Docket 33, page 322.

Bill filed January 28, 1911.

IN CHANCERY OF NEW JERSEY.

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To his Honor Mahlon Pitney, Chancellor of the State of New Jersey:

Humbly complaining, show unto your Honor your orators, Stephen Keulper and C. Maud Keulper, his wife, of Oaklyn, county of Camden and State of New Jersey:

1. That on or about the eleventh day of November, A. D. nineteen hundred and nine, your orators entered into a contract in writing with one Esterbrook Reeve, of Westmont, county and State as aforesaid, for the building, erection and construction of a certain dwelling, situate at Oaklyn, county and State as aforesaid, for the sum of twenty-two hundred and sixty-six dollars, which contract was duly filed on the twelfth day of November, A. D. nineteen hundred and nine, in the Clerk's office of Camden county, in accordance with the statute in such case made and provided.

2. And your orators further show, that under said contract said sum of twenty-two hundred and sixty-six dollars is payable as follows, viz.: One hundred dollars on signing of said contract, one hundred dollars when cellar wall was completed, two hundred and fifty dollars when said building was enclosed and rafters set, two hundred dollars when said building was lathed and plastered; balance of said sum, to wit, sixteen hundred and sixteen dollars, when said building was completed.

3. And your orators further show, that on or about the twelfth day of November, A. D. nineteen hundred and

nine, said Esterbrook Reeve commenced the building, erection and construction of said dwelling, and that on or about the first day of August, A. D. nineteen hundred and ten, completed the construction thereof.

4. And your orators further show, that your orators made payments under said contract, as follows, viz.: Said first payment, one hundred dollars, on signing said contract November eleventh, nineteen hundred and nine; said second payment, one hundred dollars, December fifteenth, nineteen hundred and nine; said third payment, two hundred and fifty dollars, December twenty-second, nineteen hundred and nine; said fourth payment, two hundred dollars, on two payments, one of forty dollars on March fifth, nineteen hundred and ten, and one of one hundred and sixty dollars on March eighteenth, nineteen hundred and ten.

5. And your orators further show, that on or about the twelfth day of December, A. D., nineteen hundred and nine, said Esterbrook Reeve gave a written order to City Line Brick and Lumber Company, a corporation under the laws of the State of New Jersey, directed to your orator, Stephen Keupler, directing him to pay to said City Line Brick and Lumber Company the sum of five hundred dollars, and to deduct the same from the moneys to grow due under said contract, and procured your orator, Stephen Keulper, to accept said order, which he did in writing, and on or about the twenty-fifth day of May, A. D. nineteen hundred and ten, your orators paid to said City Line Brick and Lumber Company the sum of four hundred and ninety-six dollars by virtue of said order.

6. And your orators further show, that on or about the twenty-sixth day of May, A. D. nineteen hundred and ten, one William H. Fredericks, of the city and county of Camden and State of New Jersey, gave notice in writing to your orators of a claim or debt due from said Esterbrook Reeve to said William H. Fredericks of the sum of four hundred and twenty-four dollars and thirty-six cents

for materials furnished said Esterbrook Reeve under said contract, and demanding that your orators pay said sum to said William H. Fredericks and that said William H. Fredericks claims to be entitled to said sum out of the funds in hands of your orators due to said Esterbrook Reeve under said contract.

7. And your orators further show, that on or about the twentieth day of June, A. D. 1910, one W. Sandiford Johnston, of the borough of West Collingswood, county and state as aforesaid, gave notice in writing to your orators of a claim or debt due from said Esterbrook Reeve to said W. Sandiford Johnston of the sum of sixty-four dollars and fifty cents, for work done or materials furnished said Esterbrook Reeve under said contract and that he had an order from said Reeve authorizing your orators to pay said claim, and demanding that your orators pay said sum out of the fund in hands of your orators due said Esterbrook Reeve under said contract.

8. And your orators further show, that on or about the twenty-second day of July, A. D. nineteen hundred and ten, the Camden Lime Company, a corporation under the laws of the State of New Jersey, gave notice in writing to your orators of a claim or debt due from said Esterbrook Reeve to said Camden Lime Company of the sum of one hundred and sixty dollars and ninety-six cents for materials furnished said Esterbrook Reeve under said contract; that said Esterbrook Reeve refused to pay said sum to said Camden Lime Company and demanding that your orators pay said sum out of the fund in your orators' hands due said Esterbrook Reeve under said contract.

9. And your orators further show, that The Haney-White Company, a corporation under the laws of the State of Pennsylvania, has given notice to your orator, Stephen Keulper, that it held an order signed by said Reeve upon your orator dated on or about May twenty-first, nineteen hundred and ten, directing your orator to deduct from any moneys due him under said contract the sum of fifty-three

dollars and to pay the same to said company and to charge the same to account of said Reeve, and also a certain guarantee of the same date directed to said company and signed by your orator, said Stephen Keulper, guaranteeing to said company the payment of said sum due said company under said contract and that your orators, on or about the twenty-third day of December, nineteen hundred and ten, paid said sum of fifty-three dollars to said company by virtue of said guarantee.

10. And your orators further show, that on or about the twenty-eighth day of July A. D. nineteen hundred and ten, one Henry Hoffman, of the city, county and State as aforesaid, gave notice in writing to your orators that said Esterbrook Reeve was indebted to said Henry Hoffman in the sum of sixty-two dollars and twenty-four cents for materials furnished said Esterbrook Reeve under said contract; that said Esterbrook Reeve had refused to pay said sum to said Henry Hoffman and demanding that your orators pay said sum out of said fund in hands of your orators due said Esterbrook Reeve under said contract.

