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Bill of Complaint.

(Filed Dec. 15, 1925.)

IN CHANCERY OF NEW JERSEY

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainant, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill. Specific Performance, Injunction, Declaratory Equities and Damages.

To Honorable Edwin Robert Walker, Chancellor.

Amalia R. Gluck residing in the City of Newark, in the County of Essex and State of New Jersey, a married woman and her husband, Maurice B. Gluck, complains of the defendants, Rynda Development Co. (a New Jersey Corporation), Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Building and Savings (a New York corporation), Frank Hancock Hennessy, Arlington Realty

Co. (a New Jersey Corporation) and Dime Savings Bank (a New Jersey Corporation) and says:

1. That complainant is the assignee of the Chemtec Co., Inc., of a valuable contract and agreement for sale and purchase of the premises described therein, which contract is made part hereof, marked Exhibit "A."

2. That complainant's husband, Maurice B. Gluck, joins with her herein although admits he has no rights or interests therein, but for any and all purposes that may be necessary to complete any of the mortgages and other papers, complainant being a married woman under the law of the State of New Jersey respecting property rights.

3. That on May 1, 1922, the defendant, Rynda Development Co. and Abraham Hauptman was the owner in fee simple of a tract of land situate in the Village of South Orange, County of Essex and State of New Jersey, Beginning at a point on the Northeasterly side of Rynda Road distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot Northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road Produced with the Northeasterly side of Ridgewood Road produced thence (1) along said side of Rynda Road North 48 degrees, 37 minues West sixty feet; thence (2) North 41 degrees, 23 minutes East one hundred and forty feet; thence (3) South 48 degrees 37 minutes East sixty feet; thence (4) South 41 degrees, 23 minutes West one hundred and forty feet to the point or place of Beginning.

4. That complainant's assignor—Chemtec Co., Inc. —and defendant Rynda Development Co., entered into

an agreement on 1st day of May, 1922, for sale and purchase of such property, a building lot, therein described without any buildings thereon a copy of which contract is hereto attached and made a part hereof (Exhibit "A.")

5. That thereafter the complainant's assignor did enter, was let into possession and did build thereon a house and a garage.

6. That the closing date of such agreement Exhibit "A" was continued to and including the 29th day of November, 1922; that on the 25th day of November, 1922, complainant's assignor pursuant to such agreement made a tender of performance; that prior to November 25, 1922 the Chemtec Co., Inc., and defendants had informal treaties that complainant was to be the assignee of Chemtec Co., Inc., and would be so recognized by defendants and that they would make, execute and deliver a deed to Complainant, if she would become the assignee and be responsible to them for the purchase money and go on the Bond and Mortgage as part payment of such purchase price, so that complainant could obtain the loan from Franklin Society for Home Buildings and Savings; that although agreed upon by defendants they delayed the delivery of Deed; that thereupon the Complainant's Assignor Chemtec Co., Inc., made a first Mortgage to Complainant for the sum of Eleven Thousand Five Hundred Dollars which was less than 80% of the cost of the improvements erected and to be further erected, and a second Mortgage for $1,400.00 payable as provided in agreement Exhibit "A" to Rynda Co., Inc., and tendered the same with cash for the balance at the place designated in said agreement Exhibit "A"; that said Rynda Co. refused the said tender, said it was unnecessary

and that they would accept the complainant as assignee of the contract Exhibit "A," had made out such deed to Complainant, so that Complainant could make the loan agreement with Franklin Society and obtain such money, and would execute the same and deliver such deed that day to Complainant upon Complainant's promise to forego her first Mortgage of Eleven Thousand Five Hundred Dollars, to become the assignee and to promise to pay such purchase price according to the terms of such agreement Exhibit "A" and to see to it that the Franklin Society would take care of second Mortgage subject to the 1st Mortgage of $9,000.00 to said Franklin Society; That Complainant relying upon such agreement and in part performance waived her first mortgage, became the assignee for value paid to Chemtec Co., Inc., took possession of said premises, and accepted the delivery of the Deed to her on that 25th day of November, 1925, and became bound according to agreement Exhibit "A" to pay such purchase money in the terms therein expressed; that on their part in performance the Rynda Co. did deliver the deed a copy of which is hereto annexed made a part hereof, marked Exhibit "B"; that acting upon that delivery and agreement complainant also bound herself by agreement Exhibit "C" to Franklin Society as more particularly set forth and as part performance of such agreement as more particularly herein set forth, and further made an agreement to finish the said house to complete to second payment of loan of Franklin Society as per Exhibit "C."

7. That thereafter and while said loan was to be closed at second payment, Complainant's assignor Chemtec Co., Inc., in agreement with complainant assigned for $400.00 certain other contracts to lands,

on the 18th day of December, 1922, and received such as a credit upon such purchase price and balance under Exhibit "A," by which said Rynda Co. did ratify such delivery of Deed.

8. That without any right the Rynda Co. and Jacob Hauptman, Abraham Hauptman and J. Lewis Fiacre acting in concert with Frank Hancock Hennessy and Franklin Society and fraudulently, on Dec. 21, 1922, did obtain such deed Exhibit "B," which they or either of them have and refuse to return so as to complete such loan and transaction.

9. That such Deed Exhibit "B," is a very valuable property of complainant, and a muniment of title; that such wilful withholding of such property so that the same may be properly recorded and such transactions closed does result in serious and irreparable injury and harm to the complainant, render insecure her title and possession and subject complainant to a Multiplicity of suits and serious annoyances.

10. That complainant has no adequate remedy at law.

11. That complainant can in no way be put back into her original position prior to such delivery of Deed.

12. That the Rynda Development Co., while apparently legally incorporated is a dummy corporation, owned, operated and controlled by Abraham Hauptman and through his agents Jacob Hauptman and J. Lewis Fiacre.

13. On August 28, 1922, the defendant Franklin Society for Home Building and Savings agreed to and with Chemtec Co., Inc., a New York Corporation to

grant a construction loan upon the usual conditions of said corporation of the sum of $9,000 (a copy of such agreement being hereto attached marked Exhibit "D") and said corporation received and obtained and required as part performance of said agreement to accept such loan a good fair deposit of One Hundred Dollars, which was given by the complainant on that day by check of your complainant which was paid to said Frank Hancock Hennessy and received by him (a copy of receipt such sum is made a part hereof Exhibit "E"). That your complainant became the assignee for value of the said Chemtec Co., Inc., of the Buildings, rights, title and interest in and to the contract of sale and purchase between Chemtec Co., Inc., and Rynda Development Co., and the possession of such premises herein, before described, on the 25th day of November, 1922, in pursuance of and as part performance of such agreement, and as part performance of such agreement on or about November 25th, 1922, did enter into a formal agreement dated day of October, 1922, a copy of which agreement is hereto attached and made a part hereof Exhibit "C" and in part performance of such agreement to loan and acceptance of such loan did on 27th day of November, 1922, deliver a deed duly executed and delivered from the Rynda Development Co., to complainant, Amalia R. Gluck, to be used and recorded upon the completion of such loan contract, and complainant did obtain such Deed and Delivery thereof as a part performance of this loan agreement, and did inform said Frank Hancock Hennessy to pay out of such loan to Rynda Development Company, the balance of purchase price of said Building lot, and to prepare a bond and Mortgage for the sum of Fourteen Hundred Dollars, upon the terms payable each year, etc., as provided in Exhibit

A, which mortgage should be a second Mortgage upon the Buildings and land described hereinabove and in said deed; for the preparation of such Bond and Mortgage the complainant agreed to pay said Frank Hancock Hennessy, which was to be executed at the closing of said loan agreement and which Bond and Mortgage was thereafter prepared by said Frank Hancock Hennessy, all of which were done in part performance of said agreement of loan.

14. That on the 26th day of December, 1922, the date set for closing, the complainant presented herself at the office of said Frank Hancock Hennessy and the office of the Franklin Society for Home Building and Savings, and was ready, willing and able to perform such contract, with all necessary releases, etc., and is now ready, willing and able to perform such agreement; that said Frank Hancock Hennessy did then inform her that just as soon as he would get back such deed that the agreement would be performed fully; that said Frank Hancock Hennessy did then inform her that said deed had been obtained from him by the representations of defendants Jacob Hauptman and the Rynda Development Co., that he said Jacob Hauptman was from the office of Merritt Lane a prominent Counsellor at Law of Newark, N. J., that they represented the Glucks and that the Glucks were not going through with the deed and did not want the loan; that said Frank Hancock Hennessy and Franklin Society for Home Building and Savings agreed and promised to get back such deed and perform such loan agreement.

15. That defendants, Frank Hancock Hennessy and Franklin Society for Home Building and Savings, have wholly failed to get back such deed, and purposely neglecting or refusing to obtain same, acting in con-

spiracy with the other defendants to the complainant's harm, destroyal of her rights, and continuing damage.

16. That it has now become certain that such deed will not, except by decree of this Court be brought back to the Franklin Society, for the completion of such agreements; that the defendants Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre and Rynda Development Co., or either of them have such deeds and other papers and refuse to give them up and are acting in concert with the Arlington Realty Co., to involve and attempt to destroy and irreparably injure complainant in her rights and property; that on December 7, 1925, there was recorded in the Essex County Register's office a deed to Arlington Realty Co. from Rynda Development Co., which deed was given for a nominal consideration dated October 29, 1925, and acknowledged, Dec. 2, 1925.

17. That the Arlington Realty Co. took such deed with full notice of the prior rights and equities of the complainant.

18. That sometime prior to October 29, 1925, there was recorded in the Essex County Register Office in a mortgage from Arlington Realty Co., to Dime Savings Bank of Newark, N. J. a savings bank Corporation for Eight Thousand Dollars; that such Dime Savings Bank took such mortgage with full notice of the prior rights and equities of the complainant.

19. That through these actions upon the part of the defendant and/or several of them and/or part of them the complainant has been withheld her full possession and has been damaged in a large sum and amount through the loss of rents and profits.

20. That these defendants and/or several of them and/or part of them are threatening to further embarrass and destroy the complainant's rights and property, are threatening a multiplicity of various actions, threatening to destroy papers, threatening to sell the property and deliver deed, threatening the possession of the complainant, threatening to sell and assign the mortgage, all or any of which may result in irreparable damage and injury to complainant in her equities, rights and property for which there can be no adequate remedy at law.

21. Complainant was and still is ready, willing and able to perform these agreements and to do everything and all things necessary to carry out these agreements, and if necessary to accept such performance as may be decreed by the Court and such compensation if only a part performance.

Complainant Therefore Prays:

1. That the defendants Rynda Development Co. (a New Jersey Corporation), Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Building and Savings (a New York Corporation), Frank Hancock Hennessy, Arlington Realty Co. (a New Jersey Corporation), and Dime Savings Bank (a New Jersey Corporation), and each of them may answer this Bill of Complaint and each statement therein made.

2. That the said defendants may be decreed to specially perform their contracts and do all things necessary to carry out the same.

3. That the Equities of all the parties herein be fixed,

declared and decreed, and decrees of Court be made and enforced for all purposes made necessary.

4. That the defendants, any and all of them be enjoined and restrained by decrees intermediate or at the determination herein from in any way continuing to act to do damage and injury to her property, Equities and rights, from in any way starting any action at law, from in any way interfering with her possession, from in any way selling transferring or incumbrancing such property and from destroying any deeds, muniments of title or other papers.

5. That the Court in its extraordinary jurisdiction fix the amount of complainant's damages by decree and who of any of the defendants shall pay the same and by decree compel the payment of same.

6. 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.

MICHAEL J. TANSEY,
Solicitor and Counsel of Complainants.

"A."

AGREEMENT OF SALE.

ARTICLES OF AGREEMENT, made the 1st day of May in the year of Our Lord One Thousand Nine Hundred and twenty-two.

Between Rynda Development Co., a corporation under the Laws of the State of New Jersey with its prin-

cipal office at Newark, N. J., of the of
in the County of
and State of party of the first
part;

And The Chemtec Company, a corporation under the laws of the State of New York with its principal office at of the of
in the County of
and State of party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Two thousand three hundred and forty dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that it the said party of the first part, will well and sufficiently convey to the said party of the second part, its successors, by Deed of Warranty, free from all encumbrance except the restrictions to run with said land and the Village zoning laws on or before the 1st day of August next ensuing the date hereof, all that lot, tract, or parcel of land and premises, hereinafter particularly described, lying and being in the Village of South Orange in the County of Essex and State of New Jersey.

Beginning at a point on the Northeasterly side of Rynda Road distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot Northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road Produced with the northeasterly side of Ridgewood Road produced, thence (1) along said side of Rynda Road North 48 degrees, 37 minutes West sixty feet; thence (2) North

41 degrees, 23 minutes East one hundred and forty feet; thence (3) South 48 degrees 37 minutes East sixty feet; thence (4) South 41 degrees, 23 minutes West one hundred and forty feet to the point or place of Beginning.

Being then westerly thirty feet of lot #32 and the Easterly thirty feet of lot #31 on Map of Property of Rynda Development Co., South Orange, N. J. made by Ira T. Redfern & Bro., Surveyors, South Orange, N. J. in February, 1922. And the said party of the second part for itself, its successors and assigns, doth covenant, promise and agree to and with the said party of the first part, its successors and assigns, that it, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Two Thousand three hundred and forty dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

One hundred and sixty dollars in cash at the time of signing this agreement, the receipt whereof is hereby acknowledged.

Seven hundred and eighty dollars in cash at the time of passing title.

Fourteen hundred dollars to be evidenced by party of the second part giving to party of the first part a mortgage in that amount at 6% interest to run for 2 years, same to provide that it shall be postponed and made second in lien to a new mortgage which party of the second part will place on said property together with the one family house which it agrees to erect thereon. It is hereby agreed and made a part of this agreement that the sum of first mortgage to be placed and above $1,400 shall not be more than 80% of the cost of said land and house.

It is further understood and made a part of this agreement that the above mentioned $1,400 mortgage shall be made payable one third at the end of first year and balance at the end of 2nd year.

Permission is hereby given unto the party of the second part by the party of the first part to go into and upon the said premises and to build and construct a house therein, any time prior to taking of title.

It is further agreed that Maurice B. Gluck will go on the Bond of above mentioned $1,400 mortgage, in person.

And It Is Further Agreed by the parties to these presents, that the said party of the second part its successors and assigns may enter into and upon the said land and premises on the 1st day of August next ensuing the date thereof, and from thence take the rents issues and profits to it and their use.

And It Is Further Agreed, by the parties hereto, that the said Deed shall be delivered and received at the office of J. Lewis Fiacre, 828 Broad Street, Newark, N. J.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part.

Between the hours of 10 in the forenoon and 2 o'clock in the afternoon on the 1st day of August next ensuing the date hereof.

Party of the first part hereby recognizes J. Lewis Fiacre as the broker in the above transaction and agrees to pay him five per cent commission for his services.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay upon

failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor.

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

RYNDA DEVELOPMENT CO.
By A. HAUPTMAN, Pres.
(Seal of Rynda Development Co.)
CHEMTEC COMPANY,
By M. B. GLUCK, Pres.
Signed, Sealed and Delivered in the presence of
J. Lewis Fiacre.

(Seal of Chemtec Co. Incorporated 1918 New York.)

State of New Jersey,
County of Essex, ss:

Be It Remembered, that on this First day of May, in the year of Our Lord One Thousand Nine Hundred and before me the subscriber, A Notary Public in and for New Jersey personally appears J. Lewis Fiacre, Secretary of the Rynda Development Co., who being duly by me sworn doth depose and make proof to my satisfaction, that he well knows the corporate seal of Rynda Development Co. the grantor named in the foregoing deed, that the seal hereto affixed is the proper corporated seal of said company; that the same was so affixed thereto and the said deed assigned and delivered by Abraham Hauptman who was at the date and execution thereof, the President of said company, in the presence of the said deponent, as the voluntary act and agreement of the said company, and that the said deponent thereupon signed the same as subscribing witness.

J. LEWIS FIACRE.

Sworn and subscribed before me
at the date aforesaid.
John B. Kirian,
Notary Public for N. J.
Term expires Jan. 29, 1925.

Bill of Complaint—Exhibit "B"

Extensions.

Time of passing title within mentioned is extended to Aug. 22, 1922.

RYNDA DEVELOPMENT CO.,
J. LEWIS FIACRE,
Sec.

"B."

THIS INDENTURE, Made the Twenty-fifth day of November, in the year of Our Lord One Thousand Nine Hundred and twenty-two.

BETWEEN Rynda Development Company, a Corporation, organized under the laws of the State of New Jersey located in the City of Newark in the County of Essex and State of New Jersey of the First Part: and Amalia R. Gluck, of the City of Easton, in the County of Northampton and State of Pennsylvania 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 it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith full satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to her heirs and assigns forever.

Bill of Complaint—Exhibit "B"

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of South Orange in the County of Essex and State of New Jersey.

BEGINNING at a point on the northeasterly side of Rynda Road, distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road produced with the northeasterly side of Ridgewood Road produced, thence (1) along said side of Rynda Road North forty-eight degrees, thirty-seven minutes west sixty feet; thence (2) North forty-one degrees, twenty-three minutes east one hundred and forty feet; thence (3) south forty-eight degrees, thirty-seven minutes east, sixty feet; thence (4) south forty-one degrees twenty-three minutes west one hundred and forty feet to the point and place of Beginning. Being the westerly thirty feet of lot #32 and the easterly thirty feet of lot #31 of map of property of Rynda Development Company, South Orange, New Jersey, Dated February, 1922.

TOGETHER with all and singular, the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in any wise appertaining; Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof; TO HAVE AND TO HOLD, all and singular the above described land and premises with the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever; And the said party of the first part does for itself and its successors, covenant and grant to and with the said party of the second part

her heirs and assigns, that the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever; except restrictions of record as contained in deed from the party of the first part as recorded in Essex County Register's office in Book of Deeds K 66, page 455, etc.

And Also, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid.

And Also, that the said party of the first part will warrant, secure, and forever defend the said land and premises unto the said party of the second part, her heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In Witness Whereof, the said party of the first part has caused these presents to be signed by its President and attested by its Secretary and its common seal to be hereto affixed, the day and year first above written.

RYNDA DEVELOPMENT CO.

Abraham Hauptman,
President.

(seal of)
(Rynda Co.)

Attest:

J. Lewis Fiacre,
Secretary.

Bill of Complaint—Exhibit "B"

State of New Jersey,
County of Essex, ss:

Be It Remembered, That on this twenty-seventh day of November in the year of Our Lord One Thousand Nine Hundred and twenty-two before me, An Attorney at Law of the State of New Jersey personally appeared J. Lewis Fiacre who, being by me duly sworn, doth depose and made proof to my satisfaction, that he well knows the corporate seal of the Rynda Development the grantor named in the foregoing deed; that the seal thereto affixed is the proper corporate seal of said company; that the same was so affixed thereto and the said deed signed and delivered by Abraham Hauptman who was at the date and execution thereof, the President of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

J. LEWIS FIACRE.

Sworn and subscribed before me at
Newark the date aforesaid.
Jacob Hauptman,
Attorney at Law,
Of New Jersey.

DEED

Rynda Development Company
to
Amelia R. Gluck

Dated, November 25th, 1922.

Bill of Complaint—Exhibit "C"

"C."

CONTRACT OF FRANKLIN SOCIETY TO A. R. GLUCK.

AGREEMENT made this day of October, 1922, between The Franklin Society for Home Building and Savings, a corporation organized and existing under the laws of the State of New York, hereinafter designated as the Lender and Amalia R. Gluck, hereinafter designated as the Borrower, is as follows:

WHEREAS the Borrower is now the owner of All that tract or parcel of land, situate in the Borough of South Orange, County of Essex, State of New Jersey, more particularly bounded and described as follows:

BEGINNING at a point on the Northeasterly side of Rynda Road, distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot Northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road Produced with the Northeasterly side of Ridgewood Road Produced, thence (1) along said side of Rynda Road North 48 degrees, 37 minutes West sixty feet; thence (2) North 41 degrees 23 minutes East one hundred and forty feet; thence (3) South 48 degrees 27 minutes East sixty feet; thence (4) South 41 degrees 23 Minutes West One Hundred and forty feet to the point or place of beginning. Being the westerly thirty feet of lot #32 and the Easterly thirty feet of lot #31 on Map of Property of Rynda Development Co., South Orange, N. J., made by Ira T. Redfern & Bro., Surveyors, South Orange, N. J., in February, 1922.

