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TESTIMONY FOR COMPLAINANT.

TESTIMONY FOR DEFENDANTS.

EXHIBITS.

Notice of Appeal.

(Filed December 13, 1923.)

In Chancery of New Jersey.

Between
WILLIAM S. MEEKS,
Complainant,
and
MARY M. BICKFORD, *et al.*,
Defendants.

WILLIAM S. MEEKS hereby appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes from all and every part of the order dismissing the Bill of Complaint, made on or about the 3rd day of December, 1923, in the above stated cause.

Dated December 10th, 1923.

WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors of William S. Meeks,
Complainant-Appellant.

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

ALBERT C. WALL,
Of Counsel with Appellant.

Petition of Appeal.

(Filed December 14, 1923.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
WILLIAM S. MEEKS,
Complainant-Appellant,
and
MARY M. BICKFORD, *et al.*,
Defendants-Respondents.

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

The petition of WILLIAM S. MEEKS, the complainant-appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final order made in the Court of Chancery by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 3rd day of December in the year one thousand nine hundred and twenty-three, in these respects, to wit:

1. That the said decree adjudges that the complainant, William S. Meeks, is not entitled to the relief sought and prayed for in his bill of complaint, and that his bill of complaint be dismissed with costs as therein provided.

2. Because the said decree adjudges that the bill be dismissed despite the fact that defendant's deed was and was intended to be a deed of quitclaim and was made by a grantor without title or possession to a grantee similarly situated.

The decree therefore should have been against defendants for the reason that defendant's deed was a nullity so far as complaint was concerned and its record prior to the record of complainant's bargain and sale deeds (delivered first and followed by immediate and continuous possession by complainant) did not give defendant's deed any vitality.

3. Because the said decree adjudges that the bill be dismissed despite the fact that the certificate of the Clerk of the District Court of Shawnee County in the State of Kansas does not certify that the Notary Public who took the acknowledgment was authorized by the laws of the State of Kansas to take acknowledgments and proofs in accordance with the statute. (2 C. S., p. 1523, Sec. 23, as amended by P. L. 1912, p. 326.)

4. And your petitioner humbly appeals from the parts of the order of the Chancellor which decrees as aforesaid, upon the ground that the same are erroneous.

Your petitioner therefore prays that the said order of the said Chancellor dated December 3rd, 1923, may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner shall have such relief in the premises as to this honorable Court shall seem meet.

Dated December 11th, 1923.

WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors of William S. Meeks,
Complainant-Appellant.

Answer to Petition of Appeal.

(Filed January 4, 1924.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

WILLIAM S. MEEKS,
Complainant-Appellant,

and

MARY M. BICKFORD, *et al.*,
Defendants-Respondents.

The answer of the above named respondent, Mary M. Bickford, to the petition of appeal of the above named appellants.

This respondent, Mary M. Bickford, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was on the third day of December 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 form and substance thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

PIERRE F. COOK,
Solicitor for and of counsel with respondent, Mary M. Bickford.

Substitution of Solicitors.

(Filed December 13, 1923.)

IN CHANCERY OF NEW JERSEY,

WILLIAM S. MEEKS,
Complainant,

v.

MARY M. BICKFORD, *et al.*,
Defendants.

We hereby consent that Albert C. Wall be substituted in our stead as solicitor for the complainant in the above action.

December 6, 1923.

MORRISON, LLOYD and MORRISON.

I hereby consent that Wall, Haight, Carey & Hartpence be substituted in my stead as solicitors for the complainant.

Dec. 6th, 1923.

ALBERT C. WALL.

Bill of Complaint.

(Filed May 31st, 1922.)

IN CHANCERY OF NEW JERSEY.

To his Honor:—EDWIN ROBERT WALKER, Chancellor of the State of New Jersey.

The complainant, William S. Meeks, residing at Norwood, Bergen County, New Jersey, respectfully shows:

1. That by a certain deed dated May 11th, 1914,

and recorded in the Bergen County Clerk's office April 19, 1918, in Book 985 of Deeds, page 165, one Juliet C. Smith for a valuable consideration, conveyed to the complainant,

ALL her right, title and interest in and to all those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Norwood in the County of Bergen and State of New Jersey, known and distinguished on a Map of Norwood, Bergen County, New Jersey filed in Bergen County Clerk's office November 5th, 1867, as Map number 86, as follows, To Wit, All of Block numbered Twenty-One on said map. Subject however to all taxes, liens, mortgages, &c existing against the same. Being part of the same premises of which William H. Wells, died seized, intestate, leaving him surviving his daughter Sarah C. Wells, his only child and heir at law, and of which said Sarah C. Wells, died seized, and which in and by her last Will and Testament dated March 8th, 1912, she devised to her cousin Juliet C. Smith the party of the first part.

2. That by a certain deed dated September , 1914, and recorded in the Bergen County Clerk's office on April 19, 1918, in Book 985 of deeds, page 167, the said Juliet C. Smith, for a valuable consideration, conveyed to complainant,

ALL her right, title and interest in and to all those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Norwood in the County of Bergen and State of New Jersey, known and distinguished on a map of Norwood,

Bergen County, New Jersey, filed in the Bergen County Clerk's office November 5th, 1867, as map number 86, as follows—To Wit, Lots number One to Seven both inclusive in Block Thirty-one on said map. Subject however to all taxes, liens, mortgages &c. existing against the same. Being part of the same premises of which William H. Wells died seized, intestate, leaving him surviving his daughter, Sarah C. Well, his only child and heir at law, and of which said Sarah C. Wells, died seized, and which in and by her last Will and Testament dated March 8th, 1912, she devised to her cousin, Juliet C. Smith the party of the first part.

3. That by a certain deed dated May 11th, 1914, and recorded in the Bergen County Clerk's office April 19, 1918, in Book 985 of deeds, page 163 &c., the said Juliet C. Smith for a valuable consideration, conveyed to complainant, ALL her right, title and interest in and to all those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Norwood, in the County of Bergen and State of New Jersey, known and distinguished on a Map of Norwood, Bergen County, New Jersey, filed in the Bergen County Clerk's office November 5th, 1867, as Map number 86, as follows, To Wit, Lots numbered twenty-five to fifty-eight both inclusive in Block numbered thirty-one on said map. Subject however to all taxes, liens, mortgages, &c., existing against the same. Being part of the same premises of which William H. Wells died, seized, in estate leaving him surviving his daughter, Sarah C. Wells, his only child and heir at law. And of which said Sarah C. Wells died seized, and which in and by her last Will and Testament

dated March 8th, 1912, she devised to her cousin, Juliet C. Smith the party of the first part.

4. The complainant is now, and since the delivery of said deed, has always been in peaceable possession of the said premises and at the time of purchasing the same believed and still believes that he acquired a good title to said lands in fee simple and has always claimed and does now claim to own the same accordingly. That the taxes upon the said premises have been assessed to the complainant for more than five years, immediately prior to the commencement of this suit, and have been paid by the complainant.

5. That the complainant's title to said lands or some part theerof is denied and disputed by Mary H. Bickford and Samuel R. Bickford, her husband, who are the defendants in this suit and that the said defendants claim or are claimed and reputed to own said lands or some part thereof or some estate therein.

6. No suit or action of any kind whatever is pending to enforce or test the validity of such title or claim which is without foundation, unjust and vexatious.

The complainant is without adequate remedy in the courts of law, and therefore prays:

1. That the said Mary M. Bickford and Samuel R. Bickford her husband, who are the defendants to this suit may answer this bill of complaint without oath.

2. That the defendants may disclose what title or interest, if any, they have in said lands.

3. That a decree may be made that the com-

plainant has a perfect title to said premises, and that the defendants have no title or interest in said premises.

4. That the complainant may have such further decree as may be equitable.

5. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

MORRISON, LLOYD & MORRISON,
Solrs. for and of counsel with Complt.

Answer.

(Filed July 5th, 1922.)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM S. MEEKS,
Complainant,
and
MARY M. BICKFORD, *et al.*,
Defendants.

The answer of Mary M. Blackford, one of the defendants to the bill of complaint.

This defendant, Mary M. Blackford, says that:

1. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs one, two and three of the bill of complaint.

2. Paragraph four is denied.

3. This defendant admits that the complainant's title to the lands described in the bill of complaint is denied and disputed by this defendant, Mary M. Bickford, and that said defendant claims to own and does own said lands in fee. Said Samuel R. Bickford, the husband of this defendant, departed this life upwards of six year ago.

4. Paragraph six is denied.

5. This defendant further answering says and charges the fact to be that said lands and premises were conveyed by Juliet C. Smith to this defendant, Mary M. Bickford, in fee by deed dated October 11, 1916, recorded October 16, 1916, in Book 946 of Deeds for Bergen County, pages 442, &c., by virtue whereof this defendant immediately upon the execution of said deed, entered into possession of said premises, and has so continued in possession from thence hitherto and owns the same in fee.

PIERRE F. COOK,
Solr. for and of Counsel with
Defendant, Mary M. Bickford.

Replication.

(Filed November 13, 1922.)

IN CHANCERY OF NEW JERSEY.

WILLIAM S. MEEKS,
Complainant,

v.

MARY M. BICKFORD, *et al.*,
Defendants.

The complainant, replying to the answer of the defendant Mary M. Bickford, says:

1. He denies the allegations of paragraph five, and further answering says that the deed to the defendant Mary M. Bickford therein mentioned, was a quit claim deed and was not a conveyance to the defendant of the lands, and premises therein described; and that said deed should not have been recorded in the office of the Clerk of the County of Bergen because, having been acknowledged in the State of Kansas, County of Shawnee, before a certain foreign notary public, the certificate to such acknowledgment was not accompanied by a certificate as required by statute, that the officer before whom such acknowledgment or proof was taken, was at the time of taking said acknowledgment authorized by the laws of such State to take acknowledgments and proofs.