11. And your orators further show, that on or about the fifth day of August, A. D. nineteen hundred and ten, one Lewis F. Hurff, of the borough of Collingswood, county and State as aforesaid, gave notice in writing to your orators that said Esterbrook Reeve was indebted to said Lewis F. Hurff in the sum of seventy-nine dollars and twenty cents for materials furnished said Esterbrook Reeve under said contract, that said Esterbrook Reeve refused to pay said sum out of the fund in hands of your orators due said Esterbrook Reeve under said contract.

12. And your orators further show, that on or about the twenty-fourth day of August, A. D. nineteen hundred and ten, one Elsworth S. Whitney, of Mt. Ephraim, county and State aforesaid, gave notice to your orator as follows: that said Esterbrook Reeve was indebted to said Elsworth S. Whitney in the sum of one hundred and

twenty dollars for materials furnished said Esterbrook Reeve under said contract; that said Esterbrook Reeve refused to pay said sum to said Elworth S. Whitney and demanding that your orators pay said sum out of the fund in hands of your orators due said Esterbrook Reeve under said contract.

13. And your orators further show, that on or about the twenty-first day of September, A. D. nineteen hundred and ten, one Elmer Tucker, of the city and county of Camden and State aforesaid, gave notice to your orators as follows: that said Esterbrook Reeve was indebted to said Elmer Tucker in the sum of twenty-seven dollars for materials furnished said Esterbrook Reeve under said contract; that said Esterbrook Reeve refused to pay said sum to said Elmer Tucker and demanding that your orators pay said sum out of the fund in hands of your orators due said Esterbrook Reeve under said contract.

14. And your orators further show, that the following are claims for materials furnished and work done under said contract, viz.: Samuel M. Reeves, five dollars and eighty-five cents ($5.85); Collingswood Construction Company, eighteen dollars and fifty cents ($18.50); Andrew Eisele and Michael D. Manning, trading as Eisele & Manning, five hundred and twenty dollars ($520); amounting to the sum of five hundred and forty-four dollars and thirty-five cents, which said claimants claim to be due out of said fund in hands of your orators due said Esterbrook Reeve under said contract.

15. And your orators further show, that your orators have paid on account of said contract to said Esterbrook Reeve the sum of six hundred and fifty dollars, to said City Line Brick and Lumber Company for said Esterbrook Reeve the sum of four hundred and ninety-six dollars, and to said The Haney-White Company for said Esterbrook Reeve the sum of fifty-three dollars, aggregating the sum of eleven hundred and ninety-nine dollars, leaving balance in hands of your orators due said Reeve under said con-

tract the sum of one thousand and sixty-seven dollars and that there is claimed to be due said claimants under said contract the sum of one thousand four hundred and eighty-three dollars and eleven cents.

16. And your orators further show, that on or about the third day of August, A. D. nineteen hundred and ten, said William H. Fredericks commenced suit against your orators in the Camden County Circuit Court to establish a mechanics lien against said dwelling and premises upon which same is situated in the sum of four hundred and twenty-four dollars and thirty-six cents, together with interest and costs of suit; that your orators joined in said suit and that said suit was noticed for trial at the September term of said Court and trial of the same was commenced on the twenty-second day of November, A. D. nineteen hundred and ten, before said Circuit Court of the County of Camden; that at said trial said Court, after hearing plaintiff's evidence, it being admitted that the contract under which the work was done for defendant had been duly filed in accordance with the statute, ruled that the plaintiff must be non-suited or a verdict directed against him unless he should amend his declaration so as to declare against the plaintiff upon the statutory obligation of an owner to retain moneys due or to become due a contractor where stop notice is served by a material man, and adjourned the case to the December term of said Court and by order dated December thirteenth, nineteen hundred and ten, said amendment was formally permitted and your orators were required to plead or demur to the amended declaration within twenty days from said date.

17. And your orators further show, that your orators are willing to pay said money to said Esterbrook Reeve, William H. Fredericks, W. Sandiford Johnson, Camden Lime Company, Henry Hoffman, Lewis F. Hurff, Elsworth S. Whitney, Elmer Tucker, Samuel M. Reeves, Collingswood Construction Company, Andrew Eisele and

Michael D. Manning, trading as Eisele & Manning, if they may safely do so, and have been notified by them not to pay the same to any other person or persons at your orators' peril.

18, And your orators further show, that your orators have been unable to determine to whom of right said balance belongs. That on the one hand said claimants, William H. Fredericks, W. Sandiford Johnston, Camden Lime Company, Henry Hoffman, Lewis F. Hurff, Elsworth S. Whitney and Elmer Tucker, having either served notices on your orators or hold orders from said Esterbrook Reeve claiming to be entitled to their respective claims in full out of said fund; that on the other hand, said claimants; Samuel H. Reeve, Collingswood Construction Company and Eisele & Manning, dispute the validity of said notices and orders and claim to be entitled to payment of their respective claims out of said fund pro rata with said claimants holding defective notices or orders.

19. Your orators further show that said claimants, Eisele & Manning, claim to hold an assignment of all the right, title and interst of said Esterbrook Reeve under said contract; that your orators requested said Eisele & Manning to permit your orators to examine said assignment but that said Eisele & Manning refused and for that reason your orators are ignorant of the nature and contents of said assignment, if such it be, or of the legal effect or validity thereof.