AND WHEREAS the Borrower has applied to the

Lender for a loan to aid said Borrower in the erection on said land of a 2 1/2 story frame one family dwelling from plans and specifications heretofore mutually agreed upon, and filed by said Borrower with the applications for said loan.

Now Therefore, the Lender accepts said applications and agrees to make a loan of Nine Thousand ($9,000) Dollars and the Borrower agrees to take it and covenants to observe the terms of this agreement. The said Borrower agrees to proceed continuously with the erection of said building, so that the same shall be completely finished and ready for ocupancy on the 1st day of February, 1923. If the Borrower proceeds with the erection of the building as above provided and observes the terms of Nine Thousand ($9,000) Dollars to be advanced as follows:

The sum of Three Thousand ($3,000) Dollars when the foundation wall is built, the house is raised, framed, sheathed and the finished roof on.

The sum of Three Thousand ($3,000) Dollars when the piazzas are roughed out, siding and outside trim finished, the inside floored, studded, lathed and second coat of plaster on (in the case where plaster board, sheet rock or any other composition plaster is used, it must be completely finished), chimneys built and topped out, soil line laid and connected with finished cesspool or sewer; all work to be carried along evenly.

The sum of Three Thousand ($3,000) Dollars when the house is completely finished, in accordance with filed plans and specifications.

Said loan is to be evidenced by the bond of the Borrower conditioned for the repayment of the amount so advanced with interest thereon at the rate of six per cent per annum, secured by a mortgage

covering said premises, in which bond and mortgage the husband of the Borrower shall join, and which shall be a valid first lien on said premises for all sums that may be advanced thereon, and subject to no encumbrances except such as may be waived by the Lender.

Said mortgage debt and interest shall be payable in monthly installments of Ninety ($90) Dollars per month, and shall contain the clauses usually employed by the Franklin Society for Home Building and Savings in its mortgages.

And the Parties Hereto Further Agree that if any Mechanics' Liens shall be filed against said premises, said Lender may retain or may deposit on behalf of the Borrower, with any public officer authorized to receive such deposits, sums sufficient to satisfy such lien or liens.

It Is Further Agreed That if said premises shall become encumbered by any lien or encumbrance not herein provided for, or if the Borrower shall proceed continuously and with a sufficient supply of labor and materials for the erection and completion of said building, or if a petition in bankruptcy should be filed by or against the Borrower, or if the material or construction be not in accordance with the plans and specifications or if the Borrower shall fail on request to supply the Lender with the proper release or releases by workingmen subcontractors or material men who have supplied labor or materials upon said premises or if the Borrower or builder shall not comply with municipal ordinances, or requirements of the Building Department, or orders or requirements of any other state or municipal authority having jurisdiction of the premises, then whenever and as often as any such event occurs, all obligations on the part of the Lender

to make further advances shall cease if the Lender so elect, and the said mortgage debt shall become due and payable, at the option of the Lender, anything in said bond and mortgage or herein contained to the contrary notwithstanding; but the Lender may make further advances thereafter, without becoming liable to make further advances and without thereafter waiving the right to demand payment of the said mortgage debt.

The Lender reserves the right to make any installment payment upon the said building loan before the time when the same may become due and payable, or may, if it deem it proper to do so, advance a part of any such payment before the whole of said payment shall be due under the terms aforesaid, but in no case shall the Lender be liable to make any payment upon said building loan if there are unsatisfied liens or encumbrances upon the property, created by or through the Borrower, or any subcontractors or materialmen claiming under him, or if the construction of said building has been unreasonably delayed, or if the Borrower shall fail to supply a sufficiency of labor and material to proceed with the completion of said building in accordance with the plans and specifications therefor.

During the construction of the building, representatives of the Lender shall have free access thereto for the purpose of inspecting the same, and no advance shall be due unless all work usually done at the state of construction when the advance is payable, shall be done in good and workmanlike manner, and all materials and fixtures usually furnished and installed at that time, be furnished and installed.

The making of any advance or any part of an advance shall not be deemed an approval or acceptance

by the Lender of the work theretofore done, and after each advance, the Lender shall be relieved of making any further advances until the character of the materials and workmanship be approved by its representative.

It Is Agreed that the fees to cover the examination of title and the continuance thereof, the attorney's, inspector's and surveyor's fees are to be paid by the Borrower.

It Is Understood That so much of each advance as may be necessary may be applied to the payment of accrued interest on the mortgage debt.

In Witness Whereof the Lender has hereunto caused its corporate seal to be affixed and these presents to be signed by its duly authorized officer, and the Borrower has hereunto set his hand and seal on the day and year first above written.

Attest

C. Williams Lloyd, Secretary.

(Seal of The Franklin Society for Home Building and Savings)

THE FRANKLIN SOCIETY
FOR HOME BUILDING AND SAVINGS
By (signature undecipherable)
R. Obtatioeal
V. President

In Presence of:

Bill of Complaint—Exhibit "D"

"D."

FRANK HANCOCK HENNESSY

COUNSELLOR AT LAW

15 Park Row, New York City

August 29, 1922.

Please call at Room 205
and ask for Miss Rodtz.

Chemtec Co., Inc.,
New York City.

Gentlemen:

My client, The Franklin Society for Home Building and Savings, acting upon your recent application, has granted a mortgage loan of $9,000.00 upon your property at South Orange, N. J., to be repayable in monthly instalments of $90.00. The matter has been referred to me for title examination and closing.

Kindly advise in writing, within ten days from date, of your acceptance of this loan or otherwise.

If you accept the loan, you will kindly bring or send to this office, together with your letter of acceptance, your deed, abstract or title policy, survey and any other papers which may assist in identifying the property and facilitate the examination of title. You will also at the same time deposit with this office the sum of $100.00 as a good faith deposit. On the closing of the loan, this sum will be applied on account of the expenses of the loan. Examination of title will not be commenced until after the deposit has been made. The deposit should be made in the form of cash or check to my order.

Bill of Complaint—Exhibit "D"

A survey showing the location of building upon the lands to be mortgaged must be furnished with every loan. If you have not a survey already prepared, and in such form as to be acceptable to the Society, or to a Title Company, it will be necessary for me to order one for you.

Yours very truly,
F. H. HENNESSY
R. R.

P. S. The granting of this loan is, however, subject to such conditions as may be communicated to you by the officers of the Society.

(Back of the above letter is):

FOR THE GUIDANCE OF THE BORROWER

Misunderstanding and delay will be avoided if the borrower will read what follows, carefully.

COST OF LOANS—ATTORNEY'S FEES AND DISBURSEMENTS IN NEW YORK

4% of amount granted, which covers appraisal, Title Company's search and guarantee, bond and mortgage, recording, revenue stamps and State mortgage tax. Minimum charge $75 (plus mortgage tax).

IN NEW JERSEY

2 1/2% of amount granted, which covers appraisal, search, bond and mortgage, recording and revenue stamps, Minimum charge $65.

Bill of Complaint—Exhibit "D"

COST OF CONSTRUCTION LOANS

Where a construction loan is made, the cost, in addition to the foregoing is $35.

SURVEYS

In every case the borrower shall, in addition to the foregoing, furnish or pay for a survey showing the location of the building on the land. In construction loans surveys should not be made until after the roof is on the building. No survey should be ordered until after the borrower has taken the matter up with the attorney.

INSURANCE

In the case of existing building, at the time of closing the loan all policies will be cancelled, and new insurance effected in at least the value of the buildings as reported by the Society's appraisers. If more insurance is wanted the attorney should be so advised at the time of closing. On the construction, insurance will be effected at the time of making the first payment (or before, on request of the borrower). A policy certificate will be sent to the borrower, showing the cost, which is standard.

The foregoing is in compliance with the Society's by-laws and the terms of the mortgage. A borrower who is building should therefore take the matter of insurance with the Society immediately upon the first delivery of material on the ground.

Bill of Complaint—Exhibit "E"

PAYMENTS OF CONSTRUCTION LOANS

Advances will be made as the work progresses, generally as follows:

1/3 of the loan when building is enclosed and rough plumbing in.

1/3 when the brown plaster is on.

1/3 when fully completed.

When the building has reached such a state as to entitle the borrower to a payment on a construction, a notice in writing should be addressed to the Franklin Society requesting an inspection. Upon favorable report received from the inspector, notification will be sent to the borrower to call at the Attorney's office for payment.

DEVIATIONS FROM PLANS

No deviations from plans and specifications on file may be made, unless the Society has first assented thereto.

"E."

FRANK HANCOCK HENNESSY,

COUNSELLOR AT LAW,

15 Park Row, New York City.

August 29, 1922

Received of Mr. Gluck check for $100 as a good faith deposit in connection with the Franklin Society's proposed loan on premises at South Orange, N. J.

F. H. HENNESSY,

R. R.

Answer of Defendant, The Dime Savings Institution.

(Filed December 28, 1925.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey corporation), *et als.*, Defendants.	On Petition, &c. Answer of Defendant, Dime Savings Institution.

The answer of the defendant, The Dime Savings Institution, to the complainants' Bill of Complaint, shows:

That it is a Savings Bank, with its principal office in the City of Newark, and is organized under the statutes of the State of New Jersey respecting Savings Banks.

1-17. As to the allegations of paragraphs one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, this defendant has not sufficient knowledge or information to form a belief.

18. As to the allegations of paragraph eighteen, this defendant admits that part of such allegations as allege the recording of a mortgage to this defendant by Arlington Realty Co. covering premises as described in said mortgage, given to secure a loan from

this defendant by Arlington Realty Co. in sum of $8,000.00. This defendant denies that it took such mortgage with full Notice or with any notice of the rights and equities of the complainants, if any such exist, and further denies that the rights and equities of the complainants are prior to the lien and operation of this defendant's mortgage upon the premises mentioned and described in said mortgage.

19-21. As to the allegations of paragraphs nineteen, twenty and twenty-one, this defendant has not sufficient knowledge or information to form a belief.

AFFIRMATIVE DEFENSES.

This defendant, by way of affirmative defense to the complainants' Bill of Complaint, avers that the mortgage made to it was made in the course of its ordinary business authorized under the statutes of the State of New Jersey under which it is permitted to invest a portion of its funds in first mortgages on real estate within the State of New Jersey.

That said mortgage was given as collateral security for a loan made to Arlington Realty Co., and that at the time it was given an examination of the title to the premises mentioned and described in this defendant's mortgage failed to disclose the record of any instrument which would put this defendant upon notice that the complainants claimed to have or did have an interest in, a right to, or an equity in the premises mentioned and described in this defendant's mortgage, nor did such examination disclose a *lis pendens* of any proceedings to establish the complainants' rights or interests, as is required by the statute in such case made and provided, nor did this defendant have any

actual notice of the rights or interest or equity claimed by the complainants to exist in favor of them or either of them.

Wherefore, this defendant avers that the complainants' bill of complaint is without equity against this defendant, and prays that it may hence be dismissed as against this defendant, with costs.

SAMUEL D. WILLIAMS,
Solicitor for Defendant,
The Dime Savings Institution.

Notice to Amend Answer of Dime Savings Institution.

(Filed May 11, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

Notice.

To Amalia R. Gluck and Maurice B. Gluck, Complainants, and/or Michael J. Tansey, their Solicitor.

Take Notice that on Tuesday, the 11th day of May, 1926, I shall apply to the Chancellor, at the Chancery Chambers, in the City of Newark, Essex County, New Jersey, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for leave to file an amendment to the answer already filed by it, such amendment to be of the tenor and in the form annexed to this notice and made a part hereof.

SAMUEL D. WILLIAMS,
Solicitor for and of Counsel with Defendant,
The Dime Savings Institution.

Proposed Amendment to Answer.

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO., a N. J. Corp., ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS, a New York Corp., FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO., a N. J. Corp., and DIME SAVINGS BANK, a N. J. Corp.,

Defendants.

Amendment to Answer.

The defendant, Dime Savings Bank, by way of amendment to the Answer already filed by it in the above entitled cause shows:

1. That the complainants are without equity as to this defendant for the reason that they have failed and neglected to endeavor to enforce their rights, if any they have, in the property mentioned and described in this defendant's mortgage for the period since December 9, 1924, and have failed to place upon the records of the Register of Essex County in its appropriate place the record of the contract for the purchase of said premises covered in this defendant's

mortgage alleged to be in their possession, which contract they allege to be in their possession and their property.

That for the reasons aforesaid the complainants are guilty of laches and their bill should be hence dismissed as against this defendant.

SAMUEL D. WILLIAMS,
Solicitor for and of Counsel with Defendant,
The Dime Savings Bank.

Service of the within Notice is hereby acknowledged this 5th day of May, 1926.

MICHAEL J. TANSEY,
Solicitor for Complainants.

Order Amending Answer of Dime Savings Institution.

(Filed May 24, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

Order.

The defendant, The Dime Savings Institution, having, by notice duly served upon and acknowledged by the solicitor for the complainants, given notice on application by it to the Chancellor at the Chancery Chambers, of the City of Newark, on the eleventh day of May, 1926, at ten o'clock in the forenoon, for leave to file an amendment to its Answer in the particulars specified in the copy of the proposed amendment annexed to and served with said Notice, and

the matter having been on May 11th, 1926, adjourned to May 18th, 1926, and now coming on to be heard in the presence of Michael J. Tansey, Solicitor for the complainants;

It Is, on this 24th day of May, 1926, Ordered, that the defendant, The Dime Savings Institution, be and it is hereby given leave to file an amended Answer in the above entitled cause, such amendment to be the same as the copy of proposed amendment served upon the Solicitor for the complainants with the Notice of the motion for this Order.

Respectfully advised,

I hereby consent to the making of the above Order.

MICHAEL J. TANSEY,
Solicitor for Complainants.

Original returned May 24th, 1926.

Replication to Answer of Defendant, The Dime Savings Institution.

(Filed Feb. 3, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, vs. RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Petition, &c. Replication to Answer of Defendant, The Dime Savings Institution.

The Complainants join issue on the answer of the defendant.

As to the affirmative defenses contained in said Answer Complainants reply:

1. That they have no knowledge or information thereof sufficient to form a belief that the Mortgage made to the Dime Savings Institution by Arlington Realty Company was made in the course of its ordinary business authorized under the Statutes of the State of New Jersey under which it is permitted to invest a portion of its funds in First Mortgages on real estate within the State of New Jersey.

2. They have no knowledge or information thereof to form a belief as to that part of the paragraph which says that said Mortgage was given as collateral security for a loan made to Arlington Realty Company, and Complainants deny the balance of said paragraph but say that the Dime Savings Institution took said Mortgage with full notice of the prior rights and equities of the Complainants, and that said Dime Savings Institution had full notice of the Complainants' interest by direct record in a chain of title of the said premises.

MICHAEL J. TANSEY,
Solicitor for Complainants.

Answer of Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

(Filed January 22, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill, &c. Answer of Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

Defendants, Rynda Development Company, a corporation of the State of New Jersey, Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre, answering the complainants' bill of complaint, say that:

1. They deny Paragraph 1 of the complainants' bill of complaint.

2. They deny Paragraph 2 of the complainants' bill of complaint and say that the complainant, Amalia

R. Gluck, is not the real party in interest and that Maurice B. Gluck is the real party in interest and has used the name of his wife merely as a matter of convenience.

3. Defendants deny that on May 1st, 1922, Abraham Hauptman was the owner in fee simple of a tract of land described in Paragraph 3 of the bill of complaint, but admit that the Rynda Development Co. was the owner of the land and that Abraham Hauptman was a mortgagee.

4. Defendants admit Paragraph 4 of the complainants' bill of complaint.

5. Defendants admit that the Chemtec Company entered upon and was let into possession of the lands described in the bill of complaint and that it commenced the erection of a house and garage thereon, but, that work on the said house and garage was abandoned before completion thereof.

6. Defendants admit that the closing date of such agreement marked Exhibit "A" in the complainant's bill of complaint was continued from time to time but deny specifically that the complainant or complainant's alleged assignor made a tender pursuant to such agreement on the 25th day of November, 1922, or at any other time; defendants admit the allegation of the complainant that there were informal treaties that the complainant was to be the assignee of the Chemtec Co., Inc., but that no definite agreement was ever arrived at and defendants further admit that as a condition precedent to the acceptance by the defendants of the complainant as the assignee of the said Chemtec Co., Inc., the said assignee would make, execute and

deliver a purchase money mortgage for the sums due the defendant, Rynda Development Co.; defendants deny that they ever, either jointly or severally, delayed the delivery of a deed for the premises but that they were always ready and willing to deliver such a deed upon the compliance of the complainant, or her assignor, with the terms and conditions of the agreement marked Exhibit "A" and attached to the complainant's bill of complaint, and that such conditions were never complied with by the complainant, or her assignor; defendants have no knowledge as to the first mortgage alleged to have been made by the complainant's assignor to the complainant for the sum of Eleven Thousand Five Hundred Dollars ($11,500) but deny that such sum of $11,500 could possibly have been less than 6% of the cost of improvements erected; defendants deny that a mortgage for $1,400.00 payable as provided in agreement Exhibit "A" of the complainant's bill of complaint was tendered to the Rynda Development Co., or its agents, and deny that the same was tendered at the place designated in said agreement marked Exhibit "A" or at any other place or time; defendants further deny that Rynda Development Co. refused the said tender or said that it was unnecessary but admit that the Rynda Development Co. said that they would accept the complainant as assignee of the contract marked Exhibit "A," and that they did execute a deed for the premises to the complainant but, that they refused to deliver the said deed to the complainant unless the conditions of the contract marked Exhibit "A" were complied with; defendants deny that Rynda Development Co. did agree to deliver the said deed to the complainant on that day upon the complainant's promise to forego the

first mortgage and to become the assignee and to promise to pay such purchase price, as defendants have no knowledge of a mortgage of $11,500; defendants further deny that they ever delivered a deed for the premises to the complainant on the 25th day of November, 1922, or at any other time and these defendants have no knowledge as to the other allegations contained in Paragraph 6 of the complainant's bill of complaint.

7. Defendants say that on or about the 25th day of November, 1922, Rynda Development Co. executed a Warranty Deed for the premises and refused to deliver the same to the complainant or her assignor unless and until the conditions of the agreement marked Exhibit "A" were complied with, but, that, at the request of Maurice B. Gluck, husband of the complainant, defendant, Jacob Hauptman, as attorney for the Rynda Development Co., took such deed and went to the office of Frank Hancock Hennessy, attorney for the defendant, Franklin Society for Home Building and Savings, at Park Row, New York, and there entered into an escrow agreement with the said Frank Hancock Hennessy whereby the Rynda Development Co. delivered the said deed in escrow to the said Frank Hancock Hennessy as attorney for the Franklin Society and which deed was to be held by the said Frank Hancock Hennessy for the Rynda Development Co. to be delivered to the complainant upon the payment by her to the Rynda Development Co., directly or through Frank Hancock Hennessy, of the purchase price contract for in the contract marked Exhibit "A," if the conditions were satisfied by the 21st day of December, 1922, and that unless the complainant com-

plied with the conditions of the said contract by the 21st day of December, 1922, the said deed was to be returned to the Rynda Development Co. and the complainant, or her assignor, would be at an end and it was specifically agreed upon that the continuance of the said agreement until the 21st day of December, 1922, was to be the last continuance granted by the Rynda Development Co. Defendants admit that the complainant's assignor, Chemtec Co., Inc., was given credit under the said contract marked Exhibit "A" towards the purchase price of said contract the sum of Four Hundred Dollars ($400.00), but, deny that such assignment was made on the 18th day of December, 1922, and say that such assignment was made prior to November 25th, 1922.