MORRISON, LLOYD & MORRISON,
Solicitors and of Counsel
with Complainant.

Case.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM S. MEEKS, Complainant, and MARY M. BICKFORD, *et al.*, Defendants.	On Bill to Quiet Title.

Transcript of the testimony and proceedings taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City on Tuesday, October 23, 1923, at 10 o'clock in the forenoon, before his Honor JOHN BENTLEY, Vice-Chancellor.

APPEARANCES:

MORRISON, LLOYD & MORRISON, by WILLIAM J. MORRISON, JR., Esq., for the Complainant;

PIERRE F. COOK, Esq., for the Defendants.

Mr. Morrison: Complainant offers in evidence three deeds mentioned in the bill of complaint, the first being the deed recorded in Book 985, page 165 of Deeds, in the County Clerk's office, being a deed by Juliet C. Smith to William S. Meeks.

(The same is marked Exhibit C-1.)

Mr. Morrison: The complainant also offers in evidence the original deed mentioned in Paragraph 2 of the bill of complaint, being a deed recorded in Book 985, page 167 of Deeds, in the Bergen County Clerk's office, and also by Juliet C. Smith to William S. Meeks.

(The same is marked Exhibit C-2.)

Mr. Morrison: The complainant offers in evidence the deed mentioned in Paragraph 3 of the bill of complaint, being a deed recorded in Book 985, page 163 of Deeds, in the Bergen County Clerk's office, also by Juliet C. Smith to William S. Meeks.

(Admitted and marked Exhibit C-3.)

WILLIAM S. MEEKS, sworn in his own behalf, testified as follows:

Direct examination by Mr. Morrison:

Q. Mr. Meeks, I show you a paper and ask you what relation, if any, that has to the property, or one of the properties, mentioned in these deeds? A. This is a tax bill for one of the pieces of property which I paid in 1916.

Mr. Morrison: I offer it in evidence.

Mr. Cook: If the Court please, this is a tax bill purporting to be from the Borough of Norwood in 1916, made out to William C. Daves. I presume it is offered in support of the allegation that the taxes have been assessed to the complainant, but the complainant is Mr. Meeks; therefore, I don't see what bearing it has upon the issue, and I object to it as improper.

Mr. Morrison: Mr. Cook has not got the answer of the witness that this represents taxes which he paid on this property.

Mr. Cook: I object to his conclusion of law. This witness produces a tax-bill receipt made out to an entirely different person, and I can't see that his statement that it represents taxes, apart from his explanation, helps us any.

The Court: His answer was that it was a bill for taxes assessed on the premises and that he paid the bill. It is for the purpose of proving his having paid the taxes, as alleged in the bill.

Mr. Cook: Let me cross examine him, please?

Examination on the tax bill by Mr. Cook:

Q. On what date did you pay this, Mr. Meeks? A. Whenever it was time.

Q. To whom did you pay this money? A. I paid it to the collector of taxes of that borough.

Q. Who is William C. Daves? A. That isn't William C. Daves; that is William C. Doyle, I think.

Q. Who is William C. Doyle? A. He was a man that I supposed was assessed good many years ago and it stood in that name.

Q. Well, you allege in your bill that the property was assessed to you for five years previous to the time of filing it.

Mr. Morrison: We object to this cross examination. It is outside of the direct and, further, it is addressed to a subject which we have not yet opened. We are simply proving the payment of the taxes and assessment.

The Court: Perhaps I don't understand your point, Mr. Cook.

Mr. Cook: The bill alleges that these taxes were assessed to the complainant for five years previous to the bill being filed. That, of course, is a jurisdictional point. Now, he produces a tax bill made out to William C. Doyle, and on cross examina-

tion, upon being asked who Mr. Doyle is, he supposes that he is the person against whom this property has been assessed, which, of course, is quite contrary to the allegation in the bill. I think that, in connection with the offer of that bill, becomes quite pertinent. At least, it might be connected up.

Mr. Morrison: I think it is entirely outside of the scope of the direct examination.

The Court: I think that is so.

Mr. Cook: I will withdraw that question.

Q. Mr. Meeks, in what form did you pay these taxes, in cash or by check? A. Well, I don't know; sometimes cash and sometimes a check. I think that was a cash payment.

Q. Is that you custom to pay taxes in currency? A. Well, if I had the cash in my pocket I would pay the cash; if not, I would give a check.

Q. Have you any recollection at all as to this transaction, the payment of this year's tax in 1916 except as it is brought to your mind by looking at this receipted bill; in other words, do you remember the circumstances when you went there to pay it or anything of that kind? A. Except I would go to the man's house and pay it; that's all.

Mr. Morrison: I now offer it in evidence.

The Court: Any objection?

Mr. Cook: No.

(The same is marked Exhibit C-4.)

Direct examination by Mr. Morrison resumed:

Q. Mr. Meeks, I show you another paper and ask you what, if anything, that has in relation to

the property in question? A. That is the 1917 taxes which I paid and charged up to the tax collector of the Borough of Norwood.

Q. Is that tax assessed on this property? A. Yes, but not to me.

Q. (By Mr. Cook.) Did you pay that tax? A. Yes.

Q. Do you remember when you paid it? A. I don't know; he has got the date on it.

Q. Do you remember when you got this bill? A. I got the bill when they sent out all tax bills.

Q. Have you any definite recollection about these taxes except what the bill says? A. Except I went down there and paid the taxes; that's all; and I got a receipt for it.

Mr. Morrison: I offer this tax bill in evidence.

(Admitted and marked Exhibit C-5.)

Direct examination resumed:

Q. Mr. Meeks, I show you another paper, and ask you what relation that has, if any, to the premises in question? A. That is a tax bill for 1917, lots 1 to 9, block 24.

Q. Is that another part of the premises in question from those shown in the last preceding bill? A. Yes.

Q. Did you pay those taxes? A. I paid that.

Mr. Morrison: I offer it in evidence.

By Mr. Cook:

Q. Have you any recollection when you paid those, Mr. Meeks, except as disclosed by the bill itself? A. The bill says November 4. If I hadn't paid that then the date wouldn't be on it.

Q. Do you remember whether you paid any of these taxes by check or whether they were paid in cash? A. I don't remember now.

(The same is admitted and marked Exhibit C-6.)

By Mr. Morrison:

Q. I show you another paper and ask you what relation that has, if any, to the property in question in this case? A. 1917 tax bill lot 1 to 16, block 32.

Q. Is that another part of the premises? A. Yes.

Q. Did you pay the taxes on that property? A. I paid it, yes.

Mr. Morrison: I offer it in evidence.

(Admitted and marked Exhibit C-7.)

Q. I show you another paper and ask you what relation that has to the premises in question? A. 1917 tax bill, 1 to 58, block 3.

Q. Is that a part of the premises in dispute A. Yes.

Q. Charles C. Hoffman, collector? A. Yes.

Q. Did you pay those taxes? A. Yes, sir.

Mr. Morrison: I also offer that in evidence.

(Admitted and marked Exhibit C-8.)

Mr. Morrison: Mr. Cook, we have a series of these. If you would like to look through them perhaps we can save the Court's time and shorten the matter (handing papers to counsel).

Mr. Cook: I suppose you ought to identify them with the property.

Mr. Morrison: I can do that as a whole or one by one.

Mr. Cook: Put them in as a general statement and that will save marking each one.

Q. I show you, Mr. Meeks, a group of papers, being four tax bills for 1918, four for 1919, three for 1920, and two for 1921, and ask you whether those are the tax bills on the premises in question for the years indicated by the several bills? A. Yes, they are all made out in my name and paid by me.

Q. You paid all of these tax bills? A. Yes.

Mr. Morrison: I offer this group of tax bills in evidence as one exhibit.

By Mr. Cook:

Q. Do you recall anything as to the dates of these payments, Mr. Meeks, other than as shown by the bills? A. The dates are on there. Some of them I paid by check.

Q. Your assumption is that you paid them on the dates they are receipted? A. They wouldn't give me the bill if I didn't.

(Admitted and marked as one Exhibit C-9.)

By Mr. Morrison:

Q. Mr. Meeks, what is there on the property described in the three deeds which we have offered in evidence marked C-1, C-2, and C-3, and about which this suit was brought? A. You mean—

Q. Are there any buildings on it? A. No.

Q. Is it land which is cultivated? A. No.

Q. What is the nature of it? A. Kind of woodland; some little brush on it.

Q. What, if anything, have you done with that land since you bought it? A. Nothing, except I had a notice up there, and I spoke to the constable—I don't know whether they call him the constable or not.

Q. What sort of a notice did you have there? A. "No Trespassing."

Q. Where was that? A. I tacked it up on a tree.

Q. What sort of a sign was it? A. Well, about that size (indicating).

Q. About one foot by two feet? A. Yes, I think it would be that. It may be two by six.

Q. You tacked it up; on what did you tack it up? A. On one of the trees.

Q. Have you ever been on the property yourself? A. Many times.

Q. And about how often? A. I used to go down once a week, and then on Sundays;—generally every Sunday and once a week.

Q. When you went down there what did you do? A. I looked around. I heard people were taking wood away, and I spoke to the Marshal, to tell him to keep away and not take the wood. They sawed trees down that high from the ground (indicating about 3 feet).

Q. That is all.

Mr. Cook: No cross examination.

The Court: Just a moment before he leaves the stand. Has he been asked anything about this man Doyle, who he was?

Mr. Morrison: Yes, and he answered it was a person to whom the property was assessed in the past. It doesn't appear whether it was a mistake or not; but after that first bill they were made out correctly to him.

The Complainant Rests.

THE DEFENSE.