20. And your orators further show, that on or about the ninth day of January, A. D. nineteen hundred and eleven, said Andrew Eisele and Michael J. Manning, partners trading as Eisele & Manning, under and by virtue of said assignment commenced suit against your orators in the New Jersey Supreme Court to recover all moneys alleged to be due or to grow due under said contract to said Esterbrook Reeve and that your orators have filed necessary affidavits of merits required by rules of said Court; and that your orators have joined issue thereon.

21. And your orators further show, that they have always been willing to pay the balance of such money, with interest thereon from August first last, to such person or persons as should be lawfully entitled to receive the same and to whom they could pay it with safety and they thereby offer to pay the same into this Court.

22. And your orators further show, that they do not in any respect collude with either the said Esterbrook Reeve or said claimants touching the matters in this cause; and that they have not been indemnified by such defendants or any or either of them, but bring this suit of their own free will and to avoid being molested and injured touching the matters contained in this bill.

Wherefore, and as your orators can only have adequate relief in this Court, to the end that the said defendants may answer this bill and interplead and settle their right to the said sum of money and that your orators may be at liberty to pay the same into this Court; and that the said William H. Fredericks, Andrew Eisele and Michael J. Manning, partners trading as Eisele & Manning, may be enjoined and restrained from further proceeding in the suits at law so as aforesaid commenced by them against your orators; and that your orators, upon payment into Court of such amount, and procuring said defendants to interplead according to the course of this Court, may be decreed to be discharged from all liability to such defendants in the premises, and may have all their costs therein.

May it please your Honor, to grant unto your orators not only the State's writ of injunction, issuing out of and under the seal of this honorable court, to restrain the said William H. Fredericks and Andrew Eisele and Michael J. Manning, partners, trading as Eisele & Manning, from proceeding at law against your orators touching the matters aforesaid, but also a writ or writs of subpoena, also issuing out of and under said seal, to be directed to the said Esterbrook Reeve, William H. Fredericks, W. Sandiford Johnston, Camden Lime Company, Henry Hoffman, Lewis F. Hurff, Elsworth S. Whitney, Elmer Tucker, Samuel M. Reeves, Collingswood Construction Company,

Andrew Eisele and Michael J. Manning, trading as Eisele & Manning, therein and thereby commanding them and each of them on a certain day and under a certain penalty therein to be inserted to be and appear before your Honor in this Honorable Court, and then and there to answer all and singular the premises aforesaid, and to stand to, perform and abide such order, direction and decree therein as to your Honor shall seem meet.

And your orators will ever pray.

GEO. J. BERGEN, 10

Solicitor for and of Counsel with Complainants.

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

STEPHEN KEULPER and C. MAUD KEULPER, both of full age, being duly sworn according to law, on their oaths respectively say, that they, the complainants, have exhibited their bill of interpleader against the defendants in the above stated cause without any fraud or collusion between them and the said defendants, but merely of their own accord, for relief in this Court; and that said bill is not exhibited at the request of the said defendants, or of any or of either of them; and that the complainants are not indemnified by the said defendants, or by any or either of them. 20

And they further say, that the complainants have exhibited said bill with no other intent but to avoid being sued or molested by the said defendants touching the matters contained in said bill. 30

STEPHEN KEULPER.
C. MAUD KEULPER.

Sworn and subscribed to this 27th day of January, A. D. 1911, before me.

GROVER C. RICHMAN,
Attorney-at-law of New Jersey.

A true copy.
SAMUEL K. ROBBINS,
Clerk.

Demurrer filed March 14, 1911.

IN CHANCERY OF NEW JERSEY.

Between STEPHEN KEULPER, ET AL., Complainants, AND ESTERBROOK REEVE, ET AL., Defendants.	ON BILL, &c. DEMURRER.

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The demurrer of Andrew Eisele and Michael J. Manning, trading as Eisele & Manning, to the bill of complaint of Stephen Keulper and C. Maud Keulper, complainants.

These defendants by protestation, not confessing all or any of the matters and things in the complainants' bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto and for cause of demurrer show:

20

1. The money is not brought into Court.

2. It does not appear that complainants are indifferent and disinterested.

3. It appears that one of the complainants guaranteed the claim of The Haney-White Company.

4. It appears that complainants have preferred some of the claimants by making payments thereto.

30

5. It does not appear that specifications accompanying the contract were filed in the County Clerk's office.

6. It does not appear that either contract or specifications were filed before work done or materials furnished.

7. Said bill states no facts which would or could show any liability of the complainants to the alleged claimants other than these defendants.

8. Said bill fails to show that William H. Fredericks, W. Sandiford Johnston, Camden Lime Company, Henry Hoffman, Lewis F. Hurff, Elsworth S. Whitney, Elmer Tucker, Samuel M. Reeves, Collingswood Construction Company, or any of them have complied with the provisions of the third section of the mechanics lien act or given the notice therein required.

9. The bill fails to show that complainants gave the master workman or contractor the written notice required by the third section of the Mechanics' lien act. 10

10. The bill shows no facts which would or could raise any doubt as to the rights and priorities of the respective claims.

11. The bill does not make or state such a case as entitles complainants in a court of equity to any discovery or any relief against these defendants as to the matters contained in the bill, or any of such matters.

Wherefore and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto and humbly pray the judgment of this Honorable 20 Court whether they should be compelled to make any further or other answer to the said bill and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

CHAS. R. STEVENSON,
Solicitor for Demurrants.
FRENCH & RICHARDS,
Of Counsel.