8. Defendants deny Paragraph 8 of the complainant's bill of complaint, but, say that sometime after the 21st day of December, 1922, Frank Hancock Hennessy informed the defendant, Jacob Hauptman, attorney for the Rynda Development Co., that the complainant had failed to comply with a certain agreement entered into between the Franklin Society and the complainant and that consequently the Franklin Society would not grant the mortgage loan to the complainant and that consequently negotiations between the said Franklin Society and the complainant were at an end and that consequently the escrow agreement between the Rynda Development Co. and the Franklin Society could not be carried out and that the deed delivered by the Rynda Development Co. to Frank Hancock Hennessy in escrow, would be returned to the Rynda Development Co. Defendant, Jacob Hauptman, further says that immediately after the said com-

munication from Frank Hancock Hennessy and upon the same day he communicated with Mr. Maurice B. Gluck, husband of the complainant and with whom all negotiations had been made for the complainant, and complainant's assignor, and informed him of his communication from the said defendant, Frank Hancock Hennessy, and that unless the said complainant made a tender of the purchase price under the agreement marked Exhibit "A" that the Rynda Development Co. would ask for the return of the deed from Frank Hancock Hennessy and that no further extensions of time would be granted; and defendant, Jacob Hauptman, further says that Maurice B. Gluck, as agent of the complainant and complainant's assignor, said that they could not make tender; and that subsequently the said deed marked Exhibit "B" was returned by Frank Hancock Hennessy in accordance with his agreement with the Rynda Development Co., to Jacob Hauptman and that the said deed was subsequently destroyed by the Rynda Development Co. Defendants further deny that the defendants, Rynda Development Co., Jacob Hauptman, Abraham Hauptman and J. Lewis Fiacre, acted in concert with Frank Hancock Hennessy and the Franklin Society and fraudulently obtained deed marked Exhibit "B" of the complainant's bill of complaint.

9. Defendants deny that they are individually or collectively, wilfully withholding the deed to said property, but say that the complainant has no right, title or interest whatsoever in the said property and deny that any injury or harm is being done to the complainant.

10. Defendants deny Paragraph 10 of the complainant's bill of complaint.

Answer of Rynda Co., Abraham and Jacob Hauptman and J. Lewis Fiacre

11. Defendants deny Paragraph 11 of the complainant's bill of complaint.

12. Defendants deny that Rynda Development Co. is a dummy corporation, owned, operated and controlled by Abraham Hauptman.

13. These defendants have no knowledge as to the allegations contained in Paragraph 13 of the complainant's bill of complaint relative to negotiations between the complainant and the Franklin Society and deny that the complainant ever gave a deed for the premises herein to the said Franklin Society as complainant never has such a deed.

14. Defendants deny the allegations contained in Paragraph 14 of the complainant's bill of complaint which set forth that December 26th, 1922, was the date set for closing and deny that the complainant was ready, willing and able to perform such contract on the date set for such closing and deny that any tender was made to the defendants or any of them. Defendant, Jacob Hauptman, further denies that he obtained the said deed from Frank Hancock Hennessy by representing that he was from the office of Merritt Lane, Counsellor at Law of Newark, New Jersey, and that they represented the Glucks and that the Glucks were not going through with the deed, but says that he, Jacob Hauptman, was of the office of Merritt Lane at that time, and had been for some time previous to that and that the Glucks knew that he was from Merritt Lane's office having negotiated with the said Jacob Hauptman in the office of Merritt Lane from time to time. Defendants further deny that Frank Hancock Hennessy or the Franklin Society

agreed and promised to get back such deed and perform such loan agreement.

15. Defendants deny Paragraph 15 of the complainant's bill of complaint.

16. Defendants deny Paragraph 16 of the complainant's bill of complaint, except that they admit that they did deliver a Quit Claim Deed for the premises to the Arlington Realty Co. on the 2nd day of December, 1925; and that said deed was delivered merely to aid the said Arlington Realty Co., a purchaser at the Sheriff's sale, to clear the title of said premises after the Honorable John H. Backes, one of the Vice Chancellors in this Court, in an opinion in the matter between Arlington Realty Co. and Amalia R. Gluck, held that the contention of Amalia R. Gluck, complainant herein, that a deed had been delivered to the Rynda Development Co. by her was false and that the deed was not delivered.

17. Defendants have no knowledge as to the allegations contained in Paragraph 17 of the complainant's bill of complaint.

18. Defendants have no knowledge as to the allegations contained in Paragraph 18 of the complainant's bill of complaint.

19. Defendants deny Paragraph 19 of the complainant's bill of complaint.

20. Defendants deny Paragraph 20 of the complainant's bill of complaint.

21. Defendants deny Paragraph 21 of the complainant's bill of complaint.

Answer of Rynda Co., Abraham and Jacob Hauptman and J. Lewis Fiacre

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

JACOB HAUPTMAN,
Solicitor for and of counsel with
Defendants, Rynda Development
Co., Abraham Hauptman, J.
Lewis Fiacre and of Jacob
Hauptman *pro se.*

State of New Jersey,
County of Essex, ss:

Jacob Hauptman, Abraham Hauptman and J. Lewis Fiacre, the within named defendants, being duly sworn according to law, on their oaths, depose and say that:

The matters and things set forth in the above answer so far as they relate to their own acts are true, and so far as they relate to acts of others they believe them to be true and the deponent, J. Lewis Fiacre, says that he is the Secretary and Treasurer of the defendant, Rynda Development Co., and knows the facts alleged in foregoing answer pertaining to the Rynda Development Co. to be true.

Signed JACOB HAUPTMAN (L. S.)
ABRAHAM HAUPTMAN (L. S.)
J. LEWIS FIACRE (L. S.)
RYNDA DEVELOPMENT COMPANY
By J. Lewis Fiacre,
Secretary & Treasurer.

Sworn and subscribed to before me this
day of January, 1926.

Notice to Amend Answer of Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

(Filed May 24, 1926.)

IN CHANCERY OF NEW JERSEY.

AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

against

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c. Notice.

To Michael J. Tansey, 164 Market Street, Newark, N. J., Solicitor of Complainants.

Sir:

Please Take Notice, That on Tuesday, May 18th, 1926, at ten o'clock A. M., or as soon thereafter as counsel may be heard, I shall make application on behalf of the defendants, Rynda Development Co., Abra-

Notice to Amend Answer of Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

ham Hauptman, Jacob Hauptman and J. Lewis Fiacre, for an order to amend the answer filed by the aforesaid defendants, on the following grounds:

1. That said answer as filed inadvertently omitted material facts that should have been contained in said answer.

2. That said answer inadvertently misstated certain dates and made allegations on the occurrences on certain dates instead of the correct dates.

JACOB HAUPTMAN,
Solicitor.

Service acknowledged May 12, 1926.
M. J. T.

Order Amending Answer of Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

(Filed May 11, 1926.)

IN CHANCERY OF NEW JERSEY.

AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Petition. Order to Amend Answer.

This matter being opened to the court by Jacob Hauptman, Solicitor of the defendants, Rynda Development Co., Abraham Hauptman, J. Lewis Fiacre, and of Jacob Hauptman, *pro se,* in the presence of Michael J. Tansey, Solicitor of the Complainants herein,

And It Appearing that the said defendants have heretofore filed their answer in this cause, and that the said petitioners, in paragraph seven of their said

answer, inadvertently alleged that the conditions of the escrow agreement therein referred to were to be satisfied by the Twenty-first day of December, 1922, and that unless the complainants complied with the conditions of the contract by the Twenty-first day of December, 1922, that the said deed was to be returned to the defendant, Rynda Development Co., whereas in fact, the said escrow agreement was to run until the fourth day of December, 1922, instead of the Twenty-first day of December, 1922; and furthermore the defendants having inadvertently denied that the assignment, as alleged in paragraph seven of the bill of complaint, was made on the Eighteenth day of December, 1922, whereas the said assignment was in fact made on the Eighteenth day of December, 1922, and not prior to November 25, 1922, as is alleged in the petitioners' answer:

And It Further Appearing that due notice of this application has been given to the parties entitled thereto; and the Court having read said petition and having heard and considered the arguments of counsel, and being satisfied that the prayer of the said petition should be granted; it is on this 24th day of May, 1926, Ordered, that the defendants herein have leave to amend their answer by substituting for paragraph seven thereof, the following:

"7. Defendants say that on or about the 25th day of November, 1922, Rynda Development Co., executed a Warranty Deed for the premises and refused to deliver the same to the complainant or her assignor unless and until the conditions of the agree-

ment marked Exhibit 'A' were complied with, but, that, at the request of Maurice B. Gluck, husband of the complainant, defendant, Jacob Hauptman, as attorney for the Rynda Development Co., took such deed and went to the office of Frank Hancock Hennessy, attorney for the defendant, Franklin Society for Home Building and Savings, at Park Row, New York, and there entered into an escrow agreement with the said Frank Hancock Hennessy whereby the Rynda Development Co. delivered the said deed in escrow to the said Frank Hancock Hennessy, an attorney for the Franklin Society and which deed was to be held by the said Frank Hancock Hennessy for the Rynda Development Co., to be delivered to complainant upon the payment by her to the Rynda Development Co., directly or through Frank Hancock Hennessy, of the purchase price contract for in the contract marked Exhibit 'A,' if the conditions were satisfied by the 4th day of December, 1922, and that unless the complainant complied with the conditions of the said contract by the 4th day of December, 1922, the said deed was to be returned to the Rynda Development Co. and negotiations between the defendant, Rynda Development Co., and the complainant, or her assignor, would be at an end and it was specifically agreed upon that the continuance of the said agreement until the 4th day of December, 1922, was to be the last continuance granted by the Rynda Development Co. Defendants admit that the complainant's assignor, Chemtec Co., Inc., was given credit under the said contract marked Exhibit 'A' towards the purchase price of said contract the sum

Order Amending Answer of Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

of Four Hundred Dollars ($400.00) on the 18th day of December, 1922."

And It Is Further Ordered that the defendants herein have leave to amend their answer, so that they may plead laches on the part of the complainants.

And It Is Further Ordered that the said amended answer be filed within three days after the date hereof, and that a copy of the said amended answer be served on the complainants or their attorneys, and on each of the other defendants within three days after the filing of the said amended answer.

E. R. WALKER,
C.

Respectfully advised,
MAZA LEON BERRY,
V. C.

Replication to Answer of Defendants, Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

(Filed March 11, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, vs. RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Bill, &c. Replication to Answer of Defendants, Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

The Complainants join issue on the Answer of the Defendants, Rynda Development Company, a corporation of the State of New Jersey, Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

MICHAEL J. TANSEY,
Solicitor for Complainants.

Answer of the Defendants, The Franklin Society for Home Building & Savings and Frank Hancock Hennessy.

(Filed Feb. 3, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:	On Bill, etc. Answer of the Defendants, The Franklin Society for Home Building & Savings and Frank Hancock Hennessy.
AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, and RYNDA DEVELOPMENT CO., *et als.*, Defendants.	

The defendants, The Franklin Society for Home Building & Savings, a New York corporation, having its principal office at 15 Park Row, New York City, New York, and Frank Hancock Hennessy, residing in the Borough of Haworth, Bergen County, New Jersey, answering the complainants' bill of complaint say that:

1. They have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4 and 5 of complainants' bill of complaint and therefore deny the same.

2. These defendants admit that on or about the 1st day of October, 1922, The Franklin Society for Home Building & Savings and Amalia R. Gluck entered into a contract, a copy of which is annexed to complainants' bill of complaint as Exhibit C, but as to the remaining allegations contained in paragraph 6 of com-

plainants' bill, these defendants say that they have no knowledge or information sufficient to form a belief as to the truth of the same.

3. These defendants have no knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 7 of complainants' bill of complaint.

4. They deny the allegations contained in paragraphs 8 and 9 of said bill in so far as they relate to these defendants.

5. Paragraphs 10 and 11 of said bill of complaint are denied.

6. These defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of complainants' bill.

7. They admit that on or about August 28, 1922, the defendant, The Franklin Society for Home Building & Savings, offered to loan the Chemtec Company, Inc., a construction loan in the sum of $9,000.00 and that said society required as part performance of said offer to loan, a good faith deposit of $100.00 which was given by the complainant on August 29, 1922; they further admit the execution of "Exhibit C" attached to complainants' bill but deny the remaining allegations contained in paragraph 13 of complainants' bill.

8. Paragraph 14 of said bill of complaint is denied and these defendants say that at no time have the complainants complied with the provisions of the contract entered into by and between The Franklin Society for Home Building & Savings and Amalia R.

Answer of Franklin Society for Home Building and Savings and Hennessy

Gluck on or about the 1st day of October, 1922 (Exhibit C), and have at no time been in a position to close the mortgage title according to said contract for the reason that the complainants never legally acquired title to the property described in paragraph 3 of said bill of complaint and never secured the necessary releases of the claims of mechanics and materialmen so as to enable the defendants, The Franklin Society for Home Building & Savings, failed to obtain from the complainants a mortgage on said property which would be prior to the claims of materialmen and laborers.

9. Paragraph 15 of said bill of complaint is denied.

10. These defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 16, 17 and 18 of said bill of complaint.

11. Paragraphs 19, 20 and 21 of said bill of complaint are denied.

First Special Defense.

The complainants should not now be allowed to maintain their suit in this court by reason of their failure to assert their alleged rights against these defendants within a reasonable time after the said rights came into existence.

Second Special Defense.

The complainants are guilty of laches.

De TURK & WEST,
Solicitors for and of counsel with the defendants, The Franklin Society for Home Building & Savings and Frank Hancock Hennessy.

Replication to Answer of Defendants, The Franklin Society for Home Building & Savings and Frank Hancock Hennessy.

(Filed March 11, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, vs. RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Bill, &c. Replication to Answer of Defendants, The Franklin Society for Home Building & Savings and Frank Hancock Hennessy.

The Complainants join issue on the Answer of the Defendants, The Franklin Society for Home Building and Savings and Frank Hancock Hennessy.

As to the special defenses contained in said Answer, Complainants deny all matters contained therein.

MICHAEL J. TANSEY,
Solicitor for Complainants.

Answer and Counterclaim of Defendant, Arlington Realty Company, a Corporation.

(Filed Feb. 13, 1926.)

IN CHANCERY OF NEW JERSEY.

A true copy.

RIKER & RIKER,
Solicitors for Defendant,
Arlington Realty Company, a corporation.

Between:

AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, etc. Answer and Counterclaim of Defendant, Arlington Realty Company, a Corporation.

The answer of the defendant, Arlington Realty Company, a corporation of the State of New Jersey, and the counterclaim of said defendant against the

complainants, Amelia R. Gluck and her husband, Maurice B. Gluck, as such, and Frieda Horn.

This defendant, Arlington Realty Company, a corporation of the State of New Jersey, having its principal office in the City of Newark, in said State, answering the bill of complaint, says that:

1. This defendant has no knowledge or information as to the allegations contained in paragraphs 1 to 15, inclusive, of complainants' bill of complaint, and thereby denies the same.

2. This defendant admits that it has received a deed from Rynda Development Co., dated October 29, 1925, and recorded on December 7, 1925, in the Essex County Register's office, but says that said deed was given for valuable consideration and after this Court had determined that a photostatic copy of a certain deed alleged to have been delivered by Rynda Development Co., to complainant, Amelia R. Gluck, was a fraud. Defendant denies the other allegations contained in paragraph 16 of the bill of complaint.

3. This defendant denies paragraph 17 of the bill of complaint.

4. This defendant admits that part of paragraph 18 of the bill of complaint which alleges that a certain mortgage was recorded from Arlington Realty Company to Dimes Savings Bank of Newark, N. J., for $8,000, but has no knowledge as to the other allegations contained in said paragraph.

5. This defendant denies paragraph 19.

6. This defendant denies paragraph 20.

7. This defendant has no knowledge as to the allegations contained in paragraph 21.

Answer and Counterclaim of Defendant, Arlington Realty Company, a Corporation

First Separate Defense.

1. Complainants are guilty of laches, in that they failed to prosecute promptly their alleged action for specific performance in accordance with the statute.

Second Separate Defense.

1. Complainants have heretofore in a certain suit brought in this Court by the defendants, Rynda Development Co. and Arlington Realty Company, claimed title to the premises in question by reason of a certain photostatic copy of a deed recorded in the Register's office of Essex County, which deed was declared to be a fraud by this Court in an opinion filed July 15, 1924.

Third Separate Defense.

1. This defendant has acquired legal title to said premises by reason of the two following deeds:

(a) Deed made by Harry B. O'Connell, Sheriff of the County of Essex, to this defendant, bearing date January 15, 1924.

(b) Deed executed by Rynda Development Co. to this defendant referred to in paragraph 16 of complainants' bill of complaint; and that this defendant has been and now is in peaceable possession of said premises.

This defendant, therefore, prays that the bill of complaint of said complainants may be dismissed, with costs.

Answer and Counterclaim of Defendant, Arlington Realty Company, a Corporation

BY WAY OF COUNTERCLAIM AGAINST COMPLAINANTS AND FRIEDA HORN, WHO IS HEREBY MADE A PARTY DEFENDANT, ARLINGTON REALTY COMPANY, A CORPORATION, SAYS:

1. That it is the owner of the premises mentioned in the bill of complaint filed in this cause by reason of two certain deeds, one executed by Harry B. O'Connell, Sheriff of the County of Essex, to this defendant, dated January 15, 1924, and the other executed by Rynda Development Co., to this defendant, dated October 29, 1925, and recorded in the Register's office of Essex County on December 7, 1925.

2. This defendant has been in peaceable possession of said premises since that time.

3. That complainants claim title to said property by reason of a certain deed executed by Rynda Development Co., to Amelia R. Gluck, a photostatic copy of which is annexed to a mortgage executed by the complainants to the defendant, Frieda Horn, and is recorded in the Register's Office of Essex County.

4. This defendant says that in this Court, in the cases of The Arlington Realty Company, complainant, and Amelia R. Gluck, and others, defendants, and Rynda Development Company and Arlington Realty Company, complainants, and Amelia R. Gluck, *et als.*, defendants, it was held that said photostatic copy of the deed was fraudulent.

5. That there appears of record in the Register's Office of Essex County a mortgage covering the lands in question in this cause, executed by the complainants to Frieda Horn, one of the defendants to this counterclaim. This defendant, Arlington Realty Com-

pany, a corporation, hereby charges that there was no consideration for said mortgage; that the mortgagors therein mentioned were not the owners of the lands at the time said mortgage was executed and delivered, and that said mortgage is fraudulent and that the rights of this defendant are superior to the rights of the said Frieda Horn by virtue of said mortgage.

6. That the photostatic copy of said deed and the mortgage to which it is annexed are a cloud upon the title of this defendant to said lands.

This defendant, therefore, prays:

(a) That said complainants, Amelia R. Gluck and her husband Maurice B. Gluck, as such, and Frieda Horn may answer this counterclaim, without oath, and each statement here made;

(b) That the original deed alleged to have been delivered by Rynda Development Co., to Amelia R. Gluck, one of the complainants and the photostatic copy thereof, together with the mortgage executed by said complainants to the defendant, Frieda Horn, be declared null and void, and that the same be cancelled of record;

(c) That this defendant may have such other and further relief in the premises as may be equitable and just.

(d) That a writ of subpoena may issue, commanding the defendant, Frieda Horn, to answer this counterclaim, and to abide by such decree as this Court may make in the premises.

RIKER & RIKER,
Solicitors for and of counsel with Defendant,
Arlington Realty Company, a corporation.

Replication to Answer of Defendants, Arlington Realty Co., a New Jersey Corporation.

(Filed March 11, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, vs. RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Bill etc. Replication to Answer of Defendants, Arlington Realty Co., a New Jersey Corporation.

The Complainants join issue on the Answer of the Defendant, Arlington Realty Company, a corporation of the State of New Jersey.

ANSWER OF COMPLAINANTS AND FRIEDA HORN TO COUNTERCLAIM OF DEFENDANT, ARLINGTON REALTY COMPANY.

1. They deny paragraphs 1 and 2.

2. They admit the deed from Rynda Development Company to Amelia R. Gluck, but deny the balance of paragraph 3.

3. They deny paragraph 4.

4. They admit the mortgage from Complainants to Frieda Horn, but deny the balance of paragraph 5.

5. They deny paragraph 6.

Complainants and Frieda Horn aver that the Counterclaim of Arlington Realty Company, Defendant, is without equity and pray this Court to dismiss the same with reasonable costs and counsel fee.

MICHAEL J. TANSEY,
Solicitor for Complainants & Frieda Horn.

Order Denying Motion to Strike Out Answers.

(Filed March 26, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

DIME SAVINGS BANK (a New Jersey Corporation),

Defendant.

On Bill, &c. Order Denying Motion.