Mr. Cook: If the Court please, at this point I desire to offer a deed in evidence, dated November 11, 1916, executed by Julie C. Smith to Mary M. Bickford, the defendant; acknowledged October 11, 1916, and recorded in the County Clerk's office of Bergen County October 16, 1916, in Book 946 of Deeds of Bergen County, page 442, &c.

Mr. Morrison: We object to it, or at least so much of it as shows it was recorded in the Bergen County Clerk's office, for the reason that the County Clerk's certificate is not in statutory form, and that everything that it purports to be a record of is of no avail, the statute not having been complied with. So far as the endorsement in the Clerk's office we have no objection.

The Court: Of course, I am going to admit the deed in evidence for what it may be worth. I know of no other way that I can pass upon the sufficiency of the exhibit.

Mr. Morrison: I suppose the Court will have to look at it to pass upon my objection. There is no jury here. That is the essence of the case.

The Court: I am not going to waste time in comparing this with the Act now. I mean, for the purpose of admitting it I will overrule the objection and permit it to be marked.

(The same is marked Exhibit D-1.)

GEORGE F. ALLISON, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. Cook:

Q. Mr. Allison, where do you live? A. Brooklyn, N. Y.

Q. You are a member of the New York Bar? A. Yes, sir.

Q. And are you related in any way to Mary M. Bickford, the defendant in this suit? A. She is my sister.

Q. Did you have anything to do with her acquiring this title from this lady under this deed which I have just offered in evidence? A. I examined the records in Hackensack, Bergen County.

Q. And do you live in that vicinity? A. I have a farm there where I spend the summer and where I have spent it for 25 years.

Q. How far away from the land in question is your summer home? A. About a half a mile.

Q. Will you please describe, generally, the character of this property. A. It is vacant land lying near the railroad, covered with brush and trees. Of course, it is swampy land. It is entirely unfenced and uncultivated. I have examined it lately and I have not seen any signs on it of any kind, or any notices.

Q. Have you had anything to do with any of the taxes on this property since your sister took this deed? A. I went to Mr. Hoffman, the tax collector, to get the tax bill, and he told me that the taxes had been paid for that year, and I couldn't get the tax bill and could not pay it.

Q. What year was that; do you recall? A. My recollection is I went there in 1917.

Q. Did you make any subsequent attempt to

pay the taxes? A. The following year also, and was told the taxes were paid.

Q. And so on down? A. I continued that for a couple of years and then stopped.

Q. Did he tell you who paid them? A. I think he told me Mr. Meeks paid them or somebody representing him.

Q. Now, have you had any conversation with Mr. Meeks himself in regard to the title of this property? A. No, not in regard to the title; but I had very little conversation with Meeks for about 20 years.

Q. Such as you have had in relation to this property, if any, tell us what it was. A. About the time the property was purchased, I think the following spring—

Q. Purchased by Whom? Mrs. Bickford. —I was going to the railroad station and Mr. Meeks was coming from it, and he pointed across the road and says, "I see you have bought that property." I says, "I haven't bought it; my sister has bought it." He says, "I guess you've got another guess coming," or words to that effect.

Q. Pointing to the property in question? A. Pointing to the property across the railroad track. A. And you say that was about the time of the date of your deed? A. The following spring I think it was. The date of her deed was 1916; I think 1917 was when this conversation took place.

The Court: The 11th of October, 1916.

Q. And it was about that time that you had this conversation with Mr. Meeks? A. Yes.

No Cross Examination.

Mr. Cook: I might ask one more question.

Q. (By Mr. Cook): How much did your sister pay for this property? A. I didn't pay the consideration over.

Mr. Morrison: I object to that as hearsay.

Mr. Cook: Very well; I have the other brother here.

EUGENE ELLSWORTH ALLISON, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. Cook:

Q. Where do you live? A. New York City, 106 Convent Avenue now.

Q. And you are a brother of George F. Allison? A. Yes.

Q. And also a brother of Mrs. Mary M. Bickford, the defendant? A. Yes, sir.

Q. Did you have anything to do with this purchase by her of this property involved in this suit? A. I did, sir.

Q. Please tell us what that was. A. My brother was at that time very busy, and he asked me if I could go to Kansas and take a deed from Mrs. Juliet C. Smith, in regard to some property at Norwood, N. J.

Q. And is that this deed in question? A. That is the deed in question.

Q. And did you go to Kansas? A. I went to Topeka, Kansas.

Q. Did you pay the consideration? A. I paid the consideration.

Q. How much was it? A. As I remember it, it was $300.

Q. And you paid that to Mrs. Smith? A. Yes.

Q. And took the deed? A. Yes, and brought it home with me.

Eugene Ellsworth Allison, cross.

Cross examination by Mr. Morrison:

Q. Mr. Allison, did your brother give you this money to go out to Kansas with? A. Yes, sir.

Q. That is, your brother who is here? A. Yes, sir. If I remember right, it was him—either him or my sister; I don't remember now. My recollection is that the money came from my brother.

Q. In what form, cash? A. In cash.

Q. You carried that to Kansas and gave it to Mrs. Smith? A. Yes.

Q. Had you ever seen Mrs. Smith before? A. No, sir.

Q. How did you know where to find her? A. I don't recall just this moment how I learned she was there. My recollection is that I made a search of the title in that county and made an extended effort to find out who the lady was.

Q. Did you find out as the result of your efforts or as the result of information given to you by your brother? A. To some extent by the information received from him, but mostly by efforts of my own examination.

Q. Just what did Mrs. Bickford have to do with this whole transaction? A. The information that I received from my brother was that Mrs. Bickford was buying this property.

Q. That was only his statement to you? A. That was only his statement to me.

Q. You didn't know, yourself? A. I knew that she had money and was capable of buying it.

Q. And your sister didn't communicate that fact directly to you? A. She may have, sir. I don't remember exactly. This is a matter of 10 years ago, or 7 years ago. I lived with my sister a part of that time and was in daily communication with

her and may have discussed the subject or question of purchasing this property.

Q. Won't you give us your best recollection as to whether you made your arrangement to go to Kansas with your sister or your brother? A. My recollection is that the property was to be bought by my sister who furnished the money and gave it to my brother George Allison.

Q. Did you see her give it to him? A. No, sir.

Q. Then how do you know that? A. Because my brother gave me the money.

Q. And you say you are a lawyer; you must know that that is hearsay. A. You asked me and I replied.

Q. I am asking you for your best recollection concerning this transaction, not for conclusions or hearsay. Now, what is your best recollection of how you came to go to Kansas. A. My brother, as I said before, was very busy at that time and asked me if I wouldn't go to the State of Kansas and get the deed, and he handed me the money.

Q. You have no knowledge as to where the money came from except by hearsay?

Mr. Cook: I object to the form of the question as to hearsay; I think he ought to examine the witness as to the facts.

The Court: Well, he says he is a lawyer.

A. I stated I was in daily communication with my sister who had means—owned considerable property—and was buying this property.

By the Court:

Q. Do you, of your own knowledge, know where the money came from? A. Only the money was handed to me by my brother George F. Allison.

Q. And do you know where it came from before that? A. Yes, sir; my sister stated to me that she was buying that property; but I say she didn't hand me the money. The money came from my brother.

Q. That is all you know of your own knowledge as to who supplied the money? A. Yes. I discussed the matter with my sister upon several occasions in regard to that property and other property that she was buying in New York City.

Mr. Cook: If the Court please, that is the defendant's case.

Case Closed.

Exhibit C-1.

THIS INDENTURE, made the 11th day of May, in the year of our Lord One Thousand Nine Hundred and Fourteen,

BETWEEN Juliet C. Smith, unmarried, of the City of Topeka, in the County of Shawnee and State of Kansas, party of the First Part:

AND William S. Meeks, of the Borough of Norwood, in the County of Bergen and State of New Jersey, party of the Second Part:

WITNESSETH, That the said party of the First Part, for and in consideration of the sum of One Dollar, and other good and valuable consideration, lawful money of the United States of America, to her in hand well and truly paid by the said party of the Second Part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the First Part being therewith fully satisfied, contented and paid, has given, granted, bargained,

sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the Second Part, and to his heirs and assigns, forever,

ALL her right, title and interest, in and to all those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Norwood, in the County of Bergen and State of New Jersey, known and distinguished on a Map of Norwood, Bergen County, New Jersey, filed in Bergen County Clerk's Office November 5th, 1867, as Map number 86, as follows, To Wit, All of Block numbered Twenty One on said map. Subject however to all taxes, liens, mortgages, &c. existing against the same. Being part of the same premises of which William H. Wells, died seized, intestate, leaving him surviving his daughter Sarah C. Wells, his only child and heir at law. And of which said Sarah C. Wells, died seized, and which in and by her last Will and Testament dated March 8th, 1912, she devised to her cousin Juliet C. Smith the party of the first part.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the First Part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the ap-

purtenances, unto the said party of the Second Part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the Second Part, his heirs and assigns forever:

IN WITNESS WHEREOF, the said party of the First Part has hereunto set her hand and seal the day and year first above written.

JULIET C. SMITH [Seal]

Signed, Sealed and Delivered in the Presence of

State of Kansas,)
County of Shawnee,) ss.:

BE IT REMEMBERED, That on this 11th day of May, in the year of our Lord One Thousand Nine Hundred and Fourteen, before me, the subscriber, personally appeared Juliet C. Smith (unmarried), who, I am satisfied, is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed;

A. V. LINDELL,
[Seal] Notary Public.
My commission expires Oct. 11, 1914.

State of Kansas, }
County Shawnee, } ss.:

I, C. W. Bower, Clerk of the County of Shawnee, and also Clerk of the District Court in and for said County Courts of Record, do hereby certify that A. V. Lindell, whose name is signed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof and acknowledgment a Notary Public in and for said County and State dwelling in the said County, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgment and proof of deeds or conveyances for lands, tenements or hereditaments in said State. And further, that I am well acquainted with the handwriting of such A. V. Lindell, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the (Seal) seal of said Court and County, this 11 day of May, 1914.