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

ANDREW EISELE and MICHAEL J. MANNING, of full age, being severally duly sworn according to law, say that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

M. D. MANNING.
ANDREW EISELE.

Sworn and subscribed before me this thirteenth day of March, A. D. 1911.

HOWARD M. COOPER,
Master in Chancery of New Jersey.

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

SAMUEL H. RICHARDS,
10 Of Counsel with Demurrants.

IN CHANCERY OF NEW JERSEY.

Between STEPHEN KEULPER, ET AL., Complainants, 20 AND ESTERBROOK REEVE, ET AL., Defendants.	ON DEMURRER OF EISELE & MANNING TO BILL OF INTERPLEADER. CONCLUSIONS.

CHARLES R. STEVENSON and FRENCH & RICHARDS, for demurrants.

GEORGE J. BERGEN, contra.

30 LEAMING, V. C.

The objections to the bill, as urged by demurrant at the argument, are as follows:

1. That it does not appear that complainants are indifferent and disinterested, but on the contrary they have guaranteed or made payment of some of the claims and deducted them, and now ask defendants to interplead as to the balance.

A motion was heretofore made against this bill in behalf of other defendants. This same objection was then urged and passed upon by me. A copy of my memorandum opinion then filed will be hereto annexed as embodying my present views on that question.

2. That the bill does not disclose sufficient doubt touching the rights of the respective claimants to justify a bill of interpleader.

That question was also considered by me under the former motions. 10

3. That the bill fails to show that complainants, as owners, gave notice of the several claims to the contractor.

This objection to the bill has not been heretofore considered by me.

I do not think it material to complainants' right to pay the money in their hands into Court for distribution among the parties who have filed legal stop notices that the bill disclose whether he gave written notice to the contractor of the stop notices so served. Any failure of complainant to give such notices cannot deny to the materialmen who may have served proper stop notices their statutory lien on the fund. As pointed out in the annexed menorandum opinion all payments which have been made by the owner are clearly proper credits to him as of the date of the completion of the building, except as to prior stop notices, and the funds paid into Court are more than ample to satisfy all persons claiming under stop notices served prior to that date, and stop notices served subsequent to that time are operative only against the unappropriated balance. If complainants have, perchance, incurred personal liability to demurring defendant by reason of failure to give notice to the contractor of stop notices, such personal liability to demurring defendant will neither enlarge nor diminish the rights of the persons who have served stop notices to enforce their liens against and thereby appropriate the balance of the contract price now in the hands of complainant, nor will any final decree in this case be operative to bar any personal claim demurring

defendant may have against complainant. I am convinced that the failure of complainant to state in his bill that he gave notices to the contractor of the several stop notices served will not render the bill demurrable as to demurring defendant. So far as the present bill discloses complainant appears to have no interest whatever in the fund in his hands, and I see no reason emanating from the objection now under consideration why he should not be privileged to require all defendants who have asserted
10 a claim against that fund to settle among themselves their several rights against the fund.

4. That the bill does not disclose that specifications were filed with the contract.

This objection to the bill has not been heretofore considered.

The statute contemplates that specifications accompanying a contract shall be filed. A contract may be so drawn that all necessary specifications touching material and dimensions are embodied in the contract itself. I appre-
20 hend that it is only where the contract is made with reference to independent specifications that the statute contemplates that the separate specifications shall be filed; such specifications necessarily became an important part of the contract and should be accessible to materialmen and laborers. The present bill assets that the "contract was duly filed on the twelfth day of November, 1909, in the clerk's office of Camden county, in accordance with the statute in such case made and provided." In the present aspect of this case I think this averment sufficient as
30 against the demurrer. As Already suggested, the contract, in its broad sense, includes all matters agreed upon by the parties; furthermore, the present bill seeks only that the several defendants who assert a claim against the fund in complainant's hands shall interplead. In the absence of attachments or garnishments claims against the fund exist only upon the supposition that the statute has been complied with so far as the requirements touching filing are concerned. If the contract as filed does not

include the specifications, the force of that fact is available by answer. Under such conditions I think the bill should be sustained. (See *1 Daniell's Pl. & Pr., 542, 543.*) But in view of doubt suggested by the bill whether sufficient specifications have been filed, and the possible necessity of an answer to raise that issue, I think no costs should be taxed.

I will advise an order overruling the demurrer, but without costs.

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IN CHANCERY OF NEW JERSEY.

Between STEPHEN KEULPER, ET AL., Complainants, AND ESTERBROOK REEVE, ET AL., Defendants.	ON MOTION TO DISMISS BILL OF INTERPLEADER. CONCLUSIONS.

20

WILSON & CARR and FRANCIS G. WEAVER, for the motion.

GEORGE J. BERGEN, opposed.

LEAMING, V. C.

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As the present motion is, in effect, a demurrer to the bill, the single question here presented is whether the bill on its face discloses facts sufficient to sustain a bill of interpleader.

On August 12th, 1910, the day the building was completed, complainants were, by the terms of the contract, required to be in possession of the final installment of the

contract price, the amount of which was $1,616.00. Complainants were on that day entitled to pay that money to the contractor, except as against such rights in that fund as had *at that time* arisen in behalf of others. An advance payment made by complainants, as owners, to the contractor or to his order prior to that date is necessarily treated as made on that date and will discharge the owners to the amount of such advance payment, except as against rights of others which prior to that date have arisen
10 in the fund. A stop notice served subsequent to the time the last installment became due is operative only against such part of the last installment as remains unpaid or unappropriated at the time such subsequent stop notice is served. *Taylor vs. Reed, 68 N. J. Law (39 Vroom), 178.* There can be no doubt, therefore, touching the right of complainants to interplead so far as the objection is concerned that they should pay into court the full amount of the last installment without first deducting the sum of $496.00, which was paid on contractor's order May 25,
20 1910, for the stop notices served have no rights as against that payment.