A motion having been made by Michael J. Tansey, solicitor for complainants Amalia R. Gluck and Maurice B. Gluck, to strike out the answer filed herein by the defendant Dime Savings Bank, on the ground that the answer showed no defense and that the answer was sham, frivolous, untruthful and intended for delay; and it appearing that due notice of such motion had been given to the defendant; and the Court having heard the arguments of the solicitor for the complainants and the solicitor for the defendant; and being of the opinion that the objections taken by the complainants are not well founded:

It is thereupon on this 11th day of March, 1926, Ordered that the aforesaid motion be, and the same hereby is denied.

And it is further Ordered that the complainants pay the defendant's costs of this motion to be taxed; and that the said complainants pay as counsel fee to Samuel

D. Williams, the solicitor of the defendant, the sum of Twenty-five Dollars ($25.00).

Respectfully advised,

JOHN H. BACKES,
V. C.

E. R. WALKER,
C.

A true copy.

THOMAS BARBER,
Clerk.

Order Denying Motion to Strike Out Answers.

(Filed March 13, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Bill, etc. Order Denying Motion.

A Motion having been made by Michael J. Tansey, solicitor for complainants, Amalia R. Gluck and Maurice B. Gluck, to strike out the answer filed herein by the defendants, Rynda Development Company, Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre, on the ground that the answer showed no defense and that the answer was sham, frivolous, untruthful and intended for delay; and it appearing that due notice of such motion had been given to the defendants; and the Court having heard the arguments of the solicitor for the complainants and the solicitor for the defendants; and being of the opinion that the objections taken by the complainants are not well founded:

It is thereupon on this 11th day of March, 1926, Ordered, that the aforesaid motion be, and the same hereby is denied.

And it is further Ordered that the complainants pay the defendants' costs of this motion to be taxed; and that said complainants pay as counsel fee to Jacob Hauptman, the solicitor of the defendants, the sum of Twenty-five Dollars ($25.00).

E. R. WALKER,
C.

Respectfully advised:
JOHN H. BACKUS,
V. C.

Order Denying Motion to Strike Out Answers.

(Filed March 26, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Bill, etc. Order Denying Motion.

A Motion having been made by Michael J. Tansey, solicitor for complainants, Amalia R. Gluck and Maurice B. Gluck, to strike out the answer filed therein by the defendant, Arlington Realty Company, on the ground that the answer showed no defense and that the answer was sham, frivolous, untruthful and intended for delay; and it appearing that due notice of such motion had been given to the defendants; and the Court having heard the arguments of the solicitor for the complainants and the solicitor for the defendants; and being of the opinion that the objections taken by the complainants are not well founded:

It is thereupon on this 11th day of March, 1926, Ordered, that the aforesaid motion be, and the same hereby is denied.

And it is further Ordered that the complainants pay the defendants' costs of this motion to be taxed; and that said complainants pay as counsel fee to Riker & Riker, the solicitors of the defendants, the sum of Twenty-five Dollars ($25.00).

E. R. WALKER,
C.

Respectfully advised:
JOHN H. BACKUS,
V. C.

Order Denying Motion to Strike Out Answers.

(Filed March 26, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Bill, etc. Order Denying Motion.

A Motion having been made by Michael J. Tansey, solicitor for complainants, Amalia R. Gluck and Maurice B. Gluck, to strike out the answer filed herein by the defendants, Frank Hancock Hennessy and Franklin Society for Home Building and Savings, on the ground that the answer showed no defense and that the answer was sham, frivolous, untruthful and intended for delay; and it appearing that due notice of such motion had been given to the defendants; and the Court having heard the arguments of the solicitor for the complainants and the solicitor for the defendants; and being of the opinion that the objections taken by the complainants are not well founded:

It is thereupon on this 11th day of March, 1926, Ordered, that the aforesaid motion be, and the same hereby is denied.

And it is further Ordered that the complainants pay the defendants' costs of this motion to be taxed; and that said complainants pay as counsel fee to De Turk & West, the solicitors of the defendants, the sum of Twenty-five Dollars ($25.00).

E. R. WALKER,
C.

Respectfully advised:
JOHN H. BACKUS,
V. C.

Notice to Strike Out Interrogatories.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

AMELIA R. GLUCK, *et als.*, Complainants, and RYNDA DEVELOPMENT CO., *et als.*, Defendants.	Notice.

To Michael J. Tansey, Solicitor of Complainant,
164 Market Street, Newark, New Jersey.

Sir:

Please Take Notice, that on Tuesday, May 18th, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard; I shall move before one of the Vice-Chancellors at the Chancery Chambers, Newark, New Jersey, to strike the interrogatories served upon the Rynda Development Co., Abraham Hauptman, J. Lewis Fiacre, and Jacob Hauptman, on the following grounds:

1. That they are immaterial.

2. That some of the interrogatories are within the knowledge of the complainant.

3. That they are served for the purpose of prying into the defendants' defense.

4. That some of them are a matter of record.

JACOB HAUPTMAN,
Solicitor of Defendants, Rynda Development Co., Abraham Hauptman, J. Lewis Fiacre, Jacob Hauptman.

Service acknowledged May 12, 1926.

M. J. T.,
Solr.

Notice to Answer Interrogatories.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

against

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

Notice.

To Defendants: Rynda Development Company, Abraham Hauptman, J. Lewis Fiacre and Jacob Hauptman.

Please Take Notice that the plaintiff demands of the defendants in accordance with the Rules that defendants and/or person named make true and directly responsive answers under oath to the interrogatories hereto attached, and that you serve such upon the un-

dersigned within the time set by such rules—(ten days from the date of service hereof).

Dated, April 28, 1926.

MICHAEL J. TANSEY,
Solicitor and of Counsel for Plaintiff,
No. 164 Market Street,
Newark, N. J.

To:

Jacob Hauptman, Esq.,
Solicitor and of Counsel for defendants—Rynda Development Company, Abraham Hauptman, J. Lewis Fiacre and Jacob Hauptman.

To be answered by Jacob Hauptman, as attorney, Director and employee of defendant Rynda Development Company and as individual defendant.

1. When were you admitted to practice to the New Jersey Bar as an attorney, and when as Counsellor?

2. Are you admitted to practice in the State of New York, and when were you so admitted?

3. Did you make and prepare the answer of Rynda Development Company, Abraham Hauptman, J. Lewis Fiacre and Jacob Hauptman herein?

4. From whom and where did you obtain the facts to prepare the answer herein?

5. How are you related to Abraham Hauptman?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

6. What office did you hold in Rynda Development Company, from its incorporation to date, giving each office from incorporator to date, and the date when so held?

7. From whom and at what date did Abraham Hauptman receive title to the land, a part of which is the lot and premises in this action?

8. What consideration was paid for such land by Abraham Hauptman?

9. What was the nature, extent, terms and conditions respecting that land of Abraham Hauptman with J. Lewis Fiacre?

10. Who were the incorporators of Rynda Development Company, the amount of the capital stock incorporated for, the amount each subscriber agreed to take; the names of each subscriber, and the amount of such capital stock each of such incorporators actually took after organization?

11. How many shares were issued to you of the capital stock of Rynda Development Company and how many shares therein you now hold?

12. How many meetings of directors have you attended since organization of Rynda Development Company, giving their dates and who was present at such meetings?

13. What consideration did the Rynda Development Company pay for the land to Abraham Hauptman, in cash and Mortgages, giving the amount of such cash, if any, and the Mortgage, where recorded, block and page, and if any other consideration giving its terms and conditions?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

14. What was the terms, conditions and contents of the $35,000 Mortgage given by Rynda Development Company in purchasing such land?

15. Do you know as a fact that Rynda Development Company did not build or construct the house and garage at No. 122 Rynda Road?

16. Who prepared the deed from Rynda Development Company to complainant, dated November 25, 1922?

17. At what date was such deed prepared and who was present at the time?

18. With whom did you have a conversation if you say you prepared such deed, to enable you to have the facts for preparation, and particularly how was it that you made it out to complainant?

19. On what day of the week did the 25th day of November, in 1922, fall upon?

20. On that day were you at New Haven or any other place to a football game between Hartford and another team, giving the place, the names of the teams, who was present, and if the present Mrs. Jacob Hauptman was not in the party?

21. What does your diary show you did on November 27, 1922?

22. What does your diary show you did on November 28, 1922?

23. Were you on these three days employed in the office of Merritt Lane, Esq.?

24. Would it be likely that the diary of the office of Merritt Lane, Esq., would show just what duties you performed on these days?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

25. From whom did you learn the exact name of complainant and her domicile?

26. Will you explain how it was that the deed is dated Nov. 25, 1922, and the acknowledgment on such deed in Nov. 27, 1922?

27. You took the acknowledgment of such deed dated Nov. 25, 1922; on what date?

28. The acknowledgment of deed dated Nov. 25, 1922, is dated Nov. 27, 1922, and it is not likely that you would have taken it any other day?

29. So when you went to New York to the office of Frank Hancock Hennessy it was Monday, Nov. 27, 1922, was it not?

30. When, giving the actual date and how do you mean to indicate and by what facts that complainant assignor, Chemtec Co., Inc., abandoned work on the buildings?

31. Do you mean that certain contractors and workingmen quit the premises?

32. You knew that a release of Mortgage from Abraham Hauptman would be necessary to enable complainant to obtain the mortgage from Franklin Society, and you knew this on Nov. 27, 1922, did you not?

33. Why was it that, knowing that a release of blanket Mortgage from Abraham Hauptman was necessary you did not prepare and have same executed?

34. Tell just how it was that you took all the time to go to photographer on Warren Street wait there, and go 11 blocks to office of Frank Hancock Hennessy

when you could have gone directly to his office from Fulton Street Tube entrance, a matter of 2 blocks?

35. Tell just what happened at Mr. Frank Hancock Hennessy's office when you got there, giving the entire conversations?

36. What did Mr. Gluck say to you after leaving Mr. Hennessy's office in the hall and what you said to him?

37. Give the exact day upon which you went to Mr. Hennessy's office and got the deed from him?

38. What was the exact time, hour and day that you had a conversation with Mr. Gluck, relative to your going over and getting the deed, and give the conversation in full, with the place where such was held?

39. What was the exact conversation held between you and Mr. Hennessy, when you got him to give you the deed?

40. Have you examined your files and papers for the deed, since the hearing of May 18, 1925, in case of Arlington Realty Company vs. Amalia R. Gluck?

41. Will you produce the deed?

42. What have you done with the deed?

43. What have you done with the bond and Mortgage Amalia R. Gluck to Rynda Development Company?

44. Have you examined your files and papers for the bond and Mortgage of Amalia R. Gluck to Rynda Development Company since the hearing of May 18, 1925, in case of Arlington Realty Company vs. Amalia R. Gluck?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

45. On December 27, 1922, did you attend any meeting of directors to discuss the matter of sale of lot on Rynda Road, and what was the discussion and decision you reached?

46. On what day did you obtain from your father Abraham Hauptman permission for the Arlington Realty Company to go into the land in question and the buildings thereon?

47. Did you not testify and make the answers to the following questions in the hearing in case of Rynda Development Company and Arlington Realty Company against Amalia R. Gluck, on March 26, 1924, giving the page number from the official stenographer's minutes?

Page 7—Q. After December 4th what happened to the deed? A. Well, I communicated with Mr. Hennessy or he with me—I have forgotten which now—some time after the 4th of December and had found—Mr. Hennessy told me—that the Franklin Society refused to grant the loan because there were threatened—there were a number of mechanic's liens which were to be put on the property and he could not get releases from the various material men and sub-contractors and consequently the society would refuse to give the loan and that they would have nothing more to do with the matter, and suggested that I come and get the deed, and then, either late in December or early in January—I have forgotten the exact date—it was either immediately before or very soon after Christmas—Mr. Hennessy returned the deed to me.

Page 9—Q. Now, Mr. Hauptman, after the deed was returned to you by Mr. Hennessy, what did you

do with it? A. I think I returned it—I either returned it to Mr. Fiacre, secretary and treasurer of the Rynda Development Company, or else I destroyed it —I have forgotten which.

Q. When do you think you returned it to Mr. Fiacre—what month? A. Early in January, 1923.

Q. Can you state about what date in January you sent it to Mr. Fiacre, you think? A. Well, it was before the 15th of January because I went to the hospital on the 15th.

Q. Well, was it between the 10th and the 15th, do you think? A. I do nt remember; as a matter of fact, I am not certain that I returned it to him.

Page 14—Q. Was that the time you got the deed back, when Mr. Hennessy said those releases could not be obtained? A. No; it was a day or two perhaps three before I spoke to Mr. Hennessy on the telephone and he told me. When he told me that originally that was after the 4th of December.

Q. And when did you go over and get the deed? A. No, I cannot remember whether I got the deed personally. I know that I went for the deed and I remember on one occasion Mr. Hennessy was not there and his secretary spoke to me then and told me that the deal had gone through as far as the Franklin Society was concerned, but I do not remember whether I went again personally on a subsequent occasion to get the deed or whether it was mailed to me. I am inclined to believe it was mailed to me.

Q. Do you recall whether this was on or near the 4th of December when it was mailed to you or you returned it—received it back somehow? A. No. I know that I had a notation that the deed was received by me on the 27th or 28th of December.

Q. Now, before you took that deed back from Mr. Hennessy did you tell Mr. Gluck that you were going to take it back? A. Yes, sir.

Q. You explained to him that you were going to take the deed back? A. Yes, sir—well, I mean in this way that we had very thoroughly discussed the matter and told him that this was the last extension that he would get, and Mr. Fiacre told him that and my father also told him that and that if this deal were not consummated on the 4th of December, which was the time set by Mr. Gluck himself, there would be no further extension and that we would rescind.

Q. And because the deed—or because the deal did not go through on the 4th of December your company rescinded the arrangement, is that what you want us to understand? A. Well, I don't know. It seems to me that the thing was with Mr. Gluck's consent. I am not sure as to that. Mr. Fiacre can tell you that.

Q. I am not asking you that. Do you want us now to understand that because the deal did not go through on December 4th, that your Company rescinded the Gluck arrangement and took the deed back? A. Yes, sir; because he could not go through with it himself.

Q. On December 4th? A. He said if he could not go through on December 4th he never could go through.

Q. After this happened did you tell Mr. Gluck you were going over to get the deed from Mr. Hennessy? A. I don't know whether I did, Mr. Tansey.

Page 50—Q. When did you receive the deed dated November 25, 1922, from? A. From Mr. Fiacre.

Q. Personally or by messenger? A. From Fiacre

personally he came upstairs to Mr. Lane's office and gave it to me.

Q. And did you take the acknowledgment of that deed? A. I did.

48. Did you not under oath swear that the time for closing was extended or set for December 24, 1922, in these words "that unless he was ready, willing and able to take title on or before December 24, 1922," in the affidavit to the first bill of Rynda Development Company against Amalia R. Gluck?

49. Did you not testify and make the answers to the following questions in the hearing in case of Arlington Realty Company against Amalia R. Gluck, on May 18, 1925, giving the page number from the official stenographer's minutes?

Page 60—Q. And what was the date of the last extension given by the company? A. The last extension was given by me at Mr. Hennessy's office in New York.

Q. Mr. Hauptman, what was the circumstances of the last extension given under this agreement which I have just shown you? A. The last extension as I remember it was given by me when I delivered the deed to Mr. Hennessy.

Q. What was the date of that? A. That was about the 27th of November.

The Court: The agreement between the two companies.

The Witness: Between the Rynda and the Chemtec, yes, sir, and at that time I went to Mr. Hennessy's office and delivered the deed to Mr. Hennessy under an escrow receipt. I do not remember the exact date that this title was to close—that is at which the mort-

gage was to be paid by the Franklin Society in New York, but that was early in December and they—Mr. Hennessy was to hold the deed for us until the mortgage was actually granted and at which time he would retain for us the purchase money and also get for us the purchase money mortgage—second mortgage.

Q. I show you Exhibit C1 and ask if that receipt signed by J. H. Hennessy was given in return for the deed and the mortgage and bond? A. It was. It was given to me when delivered the deed to Mr. Hennessy at his office.

Following is the receipt.

November 28, 1922.

File 2576.

Received from Rynda Development Company instruments as follows:

Deed—Rynda Development Co. to Amalia R. Gluck.

Mtge—Amalia R. Gluck to Rynda Development Co.

Bond—Amalia R. Gluck to Rynda Development Co.

The above instruments referring to premises in the village of South Orange, Essex County, N. J., on Rynda Road 177 feet from Ridgewood Road, are to be held in escrow and to be used as the closing instruments in the closing of the Franklin Society's loan to the said Amalia R. Gluck in the amount of $10,000 to be closed on December 4th.

On the Delivery of the above instruments and the release from the present blanket mortgage $780 out

of the first advance on the said Franklin Society's loan is to be forwarded to the Rynda Development Co.

F. H. HENNESSY.

The above instrument received back from Frank H. Hennessy this 21st day of December, 1922, and all liability of Frank H. Hennessy in the premises is hereby released.

JACOB HAUPTMAN,
Attorney for Rynda
Development Company.

Page 63—Then Mr. Gluck came back to me after he had seen my father, and I was then upstairs in Mr. Lane's office—Mr. Gluck came in there and I took care of it, and my father came in and signed it and Mr. Fiacre, the secretary of the corporation, came to the office, upstairs, after I telephoned to him, and he signed it as secretary—attested it, and affixed the seal.

The Court: Is that the deed of which the photostatic copy was shown here?

The Witness: Yes, sir; I am quite sure that is it. I can recognize my father's and my own signature on it.

The Court: That is the deed.

The Witness: Yes, sir. Then Mr. Gluck wanted the deed and I was told not to give it to him, and he then again explained it was very important that he get it to Mr. Hennessy, and I suggested I would take it to Mr. Hennessy.

Page 64—I then took the deed and Mr. Gluck went with me to Mr. Hennessy's office on Park Row, we

saw Mr. Hennessy, I then explained to Mr. Hennessy that there had been a number of delays and that the Rynda Development Company were impatient about the matter and unless title was closed soon that the Rynda Development Company would rescind because of the breach on the part of the Chemtec Company or Amalia R. Gluck. I then delivered the deed to Mr. Hennessy for which he gave me a receipt and in which receipt he set forth.

Q. Exhibit C1? A. That was, I think, the 27th or 29th of November, 1922. Subsequently I telephoned to Mr. Hennessy's office, some time in December, and asked him whether there was any prospect of closing the title. Mr. Hennessy then said that the Franklin Society would not close the title until there was releases from certain material men and laborers. That very same day Mr. Fitzsimmons of Riker & Riker's office telephoned me—within an hour after I spoke to Mr. Hennessy—and told me that he represented I think four lien claimants who were about to file lien claims, and he notified me because he said he would have to join the Rynda Development Company as defendants because they were owners of the land and had given permission. I then again got in touch with Mr. Hennessy and told him the situation and he said he knew that that was the case, that he had been in communication with Mr. Fitzsimmons —or Mr. Fitzsimmons had communicated with him— and that the Franklin Society was through, that they would not grant the loan. I asked him to send the deed back and he said that he would prefer if I came over and signed a receipt for the deed and I went over on the 21st day of December, I think it was the 21st, and got the deed and gave Mr. Hennessy

the receipt for it. Subsequently Mr. Gluck communicated with me, which was in January, I do not remember the date. It was very early in January, because it was before I went to the hospital—and wanted another extension and I told him that he would have to see Mr. Fiacre or my father, one of the officers. As far as I was concerned it was perfectly agreeable if he should come through and pay the purchase price immediately.

Page 70—Q. And while you were in that place with Mr. Hennessy you then set the date for passing the title, didn't you? A. Mr. Hennessy set a day, yes, sir.

Q. And that time was December 24, wasn't it? A. No, sir.

Q. What? A. No, sir.

Q. Haven't you sworn in a former affidavit in this case it was December 24? A. I may have.

Q. Was it or wasn't it? A. It wasn't. It may have been it was either the 7th or 14th. It is so long ago I cannot remember the exact date—it was either the 14th or 24th—it may have been the 24th.

Q. If you swore in your affidavit at that time it was the 24th you think it is right, now, don't you? A. I do. When was that affidavit made?