C. W. BOWER,
Clerk.

Exhibits.

(Endorsed):

DEED.

54754

JULIET C. SMITH
to
WILLIAM S. MEEKS.
W. Norwood, N. J.

Dated, 1914.

RECEIVED in the Clerk's Office of the County of Bergen, N. J., on the 19th day of April, A. D. 1918, at 1.37 o'clock in the afternoon, and Recorded in Book 985 of DEEDS for said County, on pages 165, &c.

GEO. VAN BUSKIRK,
County Clerk.

Rec'd in Bergen Co. Clerk's Office, Registry Division, Apr. 19, 1918, 1:37 P. M.

Exhibit C-2.

THIS INDENTURE, Made the day of September, in the year of our Lord One Thousand Nine Hundred and fourteen

BETWEEN Juliet C. Smith (unmarried) of the City of Topeka in the County of Shawnee and State of Kansas party of the First Part:

AND William S. Meeks of the Borough of Norwood in the County of Bergen and State of New Jersey party of the Second Part:

WITNESSETH, That the said party of the First Part, for and in consideration of One Dollar and other good and valuable consideration lawful

money of the United States of America, to her in hand well and truly paid by the said party of the Second Part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the First Part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the Second Part, and to his heirs and assigns, forever,

ALL her right title and interest in and to all those certain lots tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Norwood in the County of Bergen and State of New Jersey.

Known and distinguished on a map of Norwood Bergen County, New Jersey, filed in the Bergen County Clerk's Office November 5th, 1867 as map number 86, as follows—To Wit Lots number One to Seven both inclusive in Block Thirty one on said map. Subject however to all taxes, liens, mortgages &c., existing against the same. Being part of the same premises of which William H. Wells died seized, intestate, leaving him surviving his daughter, Sarah C. Wells, his only child and heir at law, and of which said Sarah C. Wells, died seized, and which in and by her last Will and Testament dated March 8th 1912, she devised to her cousin, Juliet C. Smith the party of the first part.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the First Part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the Second Part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the Second Part, his heirs and assigns forever:

AND the said for heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that she has not made, done, committed, executed or suffered any act, matter or thing whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or encumbered, in any manner or way whatsoever.

IN WITNESS WHEREOF, the said party of the First Part has hereunto set her hand and seal the day and year first above written.

JULIET C. SMITH.

Signed, Sealed and Delivered
in the presence of
W. R. Colvin
D. V. Elmoor.

State of Kansas, }
County of Shawnee, } ss.:

BE IT REMEMBERED, That on this ninth day of October in the year of our Lord One Thousand Nine Hundred and fourteen, before me the sub-

scriber, personally appeared Juliet C. Smith who, I am satisfied, is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed;

A. V. LINDELL,
Notary Public.
My commission expires Oct. 11, 1914.

State of Kansas,
Shawnee County, } ss.:

I, C. W. Bower, Clerk of the County of
and also Clerk of the District Court
(Courts of Record), do hereby certify that A. V. Lindell Esquire, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof and acknowledgment a Notary Public in and for said County and State dwelling in the said County, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgment and proofs of deeds or conveyances, for lands, tenements or hereditaments in said State. And further, that I am well acquainted with the handwriting of such A. V. Lindell and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal
(Seal) of said Court and County, the 9th day of October A. D., 1914.

C. W. BOWER,
Clerk.

Exhibits.

(Endorsed):

DEED.

54755

JULIET C. SMITH,
TO
WILLIAM S. MEEKS.
W. Norwood N. J.

Dated, 1914

RECEIVED in the Clerk's Office to the County of Bergen N. J. on the 19 day of April A. D. 1918, at 1:37 o'clock in the afternoon, and Recorded in Book 985 of DEEDS for said County, on pages 167 &c

GEO. VAN BUSKIRK,
County Clerk.

Rec'd in Bergen Co. Clerk's Office
Registry Division. Apr. 19, 1918, 1:37 PM

Exhibit C-3.

THIS INDENTURE, Made the 11th day of May, in the year of our Lord One Thousand Nine Hundred & fourteen

BETWEEN Juliet C. Smith, unmarried, of the City of Topeka in the County of Shawnee and State of Kansas. party of the First Part:

AND William S. Meeks. of the Borough of Norwood. in the County of Bergen and State of New Jersey. party of the Second Part:

WITNESSETH, That the said party of the First Part, for and in consideration of the sum of One Dollar, and other good and valuable consideration lawful money of the United States of America, to her in hand well and truly paid by the said

party of the Second Part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the First Part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the Second Part, and to his heirs and assigns, forever,

ALL her right, title and interest, in and to all those lots tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Norwood. in the County of Bergen and State of New Jersey. Known and distinguished on a Map of Norwood, Bergen County, New Jersey. filed in the Bergen County Clerk's Office November 5th 1867, as Map number 86, as follows, To Wit, Lots numbered twenty five to fifty-eight both inclusive in Block numbered thirty one on said map. Subject however to all taxes, liens, mortgages, &c. existing against the same. Being part of the same premises of which William H. Wells died seized, intestate, leaving him surviving his daughter Sarah C. Wells, his only child and heir at law, And of which said Sarah C. Wells died seized, and which in and by her last Will and Testament dated March 8th 1912. she devised to her cousin, Juliet C. Smith the party of the first part.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the First Part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the Second Part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the Second Part, his heirs and assigns forever:

IN WITNESS WHEREOF, the said party of the First Part has hereunto set her hand and seal the day and year first above written.

JULIET C. SMITH.

Signed, Sealed and Delivered in the Presence of

(Seal.)

State of Kansas, County of Shawnee } ss.:

BE IT REMEMBERED, That on this 11th day of May in the year of our Lord One Thousand Nine Hundred and fourteen, before me the subscriber, personally appeared Juliet C. Smith (unmarried) who, I am satisfied, is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed;

A. V. LINDELL
Notary Public.

(Seal.)

My commission expires Oct. 11, 1914

State of Kansas }
County Shawnee } ss.:

I C. W. Bower Clerk of the County of Shawnee and also Clerk of the District Court in and for said County (Courts of Record) do hereby certify that A. V. Lindell whose name is signed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof and acknowledgment a Notary Public in and for said County and State dwelling in the said County, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgment and proof of deeds or conveyances for lands, tenements or hereditaments in said State. And further, that I am well acquainted with the handwriting of such A. V. Lindell and verily believe that the signature to said certificate of proof or acknowledgment is genuine

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said (Seal.) Court and County, this 11 day of May 1914

C. W. BOWER,
Clerk.

Exhibits.

(Endorsed):

DEED.

54753

JULIET C. SMITH.

TO

WILLIAM S. MEEKS.

W Norwood

N J

Dated, 1914.

RECEIVED in the Clerk's Office of the County of Bergen N. J. on the 19th day of April A. D. 1918, at 1.37 o'clock in the afternoon, and Recorded in Book 985 of DEEDS for said County, on pages 163 &c

GEO VAN BUSKIRK

County Clerk

Received in Bergen Co. Clerk's Office Registry Division Apr. 19, 1918. 1:37 PM

Exhibits C-4 to C-9.

C-4, Tax Bill 1916 Borough of Norwood, Wm. C. Dawes, Lots 1 to 4, 7 to 16, 21 to 29, Block 29, $12.57; Paid Nov. 12, 1917;

C-5, Tax Bill 1917 Borough of Norwood, Wm. S. Meeks, Lots 1 to 76, Block 21, $38.44; Paid Nov. 4, 1918;

C-6, Tax Bill 1917 Borough of Norwood, Wm. S. Meeks, Lots 1 to 9, Block 24, $9.12; Paid Nov. 4, 1918;

C-7, Tax Bill 1917 Borough of Norwood, Wm. S. Meeks, Lots 1 to 16, Block 32, $2.80; Paid Nov. 4, 1918;

C-8, Tax Bill 1917 Borough of Norwood, Wm. S. Meeks, Lots 1 to 58, Block 31, $12.97; Paid Nov. 4, 1918;

C-9, Tax Bill 1918 Borough of Norwood, Wm. Meeks, Lots 1 to 76, Block 21, $43.77; Paid Dec. 11, 1919;

Tax Bill 1918 Borough of Norwood, Wm. Meeks, Lots 1 to 58, Block 31, $15.21; Paid Dec. 11, 1919;

Tax Bill 1918 Borough of Norwood, Wm. Meeks, Lots 1 to 16, Block 32, $2.97; Paid Feb. 17, 1919;

Tax Bill 1919 Borough of Norwood, Wm. S. Meeks, Lots 1 to 58, Block 31, $16.62; Paid May 12, 1920;

Tax Bill 1919 Borough of Norwood, Wm. S. Meeks, Lots 1 to 76, Block 21, $49.85; Paid May 12, 1920;

Tax Bill 1919 Borough of Norwood, Wm. S. Meeks, Lots 1 to 16, Block 32, $3.32; Paid May 12, 1920;

Tax Bill 1920 Borough of Norwood, Wm. S. Meeks, Lots 1 to 58, Block 31, $17.47; Paid Nov. 30, 1920 and May 14, 1921;

Tax Bill 1920 Borough of Norwood, Wm. S. Meeks, Lots 1 to 76, Block 21, $52.02; Paid Nov. 30, 1920 and April 12, 1921;

Tax Bill 1920 Borough of Norwood, Wm. S. Meeks, Lots 1 to 16, Block 32, $3.45; Paid Nov. 30, 1920 and April 12, 1921;

Tax Bill 1921 Borough of Norwood, Wm. S. Meeks, Lots 1 to 58, Block 97, $25.90; Paid April 5, 1922;

. *Exhibits.*

Tax Bill 1921 Borough of Norwood, W. S. Meeks, Lots 1 to 76, Block 96, $77.83; Paid Apr. 4, 1922;

Exhibit D-1.