Complainants also deduct from the amount of the last contract installment $53.00 which was paid by complainants Dec. 23, 1910, to The Haney-White Company by virtue of a guarantee made by complainants to that company May 21, 1910, wherein complainants guaranteed the payment of an order issued to that company by the contractor on that date against complainants for money due that company under that contract. With such an
30 accepted or guaranteed order outstanding at the time the last installment fell due, the order clearly at this time became fully operative in favor of the person holding the order as an equitable assignment of the fund to the amount of the order, as against all persons who at that time had no prior rights. It therefore becomes immaterial as to such subsequent claims whether that order was paid by complainant on the day the installment fell

due or at a subsequent day, for the holder of the order was entitled to the money on that day.

I am also satisfied that the bill discloses sufficient uncertainty as to the rights of the several claimants to entitle complainants to file the bill. The bill alleges that the several claimants to the fund have made claims on complainants to the exclusion of other claimants, and sets forth the substance of the stop notices in a manner which may be said to create substantial doubts as to the sufficiency of some of the notices. These averments I think sufficient to sustain the bill.

IN CHANCERY OF NEW JERSEY.

Between STEPHEN KEULPER AND C. MAUD KEULPER, Complainants, AND ESTERBROOK REEVE, ET AL., Defendants.	ON BILL OF INTERPLEADER, &c. ORDER OVERRULING DEMURRER.

This cause coming on to be heard in the presence of George J. Bergen, solicitor for and of counsel with the complainants, and Charles R. Stevenson, solicitor for and of counsel with defendants, Andrew Eisele and Michael Manning, trading as Eisele & Manning, and the arguments of counsel of the respective parties having been heard on the demurrer to said bill of complaint;

It is thereupon, on this twenty-sixth day of May, nineteen hundred and eleven, on motion of George J. Bergen, solicitor for and of counsel with the complainants, ordered that the said demurrer be overruled but without costs, and that the defendants answer the complainants' bill within

twenty days from the date of the service of a copy of this order, which copy need only be certified by the solicitor of the complainants, and that if they fail to do so, the complainants' bill may be taken as confessed against them.

MAHLON PITNEY,
C.

Respectfully advised.

E. B. LEAMING,
V. C.

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IN CHANCERY OF NEW JERSEY.

Between STEPHEN KEULPER, ET AL., Complainants, AND ESTERBROOK REEVE, ET AL., Defendants.	ON BILL, &c. NOTICE OF APPEAL.

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The defendants, Andrew Eisele and Michael J. Manning, trading as Eisele & Manning, hereby appeal from the order made in this Court on the twenty-sixth day of May, nineteen hundred and eleven, overruling the demurrer in the above-stated cause, to the Court of Errors and Appeals in the last resort in all causes.

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CHAS. R. STEVENSON,
Solicitor for Appellants.
SAMUEL H. RICHARDS,
Of Counsel.

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

SAMUEL H. RICHARDS,
Of Counsel with Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between STEPHEN KEULPER, ET AL., Complainants and Respondents, AND ESTERBROOK REEVE, ET AL., Defendants, ANDREW EISELE AND MICHAEL J. MANNING, trading as EISELE & MANNING, Appellants.	APPEAL FROM CHANCERY. PETITION OF APPEAL.

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To the Honorable the Court of Errors and Appeals in the Last Resort in all Causes: 20

The petition of Andrew Eisele and Michael J. Manning, trading as Eisele & Manning, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the Court of Chancery, by his Honor Mahlon Pitney, Chancellor of the State of New Jersey, overruling the demurrer in a cause wherein Stephen Keulper and C. Maud Keulper, his wife, are complainants and Esterbrook Reeve and others, including your petitioners, are defendants, in the following respects: 30

1. The Court of Chancery improperly overruled said demurrer.

2. The Court of Chancery should by said order have adjudged and decreed that it does not appear by complainants' bill that complainants are indifferent and disinterested.

3. The Court of Chancery should by said order have adjudged and decreed that it appears that one of the complainants guaranteed the claim of The Haney-White Company.

4. The Court of Chancery should by said order have adjudged and decreed that it appears that complainants have preferred some of the claims by making payments thereof.

10 5. The Court of Chancery should by said order have adjudged and decreed that it does not appear that specifications accompanying the contract were filed in the County Clerk's office.

6. The Court of Chancery should by said order have adjudged and decreed that it does not appear that their contract or specifications were filed before work done or materials furnished.

7. The Court of Chancery should by said order have adjudged and decreed that said bill states no facts which
20 would or could show any liability of the complainants to the alleged claimants other than these appellants.

8. The Court of Chancery should by said order have adjudged and decreed that the said bill fails to show that William H. Fredericks, W. Sandiford Johnston, Camden Lime Company, Henry Hoffman, Lewis F. Hurff, Elsworth S. Whitney, Elmer Tucker, Samuel M. Reeves, Collingswood Construction Company, or any of them, have complied with the provisions of the third section of the mechanics lien act or given the notice therein required.
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9. The Court of Chancery should by said order have adjudged and decreed that the bill fails to show that the complainants gave the master workman or contractor the written notice required by the third section of the mechanics' lien act.