Q. You got an affidavit here on the 25th of October, 1923? A. I think my memory then was probably better than it is now.

Q. And the date then was set for December 24th to close title? A. That probably may be true; I am not sure.

The Court: You mean that last extension?

The Witness: Yes, sir.

Q. That was the extension which you made in the office? A. Mr. Hennessy's office.

Q. It turned out that December 24th was Sunday, didn't it? A. The day before Christmas, but I don't know it was Sunday.

Q. It was thereafter put for the 26th? A. No, sir, it was not, not with my knowledge.

The Court: If it was extended to the 24th that was Sunday it would be the 26th?

The Witness: Yes, sir.

Q. At any rate you went and got the deed on the 21st of December, didn't you? A. Yes, sir.

Q. You didn't wait until the 24th? A. No, sir.

Page 73—Q. So that when you were there at that time the date was fixed for closing the title and the loan had already been granted, hadn't it? A. I don't know that the loan had been granted, and the date was not fixed as of the 24th, but it was fixed not later than the 24th, if the 24th was the date that was mentioned. I am sure of that.

Q. Now, you yourself got in touch with Mr. Hennessy, didn't you, later on, and told him—(interrupted)? A. Yes, sir.

Q. —that in view of the possibility of mechanic's liens being filed you were not going on with the contract? A. No, sir; absolutely no.

Q. What did you tell him? A. I asked him—I at that time didn't know. When I telephoned Mr. Hennessy I telephoned to find out when Mr. Gluck—Amalia R. Gluck was to take title. Mr. Hennessy told me then that as far as the Franklin Society was concerned they would never take title because they were no longer interested in it.

Q. When was that? A. That was either the 21st of December or the day before, I do not remember. It was immediately or the day before.

Q. You heard Mr. Hennessy testify yesterday, didn't you? A. Yes, sir.

Q. Didn't you then hear him say that you had told him you were going to rescind the contract, or you were not going on with it? A. I did tell him that.

Q. So that he did not tell you at that time that they were not going on with it? A. He certainly did.

Q. Did he tell you at that time that they had set the 26th of December for the closing of the title? A. No.

Q. Now, on the 18th of December your company received $400 on account of the purchase price from Mrs. Gluck, didn't you? A. I don't know the date. I know they did receive $400.

Q. Is this the receipt signed by your company, the Rynda Development Company for $400 on account of the lots? A. I didn't see it executed, but that is Mr. Fiacre's signature, I know that, and Mr. Harris', too, as witness. Exhibit C3.

Page 76—Q. Now, when you went over to Mr. Hennessy's office on the 21st of December you did not tell Mr. Gluck that you were going over to get back your deed. Did you? A. I don't think so, no. I am sure I did not—I am positive I did not.

Q. And you did not go there on the 26th of December to meet Mr. Gluck to carry on the deal? A. I had no appointment with Mr. Gluck on the 26th of December and had no knowledge and do not yet know that there was any title to be closed on the 26th or 27th of December.

Q. But you know on or before the 24th? A. Yes, sir.

Page 79—Q. Now, what did you do with that deed after you got it? A. I probably still have it in my papers. I am not sure.

Q. What did you do with the mortgage and the bond? A. I do not remember, Mr. Tansey, whether I left them with Mr. Hennessy to be sent to Mr. Gluck or whether I took them back with me, I am not sure.

Q. You signed a receipt for them, didn't you? A. I don't know.

Q. Take a look at it? A. Yes, sir, my receipt says so, so I must have taken them back.

Q. You don't know what has become of them since, do you? A. No, sir. I do not. They probably were returned to Mr. Gluck, but I couldn't say.

Page 80—Q. And you didn't care on December 21st when you went over there—you didn't care whether the money came from the building and loan or not? A. No, we didn't care on December 21st, no, sir, if we got our money. That was our only interest in the property.

Page 81—Q. I say you did not, after taking your papers on the 21st, you did not see whether Mr. Gluck could perform on the 24th or the 26th? A. It makes no difference, the deed had never been delivered. We were willing to deliver the deed at any time that Mr. Gluck or Amalia R. Gluck for any one of them or the Chemtec Company would perform.

Q. Now, the receipt, the escrow agreement which you refer to, provided for the payments of $780 to your company upon the passing of the title from the

first payment on the loan? A. I do not remember the amount.

Q. Now, that is what you were interested in when you went over to Mr. Hennessy? A. That and the mortgage.

Q. To see that you got your money—to see that he was informed about the money and that you would get your mortgage, that is all? A. That is all. That was our only interest.

Q. You didn't go over there to see that the deed was delivered to him, did you? A. I certainly did.

Q. What you did go for is to make it plain to him that you had $780 coming to you? A. I went there for that reason to see that the deed was not delivered to Mr. Gluck but to Mr. Hennessy.

50. Did you also testify and make the answers to the questions, at hearing on March 26, 1924, giving the page number from the official stenographer's minutes, as follows:

Page 8—Q. Do you recall in January, 1923, whether or not the firm of Riker & Riker, and more particularly Mr. Fitzsimmons of that firm, had papers out —mechanic's liens, in the suit of George G. Salmon, James A. Lalley & Tromer and William Allen and John J. O'Harah, were filed in January, 1923, and do you recall that your company, the Rynda Development Company, was made a party of those actions? A. Yes, sir.

Q. And were these four material men who had furnished material on that building? A. Yes, sir.

Q. And in each of these four suits has judgment been entered against the Rynda Development Company? A. Yes, sir, each of those four—I think those were the four judgments that were entered by consent.

Q. And that these mechanic's liens were for materials furnished prior to January 1, 1923, is that correct? A. Oh, yes.

The Court: What do you mean, they were entered by consent.

The Witness: Under the Mechanic's Lien Act, after having looked at the contract between Mr. Gluck and the Rynda Development Company I found that the Rynda Development Company had consented to the erection of the building by Mr. Gluck before the passing of title and under Section 7 of the Mechanic's Lien Act I found that the Rynda Development Company was liable as far as the land itself is concerned.

The Court: Under the Lien Law?

The Witness: Under the Lien Act, yes, sir.

Page 15—Q. After this happened did you tell Mr. Gluck you were going over to get the deed from Mr. Hennessy? A. I don't know whether I did, Mr. Tansey.

Q. Will you say you did not? A. That I did not tell him?

The Court: He says he doesn't know.

Q. That you did not tell Mr. Gluck? A. No; I wouldn't say that. I don't know, because I did have numerous conferences with Mr. Gluck. It was very annoying at the time and I do not remember whether I saw him immediately preceding the going over for the deed or whether I didn't.

Q. Did you tell him at any time that you were going over to get your deed from Mr. Hennessy? A. I do not know.

Q. Wasn't it a fact, Mr. Hauptman, that the real trouble with the deal going through on the part of the

Franklin Institute, the closing of the deal rather, was that there was a blanket mortgage on the Rynda Development Company property which had to be relieved by the Rynda Development Company? A. Of course not, because we had executed a release for postponement of the mortgage—one or the other—which was delivered, I think, to Mr. Hennessy, at the same time as the deed was delivered.

Q. Where is that release, if you know, or postponement? A. I don't know. I think that was returned to me at the time the deed was. Mr. Hennessy has the original slip which will show that, I think, or Mr. Walker has.

Q. What has become of it, if you know? A. It was probably destroyed at the same time the deed was, unless I returned them both to Mr. Fiacre, and I am not certain as to that.

Q. You say the release from the main mortgage on the Rynda Development Company property was delivered to Mr. Hennessy at the time of delivering the deed in escrow to him? A. I am quite certain, yes, sir, I am positive of it—either release or a postponement of the mortgage one or the other.

Page 51—Q. Was Mr. Gluck there? A. He was not, no, sir.

Q. Was he there at the time? A. No, sir, he came in at noon. I think it was exactly at noon that he came in.

Page 61—Q. On October 9, 1923, and during October, 1923, did the Rynda Development Company give permission to the Arlington Realty Company to enclose and take possession of the building known as 122 Rynda Road, South Orange?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

Mr. Tansey: I object as being after the sale in question—sheriff's sale—without any completion of purchase by the Arlington Realty Company at that sheriff's sale.

The Court: Objection overruled.

A. I do not remember whether it was in October, but I remember that it was immediately after—subsequent to the sale to the Arlington Realty Company that the permission was given to enclose the place.

Q. And did the Arlington Realty Company go in and take possession of the house, 122 Rynda Road, South Orange? A. Yes, sir; they did.

Q. What did they do? A. Well, they have enclosed the porch, they have enclosed most of it. I think all of the frame—that is, the windows. They protected the place for the winter and they put windows put in glass sash.

Q. And enclosed the garage? A. Enclosed the garage, put doors on, yes, sir.

CROSS-EXAMINATION by Mr. Tansey:

Q. Do you know whether that permission was in writing or by word of mouth? Was that permission in writing? A. I do not think so, no.

Q. Who gave the permission? A. The permission was given by the Rynda Development Company through me.

Q. You know yourself what sort of permission you gave, don't you? A. Yes, sir, surely.

Q. Was it in writing or word of mouth? A. It was not—it wasn't in writing because I know.

Q. To whom was it given? A. To Mr.—first Mr. Fitzsimmons telephoned me. I didn't know Mr.

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

Walker, and then immediately Mr. Walker telephoned. I gave them both permission, after I took it up—

Q. That was the way permission was given? A. Yes, sir.

Q. The only permission you know of was that? A. The only permission I know of, yes, sir.

Q. And what position do you hold in the company? A. Why, I am attorney for the company and also on the board of directors, but the permission, as I say, was given through me. I got it from my father and Mr. Fiacre, the officers of the company.

Page 63—Q. And the only title, or the only right of the Arlington Realty Company given by the Rynda Development Company was based on our permission, wasn't it? A. Well, as a result of the sheriff's sale, of course.

Q. I mean your permission, you have already spoken about? A. Well, I don't believe I understand.

Q. The only right which they had was based upon the permission which you have to do into possession? A. No; I don't know. All I know is that they bought at the sheriff's sale and asked our permission to preserve the premises before they got the deed, and we granted that permission. That is all I know about it.

Page 70—Q. How long have they been in possession? A. Since fall, last year. They were in possession in this way, too, I think they had an automobile in the garage.

Q. What? A. An automobile was in the garage all winter, and I am not certain as to that. I remember it going in—I remember having seen it taken in. I don't know whether it was in all winter or not.

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

Page 74—Q. My question to you was how did the Chemtec Company figure in it after the giving of the deed to Gluck? A. I don't know what you mean. Do you mean how did they abandon it?

Q. Yes? A. Why, they did it by celebrating. A lot of people came up there and they had some drinks and had a regular party out there for about four hours and everybody took their tools away—one Saturday afternoon—and that was the end of it and never seen there again.

Q. When was that? A. I do not remember the date, Mr. Tansey.

Q. Was it before or after the turning over the deed to Mr. Hennessy? A. That was after.

Q. After turning the deed? A. During the winter, yes, sir.

Q. And was Mr. Gluck there at that time, or Mrs. Gluck? A. I do not think so. I have never seen Mrs. Gluck there at all. I do not believe I ever saw her until I saw her here in court at the last hearing. Mr. Gluck had been there. I do not remember seeing him. There was about fifteen men there though.

Page 76—Q. How did you know that the Chemtec Company was going to abandon the premises on that day of the jamboree? A. Because all the gentlemen who had the jamboree said so.

Q. Did you tell them first of all to abandon the premises? A. No, sir, never; of course not.

Q. Did they notify you that they were going to? A. Yes, sir. They were having this party on what would be in front lawn and I was very interested. They saw me and asked me to come over and have a drink, and they explained to me that they had abandoned it; they couldn't go through with it.

Q. Who were the people who did that? A. Why the people who were doing the actual building, the contractors.

Q. It wasn't the Chemtec Company, was it? A. Well—the Chemtec Company itself?

Q. Yes? A. The Chemtec Company itself was not there.

Q. You said the Chemtec Company abandoned it. I want to know whether they were any of the officials of the Chemtec Company? A. I don't know who the officials of the Chemtec Company are.

Q. What you saw was some of the laborers or people who were building the building leaving the premises? A. Yes, sir.

Q. That is what you mean by the abandoning of the construction? A. Yes, sir.

Q. Did you see Mr. Gluck coming there to see the premises? A. No; I don't think I ever saw him after.

Q. Or Mrs. Gluck? A. No; I have never seen her.

Q. Was it before or after the sheriff's sale? A. This was before the sheriff's sale.

Q. What was? A. What I call the abandonment.

51. Did you also testify and make the answers to the questions at hearing on May 18, 1925, giving the page number from the official stenographer's minutes, as follows:

Page 62—Q. You suggested to him— A. I suggested to him that he see my father. I told him I was not an officer of the company. At any rate my father communicated with me and told me I should prepare the deed from the Rynda Development Com-

pany to Amalia R. Gluck, Mr. Gluck's wife, and it was—(interrupted).

The Court: The deed—the contract was—(interrupted).

The Witness: Between the Chemtec Company.

The Court: The contract was to the Chemtec Company, and the deed was to be made to Amalia R. Gluck, your father directed you.

The Witness: My father directed me to do that if I thought it was all right, and Mr. Gluck explained to him the reason for that was that Mr. Hennessy, the attorney for the Franklin Society, said they couldn't grant the loan unless they had a personal obligation on the bond—they wouldn't take a corporation.

The Court: Your understanding is there was a substitution of Mrs. Gluck for the Chemtec Company.

The Witness: Yes, sir, at that time there was; yes, sir.

The Court: At that time how far had the house on the property progressed?

The Witness: I think at that time, in November, they were brown coating.

The Court: Enclosed.

The Witness: Yes, sir; the building was enclosed. There were no windows or sash in, but outside of that. You see I live right next door to it.

Page 71—Q. Now, at the time you were talking to Mr. Hennessy about the title, on December—on November 27th, you are sure that was November 27th, aren't you? A. I am not. It was either the 27th or 28th.

Q. Well, if you say in your affidavit also it was December 27th—or November 27th, at that time were

you right? A. Well, I may have been mistaken but I was probably more nearly correct then than I could be now.

Q. You say in your affidavit it was on November 27th you were at Mr. Hennessy's office? A. That is probably true.

Page 74—Q. Look and see if December 24th, in the year 1922, did not come on Sunday, showing you a calendar of that year? A. The calendar shows that, yes, sir.

Mr. Tansey: I offer the calendar in evidence to show that the 24th came on Sunday.

The Court: That is wholly unnecessary. The Court will take notice.

52. Did you ever show or state to C. Herbert Walker the terms and conditions of the agreement of sale of Rynda Development Company and Chemtec Co., Inc.?

53. Did you ever show or state to Samuel D. Williams the terms and conditions of the agreement of sale of Rynda Development Company and Chemtec Co., Inc.?

54. Did you ever show or state to Thomas Fitzsimmons the terms and conditions of the agreement of sale of Rynda Development Company and Chemtec Co., Inc.?

55. Did you ever show or state to Henry H. Eisenberg the terms and conditions of the agreement of sale of Rynda Development Company and Chemtec Co., Inc.?

56. Was the agreement of sale from Rynda De-

velopment Company to Chemtec Co., Inc., introduced in evidence at the hearing in Rynda Development Co., and Arlington Realty Co., against Amalia R. Gluck, March 28, 1924?

57. Was the agreement of sale from Rynda Development Company to Chemtec Co., Inc., introduced in evidence at the hearing in Arlington Realty Co. vs. Amalia R. Gluck, May 18, 1925?

Interrogatories to

Defendants, Rynda Development Company and Abraham Hauptman.

To be Answered by Abraham Hauptman as President, Treasurer and Director of Rynda Development Company and Individually.

58. What office did you hold in Rynda Development Company, from its incorporation to date, giving each office from incorporator to date, and the date when so held?

59. How are you related to Jacob Hauptman?

60. Is J. Lewis Fiacre related to you by any blood or marriage ties?

61. What conferences did you have with Jacob Hauptman regarding the making of the answer herein; giving the date of such conferences and the substance of what you told him at such conferences?

62. From whom and at what date did you receive title to the land, a part of which is the lot and premises in this action?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

63. What consideration did you pay for such land and to whom?

64. What agreement did you have about such land with J. Lewis Fiacre?

10 65. How many shares were issued to you of the capital stock of Rynda Development Company and how many shares therein you now hold?

66. Who were the incorporators of Rynda Development Company, the amount of the capital stock incorporated for, the amount each subscriber agreed to take, the names of each subscriber, and the amount of such capital stock each of such incorporators act-
20 ually took after organization?

67. How many meetings of directors have you attended since organization of Rynda Development Company, giving their dates and who was present at such meetings?

68. What consideration did the Rynda Development Company pay for the land to Abraham Hauptman, in cash and mortgages, giving the amount of
30 such cash if any, and the mortgage, where recorded, block and page, and if any other consideration giving its terms and conditions?

69. What was the terms, conditions and contents of the $35,000 mortgage given by Rynda Development Company in purchasing such land?

70. Do you know as a fact that Rynda Development Company did not build or construct the house and garage at No. 122 Rynda Road?

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71. When and where did you first see the deed you signed and executed to complainant conveying premises 122 Rynda Road, dated November 25, 1922?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

72. Where did you sign and execute the deed to complainant dated November 25, 1922?

73. Did you ever hold the seal of the Rynda Development Company in your possession?

74. Did not J. Lewis Fiacre as secretary have charge and custody of the seal?

75. Did not Fiacre bring the seal to you in South Orange when you had to sign papers?

76. To what football game was your son on November 25, 1922?

77. Did you not on November 25, 1922, tell Mr. Gluck that your son was out of town to a football game?

78. Where were you on November 25, 1922, which was a Saturday?

79. Were you not in South Orange on November 25, 1922, paying your workmen in construction of Builders Construction Co.?

80. And if such a conversation was held on that day November 25, 1922, between you and Mr. Gluck, it could have only been held in South Orange, is not that the fact?

81. Do you recall any conversation on November 25, 1922, between you and Mr. Fiacre?

82. Were you to Mr. Fiacre's office on that day, Nov. 25, 1922?

83. What became of the deed dated Nov. 25, 1922, after you signed and executed it?

84. Who gave you the deed of Nov. 25, 1922, to sign and execute?

85. Who was present when you signed and executed the deed?

86. Have you any diary or can you by any books show where you were on the days Nov. 25, 1922, 27th and 28th, 1922, and after examination of such date can you show extracts and give facts where you were those days?

87. Why was the deed to complainant dated November 25, 1922?

88. On Nov. 27, 1922, you know you were not in the office of Jacob Hauptman and was not present when he acknowledged it, do you not?

89. When, giving the actual date, and how do you mean to indicate and by what facts that complainant assignor, Chemtec Co., Inc., abandoned work on the buildings?

90. Do you mean that certain contractors and working men quit the premises?

91. Do you not recall Mr. Gluck and Mr. Fiacre coming to see you on Nov. 25, 1922, with deed dated Nov. 25, 1922, and your signing it that day and executing it and giving it to Mr. Gluck, with the statement that your son Jacob Hauptman would be back on Monday, and Mr. Fiacre would go to his office and he, Jacob Hauptman would then acknowledge it?

92. What occurred with reference to the property and the assignment of two other contracts of sale on December 18, 1922?

93. Have you and will you produce the two contracts for purchase that were assigned back to you,

and give the wording of such assignment signed by Maurice B. Gluck as President of Chemtec Co., Inc.?

94. When were these assignments actually made and in whose presence?

95. You knew that while you were taking these assignments and crediting complainant with $400 as consideration on her purchase price, that Jacob Hauptman was then already negotiating for the deed with Mr. Hennessy?

96. On December 27, 1922, did you attend any meeting of directors to discuss the matter of sale of lot on Rynda Road, and what was the discussion and decision you reached?

97. Did you ever tell Mr. Gluck about the blanket Mortgage held by Abraham Hauptman on the property for $35,000.00?

98. Did you sign and execute the deed from Rynda Development Company to Arlington Realty Company for the property?

99. What were you given to understand and by whom, as to the purpose of making the deed to Arlington Realty Company?

100. What consideration was paid to you by the Arlington Realty Company for such deed?

101. Were you shown the opinion of Vice Chancellor Backus in Arlington Realty Company vs. Amalia R. Gluck at or before signing such deed to Arlington Realty Company and by whom?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

Interrogatories to Defendants, Rynda Development Company and J. Lewis Fiacre, to be Answered by J. Lewis Fiacre as Secretary, and Director of Rynda Development Company and Individually.