THIS INDENTURE, made the Eleventh day of October in the Year of Our Lord Nineteen hundred and sixteen, between Juliet C. Smith (unmarried) of the City of Topeka and State of Kansas, of the first part; and Mary M. Bickford of the City and State of New York, of the second part, WITNESSETH: That the said party of the first part in consideration of the sum of One Dollar and other good and valuable considerations, to her duly paid before the delivery hereof, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim to the said party of the second part, and to her heirs and assigns, all those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Norwood, in the County of Bergen, and State of New Jersey, known and described on a Map of Norwood, Bergen County, New Jersey, filed in the Bergen County Clerks office as Map No. 86, as follows, to wit: Lots Number One (1) to Eight (8) both inclusive in Block No. Twenty-three (23); Lots Numbers One (1) to Nine (9) both inclusive in Block No. Twenty-four (24); all of Block No. Twenty-nine (29) excepting Lots Numbered Five, Seventeen and Eighteen; all of Block Numbered Twenty-one (21); all of Block Numbered Thirty-one (31) excepting Lots Numbered Eight (8) to Twenty-four (24); Lots Numbered Five (5) to Nine (9) both inclusive in Block No. Twelve. Including all in-

terests and title to the streets adjoining the above said lots of land. Subject to all liens of every nature and unpaid taxes now existing against said property.

With the appurtenances, and all the estate, right, title, and interest, of the said party of the first part therein, TO HAVE AND TO HOLD, the above mentioned and described premises, with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal, the day and year first above written.

JULIET C. SMITH (L. S.)

Signed, Sealed and delivered in the presence of

A. V. LINDELL

State of Kansas
County of Shawnee } ss.:

Be it remembered that on this 11th day of October in the Year of Our Lord Nineteen Hundred and Sixteen, before me a Notary Public, personally appeared Juliet C. Smith (Unmarried), who I am satisfied is the grantor mentioned in the within indenture, and to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

A. V. LINDELL
Notary Public

(Seal)

My commission expires Oct. 11, 1918.

State of Kansas, County of Shawnee, } ss.:
Third Judicial District. }

I, C. W. Bower Clerk of the District Court of Shawnee, COUNTY State of Kansas, the same being a court of record, do hereby certify, that A. V. Lindell, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of making such proof or acknowledgment, a Notary Public, in and for the said County of Shawnee. dwelling in the said County, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the (Seal) seal of said Court, this 11th day of October, 1916.

C. W. BOWER
Clerk.

Endorsed
Received in the office of the Clerk of Bergen County, New Jersey, on the 16th day of Oct. A.D.1916, at 9:13 o'clock A.M. and recorded in Book 946, Page 442 &c. of Deeds.
Geo. Van Buskirk, Clerk.

Rec'd in Bergen Co. Clerk's Office Registry Division Oct.16 1916, 9.13 A.M.

Final Decree.

(Filed December 3rd, 1923.)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM S. MEEKS,
Complainant,
and
MARY M. BICKFORD, *et al.*,
Defendants.

This cause coming on to be heard in the presence of Pierre F. Cook, of counsel with the defendants, and Morrison, Lloyd & Morrison, of counsel with the complainant, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the court being of opinion that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint,

It is, on this 3rd day of December, nineteen hundred and twenty three by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth by virtue of the power and authority of this court, hereby order, adjudge and decree that the complainant's bill be and the same is hereby dismissed.

And it is further ordered, adjudged and decreed that the said complainant, William S. Meeks, do pay to the said defendant, Mary M. Bickford, her costs in this suit to be taxed, including a counsel

fee of $100 00/100 dollars to Pierre F. Cook, her counsel herein.

Respectfully advised,

JOHN BENTLY,
V. C.

E. R. WALKER,
C.

Opinion.

(Filed November 8, 1923.)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM S. MEEKS,
Complainant,

and

MARY M. BICKFORD, *et al.*,
Defendants.

Nov. 7, 1923.

MORRISON, LLOYD & MORRISON, by WILLIAM J. MORRISON, JR., Esq., for the Complainant;

PIERRE F. COOK, Esq., for the Defendants.

MEMORANDUM OF OPINION.

BENTLEY, V. C.:

This is a bill under the statute to quiet title and presents for determination a single question, namely, whether or not a county clerk's certificate from another state was sufficient to authorize the recording of a deed.

In 1914, the complainant purchased land in Bergen County, taking three separate deeds on different dates from one Juliette Smith. On October

11, 1916, the defendant took a conveyance of the same land from the same grantor and paid consideration therefor. The defendants' deed was executed in Kansas before a notary public of that state, and was promptly recorded in the office of the Clerk of Bergen County on October 16, 1916. The complainant, on the other hand, did not record his deeds until more than a year and a half thereafter and nearly four years after taking the same. Under this state of facts, it would appear that the defendant has the better right to the title, because the 59th section of the statute entitled "An Act Respecting Conveyances" provides, in the pertinent part thereof, as follows:

> "Every deed * * * shall, until duly recorded, * * * be void and of no effect against * * all subsequent *bona fide* purchasers * * * for valuable consideration, not having notice thereof, whose deed * * * shall have been first duly recorded, * * * provided that such deed * * * shall be valid and operative, although not recorded, except as against such subsequent * * * purchasers.

But the attack made upon this position assumed by the defendants is, that the certificate of the county clerk does not conform to the requirements of the 23d section of the act just mentioned as amended in the pamphlet laws of 1912, at page 326. The pertinent provision of this latter section provides that an acknowledgment of a deed executed out of this state shall be an effectual one, provided in such cases the certificate of acknowledgment or proof shall be accompanied by a certificate under proper seal, that the officer before whom such acknowledgment or proof was or shall

be made was at the time of the taking of the said proof or acknowledgment "authorized *by the laws of such state,* territory, or district to take acknowledgments and proofs." The form of acknowledgment and the language of the certificate of the Kansan county clerk in this respect was as follows:

State of Kansas
County of Shawnee } ss.:

Be it remembered that on this 11th day of October, in the year of Our Lord nineteen hundred and sixteen, before me a Notary Public, personally appeared Juliet C. Smith (unmarried), who I am satisfied is the grantor mentioned in the within indenture, and to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

A. V. Lindell, Notary Public.

State of Kansas
County of Shawnee,
Third Judicial District } ss

I, C. W. Bower, Clerk of the District Court of Shawnee County, State of Kansas, the same being a court of record, do hereby certify that A. V. Lindell, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the County of Shawnee, dwelling in the said county, com-

missioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and annexed the seal of said court, this 11th day of October, 1916.

C. W. BOWER.

If the county clerk's certificate does not come within the meaning of the 23d section of the Act Respecting Conveyances then, of course, the recording of it is a mere nullity. To this effect will be found, among others:

Brinton *v.* Skull, 55 N. J. Eq. 747.
Osborn *v.* Tunis, 25 N. J. Law, 633.
Lindsley *v.* O'Reilly, 50 N. J. Law, 636.

The question to be determined is, whether or not this certificate of the county clerk was a substantial compliance with the language of the 23d section of the act providing for acknowledgment taken out of the state. I say "substantial compliance" because that is the language of all the cases, of which Den *v.* Geiger (9 N. J. Law, 225) and Thayer *v.* Torrey (37 N. J. Law, 339) are typical. The rule laid down in all these cases is that substantial but not verbal compliance is required. It seems to me that the Clerk's certificate in this instance is good, because it appears by the acknowledgment set out above that the same was taken in the County of Shawnee, State of Kansas, and immediately thereafter, on the county clerk's certificate attached to the acknowledgment to

which it refers, it is said that the notary was a notary in and for that county, commissioned and sworn, "duly authorized to take the same." Yet the complainant says that this is an attempt upon the part of the county clerk to usurp the functions of this court and adjudicate that the acknowledgment is efficacious within the State of New Jersey, and not a certificate as the law requires, that the Notary was authorized by the law of that state to take acknowledgments in Kansas. This seems to be a very strained construction of the language of the county clerk, taken in connection with the acknowledgment. Some force must be given to the presumption that public officers know their duties and perform them (1 R. C. L., p. 256). In this case the incumbent of the very responsible office of county clerk has certified that the acknowledgment which, on its face, shows it to have been taken in Kansas was taken by an officer duly authorized to do so, and it can scarcely be thought that the county clerk meant that the notary was authorized by the grantor, or by any other than the entity that authorized all public officers to perform their public duties, and that, of course, is the law of the jurisdiction in which they act. It seems clear to me that the meaning to be given to the language of the certificate of the county clerk is substantially that called for by the 23d section of the Act.

The Legislature has established the policy of this state with regard to requiring a class of instruments, of which a deed is one, to be recorded. It is clearly the intent of that policy that protection be given to the diligent grantee who forthwith gives notice to all the world from then on of his title, and that any other interpretation of the lan-

guage used in the certificate would defeat the clearly-expressed purpose of the law. That this policy is generally prevalent throughout this country will be shown by an examination of the case of Summer *v.* Mitchell (29 Fla. 179) which will be found in 14 L. R. A., 875 with a wealth of citations, both in the opinion and the foot-notes attached thereto.

No proof of fraud or actual knowledge has been given, nor has any question been raised as to the effect of the defendant's deed, whether recorded or not recorded. The only question that has been pressed by the parties for determination is the one that I have discussed, and being ineffective to change my decision it is not necessary to consider any other aspect of the case.

