner humbly appeals from the whole and every part of said order of the Chancellor, dated, September thirteenth, nineteen hundred and fifteen, which order adjudges as aforesaid, 40

Petition of Appeal

10 on the ground that the same is erroneous, for that
said order should have adjudged that said bill of
complaint presented a good cause of action and
said bill of complaint should have been sustained
by the order of the Chancellor and the complain-
ant granted relief prayed for therein, and said bill
20 should not have been dismissed and should have
been retained under the final decree in said cause,
and further, that in and by said order the Chan-
cellor should have ordered that said cause of ac-
tion be transferred to a Court of law, there to be
tried and determined according to the right of the
complainant, and should not have adjudged that
the complainant's cause be dismissed because in
and by said order it is set forth that the complain-
20 ant has a full and complete and adequate remedy
at law under the statute.

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

JOSEPH ANDERSON, SR.,

Sol'r for and of Counsel with Appellant.

30

Copy of within copy petition of appeal received
October 21st, 1915.

CHARLES E. S. SIMPSON,

Sol'r for Appellee.

Answer to Petition of Appeal

(Filed, November 3, 1915)

NEW JERSEY COURT OF ERRORS AND AP- PEALS

Between : RICHARD MOTLEY, Complainant-Appellant, and HENRY I. DARLING, <i>et al.</i> , Defendant-Respondent.	}
---	---

10

The answer of the above-named respondent to the petition of appeal of the appellant, Richard 20 Motley.

The respondent, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that an order was on the 30th day of September, 1915, 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 30 when the same shall be produced. And this respondent is advised and believes, that the said order is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

CHAS. E. S. SIMPSON,
Solicitor for and of Counsel
with Defendant-Respondent. 40