102. What office did you hold in Rynda Development Company, from its incorporation to date, giving each office from incorporator to date, and the date when so held?

103. How are you related to Abraham Hauptman?

104. Are you related to Abraham Hauptman by blood or marriage ties?

105. What conferences did you have with Jacob Hauptman regarding the making of the answer herein; giving the date of such conferences and the substance of what you told him at such conferences?

106. From whom and at what date did Abraham Hauptman receive title to the land, a part of which is the lot and premises in this action?

107. What consideration was paid for such land by Abraham Hauptman?

108. What agreement did you have about such land with Abraham Hauptman?

109. How many shares were issued to you of the capital stock of Rynda Development Company and how many shares therein you now hold?

110. Who were the incorporators of Rynda Development Company, the amount of the capital stock incorporated for, the amount each subscriber agreed to take, the names of each subscriber, and the amount of such capital stock each of such incorporators actually took after organization?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

111. How many meetings of directors have you attended since organization of Rynda Development Company, giving their dates and who was present at such meetings?

112. What consideration did the Rynda Development Company pay for the land to Abraham Hauptman, in cash and Mortgages, giving the amount of such cash, if any, and the Mortgage, where recorded block and page, and if any other consideration giving its terms and conditions?

113. What was the terms, conditions and contents of the $35,000 Mortgage given by Rynda Development Company in purchasing such land?

114. When did you learn for the first time the complainant's connection with the purchase of this land, how, under what circumstances?

115. How did you come to make a deed to complainant if she was not the assignee of Chemtec Company, Inc.?

116. Did you make and acknowledge the deed of Nov. 25, 1922, from Rynda Development Company to complainant?

117. Who actually prepared that deed?

118. When was such deed of Nov. 25, 1922, actually prepared giving the date, and who were present?

119. Did you actually see Abraham Hauptman sign and execute the deed to complainant?

120. Did you affix the seal of the corporation to such deed of Nov. 25, 1922, to complainant, and where did you affix it?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

121. Who had the custody and care of the seal of the Rynda Development Company?

122. Did you ever carry the seal of Rynda Development Company from your office to South Orange to Abraham Hauptman?

123. Do you know as a fact that Rynda Development Company did not build or construct the house and garage at No. 122 Rynda Road?

124. Have you any diary that would show just what you did and where you were on the dates, Nov. 25, 27 and 28, 1922?

125. On Nov. 25, 1922, did you and Mr. Gluck go up to South Orange to Mr. Abraham Hauptman?

126. Nov. 25, 1922, being a Saturday, Mr. Abraham Hauptman would be busy at South Orange and likely not to come to your office, is not that the fact?

127. Do you recall that on Nov. 25, 1922, Mr. Abraham Hauptman told you that his son Jacob was to a football game and would be back on Monday following?

128. What occasioned Mr. Abraham Hauptman to tell you that his son Jacob was at a football game and would not be back until the following Monday?

129. When did you first see the deed dated Nov. 25, 1922, to complainant?

130. How many days previous to its actual execution was it prepared?

131. Did you tell any one to prepare it, and how did you know the name of Complainant and her domicile?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

132. Where, when and at what hour did you actually sign your name to the acknowledgment of deed dated Nov. 25, 1922?

133. When, giving the actual date and how do you mean to indicate and by what facts that complainant assignor, Chemtec Co., Inc., abandoned work on the buildings?

134. Do you mean that certain contractors and workingmen quit the premises?

135. On Nov. 25, 1922, at and before noon did you not meet Mr. Gluck at your office?

136. At the date Nov. 25, 1922, did not Mr. Gluck appear to be angry and indicate that he was not going to have Rynda Development Company delay the delivery of the deed?

137. At that date Nov. 25, 1922, did not Mr. Gluck show you certain papers and a second mortgage to Rynda Development Company that he had made up for $1,400.00 and subject to a first mortgage to Amalia R. Gluck in sum of $11,500.00?

138. What was the conversation held between you and Mr. Gluck on that day before noon?

139. Pursuant to some conversation held at that time between you and Mr. Gluck did not you drive Mr. Gluck up in your automobile to South Orange to see Mr. Abraham Hauptman?

140. Did not Mr. Gluck at that time offer you cash and a second Mortgage of $1,400.00 subject to first Mortgage to Amalia R. Gluck of $11,500?

141. Did not you say in such conversation that

the offer was unnecessary and that you had a deed to Amalia R. Gluck and would have it signed and sealed by Mr. Abraham Hauptman that very day?

142. Do you not recall that after Mr. Abraham Hauptman signed and executed the deed on Nov. 25, 1922, Mr. Hauptman gave that deed to Mr. Gluck and told him his son knew his signature, and you would go with him on Monday and Mr. Jacob Hauptman would then acknowledge it?

143. You are certain that you did not bring that deed dated Nov. 25, 1922, with you to the office of Jacob Hauptman on Nov. 27, 1922?

144. You knew that a release of Mortgage from Abraham Hauptman would be necessary to enable complainant to obtain the Mortgage from Franklin Society, and you knew this on Nov. 27, 1922, did you not?

145. Why was it that, knowing that a release of blanket Mortgage from Abraham Hauptman was necessary, you did not prepare and have same executed?

146. Is it not a fact that you deliberately tricked Mr. Gluck into believing that you trusted him with the deed, knowing that you were secured in that you would not release the $35,000 Mortgage until he paid the purchase price?

147. Did you ever tell Mr. Gluck about the blanket Mortgage held by Abraham Hauptman on the property for $35,000.00?

148. What occurred with reference to the property and the assignment of two other contracts of sale on December 18, 1922?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

149. Have you and will you produce the two contracts for purchase that were assigned back to you, and give the wording of such assignment signed by Maurice B. Gluck as President of Chemtec Co., Inc.?

150. When were these assignments actually made and in whose presence?

151. You knew that while you were taking these assignments and crediting complainant with $400 as consideration on her purchase price, that Jacob Hauptman was then already negotiating for the deed with Mr. Hennessy?

152. On December 27, 1922, did you attend any meeting of directors to discuss the matter of sale of lot on Rynda Road, and what was the discussion and decision you reached?

153. Pursuant to such meeting did you write letter and envelope of Dec. 27, 1922, to "Morris B. Gluck"?

154. On December 26, 1922, did Mr. Gluck see you and what was the conversation held between you and him?

155. Did you not say to him at conversation of December 26, 1922, that you were disgusted with the Hauptman's and their dirty dealings and that they were a bunch of "dirty kiks"?

156. Did you not in pursuance of this conversation between you and Mr. Gluck on Dec. 26, 1922, arrange and have this meeting on Dec. 27, 1922, and write the letter of Dec. 27, 1922?

157. Did you sign and acknowledge the deed from Rynda Development Company to Arlington Realty Company for the property?

Interrogatories to Defendants, Rynda Development Company and Jacob Hauptman

158. What were you given to understand and by whom, as to the purpose of making the deed to Arlington Realty Company?

159. What consideration was paid to you by the Arlington Realty Company for such deed?

160. Were you shown the opinion of Vice Chancellor Backus in Arlington Realty Company vs. Amalia R. Gluck at or before signing such deed to Arlington Realty Company and by whom?

161. Did you also testify and make the answers to the questions at hearing on March 26, 1924, giving the page number from the official stenographer's minutes, as follows:

Page 29—Q. Did you know at that time the deed had been taken back by your company from the Franklin Company? A. We left that entirely to our counsel.

Q. I am asking you did you know? A. No; I did not know.

Page 49—Q. You did prepare the deed, however, and give it, didn't you? A. No, sir; our attorney prepared whatever deed there was.

Q. I say you executed the deed as secretary of the company? A. I did for our attorney; yes, sir.

Q. And was Mr. Gluck present at the time? A. No, sir.

Q. Was Mr. Gluck present at the time? A. I do not think so.

162. Did you also testify and make the answers to the questions at hearing of May 18, 1922, giving the page number from the official stenographer's minutes, as follows:

Page 7—Q. By the Arlington Realty Company?

A. By the Arlington. I met Mr. Walker there personally.

Q. In what connection with the company? A. I believe he is president of it.

Q. And what month in the fall of 1924 were you there? A. Oh, I was there September, October, I think.

Q. You say about October? A. I went there for the purpose of getting the house listed. I am in the real estate business in that territory and you gave me the house for list for sale when it was completed.

Page 82—Q. How much money had the Rynda Development Company received from the Chemtec Company or Amelia R. Gluck on account of the premises in question? A. How much? Altogether they received $160 on the signing of the contract May 1st and December—some part of December they received $400 additional.

163. At any time was there any directors' meeting at which the Rynda Development Company gave authority to Jacob Hauptman to consent to judgments in any of these lien actions affecting the premises?

Notice to Strike Out Interrogatories to Arlington Realty Co.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill &c. Notice.

To the Complainants, Amelia R. Gluck and her husband, Maurice B. Gluck, or Michael J. Tansey, Solicitor and Counsel for said Complainants.

Please Take Notice that on Tuesday, May 11th, 1926, at ten o'clock in the forenoon, daylight saving time, or as soon thereafter as counsel can be heard, we shall move before his Honor, Vice Chancellor Maja Leon Berry, at the Chancery Chambers in the Prudential Building, Newark, N. J., to strike out the interrogatories served upon the defendant, Arlington

Notice to Strike Out Interrogatories to Arlington Realty Co.

Realty Co., in the above matter on the following grounds:

First: Said complainants have failed to comply with an order of the Court of Chancery compelling said complainants to pay defendant, Arlington Realty Co., a counsel fee of $25.00.

Second: That said interrogatories are irrelevant and immaterial to the issues involved, are frivolous and are within the knowledge of said complainants.

RIKER & RIKER,
Solicitors for and of Counsel with
Defendant Arlington Realty Co.

Service acknowledged May 7, 1926.
M. J. T.

MICHAEL J. TANSEY,
Solicitor of Complainants.

New Jersey State Library

Notice to Arlington Realty Co. to Answer Interrogatories.

IN CHANCERY OF NEW JERSEY.

(Filed May 18, 1926.)

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill, &c. Notice.

To Defendant: Arlington Realty Company:

Please take notice that the plaintiff demands of the defendant in accordance with the Rules that defendant and/or person named make true and directly responsive answers under oath to the interrogatories hereto attached, and that you serve such upon the undersigned within the time set by such rules—(ten days from the date of service hereof).

Dated, April 28, 1926.

MICHAEL J. TANSEY,
Solicitor and of Counsel for Plaintiff,
No. 164 Market Street,
Newark, N. J.

To:
Riker & Riker,
Solicitor and Counsel for Defendant,
Arlington Realty Company.

Interrogatories to Defendant, Arlington Realty Company

To be Answered by C. Herbert Walker as President of Defendant Arlington Realty Co.

1. Are you admitted to practice as an attorney in New Jersey, and when were you admitted?

2. Were you ever employed in the office of Charles Stewart, Esq.?

3. Do you know whether Jacob Hauptman was ever employed in the office of Charles Stewart, Esq.?

4. What office do you hold in the Arlington Realty Company, and since what date?

5. Who acquainted you with the house and lot in question first?

6. How much did you pay in actual consideration for the assignments of the judgments upon the claims of Geo. G. Salmon Co., Willfred Allen, John O'Harra, Lally & Trehmore, a corporation, Elizabeth Sash & Door Supply Co., and Alexander-Morrison & Co., giving as well to whom paid and the dates?

7. In buying these judgments did you examine the liens, the suits on the lien claims, and the facts therein disclosed?

8. Did you not see that in the alleged lien claim of Geo. G. Salmon & Co., that the lien had been discharged because the County Clerk had failed to endorse upon the lien notice the issuing of the summons?

9. Is it not a fact that you knew no judgment predicated on Geo. G. Salmon Co., notice of lien could be valid because of the discharge of such lien

for failure to have endorsed on it by the County Clerk the date of issuing the summons?

10. Did you make a search of the title before your attempting to purchase at the Sheriff's sale on October 9, 1923, upon the judgment of Geo. G. Salmon & Co. lien claim?

11. Did you search against the name Rynda Development Company?

12. What does your search disclose that you found against the title 122 Rynda Road, South Orange, against the name Rynda Development Company from the taking of title by Rynda Development Company to and including October 9, 1923?

13. In such search did you find under the indexes of the County of Essex, Mortgagors Index Corporations, Book R, in the direct chain of title of Rynda Development Company any mortgage to Frieda Horn, what was such Index, the date, the book and page given of such recording?

14. What did you find were the recorded Mortgage from Rynda Development Company, *et als.*—to Frieda Horn, giving the same in full with all papers attached, and if the same was open of record or cancelled?

15. Did you also search against the name of Rynda Development Company for any Mechanics' lien notices on record?

16. Did you find the notices of lien of George G. Salmon Co., Lally & Tramer, a corporation, John O'Harra, Willfred Allen, Elizabeth Sash & Door Supply Company and Alexander-Morrison & Co.?

Interrogatories to Defendant, Arlington Realty Company

17. Did you continue such search to show whether action and suit was started, and what endorsements did you find made by the county clerk of Essex County upon the notices of lien of George G. Salmon Co., Lally & Trahmer, a corporation, John O'Harra, Willfred Allen, Elizabeth Sash & Door Supply Company and Alexander, Morrison & Co.?

18. Did you continue such search upon the lien claim of George G. Salmon & Co., and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

19. Did you continue such search upon the lien claim of Lally & Trahmer, a corporation, and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

20. Did you continue such search upon the lien claim of John O'Harra and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

21. Did you continue such search upon the lien claim of Willfred Allen, and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building or the buildings therein described upon premises therein

described, and as to the ownership of such buildings and land of Amalia R. Gluck?

22. Did you continue such search upon the lien claim of Elizabeth Sash and Door Supply Company, and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

23. Did you continue such search upon the lien claim of Alexander-Morrison & Co., and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

24. Did you examine and find a contract for building filed in the County Clerk's office from Amalia R. Gluck to Chemtec Co., a corporation, relating to the said premises, and give its contents?

25. Did you not see that in the alleged lien claim of Lally-Trehmer, a corporation that such lien claim had been discharged because no suit was started by Lally & Trehmer, a corporation, but only by Lally & Trehmer, a co-partnership, because the goods alleged to be sold and materials delivered were not and could not have been made a part of any building, were in fact mostly tools and appliances used in construction, and because suit had not been started and endorsed upon the lien claim within four months, the last materials as alleged to be furnished were prior to or on September 30, 1922, and the suit started and endorsed on lien, on February 8, 1923?

Interrogatories to Defendant, Arlington Realty Company

26. Is it not a fact that you knew no judgment predicated on Lally & Trehmer, a corporation, lien notice could be valid because of the discharge of such lien for failure to start suit and endorse thereon the starting of such suit within four months from the last materials furnished?

27. Is it not a fact that you knew no judgment predicated on Lally & Trehmer, a corporation, lien notice could be valid because the materials alleged to be furnished were not placed in any or part of the buildings so constructed?

28. Is it not a fact that you knew no judgment predicated on Lally & Trehmer, a corporation, could be valid unless suit had been started within four months from the time of the last furnishing of the material for such construction by Lally & Trehmer, a corporation, and that starting an action thereon by Lally & Trehmer, a co-partnership was not starting such action?

29. Is it not a fact that you knew that no notice of lien could be valid nor any judgment upon any lien upon such premises could be valid as against the Rynda Development Company's title or interest because the Rynda Development Company had not consented in writing to the building of such house and garage?

30. You knew, did you not, from the records that in none of these actions upon lien claim, had there been any service of process upon the complaint herein?

31. Before your purchase of these alleged judgments on alleged lien claims did not Mr. Thomas Fitz-

simmons tell you that there had been no service upon the complainant in any of these actions?

32. What conversations did you have with Jacob Hauptman before and since purchasing these assignments of judgment, giving the date and time of day, and if someone else was present the name and address of such person?

33. What conversations did you have with Thomas Fitzsimmons before and since purchasing these assignments of judgment, giving the date, and time of day, and if someone else was present the name and address of such person?

34. At Sheriff's sale on October 9, 1923, what notices were read at such sale, giving them in substance?

35. You knew also that similar notices had been received by the Sheriff to be read at sale of January 15, 1924?

36. After October 9, 1923, did you examine the record of Mortgages of Essex County and find a mortgage recorded thereon from Rynda Development Company and Amalia R. Gluck to Frieda Horn, with a copy of the deed attached?

37. What date would you fix as the first time you saw the record in the Register's office of the mortgage and copy of deed attached of Rynda Development Company and Amalia R. Gluck to Frieda Horn?

38. Subsequently and on August 26, 1924, you had an execution issued out of the Common Pleas Court of Essex County and had such returned satisfied on September 9, 1925, and signed a receipt for the moneys obtained on such execution on May 29, 1925. did you not?

Interrogatories to Defendant, Arlington Realty Company

39. You knew, did you not, from your examination of the records in these actions that all these alleged judgments had been obtained by consent of Rynda Development Company signed by Jacob Hauptman as an attorney, did you not?

40. Did it not occur to you that he might not have had any authority to do so?

41. Did you make any inquiries regarding the Rynda Development Company's right to give consent judgments in the premises?

42. Did you have any conversations with J. Lewis Fiacre, the secretary of the Rynda Development Company, regarding any phase of the premises in question, giving when, where and the substance of the conversations?

43. What date in October, 1923, and from whom did you obtain permission to go on and take physical control over the premises in question?

44. How many times, when and where and give the substance of such conversations did Maurice B. Gluck tell you to get off and keep off the premises?

45. Since the date in October, 1923, when you alleged you received permission from and with the consent of the Rynda Development Company have you or your company been in control of said premises and kept the complainant out of possession?

46. In 1925 you made a contract for the sale of the premises and installed the purchaser therein one Smith, did you not?

47. Give the terms of such agreement of sale by your company to Smith?

Interrogatories to Defendant, Arlington Realty Company

48. When did Smiths vacate the premises?

49. Whose auto truck have you kept and still keep to date in the garage of the said premises?

50. On the premises was a gasoline motor (power) which you placed or had placed in such garage, what have you done with it?

51. Whose automobile (pleasure type) is or has been occupying the other side of the garage on said premises, as distinguished from the auto truck?

52. Have you installed such person or rented or given permission in any way for such owner of automobile to occupy such garage?

53. What conversations respecting the property or loan thereon did you have with Mr. Samuel D. Williams or any officer of the Dime Savings Institution, giving the time when and where and the substance of such conversations?

54. Did you show Mr. Williams a copy of the opinion of Vice Chancellor Backus in case of Rynda Development Company and Arlington Realty Company against Amalia R. Gluck, and what, when and where was the substance of such conversations?

55. Did you make and execute a mortgage upon other property to Dime Savings Institution to substitute the mortgage given them by you upon these premises, giving the date, substance of same, and book and page number where recorded?

56. How many days after the rendering of opinion and decision of Vice Chancellor Backus in the case of Arlington vs. Gluck was such mortgage given to substitute the one given by you on the premises?

Interrogatories to Defendant, Arlington Realty Company

57. Who advised the obtaining of a deed from the Rynda Development Co.?

58. Why was such deed from Rynda Development Company to Arlington Realty Company dated October 29, 1925, when the acknowledgment was dated December 2, 1925?

59. What consideration did you pay the Rynda Development Company for such deed to Arlington Company?

60. What conversations did you have with the officers of the Rynda Development Company with respect to such deed to Arlington Realty Company, giving the time, and where such conversations were made?

61. The answer in this action of the Rynda Development Company is that this deed to Arlington Realty Company was understood to be only a quit-claim deed and only to help your company get a title because Vice Chancellor Backus gave his opinion that there had been no delivery to complainant, is this so?

62. In your answer, you deny that you have any knowledge or information to form a belief as to paragraph 5 of the bill of complaint, is that true, in spite of your examination of the records and papers affecting the premises or Mechanics' liens upon such premises?

63. In your answer, you deny that you have any knowledge or information to form a belief as to paragraphs 1 to 15 inclusive, is that true in spite of your examination of the records and papers, and that you

were present and conducted two actions and heard the testimony therein?

64. Who first showed you and where a copy of the agreement of sale of the premises from Rynda Development Company to Chemtec Co., Inc.?