New Jersey Court of Errors and Appeals

WILLIAM S. MEEKS, Complainant-Appellant, *vs.* MARY M. BICKFORD, *et al.*, Defendants-Respondents.	On Appeal from Chancery.

BRIEF FOR APPELLANT.

This is an appeal from a decree of the Court of Chancery, advised by Vice-Chancellor Bentley, in a suit to quiet title.

Appellant claims under three bargain and sale deeds by Juliet C. Smith made May 11th, 1914 (C-1, Case, p. 26), September , 1914 (C-2, Case, p. 30) and May 11th, 1914 (C-3, Case, p. 34), all of which were recorded on April 19th, 1918.

The premises in question are unimproved lands, uncultivated, a kind of woodland with some little brush on it (C., p. 18, lines 34-38).

Appellant's testimony, which is uncontradicted, shows that he put up a "no trespass" sign on the premises in question, visited the premises generally every Sunday, and once a week, looked around, spoke to the marshal about keeping people away who were taking wood (C., p. 19, lines 1-30).

Appellant paid the taxes on these premises for the years 1916 to 1921, inclusive, his receipts for the taxes being produced and offered in evidence (C., p. 13, line 18; p. 16, lines 2, 31; p. 17, lines 17, 28; p. 18, lines 8-18). Excerpts from the tax bills are printed on pages 38 and 39 of the case.

Respondent claims title to the premises in question by a quitclaim deed (D-1 offered, C., p. 20, printed, C., p. 40) from the same grantor dated October 11, 1916, and alleged to have been recorded October 16, 1916. There is not a word of evidence in the case to indicate that the intention of the defendant and her grantor was to give more than a quitclaim. The grantor lived in Kansas. The certificate of the Clerk of the District Court of Shawnee County, Kansas, in respect of the notary who took the acknowledgement to defendant's deed omitted to state by what or by whom the notary was authorized to take acknowledgments and proofs. The questions in the case are, first, whether the certificate of the clerk complies with the laws of 1912, pages 326 and 327, which provides for a certificate under the seal of a court of record in the county "in which it was or shall be made that the officer before whom such acknowledgment of (or) proof was or shall be made, was, at the time of taking such proof or acknowledgment, authorized by the laws of such state, territory or district to take acknowledgments and proofs." The other question is whether a deed, in form a quitclaim, with no indication of any intention that it was to act otherwise than as a quitclaim, will be held to be a bargain and sale deed because it is for a valuable consideration and contains the words "To have and to hold the above mentioned and described premises with the appurtenances unto the said party of the second part, her heirs and assigns forever."

Defendant's quitclaim deed contained these significant words:

> "Has remised, released and forever quitclaimed and by these presents does remise, release and forever quitclaim" (Case, p. 40, lines 1922),

and these:

> "Subject to all liens of every nature and unpaid taxes now existing against said property" (Case, p. 41, lines 2-4).

Appellant's counsel did not act for the complainant below.

The evidence is very meager. It consisted on the part of the complainant below of the proof of his deeds, the taxes he had paid and his acts of possession. On the part of respondent and defendant below it consisted of the production of her deed and the testimony of her two brothers, both of whom were New York lawyers.

Defendant did not appear at the trial, but one of her brothers testified that he paid $300 as consideration for the deed (Case, p. 23, line 35). Another brother testified that he went to the Tax Collector in 1917 to get a tax bill, and was told the taxes had been paid (Case, p. 21, line 33). That he continued going there for a couple of years, and was told the taxes had been paid. He then stopped (Case, p. 22, line 3). He said the Collector told him Mr. Meeks was paying the taxes (Case, p. 22, line 6). There was no testimony of any acts of possession by respondent.

POINT I.

The Certificate of the Kansas Clerk fails to show that the Notary was authorized by the laws of the State of Kansas to take acknowledgments.

The matter is regulated by 2 Compiled Statutes, page 1523, Section 23, as amended by the Laws of 1912, page 326. The section in question is as follows:

> "If the party who shall have executed * * * any such deed * * * shall have happened or shall happen to be in some other State in the Union * * * then such acknowledgment or proof as is above prescribed, made before * * * or before and by any officer in such State of the Union, territory thereof, or District of Columbia, then residing and being anywhere in such State, Territory or District, authorized at the time of such proof or acknowledgment by the laws of such State, Territory or District, to take proofs and acknowledgments; provided in such case the certificate or acknowledgment or proof shall be accompanied by a certificate under the great seal of such State, Territory or District, or under the seal of some court of record in the county, in which it was or shall be made, that the officer before whom such acknowledgment or proof was or shall be made, was, at the time of the taking of said proof or acknowledgment, authorized by the laws of such State, Territory or District, to take acknowledgments and proofs, shall be as good and effectual as if such acknowledgment or proof had been made within this State before the Chancellor thereof and had been certified by him" (P. L. 1912, p. 326).

The defective certificate is set forth on page 42 of the case. It shows that the notary was a notary public for the County of Shawnee. That he dwelt in the county. That he was commissioned and sworn and "duly authorized to take the same." Duly authorized by whom? Surely the provision in our statute that the Clerk of the Court shall certify that the foreign notary is authorized by the laws of the state where the acknowledgment is taken to perform the act is a matter of substance. How can we tell whether the notion of the Kansas Clerk as to what constituted due authority coincided with the definition in our statute. He may

have thought that the grantor could duly authorize it, or the Clerk's own *ipse dixit*. There is absolutely no way from an examination of the Clerk's certificate to determine whether the notary was authorized by the laws of Kansas to take the acknowledgment or not. Suppose the Clerk had certified that the notary was "O. K." Would not that have been just as valid as the present certificate?

It is, of course, true that substantial compliance is all that is necessary to validate a certificate as it is to validate an acknowledgment. There may be a real difference as to an acknowledgment taken in one's own state, where one is presumed to know the law, and a certificate made in a foreign state as to a matter of the land laws of New Jersey, where our Legislature has laid down the specific test that the certificate shall show that the notary was authorized by the laws of the foreign state.

Den v. *Geiger*, and the other cases referred to by the Vice-Chancellor do not, it is respectfully urged, meet the present case, because here there is a defect in substance, and we do not know by whom the notary was authorized.

The following cases show how this matter is regarded in other jurisdictions:

In 1 *Corpus Juris*, p. 880, it is stated:

> "Under statutes providing for the acknowledgment of instruments in other states it is usually necessary that the authority of the officer who took the acknowledgment must be shown:
>
> Moore *v.* Nelson, 17 Fed. Case No. 9771;
> Wallace *v.* Dewey, 29 Fed. Case No. 17099;
> 20 N. D., 295, 303;
> 10 Ohio, 188.

"And where the statute recognizes the validity of acknowledgments conforming to the laws of the state in which taken, it must be shown that the officer was authorized by such laws to take the acknowledgment:

33 Ill., 327;
15 Ill., 328;
50 Mo., 415;

and that it was taken in accordance therewith:

59 Ill. A., 662;
11 Ill. A., 340;
80 Iowa, 733;
50 Mo., 415;
4 Neb., 431."

1 *Corpus Juris,* at page 835:

"* * * But there should be at least enough to show in some way that the officer was one of those authorized by the Statute.

"NOTE: (a) Authority under laws of foreign state: Under a statute authorizing acknowledgments to be taken in other states by any officer authorized by the laws of the state where the acknowledgment is taken, the officer's certificate must show that he is authorized by the laws of his own state.

Johnson *v.* Granger, 17 Misc., 54;
Matter of Wilcox, 1 Misc., 55;
DeSegond *v.* Culver, 10 Ohio, 188;
Brown *v.* Stilwell, 1 N. Y. St. Rep., 132."

1 *Corpus Juris,* page 882:

"The facts to be recited in such certificates are usually prescribed by statute and the certificate must show on its face and without the aid of extrinsic proof all the material matters required by the statute:

6 Abbots Prac., 80;
150 N. C., 206."

1 *Corpus Juris,* p. 883:

"The certificate is usually required to show that the officer before whom the acknowledgment was taken was duly authorized to take it:

Goddard *v.* Schmoll, 24 Misc., 381;
Matter of Wilcox, 1 Misc., 55;
Brown *v.* Stilwell, 1 N. Y., St. Rep., 132."

McKibbin v. *Paul,* 25 Colo. App., 134, p. 137:

"The deed has attached to it a certificate by Clyde O. Yoho, Clerk of the District Court of said Greene County, and reads as follows:

" 'State of Indiana, Greene County, SS.

" 'I, Clyde O. Yoho, Clerk of the said Court within and for Greene County, State of Indiana, do hereby certify that Lafe Scott, whose certificate of acknowledgment appears to the instrument of writing to which this is attached, was on the date and at the time of making such certificate, to wit, the 5th day of December, 1907, a Justice of the Peace (he was appointed to take oath of office Sept. 29, 1896, and has been acting since that date to the present time) within and for said Greene County, duly commissioned and qualified, whose term of office began on the 29th day of September, 1896, and will expire on the day of , 19 , and that full effect and credit ought to be given to his official acts, and that the signature purporting to be his is genuine.

" 'IN WITNESS of which I have hereunto affixed the seal of said court and subscribed my name at Bloomfield, Indiana, this 23rd day of December A. D. 1907.

'Clyde O. Yoho, &c.'

When the record of the deed was offered in evidence appellant objected to its introduction for several reasons, the only one necessary to notice being that there is no certificate attached to this, as provided by our statute, showing the authority of the Justice of the Peace to take acknowledgments in Indiana where the deed is executed. Section 684, Revised Statutes 1908 refers to the manner and method of acknowledging or proving written instruments purporting to convey land or any interest therein, located in this state.