10. The Court of Chancery should by said order have adjudged and decreed that the bill shows no facts which

would or could raise any doubt as to the rights and priorities of the respective claims.

11. The Court of Chancery should by said order have adjudged and decreed that the bill does not make or state such a case as entitles the complainants in a court of equity to any discovery or any relief against these appellants as to the matters contained in the bill, or any such matters.

12. The Court of Chancery should by said order have adjudged and decreed that it does not appear that complainants are indifferent and disinterested, but on the contrary have guaranteed or made payments to some of the claimants, and deducted them and now ask defendants to interplead as to the balance. 10

13. The Court of Chancery should by said order have adjudged and decreed that the bill does not disclose sufficient doubt touching the rights of the respective claimants to justify a bill of interpleader.

14. The Court of Chancery should by said order have adjudged and decreed that the bill fails to show that complainants as owners gave notice of the several claims to the contractor. 20

15. The Court of Chancery should by said order have adjudged and decreed that the bill does not disclose that specifications were filed in the County Clerk's office.

16. The Court of Chancery should by said order have adjudged and decreed that the bill shows nothing to indicate that the claims are valid under the mechanics' lien law and nothing to indicate that there is any doubt as to their priorities. 30

17. The Court of Chancery should by said order have adjudged and decreed that the complainants have shown no such compliance with the statute as would protect their land from liability to all claimants.

18. The Court of Chancery should have sustained said demurrer.

Your petitioners therefore pray that the said order of the Chancellor may in the particulars aforesaid be reversed, set aside and for nothing holden. And that your petitioners may have such other relief in the premises as to this Honorable Court shall seem meet.

CHAS. R. STEVENSON,
FRENCH & RICHARDS,
Solicitors for and of Counsel with Appellants.

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Answer to petition of appeal in usual form.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

No. 82. November Term, 1911.

Between

Stephen Keulper and C. Maud Keulper, his wife,
Complainants and Respondents,

and

Esterbrook Reeve, et al.,
Defendants,

Andrew Eisele and Michael J. Manning, trading as Eisele & Manning,
Appellants.

BRIEF FOR APPELLANTS.

This appeal is taken to review an order overruling a demurrer to an interpleader bill.

Complainants are the owners of land at Oaklyn, Camden county, New Jersey, upon which a dwelling house has been erected under a contract filed in the County Clerk's office.

They claim to have in their hands a balance due under the contract of $1,067, and file a bill of interpleader against Esterbrook Reeve, the contractor, Andrew

Eisele and Michael J. Manning, trading as Eisele & Manning, to whom the contractor has assigned all his right, title and interest under the contract, and also against nine others, who it is claimed have served stop notices.

The assignees of the contractor file a demurrer, which is overruled.

From the order overruling it they appeal to this Court, and claim the order should be reversed and the demurrer allowed for the following reasons:

IT DOES NOT APPEAR THAT COMPLAINANTS ARE INDIFFERENT AND DISINTERESTED, BUT, ON THE CONTRARY, THEY HAVE GUARANTEED OR MADE PAYMENT OF SOME OF THE CLAIMS, DEDUCTED THEM AND NOW ASK DEFENDANTS TO INTERPLEAD AS TO THE BALANCE.

The complainants guaranteed the claim of The Haney-White Company and afterwards paid it.

State of the Case, page 4, lines 4 to 9.

State of the Case, page 5, lines 30 to 36.

They have paid the claim of the City Line Brick and Lumber Company.

State of the Case, page 5, lines 30 to 34.

The bill does not state when these payments were made nor whether the orders were given by the contractor before or after his assignment to appellants.

If made afterwards they would not be effective against appellants.

Craig vs. Smith, 37 N. J. L., 549.

The Court cannot tell from the bill whether either of these payments was proper.

Both payments are duducted in fixing the balance for which defendants are asked to interplead.

State of the Case, page 5, lines 30 to bottom.

Such deductions cannot be made in an interpleader bill.

Williams vs. Matthews, 47 N. J. Eq., 196.

THE BILL DOES NOT DISCLOSE THAT SPECIFICATIONS WERE FILED WITH THE CONTRACT.

The only ground upon which complainants can escape liability to all persons who have furnished labor or materials is by showing that there has been a full compliance with section 2 of the mechanics lien act.

Laws of 1898, page 538, Sec. 2.

This requires that the specifications accompanying the contract be filed.

Chancellor Magie sustained a demurrer to a bill which failed to allege that the contract had been filed.

Schmidt vs. Eitel, 70 N. J. Eq., 8.

Vice Chancellor Leaming thinks that an allegation that the "contract" was filed means the contract in its broad sense, including all matters agreed upon by the parties. He is in such doubt about it, however, that in overruling the demurrer he directs that it be without costs.

State of the Case, pages 14 and 15.

We submit that the words "contract" and "specifications" as used together in the statute necessarily have a different meaning and an enumeration of one cannot include the other.

THE BILL FAILS TO SHOW THAT THE COMPLAINANTS, AS OWNERS, GAVE NOTICE OF THE SEVERAL CLAIMS TO THE CONTRACTOR.

The statute provides that when the contract and specifications are filed in the County Clerk's office the liability shall be to the contractor alone.

Laws of 1898, page 538, Sec. 2.

Laws of 1898, page 472.

The bill shows that the appellants claim to stand in the shoes of the contractor by virtue of an assignment of all his rights, title and interest in the contract.

State of the Case, page 7, lines 20 to 24.

Complainants seek to avoid their absolute liability to appellants by showing certain things which they claim under sections 3 and 4 of the act will relieve them.