65. Did you read the contents of the agreement of sale of the premises from Rynda Development Company to Chemtec Co., Inc.?

66. Did you ever show Mr. Samuel D. Williams a copy of the agreement of sale between Rynda Development Company and Chemtec Co., Inc.?

67. Did you show Mr. Samuel D. Williams a copy of the testimony taken in either or both cases in which you appeared as solicitor, taken in hearings of Rynda Development Co., and Arlington Realty Co., vs. Amalia R. Gluck, March 26, 1924, and in hearing in Arlington Realty Co., vs. Amalia R. Gluck, May 18, 1925, at any time, when and where and which testimony?

68. You were the solicitor and tried both cases at such hearings March 26, 1924 and May 18, 1925, were you not?

69. Was the testimony introduced that Amalia R. Gluck was the assignee of Chemtec Co., Inc., and did not Maurice B. Gluck so testify at both hearings, March 26, 1924 and May 18, 1925?

70. At such hearings of March 26, 1924 and May 18, 1925, was the agreement of sale between Rynda Development Company and Chemtec Co., Inc., introduced in evidence?

71. Did not Mr. Thomas Fitzsimmons show to you

or state to you the terms and conditions of agreement of sale between Rynda Development Company and Amalia R. Gluck, and when and where?

72. Before you bought the assignment of judgment of George G. Salmon Co., from Mr. Thomas Fitzsimmons as attorney for George G. Salmon & Co., did he not show you the complaint in George G. Salmon & Co. vs. Chemtec Co., Inc.?

73. What does the complaint of George G. Salmon & Co. vs. Chemtec Co., Inc., show was the agreement of sale between Rynda Development Co., and Chemtec Co., Inc., regarding the building of the house and garage and regarding the subject-matter of permission to build, and what are the exact words of such permission?

74. You knew as a fact, did you not, that Rynda Development Co., had no interest, claim or ownership in the building and garage upon the premises, and that they told you they had not built such house and garage, did you not, and when giving the date and where you learned such facts and from whom?

Notice to Strike Out Interrogatories to Defendant, Dime Savings Institution.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c. Notice.

To Amalia R. Gluck and Maurice, Complainants, and/or Michael J. Tansey, their solicitor.

Take Notice that on Tuesday, the 11th day of May, 1926, I shall move before the Chancellor, at the Chancery Chambers in the City of Newark, Essex County, New Jersey, at 10 o'clock in the forenoon, or

as soon thereafter as counsel can be heard, to have the interrogatories propounded to Dime Savings Bank and to Samuel D. Williams, its solicitor, stricken out and for nothing holden.

And Further Take Notice that at the time and place aforesaid the grounds for said motion will be as follows:

1. That the complainants are not entitled to propound interrogatories to this defendant, or its solicitor, until and unless the complainants shall have complied with the order of this Court made March 11th, 1926, for the payment of costs to this defendant or its solicitor on the unsuccessful motion by the complainants to strike out this defendant's answer.

2. That said interrogatories or some of them refer to information or facts appearing of record in the Register's or Clerk's office of the County of Essex, and therefore are as well known and easily ascertainable to the complainants as to this defendant or its solicitor.

3. That said interrogatories or some of them refer to facts or information not material to the issues raised by the pleadings between this defendant and the complainants.

4. That said interrogatories or some of them are sham, frivolous, immaterial, incompetent and irrelevant.

5. That said interrogatories or some of them refer to matters contained in the statutes of the State of New Jersey and therefore as well known or as easily ascertainable to the complainants as to this defendant, or its solicitor.

Notice to Strike Out Interrogatories to Defendant, Dime Savings Institution

6. That said interrogatories or some of them refer to matters peculiarly within the knowledge of the complainants or their solicitor and therefore are not properly the subject of interrogation of this defendant, or its solicitor.

SAMUEL D. WILLIAMS,
Solicitor for and of Counsel with Defendant, The Dime Savings Institution.

Service of the within notice is hereby acknowledged this 5th day of May, 1926.

MICHAEL J. TANSEY,
Solicitor for Complainants.

Noice to Answer Interrogatories to Defendant, Dime Savings Institution.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill, &c. Notice.

To Defendant: Dime Savings Institution:

Please take notice that the plaintiff demands of the defendant in accordance with the rules that defendant and/or person named make true and directly responsive answers under oath to the interrogatories hereto attached, and that you serve such upon the undersigned

within the time set by such rules—(ten days from the date of service hereof).

Dated, April , 1926.

MICHAEL J. TANSEY,
Solicitor and of Counsel for Plaintiff,
No. 164 Market Street,
Newark, N. J.

To:
Samuel D. Williams, Esq.,
Solicitor for Defendant,
Dime Savings Institution.

Interrogatories to
Dime Savings Institution.

To be answered by Samuel D. Williams, their attorney, searcher and employee.

1. When were you admitted as an attorney at law of the State of New Jersey?

2. How long have you been making searches of titles in the County of Essex?

3. Did you make a search of the records of the County of Essex respecting the title for the mortgage from Arlington Realty Company to Dime Savings Institution on property 122 Rynda Road, South Orange?

4. When did you make such search against title 122 Rynda Road, South Orange?

5. Did you search against the name Rynda Development Company?

6. What does your search disclose that you found

against the title 122 Rynda Road, South Orange, against the name Rynda Development Company from the taking of title by Rynda Development Company to and including the date of October 29, 1925?

7. In such search did you find under the indexes of the County of Essex, Mortgagors Index Corporations, Book R, in the direct chain of title of Rynda Development Company any mortgage to Frieda Horn, what was such index, the date, the book and page given of such recording?

8. What did you find were the recorded mortgage from Rynda Development Company, *et als.*—to Frieda Horn, giving the same in full with all papers attached, and if the same was open of record or cancelled?

9. Did you also search against the name of Rynda Development Company for any Mechanics' lien notices on record?

10. Did you find the notices of lien of George G. Salmon Co., Lally & Trahmer, a corporation, John O'Hara, Willfred Allen, Elizabeth Sash & Door Supply Company and Alexander Morrison & Co.?

11. Did you continue such search to show whether action and suit was started, and what endorsements did you find made by the County Clerk of Essex County upon the notices of lien of George G. Salmon Co., Lally & Trahmer a corporation, John O'Hara, Willfred Allen, Elizabeth Sash & Door Supply Company and Alexander, Morrison & Co.?

12. Did you continue such search upon the lien claim of George G. Salmon & Co., and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the

building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

13. Did you continue such search upon the lien claim of Lally & Trahmer, a corporation, and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

14. Did you continue such search upon the lien claim of John O'Hara, and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

15. Did you continue such search upon the lien claim of Willfred Allen, and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck.

16. Did you continue such search upon the lien claim of Elizabeth Sash and Door Supply Company, and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

Interrogatories to Defendant, Dime Savings Institution

17. Did you continue such search upon the lien claim of Alexander Morrison & Co., and examine the summons and complaint and what did you find in such summons and complaint alleges with respect to the building of the buildings therein described upon premises therein described, and as to the ownership of such buildings and land of Amalia R. Gluck?

18. Did you continue such search and examine the deed in Salmon action from the Sheriff to Arlington Realty Company, on sale of October 9, 1923, and find what interest if any in such premises were purported to be sold, and subject to what notices?

19. On examination of the notices read at such sale and purporting to be attached to the execution what interests in such premises, land and buildings, and whose interests therein were so described, giving any deed and documents claimed and when and where recorded?

20. On examination of such title what did you find with respect to execution in suit of lien claim of Lally & Trahmer a corporation, as to levy of whose interest, satisfaction of such execution, when and where returned.

21. On examination of such title, what did you find with respect to execution in suit of lien claim of Willfred Allen, as to levy of whose interest, satisfaction of such execution, when and where returned.

22. On examination of such title what did you find with respect to execution in suit of lien claim of John O'Hara, as to levy of whose interest, satisfaction of such execution, when and where returned.

23. On examination of such title what did you find with respect to execution in suit of lien claim of Eliza-

beth Sash & Door Supply Company, as to levy of whose interest, satisfaction of such execution, when and where returned.

24. On examination of such title what did you find with respect to execution in suit of lien claim of Alexander Morrison & Co., as to levy of whose interest, satisfaction of such execution, when and where returned.

25. On examination of such title did you find a sale by sheriff on execution of Lally & Trahmer a corporation, lien claim, and did you make any inquiries of the sheriff, as to the return of such execution upon such execution and sale, when and where so made, and as to the notices received by the sheriff before such sale and whether such notices were read at such sale, by whom, and whose interests in such premises were therein described?

26. Did you have any conversations with C. Herbert Walker with respect to any question in such title?

27. Did you have any conversation with Jacob Hauptman with respect to any question in such title?

28. What conversations did you have with C. Herbert Walker with respect to any question in such title, giving the date, the time of the day, the conversation, and who was present at the time?

29. What conversations did you have with Jacob Hauptman with respect to any question in such title, giving the date, the time of the day, the conversation, and who was present at the time?

30. Did you state to Michael J. Tansey in substance that on your search you had turned up the mortgage

of Frieda Horn and the recorded picture of deed from Rynda Development Company, on your search?

31. Did you state to Michael J. Tansey in substance that both C. Herbert Walker and Jacob Hauptman did show you a decision and opinion of Hon. Vice Chancellor Backus in the action of Rynda Development Co., and Arlington Realty Company against Amalia R. Gluck, *et als*?

32. What inquiries did you make at the premises with respect to the buildings upon the premises, whose they were and in whose possession.

33. What inquiries did you make at the premises as to the possession or ownership of the said premises?

34. What inquiries did you make in the neighborhood of the premises as to the possession or ownership of said premises?

35. What inquiries did you make in the building department of South Orange Village with respect to the buildings upon such premises?

36. Upon whose advice was the deed made from Rynda Development Company to Arlington Realty Company and dated October 29, 1925, although acknowledged as to date December 2, 1925?

37. When did your bank receive notice from Michael J. Tansey as attorney for Amalia R. Gluck to remove mortgage from Arlington Realty Company to Dime Savings Institution from the record?

38. What does such notice to remove mortgage to Dime Savings Institution state?

Interrogatories to Defendant, Dime Savings Institution

39. What other security was given by Arlington Realty Company to Dime Savings Institution to replace the mortgage to Dime Savings Institution upon the premises, and when was such given, and the book and page where recorded?

40. What does the mortgage state that was given by the Arlington Realty Company to Dime Savings Institution to replace and substitute as security for the loan and bond to Dime Savings Institution to replace the mortgage given by Arlington Realty Company to Dime Savings Institution upon the premises 122 Rynda Road, South Orange?

41. What inquiries in making such search did you make from any officer or person connected with the Rynda Development Company respecting the premises 122 Rynda Road, South Orange, with respect to deed made by them to Amalia R. Gluck, with respect to any contract of sale of such premises, and with respect to the construction of such buildings thereon, with whom were such conversations had, who else was present at the time, the conversation and the time and where such conversations were held?

42. Did you examine and find a contract for building recorded in the County Clerk's office from Amalia R. Gluck to Chemtec Co., a corporation, relating to the said premises, and give its contents?

43. Did you prepare and file the answer of the Dime Savings Institution in this action?

Interrogatories to Defendant, Dime Savings Institution

Interrogatories to
Dime Savings Institution
To be answered by its President.

44. When and what notice and demand to remove a mortgage from Arlington Realty Company to Dime Savings Institution upon premises 122 Rynda Road, South Orange was made and served upon you by Michael J. Tansey as attorney for Amalia R. Gluck, giving the contents of such demand and notice with all papers attached?

45. When and what mortgage was given to Dime Savings Institution, giving the date, and contents, and the book and page number where recorded in Essex County Register's office, to replace and substitute as security the mortgage given by Arlington Realty Company to Dime Savings Institution on Premises No. 122 Rynda Road, South Orange?

46. Upon whose advice was such mortgage taken as a substitute for the mortgage given upon the premises 122 Rynda Road, South Orange?

47. What has been done, if anything, to carry out the notice and demand to remove the mortgage from the premises 122 Rynda Road, South Orange?

48. What is the Dime Savings Institution, giving the certificate of incorporation with all amendments thereto?

49. What is the usual course of business of such Dime Savings Institution, as ordinary business authorized under the statutes, and which statutes?

50. In what respect the examination of the title failed to disclose the record of any instrument which would put Dime Savings Institution on notice?

Report of Special Master Upon Interrogatories.

(Filed June 7, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants. against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill, &c. Report.

TO HIS HONOR, MAJA LEON BERRY, VICE CHANCELLOR OF THE COURT OF CHANCERY OF THE STATE OF NEW JERSEY:

Complying with the order of reference, I respectfully report that I have carefully examined the pleadings in the above matter and two hundred eighty-seven interrogatories propounded by the complainants to the defendants. Before reaching my conclusions as to those interrogatories which should be answered.

I examined many cases to ascertain the rules of law which should guide me, and in my conclusions, guided by these rules, I find that only those interrogatories should be answered as are indicated in my report and attached to each set. In my opinion, ninety per cent of the interrogatories are absolutely prescribed by well known principles of law for the reason that obviously they are either

(a) Not material to the issue.

(b) The information requested is easily ascertainable by the complainants.

(c) Cannot assist the complainants in the preparation of their case.

(d) Require testimony clearly prohibited by the hearsay law.

(e) Vexatious and frivolous.

(f) See conclusions of the witness.

Respectfully submitted this fifth day of June, A. D., 1926.

JOHN BERNHARD,
Special Master in Chancery
of New Jersey.

In disposing of the motion expunging the interrogatories I have been guided by the following Rules:

1. If interrogatories are numerous and so carelessly drawn as to devolve upon the judge the trouble of settling them he may send them back to be reformed.

2. If interrogatories as a whole are vexatious and unreasonable the court may strike out all of them without sifting the mass for the purpose of saving those interrogatories which may be reasonable and proper.

3. a. Interrogatories must be material to the issue. Gavin vs. N. Y. Construction Co., 107 N. Y. S 272.

b. Interrogatories must be material to a case of the party filing them. 84 N. J. L. 143, 65 *id.* 130, 80 N. J. Eq. 509-516, 56 N. Y. Super. 600, 81 N. J. Eq. 253.

4. The Court and not the adverse party determines the relevancy.

5. Complainant is entitled to meet defendant's bill by knowing in advance what they intend to prove.

6. It seems to be inferred from Walker's case that an interrogatory eliciting the contents of a paper may be required and the question of its competency (primary or secondary evidence) to be determined at the trial.

7. It is also clear that the answer of a corporation must be under the seal of the corporation by such information as may come to the corporation through its officers or agents.

8. This is not a bill for discovery. The principle upon which the right of discovery is based is limited

to a discovery of material facts as relates to plaintiff's case, and does not extend to a discovery of the manner in which or of the evidence by which the defendant's case is to be established, or to any discovery of the defendant's evidence.

9. Frivolous or vexatious interrogatories need not be answered. 85 Ind. 535.

10. It has been held that a corporation may select its own agents to make answering interrogatories.

11. In Bocharsch vs. Bartlett, 81 Eq. 254, "A defendant is not required to put himself to the trouble of gathering information for the purpose of answering." While this principle relates to a motion by the complainant to strike out defendant's answer to the bill of complaint for the reason that the answer did not completely and minutely meet the allegations of the complaint, the principle is nevertheless held with reference to interrogatories.

12. Watkins vs. Cope, 86 Atl. 545, decides no principle of law, which I have not already considered, even though fraud is alleged by the defendants, Hauptman, *et als.*, against complainants.

13. Judge Fort said in Dodd vs. Public Service, 29 N. J. L. J. 22:

"The statute is clear, the answer to questions proper to be asked must be made by a corporation through some one or more persons, among its officers, agents or employees, who can answer them. If one interrogatory can be answered by one person who has the requisite knowledge, and another by some other person, who has such knowledge, then the answer must be made by several and by the officer, agent or employee, having the knowledge. A witness may be required to disclose facts from which a legal conclusion may arise, but he cannot give his opinion or conclusions of such facts."

Report of Special Master to Strike Out Interrogatories of Defendant, Dime Savings Institution.

(Filed June 7, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants.

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c.
Report.
Motion to Strike Out Interrogatories Propounded to Dime Savings Institution.

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

In pursuance of an order of the Court of Chancery, dated May 18th, 1926, wherein I was directed to determine whether certain interrogatories, or any of them, propounded in the above matter should be answered

by the various defendant or struck out, and to submit my conclusions to this Court, I do respectfully report as follows:

ONE.

I conclude that the motion to strike out all of the interrogatories should be granted for the reason:

(a) The interrogatories while addressed to the Dime Savings Institution specifically require answers from "Samuel D. Williams, their attorney, searcher and employee" to forty-three inquiries (page 2), and seven inquiries to be answered by its president. There is no statute or rule of this Court which authorizes a party propounding interrogatories to a corporation to designate a specific officer or employee of the corporation to make the answers. The statute upon this subject is:

"Complied Statutes, page 133, Rule 62, Interrogatories. When a cause is at issue between two or more parties, either of them may serve on the adverse parties, or any of them written interrogatories upon any matter material to the issue, with a note at the foot thereof stating which of the interrogatories each of the parties is required to answer.

"Written answer under oath shall be served within ten days after service of the interrogatories. The answer shall be strictly responsive.

"If the interrogatories are addressed to a corporation, the answers shall be made under the oath of such of the officers, agents or employees of the corporation as have personal knowledge of the facts, or custody of the books, records or papers, a discovery of which is sought."

While the notice demands answer from "defendant and or person named," the complainants have attempted to direct Mr. Williams, and the president of the company to respond, which in my opinion negatives the direction contained in the notice, and also contrary to the above statute.

(b) My examination of the law and decision leaves no doubt in my mind that a corporation must only obtain from its personnel, the information required, if material, and to submit its responses, under the seal of the corporation, verified by one of its competent officers.

Two.

If I am in error in the views which I have expressed, I am still of the opinion that the defendant should not be required to answer for these reasons:

(a) It is well settled that interrogatories must be material to the issue. So far as this defendant is concerned, the issue is in a very narrow scope. The complaint charges, paragraph 18, that the Arlington Realty Company executed a certain mortgage to this defendant, Dime Savings Institution, for $8,000, dated "Sometime prior to October 29th, 1925," which mortgage was subsequently recorded and that "said Dime Savings Institution took such mortgage with full notice of the prior rights and equities of the complainants." The original and amended answer of the Dime Savings Institution denies, "that it took such mortgage with full notice, or with any notice of the rights and equities of the complainants, etc.," and also set up laches of affirmative defense. The only issue between these parties is that of notice, except that in paragraph

19, there is a loose allegation of conspiracy "upon the part of the defendant, and or several of them." In reaching my conclusions, I have not considered the charge of conspiracy or connivance as against the Dime Savings Institution because there is no positive and unequivocal allegation to that effect. My determination is based upon the grounds which I will state:

Questions 1, 2, 3, 4 and 5 are immaterial.

Questions, addressed to Mr. Williams, Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25, are immaterial. All of these inquiries relate to an examination of the records by Mr. Williams, or his searcher, and the defendant, Dime Savings Institution is responsible for what the records contain and not what Mr. Williams found they contained. If on the other hand the purpose of the questions is to charge the Dime Savings Institution with constructive notice, the records are the best evidence and are as available to the complainants, as they are to this defendant. Perhaps at this point I should state a rule by which I have been guided, viz: A defendant is not obliged to put himself to the trouble of gathering information which is equally available to the complainant. Then too, if the information solicited is absolutely necessary to assist the complainants in preparing their case, for such information they can resort to the records, which is the best evidence.

Questions 26, 27, 28 and 29 do not come within the issue, so far as the face of the questions indicate.

Questions 30 and 31 are obviously improper because they contain their own answer.

Questions 32, 33, 34 and 35 presume that certain inquiries were made and are altogether too indefinite to indicate whether they relate to the issue. They

seem to seek data as to actual notice by this defendant, which is not charged in the complaint.

Question 36 relates to a transaction between the Rynda Development Co. and Arlington Realty Company and not between the complainants and this defendant.

Questions 37 and 38 ask for information clearly within the knowledge of the complainants or their solicitor.

Question 39 assumes a fact which does not appear in any of the pleadings.