* * * * * *

"After enumerating by official title what officers may take such acknowledgments, the statute continues:

> "'* * * before any other officer authorized by the laws of such state or territory to take and certify such acknowledgments; provided there shall be affixed to the certificate of such officer other than those above enumerated, a certificate of the Clerk of some court of record of the county, state or territory, wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be; that he has the authority by the laws of such state or territory, to take and certify such acknowledgment, and that the signature of such officer to the certificate of acknowledgment is the true signature of such officer.'

* * * * * *

"From the statute above quoted it is plain that the Legislature intended to provide a method of taking acknowledgments to written instruments not only in our own state, but in every state or territory of the union, as well as in foreign countries. A justice of the peace not being mentioned in the statute as a proper officer before whom such acknowledgments may be taken in a sister state or territory, it becomes necessary by force of the

statute, that if such official in another state assumes to certify an acknowledgment of a deed conveying real property in Colorado, the certificate of a Clerk of a court of record of such state must under the seal of the court effectively show that the justice of the peace is authorized under the laws of that state to take and certify such acknowledgment. The omission of such a statement in the Clerk's certificate renders the purported acknowledgment defective and insufficient, and leaves the deed lacking in proper proof of its execution. We do not think such statement must necessarily be in the identical language of the statute, but it must be so clear and unequivocal that it can be readily seen from the Clerk's certificate that the officer certifying to the acknowledgment had power or authority under the laws of his state to act.

* * * * * *

"The information required to appear in the Clerk's certificate is not whether or not faith and credit should be given to the official acts of the justice of the peace, but rather, did he have authority under the laws of the State of Indiana to take and certify an acknowledgment to a deed. This power is necessary to the validity of an acknowledgment to a deed, taken in a sister state, when the deed purports to convey land in Colorado and if this power is not clearly shown by the Clerk's certificate, the acknowledgment is defective and leaves the deed wanting in proof of its execution. It cannot be contended that the court will presume a justice of the peace in a sister state or territory has authority to take acknowledgments to written instruments. The Legislature certainly did not indulge in any such presumption, for it required a certificate of an officer of a court of record to support the information required under the seal of the court."

In *McCormack* v. *Evans,* 33 Ill., p. 327, the Court said at page 330:

> "We are, however, obliged to reverse the judgment of the court below for the reason that the contract between B and P and W was not sufficiently proven. A certified copy of it from the recorder's office was read in evidence; from which it purported to have been acknowledged before the First Judge of Schenectady County in the State of New York. It does not appear that he was authorized by the laws of New York to take acknowledgments of deeds, or that he was a judge before whom our laws ever authorized such acknowledgments to be taken. It does not appear that he was a judge of our supreme, superior or circuit court, or of a court of record."

Culbertson v. *Witbeck Co.,* 127 U. S., 326:

> "Under Howard's Ann. St. 5660 providing that where an acknowledgment of a deed is taken in another state the clerk certifying to the official character of the officer shall also state that the deed was 'executed and acknowledged according to the laws of such state,' such certificate by the clerk sets at rest any question as to the form of the acknowledgment."

80 App. Div., 487:

> "*Headnote*: The certificate of authentication executed by the Clerk of a court in the state in which the acknowledgment was taken is defective where the clerk instead of certifying in accordance with the provisions of the state that he is well acquainted with the handwriting of the notary and verily believes that his signature to the acknowledgment is genuine, merely certifies that said notary is 'duly commissioned and qualified and that full faith and credit are due to all his acts as such.' "

In *Prentice* v. *Duluth Storage & Forwarding Co.*, 58 Fed., p. 437, at page 446, Sanborn, Circuit Judge, said:

> "At the time this deed and the subsequent deed to Mr. Gilman were executed the statutes of Minnesota provided:
> * * * * * *
>
> " 'Second: That in cases where deeds are executed in any other state, territory or district, unless the acknowledgment is taken before a commissioner appointed by the governor of the territory for that purpose, such deeds shall have attached thereto a certificate of the clerk or other certifying officer of a court of record that the deed is executed and acknowledged according to the laws of such state, territory or district, *id.*, Sec. 10.
>
> " 'Third: That to entitle any deed to record it must have "a certificate of acknowledgment * * * as provided in this chapter, and in cases where the same is necessary, the certificate required by the tenth section of this chapter," *id.*, Sec. 23.
>
> "The deed to the appellant was executed in Wisconsin, and acknowledged before a justice of the peace in that state. There was attached to it the certificate of the clerk of the county court, but this certificate failed to state that the deed was 'executed and acknowledged according to the laws of Wisconsin.' Under the construction given to these statutes by the highest judicial tribunal of the State of Minnesota, which is a rule of property in that state, and which the federal courts are bound to follow, this deed was not entitled to record, and hence was not 'recorded as provided by law.'

Lowry v. *Harris*, 12 Minn., 255 (Gil. 166).

See also:

Morton v. *Smith*, 2 Dill., 316, 319;
Obrien v. *Gaslin*, 20 Neb., 347; 30 N. W. 274;

Greenwood v. *Jenswold*, 69 Iowa, 53, 28 N. W., 433;
Ely v. *Wilcos*, 20 Wis., 551, 556;
Fisher v. *Vaughan*, 75 Wis., 609, 615, 44 N. W., 831, 833."

Crispen v. *Hannaran*, 50 Mo., p. 415:

"*Headnote*: 1. * * * A deed conveying military bounty lands in this state and acknowledged before a notary public of another state is inadmissible in evidence, unless the evidence shows that such notary was at the time of the execution of the deed, authorized by the laws of his own state to take such acknowledgment."

Hoadley v. *Stephens*, 4 Neb., 431, at p. 434, Maxwell, J.:

"The acknowledgment of William A. Jobson was taken before George E. Tadler, a justice of the peace in the City of Richmond, Virginia, and attached to the deed is a certificate of the clerk of the court of Hustings of said city, stating that the party taking the acknowledgment was at the date thereof an acting justice of the peace and that his signature is genuine; but it nowhere appears that the deed in question was executed and acknowledged according to the laws of the State of Virginia.

"Section 4, ch. 61, General Statutes provides, in case of deeds 'if acknowledged or proved in any other state, territory or district of the United States, it must be done according to the laws of such state, territory or district and must be acknowledged or proved before any officer authorized to do so by the laws of such state, territory or district, or before a commissioner appointed by the Governor of this state for that purpose.'

* * * * * *

"But in all other cases our statute expressly required that 'the deed or instrument shall

have attached thereto a certificate of the clerk of a court of record, or other proper certifying officer of the county, district or state, within which the acknowledgment or proof was taken under the seal of his office showing that the person whost name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the signature of such officer to be genuine and that the deed or other instrument is executed and acknowledged according to the laws of such state, district or territory.'

* * * * * * *

"The deed of December 13th, 1860, offered in evidence by the defendants was executed and acknowledged before a justice of the peace of the City of Richmond, Virginia, and no testimony was offered to show that it had been executed and acknowledged according to the laws of the State of Virginia. It was therefore properly excluded."

POINT II.

Appellant's title is paramount because respondent's deed was and was intended to be a mere quitclaim.

A quitclaim deed conveys only such title or interest as the grantor has at the time it is made; and by the weight of authority a party claiming under such a deed cannot be deemed a *bona fide* purchaser of any greater interest than his grantor then had.

39 *Cyc.*, p. 1693, and long list of cases cited.

The tender of a quitclaim deed is a fact sufficient to awaken the suspicion of the purchaser as to the validity of the title; and he is chargeable

with notice of all outstanding interests and claims of which he could obtain knowledge by the exercise of reasonable diligence and by making proper inquiry.

39 *Cyc.*, pp. 1693-1694.

One claiming under a quitclaim deed cannot be deemed an innocent purchaser. A grantee in a quitclaim is not a *bona fide* purchaser and takes only the interest of his grantor.

22 *Amer. Dig.* 1907-1916, 2d Dec. Ed. (*Vendor and Purchaser,* Sec. 224), and cases cited;
48 *Cent. Dig. Col.* 653, Sec. 469, and cases cited.

One taking title to land by quitclaim takes with notice of defects in his grantor's title and subject to previous unrecorded warranty deeds.

Donohue v. *Vosper,* 243 U. S., 59; 61 L. Ed., 592.

From the above it appears that the weight of authority in this country is in favor of the proposition that a grantee under a quitclaim deed is not a *bona fide* purchaser. Therefore, appellant's deed is valid and operative against respondent, even though it is not recorded, because respondent cannot claim the protection of Section 54 of the Conveyance Act because she is not a *bona fide* purchaser.

Pomeroy's Equity Jurisprudence, 3rd Edition, Sec. 753. Note on page 1338:

"Whether Quitclaim Grantee can be a *Bona Fide* Purchaser.

"No question in the law of *bona fide* purchaser has been more productive of judicial discussion in this country. Possibly the ma-

jority of the adjudicated cases still support the view that a quitclaim deed is *ipso facto* notice, and that a grantee thereunder cannot claim to be a *bona fide* purchaser:

See

May v. *LeClaire,* 78 U. S., 217;
Dickerson v. *Cosgrove,* 100 U. S., 578.

(There then follows a long list of cases in various states.)

* * * * * * *

Peters v. *Cartier,* 80 Mich., 124:

"It would be absurd for a grantee under a mere quitclaim deed to undertake to claim that he took title to the property freed from the previous acts of the grantor affecting that title. There is nothing in the nature of that character of conveyance which assures the grantee indemnity from such acts. He has no reason to believe that he has purchased a clear title to the property or anything more than what the terms of his deed indicate, and, 'The quitclaim deed * * * purports to convey only such right as A. may actually have. It may be something or nothing; and the recording act, it is suggested, will not give to an instrument of record any greater force or larger meaning than that expressed by its words.'"

"American Mortgage Co. *v.* Hutchinson, 19 Ore., 334, 24 Pac., 515. The opinion of Thayer, C. J., in this case is a most vigorous presentation of this view of the question."