To so relieve themselves they must show that the provisions of the statute and the remedy therein provided have been strictly pursued.

Superintendent vs. Heath, 15 N. J. Eq., 22-26.

Section 3 provides that the owner on receiving a stop notice shall give the master workman or contractor written notice of such notice or demand, and section 4 states what the contractor may do on receipt of such notice from the owner.

Laws of 1898, page 538, Sections 3 and 4.

Vice Chancellor Bergen, in 1905, in commenting upon a case where the statutory notice did not appear, stated that the bill should never have been filed and that it would not have been countenanced had the claimants protested. He says, "the practice of filing interpleader bills in cases as free from doubt as this should be discountenanced, and counsel alert to call the attention of the Court to such useless proceeding."

Turner vs. Miller, 61 Atl., 741.

Here the bill fails to show that the complainants, the owners, gave to the contractor the written notice required by Section 3 of the Mechanics' Lien Act.

Vice Chancellor Leaming, in considering this feature of the case, says the failure of the owner to give this notice cannot deny to the materialmen who have served proper stop notices their statutory lien on the fund, and that if the owner has incurred personal liability to the demurring defendant by reason of failure to give notice to the contractor of stop notices any final decree in this case would be inoperative to bar any personal claim demurring defendant may have against complainant.

State of the Case, pages 13 and 14.

It seems to us that the Vice Chancellor has overlooked the very object and purpose of an interpleader bill.

Paragraphs 17 and 21 of the bill in effect allege that the complainants cannot pay out the money with safety, and paragraph 22 declares this suit is brought "to avoid being molested and injured touching the matters contained in the bill." The prayer is that appellants may be enjoined from further proceeding in their suit at law

against complainants, and that complainants "may be decreed to be discharged from all liability to such defendants in the premises."

We submit that if the right of complainants to file this bill had not been challenged a decree of interpleader in the ordinary form would have forever released, acquitted and discharged the complainants from any liability, personal or otherwise, to these appellants.

Dickinson's Chancery Precedents, page 486.

THE BILL STATES NO FACTS WHICH WOULD OR COULD SHOW ANY LIABILITY OF THE COMPLAINANTS TO THE ALLEGED CLAIMANTS OTHER THAN THE APPELLANTS OR RAISE ANY DOUBTS AS TO THE RIGHTS AND PRIORITIES OF THE RESPECTIVE CLAIMS.

Stop notices served after the assignment by the contractor to appellants create no obligations against the owner.

Craig vs. Smith, 37 N. J. L., 549.

The bill does not state any facts from which the Court can determine whether any of the claimants serving stop notices have brought themselves within the protection of the statute.

If we assume, as did Vice Chancellor Bergen, in *Turner vs. Miller, 61 Atl., 741*, that the notices answered the requirements of the statute, that being the view most favorable to the complainant, the order of liability is fixed by the statute and there is no occasion for this bill.

The mere fact that notices are received gives no jurisdiction. The bill must show facts concerning each claim

from which existence of doubt or dispute is properly inferable or the bill will be dismissed.

Ter Knile vs. Reddick, 39 Atl., 1062.

The order should be reversed and the demurrer allowed.

CHARLES R. STEVENSON,
FRENCH & RICHARDS,
For Appellants.

I. F. Huntzinger, Appellate Printer, Camden, N. J.

New Jersey
Court of Errors and Appeals

Between

STEPHEN KEULPER and C. MAUD KEULPER, His Wife,
Complainants and Respondents,

AND

ESTERBROOK REEVE, et al.,
Defendants.

ANDREW EISELE and MICHAEL J. MANNING, Trading as
EISELE & MANNING,
Appellants.

BRIEF FOR
COMPLAINANTS AND RESPONDENTS.

The defendant Reeve contracted with the complainants to erect for them a dwelling house at Oaklyn, Camden County, for the sum of $2266. The contract was filed in the clerk's office of said county November 12, 1909. On August first, nineteen hundred and ten, the contract was completed and the complainants having paid on account of said contract eleven hundred and ninety-nine dollars

there remained a balance on their hands of ten hundred and sixty-seven dollars on said contract price. Claims were presented to the complainants against the fund amounting to fourteen hundred and eighty-three dollars and eleven cents so that the sum in hand was insufficient to pay the claimants in full and thereupon disputes arose as to the claimants' respective interest in the fund. The respective rights of the defendants being uncertain and in dispute the complainants filed this bill of interpleader and deposited in court the balance in their hands with interest. Three of the defendants thereupon gave notice of a motion to dismiss the bill but after hearing the motion to dismiss was overruled and the bill sustained. Afterwards the appellants demurred to the bill, and after hearing the demurrer was overruled. The opinions of the Vice-Chancellor appear in the printed book at pages 12 and 15. The bill sets out (Book p. 7 §19) that the demurrants claim to hold an assignment of the rights of the contractor under the contract, and that the complainants requested them to permit them to examine the assignment but that said demurrants refused and for that reason complainants are ignorant of the nature of said assignment or its legal effect or validity. The demurrants deny that the complainants are in a position to file a bill of interpleader.

I.

Because they are not disinterested and have guaranteed and paid the claims of Haney White Company and City Line Brick and Lumber Company.

The demurrants, as assignees of the contractor, stand in the contractor's shoes. The bill sets out that the con-

tract was completed on or about August 1, 1910, (Book p. 2 l. 3) and that the payments to these claimants were under written orders given by the contractor and accepted by the complainants before that time (Book p. 2 l. 18, &c., p. 3 l. 31, &c.). The contractor himself could not complain that the complainants have paid these orders, and neither can the demurrants.

Blauvelt vs. Fuller, 37 Vr. 46.
Taylor vs. Reed, 39 Vr. 178.
Edge vs. McClay, 2 Buch, 216 and cases cited.

The statement in appellants' brief that the bill does not state the date of payment nor when the orders were given is certainly erroneous. Craig vs. Smith, 37 N. J. L. 549, cited as authority, does not support the appellants' contention, and deals with the rights of a prior assignee, as against a subsequent workman or material man giving notice of his debt. The appellant occupies the position of a subsequent assignee complaining of the payment of a prior assignment or order. As against the appellant the payments were certainly proper.

II.

The appellants further contend that the bill does not disclose that specifications were filed with the contract.

The act (Sec. 2) provides that the building and land shall be liable to the contractor alone "provided said contract or a duplicate thereof *together with the specifications accompanying the same, or a copy, or copies thereof,* be filed in the office of the clerk of the county," &c.

The bill alleges that the contract was made "which contract was duly filed on the twelfth day of November, A.

D. 1909, in the clerk's office of Camden County in accordance with the statute in such case made and provided."

It is impossible that this allegation be true, unless the specifications do accompany the contract and are filed therewith. Without the specifications the contract cannot be filed "in accordance with the statute." Attention is called to the strict grammatical construction of this sentence in the act. The requirement is that the "contract" be filed, not that the "contract and specifications" be filed but that said contract be filed "together," i. e., "accompanied with" the specifications. The point raised by appellants is so highly technical that the precise meaning and construction of the requirement of the statute must be noticed.

In addition to this it may well be doubted whether the word contract alone is not sufficient to include the specifications if any there are.

Murphy Hardy Co. vs. Nicholas, 37 Vr. at p. 417.

And certainly on demurrer it cannot be held that it of necessity appears that there are any specifications. None are mentioned in the bill and there might be none. The complainants certainly do not have to allege the negative fact that there are no specifications.

III.

The appellants claim that the bill is defective in that it fails to show that the complainants gave notice of the several claims to the contractor.

They say that they must show that the provisions of the statute have been strictly complied with and cite

Superintendent vs. Heath, 15 N. J. Eq. 22-26.

This case is authority on the point that the material men, &c., giving notices in order to obtain the benefit of the statute must strictly pursue the statute. The complainants however are not seeking the aid of the statute. It is the material men who are doing that. If the complainants had attempted to pay out the moneys in their hands they would be met with just such sort of objections and would have to justify in each case the correctness of the payment made. After giving of the notice under Sec. 3, the owner would still have to pass upon the complicated problem of whether the notices given by the sub-contractors complied with the statute, and the relative standing of orders, notices and assignments.

This section is intended for the protection of the sub-contractors and owner as against the contractor, and the owner is required to pay the sub-contractors only when satisfied of the correctness of the demand. The object is to compel the contractor either to object or be barred from objection. But it is alleged in the bill that not only do the appellants dispute the validity of the notices, orders, &c., but have actually brought suit against complainants for all the moneys due under said contract.

Turner vs. Miller, 61 Atl. 741, is no authority in point. There the contractors did not dispute even after notice. Here the assignees of the contractor dispute even without notice. Had the complainants paid the moneys without notice there might be some point in the appellants' objection.

There is substantial ground for uncertainty as to the standing of the respective claimants.

Sec. 3 of the act as amended (P. L. 1905 p. 311 §1) contains the following formal requirements as to stop notices:

(*a*) Must be made to owner.

(*b*) Must be in writing.

(*c*) Must show amount due.

(*d*) Must show demand on contractor.

(*e*) Must show refusal by contractor.

Notices served on the owner in the above entitled cause are as follows: Claimant, William H. Fredericks (May 26, 1911, in paragraph 6 of bill).

Contains a, b, c, *omits d and e.*

Claimant W. Sandiford Johnston (June 20, 1910, par. 7 of bill).

Contains a, b, c, *omits d and e.*

Claimant Camden Lime Co. (July 22, 1910, par. 8 of bill).

Contains a, b, c, d and e.

Claimant Henry Hoffman (July 28, 1910, par. 10 of bill).

Contains a, b, c, d and e.

Claimant Lewis F. Hurff (Aug. 5, 1910, par. 11 of bill).

Contains a, b, c, d and e.

Claimant Ellsworth S. Whitney (Aug. 24, 1910, par. 12 of bill).

Contains a, b, c, *omits d and e.*

Claimant Elmer E. Tucker (Sept. 21, 1910, par. 13 of bill).

Contains a, b, c, d and e.

Claimants Samuel M. Reeves, Collingswood Construction Company, and Eisele and Manning not having served notices, dispute the right of the complainant to pay the previous claimants in full (bill, paragraph 18). Their objections may be that the formal requirements of the statute have not been followed or may be to the correctness of the amounts, or otherwise, as to which the complainants have no knowledge.

Also the matter is further complicated in that although the contract was completed Aug. 1st, 1910, the notices (par. 11, 12 and 13) were served after completion of said contract, and the maturing of the debt to the contractor under the terms of the contract.

I submit that the bill of interpleader in this case is a proper one and that the order appealed from should be sustained.

Waterman vs. Kingsland, 1 Dick. 113.
Illingsworth vs. Rowe, 7 Dick. 350.
Hall vs. Baldwin, 18 Stew. 858.

GEO. J. BERGEN,
Solicitor and Counsel with Complainants
and Respondents.

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