Whether the conveyance be a quitclaim or not is dependent upon the intent of the parties to it, as that intent appears from the language of the instrument itself.

39 *Cyc.,* p. 1694 (bb).

Defendant relies on *Havens* v. *Sea Shore Land Co.,* 47 N. J. Equity, page 365, which is to the effect that a deed should be so construed as to give effect

to the intention of the parties if by law it may, and if the intention of the parties cannot be carried out in the way they intended and the law will permit it to be carried out in another, that other should be adopted." (Headnote.) It further held that the *habendum* clause cannot be used to enlarge or diminish the estate specifically defined in the granting clause, for if it is repugnant to that clause it is void, but if that clause is silent or ambiguous, then the *habendum* becomes the standard by which the estate must be measured.

In the Havens case the clause was

> "hath remised, released and forever quitclaimed unto the said Joseph Lawrence,"

the grant not being made to the grantee and his heirs. The *habendum* was

> "to have and to hold to the grantee, his heirs and assigns forever."

The Court as to the granting clause said, page 371:

> "This language, standing by itself, and in the absence of any words plainly indicating that the estate to be granted was less than a fee, would seem to furnish very cogent evidence that the grantor intended to convey a fee. That such was the intention of the maker of this instrument is put beyond all question by the language of its *habendum,* which is in these words:
>
> > " 'To have and to hold the above (then designating the thing conveyed) with all and singular the privileges and appurtenances thereunto belonging (reserving liberty to fish and gun) to the only proper use, benefit and behoof of him, the said Joseph Lawrence, his heirs and assigns forever; so that neither he, the said John Curtis, nor Mercy his wife, nor their heirs, nor any other per-

> son or persons, for themselves, or any other of the name, or in the name, right or stead of any of them, shall or will, by any way or means, hereafter claim, challenge or demand any right, title or interest of, in or to the said right or any part or parcels thereof.' "

It is perfectly clear from an examination of the Havens case that the court was confronted with a quitclaim deed which on its face indicated to the court that it was intended to operate as the grant of a fee. In other words, that like any other contract, it was to be given the effect according to the intention of the parties, and because it was called a quitclaim, but bore evidence that it was intended to convey a fee, the court would give it effect according to its essence and not according to its form.

Here we have no such question. The deed is a quitclaim in form and its quality as a quitclaim is enforced by the following recital (Case, p. 41),

> "subject to all liens of every nature and unpaid taxes now existing against said property."

No testimony as to intention was offered by defendant. Defendant did not appear. The grantor did not appear. How then is one to gather the intention of the parties except from the document itself. To hold that this deed, in form a quitclaim, made by a grantor who had no title, is to operate as a bargain and sale deed is to override the intention of the grantor unequivocally expressed in the document itself.

The intention of the parties was that the respondent was to get only the interest the grantor had in the property, otherwise the grantor would not have conveyed by a quitclaim deed and the grantee would not have accepted such a deed.

The tender of the quitclaim deed charged the grantee with notice of some outstanding interest against the property. There is nothing in the case to show respondent made any inquiries to find out if there were any claims against the property, or who the true owner was.

POINT III.

Respondent was not a bona fide purchaser.

Section 54 of the Conveyance Act under which she claims provides in effect that a deed shall be of no effect until duly recorded against subsequent bona fide purchasers for a valuable consideration not having notice thereof, whose deed or mortgage shall have been first duly recorded.

A bona fide purchaser therefore under this statute is a purchaser without notice. The respondent failed to prove her bona fides in this respect. She did not testify at all. Her two lawyer brothers, the only witnesses for her, did not testify to anything from which it could be inferred that the purchase was made without notice. So far as the evidence shows, respondent may have known all about appellant's prior deeds. For example, her brother George spent every summer for 25 years a half mile from the property in question (Case, p. 21, line 19). Evidently he had known the appellant for about 20 years (Case, p. 22, line 15). It was a country community sparsely settled. Was he ignorant of appellant's claims, of appellant's undisputed acts of possession, of the existence of the no tresspass signs? And after the date of respondent's quitclaim deed when her brother George found that the taxes were being paid by appellant, he made no attempt to straighten it out but let appellant continue the payments. (See Exhibits C-4 to C-9, Case, p. 38.)

Is it not fair to reason from this inequitable conduct perpetrated by a lawyer who keeps his sister off the stand, that the whole thing was a scheme to cheat appellant out of the property?

Apart from this, however, to succeed in the case, the respondent was bound to prove that she was a purchaser without notice. This she failed to do.

And the question of the payment of the consideration is thrown in doubt by the testimony. Respondent's brother George was asked (Case, p. 23, line 1):

> "Q. How much did your sister pay for this property? A. I did not pay the consideration over."

He does not say that he got the consideration from his sister; and when we come to the other brother, Eugene, who paid the money to the grantor in the deed, he said in answer to a question by the court that all he knew of his own knowledge was that the money was handed to him by his brother George (Case, p. 25, line 38).

And thereupon the case was immediately closed without brother George testifying that he got the money from his sister. Nor does brother Eugene say that the purchase was made without notice of appellant's claims. Nobody says that despite the fact that it was an essential part of respondent's case to show that she was a bona fide purchaser for value.

POINT IV.

The decree should be reversed.

Respectfully submitted,

WALL, HAIGHT, CAREY & HARTPENCE,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals.

ON APPEAL FROM CHANCERY.

WILLIAM S. MEEKS,
Complainant-Appellant,
—against—

MARY M. BICKFORD,
Defendant-Respondent.

BRIEF OF MARY M. BICKFORD, DEFENDANT-RESPONDENT.

I.

The defendant's deed conveyed a good and valid title to the premises in question.

The objection to defendant's deed on the ground that it was intended to be a deed of quit claim, was raised by replication, but was abandoned at the trial (see Opinion, p. 49).

Complainant's contention that the deed to the defendant was intended to be a deed of quit claim, and was a nullity so far as complainant was concerned, set forth in the petition of appeal, is unsound. The deed in question (Ex. D-1) (pp. 40, 41, 42), has the following granting clause:

> "That the said party of the first part in consideration of the sum of One dollar and other good and valuable considerations to

> her duly paid before the delivery hereof, has remised, released and forever quit claimed, and by these presents does remise, release and forever quit claim to the said party of the second part and to her heirs and assigns, all those tracts, &c."

The Habendum is as follows:

> "To Have to Hold the above mentioned and described premises, with the appurtenances unto the said party of the second part, her heirs and assigns forever."

The deed shows on its face, and the uncontradicted testimony (p. 23), is, that it was founded on a valuable consideration.

> "A deed which has failed of effect as a release, for want of an estate in possession in the releasee, may, if it is founded on a valuable consideration, be given effect as a bargain and sale." *Havens* v. *Sea Shore Land Co.*, 2 Dick. 365, Syllabus.
>
> "Any words that will raise a use, will, with a valuable consideration, amount to a bargain and sale. * * * No particular form of words is required to raise a use; any words will be sufficient for that purpose which show an intention to convey. That such was the intention of the maker of this instrument is put beyond dispute by the words of the instrument itself. Effect must be given to the deed as a bargain and sale." *Havens* v. *Sea Shore Land Co., supra,* 373.

In the *Havens* case the granting clause was, "Hath remised, released and forever quit claimed unto the said Joseph Lawrence," the grant not being made to the grantee and his heirs. The Habendum was: "To have and to hold to the grantee, his heirs and assigns forever."

II.

The Clerk's certificate to the defendant's deed complies with the statute.

The certificate is as follows:

> "State of Kansas,
> County of Shawnee,
> Third Judicial District—ss.:
>
> I, C. W. BOWER Clerk of the District Court of Shawnee County, State of Kansas, the same being a court of record, do hereby certify, that A. V. Lindell, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written was at the time of taking such proof or acknowledgment, a Notary Public, in and for the said County of Shawnee, dwelling in the said County, commisioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.
>
> (L. S.) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 11th day of October, 1916.
>
> C. W. BOWER,
> Clerk."

The statute governing the situation, Laws of 1912, pages 326, 327, provides, that

> "the certificate of acknowledgment or proof shall be accompanied by a certificate under the great seal of such state, territory or dis-

> trict, or under the seal of some court of record in the County in which it was or shall be made, that the officer before whom such acknowledgment of (or) proof was or shall be made was, at the time of the taking of such proof or acknowledgment authorized by the laws of such state, territory or district to take acknowledgments and proofs."

The Clerk certifies that the person who subscribed to the certificate of the acknowledgment was at the time of taking such proof or acknowledgment, a Notary Public in and for the said County of Shawnee, Kansas, dwelling in the said County, commissioned and sworn, and duly authorized to take the same. "The same" refers only to the acknowledgment in question, and therefore the certificate fully complies with the statute.

It will be observed that the form of certificate specified in the statute of 1912 is more general than the form previously required, as specified in C. S. N. J., Vol. 2, pages 1543, 1544, Section 23, which adds the words, "of deeds or conveyances for lands, tenements or hereditaments in such state, territory, or district."

> "A certificate of acknowledgment of a deed is good if it shows a substantial, though not a verbal, compliance with the requirements of the act respecting conveyances." *Den* v. *Geiger*, 9 New Jersey Law, p. 225, approved in *Thayer* v. *Torrey,* 8 Vroom, 339, 341.

The certificate in question shows a substantial compliance, and *Den* v. *Geiger* controls, as the certificate of authority is a part of and accompanies the certificate of acknowledgment.

III.

Complainant had actual notice of defendant's deed.

Such notice was abundantly proved at the trial by the evidence of the witness, George F. Allison (p. 22), no testimony being offered in contradiction by the complainant who was in Court and had testified.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed.

PIERRE F. COOK,
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