Question 40 asks for information to be found in the records.

Question 41 is improper in part because it asks for the names of witnesses and also assumes a fact for which there is no basis in the pleadings.

Question 42 is immaterial because whether Mr. Williams found in the records of the Clerk's office a certain contract or whether he did not find it, this defendant is chargeable with constructive notice, if the contract is actually recorded.

Question 43 is frivolous for the reason that the answer of the Dime Savings Institution is signed by Mr. Williams as solicitor and the defendant is bound by it, whether or not he prepared and filed it.

(b) The remaining seven questions are addressed to the President.

Question 44 clearly asks for information within the knowledge of the complainants or their solicitor.

Question 45 pertains to a public document.

Questions 46, 47, 48, 49 and 50 are clearly immaterial—upon whose advice the mortgage was taken or the date of the encumbrance of this defendant, or what

is done in the usual course of business, seem to me to have been propounded with the intention to harass the defendant and not to seek information which will aid the trial of the issue.

For the reasons stated and upon the principles of law set out, as to this defendant, I find and report that the motion to strike out all these interrogatories should be granted.

All of which is respectfully submitted this fifth day of June, A. D. 1926.

JOHN BERNHARD,
Special Master in Chancery
of New Jersey.

Report of Special Master on Interrogatories Addressed to Arlington Realty Company.

(Filed June 7, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

against

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, etc. Report.

The complainants demand that these interrogatories "be answered by C. Herbert Walker, president of Arlington Realty Company." As I have indicated with reference to a corporate defendant, I think that there is no legal authority which authorizes the complainants to demand answer from any specific officer of a corporation. Therefore all of the interrogatories are improper.

In the event that I have misconceived this rule of law, then I report that the defendant should an-

swer questions Nos. 37, 43, 45, 46, 47, 48, 59 and 74, and that it should not be obliged to answer the other sixty-six questions.

With reference to this defendant, the complainants charge, paragraph seventeen, "That the Arlington Realty Company took such deed (deed from Rynda Development Company to Arlington Realty Company alleging to have been for a nominal consideration) with full notice of the prior rights and equities of the complainants," and that this defendant threatens to embarrass and destroy the complainants' rights and property. The Arlington Realty Company denies the allegation.

I desire again to call the attention of the Court to the indefinite undivided charges of conspiracy in paragraphs nineteen and twenty of the bill which are in these words, "that these defendants and/or several of them, and/or part of them are threatening, etc.," which makes it practically impossible for me to determine whether the complainants charge this particular defendant with conspiracy, which would help me determine the materiality of the interrogatories. The complainants alone, are responsible for this condition of the pleadings.

A large number of these questions relate to what, if anything, Mr. Walker found by searching the records in the Essex County Register's Office. Whatever he found, if he found anything, can also be ascertained by the complainants or their solicitor. I am not at all certain that these matters of record are material but I base my rule upon the principles just stated.

Respectfully submitted this 5th day of June, 1926.

JOHN BERNHARD,
Special Master in Chancery
of New Jersey.

Report of Special Master on Motion to Strike Out Interrogatories Propounded to Rynda Development Company, Abraham Hauptman, J. Lewis Fiacre and Jacob Hauptman.

(Filed June 7, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:	
AMELIA R. GLUCK, *et als.*, Complainants, and RYNDA DEVELOPMENT CO., (a Corporation), *et al.*, Defendants.	On Bill, &c. Report.

With reference to the interrogatories propounded to the defendants, Rynda Development Company, Abraham Hauptman, J. Lewis Fiacre and Jacob Hauptman, I respectfully report as follows:

The defendants, above named have answered the bill jointly, although the bill prays for an answer by each of them to "each statement therein made." This status of the pleadings makes the determination of the issues extremely difficult, because the materiality of the interrogatories rests upon the issues made by the pleadings. This situation is still more involved by the fact that all of the interrogatories directed to this set of defendants, to the number of one hundred sixty-three, served under one cover and questions to one of these defendants were repeated in the same form to one or more of the other of these defendants. Therefore, they come within the principles of law. "If inter-

terrogatories are numerous and so carelessly drawn as to devolve upon the judge the trouble of settling them, he may send them back to be reformed," and, "If interrogatories, as a whole, are vexatious and unreasonable the court may strike out all of them without sifting the mass for the purpose of saving these interrogatories which may be reasonable and proper."

Guided by these two rules, I think the Court would be justified in directing the complainants to reform the mass and confine the inquiries succinctly to the issue. I will, however, designate the number of the interrogatory which the defendants should answer without stating the reasons. My conclusions are based upon the principles attached to the general report. All the remaining interrogatories should be stricken out.

ONE.

To the interrogatories directed to the Rynda Development Company, for reasons which I have set out in my report covering the questions propounded to the Dime Savings Institution, I think that the complainants are not entitled to an answer, because the responses are required to be made "by Jacob Hauptman, as attorney, director and employe of the Rynda Development Company, and as an individual." There are fifty-seven of these interrogatories, many of which are repeated, in the demand to Jacob Hauptman, as an individual. If, however, my reasons are not sustained, I conclude that the Rynda Development Company, through its selected officer, and under its seal, should answer interrogatories Nos. 6, 8, 11, 26, 40 and 44, and that Jacob Hauptman should be requested to reply to Nos. 10, 11, 15, 20, 26, 27, 34, 35, 37, 39, 41 and 42. Even though question 20 seems irrelevant (whether

Mr. Hauptman attended the Yale-Harvard game) it may be important to show that he was at a place far distant from the county where the acknowledgment indicates he must have been (if true) on the date stated in the instrument. As to questions 34, etc., Jacob Hauptman admits that he had a conference with Mr. Hennessy at his New York office about the deed and as fraud is a pertinent issue Mr. Hauptman should divulge the substance of his talk with Mr. Hennessy. All the other interrogatories up to forty-four obviously are not material or are within the knowledge of the complainants, and all interrogatories subsequent of No. 44, relate to testimony taken at a prior proceeding, which testimony is substantially repeated in the interrogatories. This disposes of the questions of No. 58.

Two.

Those inquiries directed to the Rynda Development Company, "to be answered by Abraham Hauptman, as president, treasurer and director of the Rynda Development Company, and individually, for the reasons already stated, need not be answered by Abraham Hauptman, as president. If, however, the Court determines that the president should answer such interrogatories as are proper, then I decide of the interrogatories No. 58 to 198, some are material and will assist the complainants in the preparation of their case. With reference to these, the defendant Abraham Hauptman should answer Nos. 58, 65, 66, 68, 71, 72, 83, 93, 94, 98 (on the theory that this deed is not of record) and 100. All the other interrogatories:

(a) Either seek to pry into defendants' case or

(b) Are within the knowledge of the complainants or available to them or

(c) Are immaterial.

THREE.

Interrogatories "to be answered by J. Lewis Fiacre, as secretary and director of the Rynda Development Company and individually." The defendant should not be required to answer through J. Lewis Fiacre, as secretary or as director. If he answers as an individual, these questions which are material, the complainants will have the information which they seek.

Sixty-two questions have been propounded (102 to 163). Of these Nos. 102, 108, 109, 114, 116, 120, 121 (on the theory that by law the secretary is the custodian of the seal), 122, 129, 132, 140, 157 and 163 should be answered.

Of the forty-nine remaining interrogatories, some are obviously within the knowledge of the complainants, *e. g.,* Nos. 154, 155 and 156 and the others are not material to the issue, or they seek information which is available to the complainants.

It has been noted that "Jacob Hauptman, as director, attorney and employee of the Rynda Development Company, as an individual," and Abraham Hauptman as president, treasurer and director of the Rynda Development Company, and individually, are directed to submit the answers. Whether they respond as individual defendants or in a corporate capacity the net result will be the same.

All of which is respectfully submitted this fifth day of June, A. D. 1926.

JOHN BERNHARD,
Special Master in Chancery
of New Jersey.

Order Striking Out Interrogatories.

(Filed June 14, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

against

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c. Order Striking Out Interrogatories.

A motion having been made by Thomas E. Fitzsimmons, Samuel D. Williams and Jacob Hauptman, solicitors for the defendants in the above matter, to strike out the interrogatories served upon them as solicitors for the above named defendants on the ground that said complainants have failed to comply with an order of this court compelling said complainants to pay the respective solicitors for said defendants a counsel fee of twenty-five dollars each together with the taxed costs and further that said interrogatories

are irrelevant and immaterial to the issues involved, are frivolous and are within the knowledge of said complainants; and it appearing that due notice of said motion has been given to said complainants and the Court having heard the arguments of the solicitors for the respective parties and the Court having referred said interrogatories to John A. Bernhard, Esquire, one of the Special Masters of this Court, for a report as to whether or not said interrogatories should be answered by the respective parties and a report having been filed with this Court by said Special Master;

It is thereupon on this fourteenth day of June, 1926, Ordered that said report of said Special Master insofar as it suggests the striking out of all interrogatories be confirmed and that all of said interrogatories mentioned in said report be and they are hereby stricken out;

And it is further ordered that the complainants be given leave to reframe the interrogatories limiting the new interrogatories to those which said Special Master has reported may be pertinent and should be answered and serve same on counsel for the defendants within three days from the date hereof;

And it is further ordered that the complainants pay the defendants' costs of this motion to be taxed together with a counsel fee of Fifty Dollars to each of the solicitors for the respective defendants moving to strike and a fee of Two Hundred Fifty Dollars to John A. Bernhard, Special Master, for his services to the Court in examining said interrogatories and reporting thereon.

Respectfully advised,

MAJA LEON BERRY,

V. C.

Application of Defendant, Arlington Realty Co., for Mandatory Injunction.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between: AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill, &c. Application for Mandatory Injunction.

The defendant Arlington Realty Co., a corporation of the State of New Jersey, and having its principal office in the City of Newark, Essex County, says:

1. It is the owner in the fee simple of property located at 122 Rynda Road, in the Village of South Orange, over which said suit is brought.

2. That it acquired title to said premises by a certain deed executed by Harry B. O'Connell, sheriff of the County of Essex, to wit, dated January 15, 1924, which deed has been recorded in the Register's office

of Essex County and also by deed executed by Rynda Development Co., to said Arlington Realty Co., dated October 29, 1925, and also recorded in said Register's office of Essex County.

3. That the complainants claim title to said property by reason of a certain deed executed by the Rynda Development Co., to Amelia R. Gluck which deed was never delivered to the said Amelia R. Gluck, but was placed on record by attaching a photostatic copy of the same to a mortgage which was recorded in the Register's office of Essex County and that said deed in an opinion rendered by Vice Chancellor Backes in this court was declared to be false.

4. That an action is now pending in this court to settle the matters in controversy which has been referred to Vice Chancellor Berry who has designated the twenty-third day of June, 1926, as the time for hearing the same.

5. On May 6, 1926, the said complainants unlawfully and illegally entered into possession of said premises and placed their furniture therein and occupied the same.

6. That the said Amelia R. Gluck and Maurice B. Gluck, her husband, have neither right or title to said premises and their occupation thereof pending the suit in this court is contrary to law and detrimental to the interest of said Arlington Realty Co.

That defendant alleges that it is without adequate remedy in the courts of law and that the rights of the parties can best be determined by a court of equity and therefore prays:

Application for Mandatory Injunction

1. That the complainants answer this bill and each statement herein made.

2. That the said complainants may be ordered to immediately vacate said premises and be enjoined from trespassing upon the same or being in or about said premises until the determination of the suit mentioned above or until the further order of this Court.

3. That a writ of subpoena may issue commanding said complainants to answer this bill and to abide by such decree as this Court may make in the premises.

4. That Arlington Realty Company may have such other and further relief as this Court may deem equitable and just.

RIKER & RIKER,
Solicitors for Defendant Arlington Realty Co.

(Filed May 18, 1926.)

State of New Jersey,
County of Essex, ss:

C. Herbert Walker, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the president of the Arlington Realty Co., a corporation of New Jersey, the complainant in the above entitled cause, and am duly authorized to make this affidavit.

2. Said Arlington Realty Co. is the owner of property located on Rynda Road, in the Village of South Orange, in the County of Essex and State of New Jersey, over which a suit has been commenced and is

now pending in the Court of Chancery of New Jersey, wherein Amelia R. Gluck and her husband Maurice B. Gluck as such, are complainants, and the Rynda Development Co. (a New Jersey Corporation), Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Building and Savings (a New York corporation), Frank Hancock Hennessy, Dime Savings Bank (a New Jersey corporation), the said Arlington Realty Co. are defendants.

3. That said Arlington Realty Co. acquired title to said premises by deed executed by Harry B. O'Connell, sheriff of the County of Essex to it, dated, January 15th, 1924; and also by a deed executed by Rynda Development Co. to said Arlington Realty Co., dated October 29th, 1925, and recorded in the Register's office of Essex County on December 7th, 1925.

4. That said Amelia R. Gluck and her husband Maurice B. Gluck claim title to said property by reason of a certain deed executed by the Rynda Development Co. to Amelia R. Gluck, which deed was never delivered, but was placed on record by attaching a photostatic copy of the same to a mortgage which was recorded in the Register's office of Essex County; that said deed, in an opinion rendered by Vice Chancellor Backes was declared to be false.

5. On May 6th, 1926, I was advised by the Police Department of the Village of South Orange that said Amelia R. Gluck and her husband Maurice B. Gluck had moved their furniture into the house erected on said premises and had taken possession thereof.

6. Said Amelia R. Gluck and her husband Maurice B. Gluck have no right or title to said premises, and

their occupation thereof pending the suit in the Court of Chancery of New Jersey, above mentioned, is contrary to law and detrimental to the interests of said Arlington Realty Co.

7. I have read the foregoing bill for an injunction and know the contents thereof, and the matters and things therein set forth are true to the best of my information, knowledge and belief.

C. HERBERT WALKER.

Sworn and subscribed before me
this 7th day of May, 1926.
Samuel P. Batson,
Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

(Filed May 18, 1926.)

State of New Jersey,
County of Essex, ss:

Jacob Hauptman, of full age being duly sworn according to law on his oath deposes and says that he is solicitor for Rynda Development Company, Abraham Hauptman and J. Lewis Fiacre in a certain suit pending in this Court in which Amelia R. Gluck and her husband Maurice B. Gluck, as such are complainants, and Rynda Development Co. (a New Jersey corporation), Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Building and Savings (a New York corporation), Frank Hancock Hennessy, Arlington Realty Co. (a New Jersey corporation), and Dime Savings Bank (a New Jersey corporation) are defendants; that he is also a party de-

fendant in said suit; that he resides at 118 Rynda Road in the Village of South Orange, Essex County, New Jersey, which premises immediately adjoins the property over which the above action was brought, that on May 6, 1926, at about six P. M., he saw furniture being moved into said premises by the above defendants and that he personally saw both of said defendants in and about the said premises.

JACOB HAUPTMAN.

Sworn and subscribed to before
me, this seventh day of May, 1926.
David M. Satz,
A Master in Chancery of New Jersey.

Order to Show Cause for Mandatory Injunction.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between: AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), *et als.*, Defendants.	On Bill, &c. Order to Show Cause for Mandatory Injunction.

This matter being opened to the Court by Thomas E. Fitzsimmons, Esquire, solicitor for defendant Arlington Realty Company, a corporation, and after reading the bill and affidavits filed, it is on this tenth day of May, 1926

ORDERED that the complainants show cause before me at the Chancery Chambers, 763 Broad Street, Newark, N. J., on the eighteenth day of May, 1926, at ten o'clock (daylight saving time), in the forenoon or as soon thereafter as counsel can be heard, why a mandatory injunction should not issue directing said complainants to immediately vacate premises occupied by them at 122 Rynda Road, South Orange, and also why they should not be permanently enjoined from trespassing on said premises or entering in or about the same.

And it is further ordered that a copy of this order marked a true copy by solicitor for defendant Arlington Realty Company, a corporation, be served on complainants' counsel within three days from the date hereof.

Respectfully advised,
MAJA LEON BERRY,
V. C.

Notice of Motion to Dismiss Bill for Mandatory Injunction.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

ARLINGTON REALTY COMPANY,
Body Corporate,
Complainant,
and
AMELIA GLUCK, *et al.*,
Defendant.

On Bill for Injunction, &c.

Gentlemen:

Please take Notice that on Tuesday, May 18, 1926, before the Chancellor at the Chancery Chambers, Newark, New Jersey, at ten o'clock in the forenoon or as soon thereafter as the matter can be heard, I shall move to dismiss the bill of complaint for injunction filed in the above cause and to dissolve the restraining order thereon, because, the legal title to the lands mentioned in said bill and in possession of said defendant, is in question and disputed between the parties and the Court of Chancery is without jurisdiction to try and determine such title in dispute, but same must be tried and determined in a court of law.

Dated, May 12, 1926.

Respectfully,
MICHAEL J. TANSEY,
Solicitor for Defendant.

To:
Messrs. Riker & Riker,
Solicitors for Complainant,
Or
Whom it may concern:

Service of copy of within Notice, hereof acknowledged this 12th day of May, 1926.

RIKER & RIKER,
Sol'rs for Complainant,
Arlington Realty Company.

Answer of Complainants to Bill or Application of Defendant, Arlington Realty Co., for Mandatory Injunction.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between: AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, and RYNDA DEVELOPMENT CO. (a New Jersey corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey corporation) and DIME SAVINGS BANK (a New Jersey corporation), Defendants.	On Bill. Answer to Petition, Application or Bill for Mandatory Injunction.

The Complainants Amelia R. Gluck and her husband Maurice B. Gluck, as such of No. 122 Rynda Road, South Orange, Essex County, answering, says:

1. Deny that the allegations in Paragraph 1 of the application or bill for injunction, and deny that the Arlington Realty Company is the owner in fee simple, either legal or equitable or that it has any interest therein, and further allege that Amalia R. Gluck is

the owner in fee simple, the owner of the entire legal estate and uses, and the full equitable owner and that Amalia R. Gluck acquired such ownership, (a) by the assignment of the contract of sale between Rynda Development Company and Chemtec Co., Inc., for the building lot, which contained a deed of the entire use and an easement, which contract of sale and deed was duly acknowledged (b) by the assignment from Chemtec Co., Inc., of the house, buildings, garage and appurtenances thereto (c) by the assignment of possession and the possession of the uses, (d) by the delivery of the deed Rynda Development Company to Amalia R. Gluck, dated November 25, 1922, and recorded in the Essex County Register's office, and (e) by the presumption in equity of the delivery of such deed and completion of contract of sale, as the full equitable owner.

2. Deny each and every the allegations and averments in paragraph 2 of the application and bill for injunction, and allege that the deed of January 15, 1924, was a Sheriff's deed upon a judgment founded upon a mechanic's lien of Lally & Trahmer, a corporation, which judgment was a special judgment against the Rynda Development Company only, was a nullity therefor as Rynda Development Company had no interest or title in the said land, nor any ownership in the buildings and appurtenances thereon, and defendant Arlington Realty Company had notice of Amalia R. Gluck's title, ownership interest and equitable ownership, and allege as well that such judgment was a nullity and void in that (1) the lien claim was filed in the name of Lally & Trehmer, a corporation, and the suit to perfect same was started by Lally & Trehmer, a copartnership.

Answer of Complainants to Bill or Application of Defendant, Arlington Realty Co., for Mandatory Injunction

(2) The lien claim on its face and bill attached shows it is for materials that cannot be placed in a building, being saws, hammers, block and tackle, etc. (3) The last day for the furnishing of the materials was given as of September 30, 1922, and the action was started on February 8, 1923, over 10 days over four (4) months. (4) The certificate from the District Court made on Feb. 8, 1922, was not filed until Feb. 13, 1922, which is over the time as provided by the act, "within four (4) days from the starting of such action." (5) The summons does not describe the curtilage. (6) The lien claim contains a wilful misstatement in attempt to hold deponent, alleging and brought against "Maurice B. Gluck and Francisco Geldago, co-partners under the firm name of Ruiz-Urrutia Co." (Bartley vs. Smith, 14 Vroom 321). Deponent never was a partner of Ruiz-Urrutia Co. and does not know any Geldago. (7) While execution was issued on Nov. 16, 1923, and sale held Jan. 15, 1924, and deed given March 20, 1924, deed only recorded March 11, 1926, Book W. 73, page 398, another execution on same judgment was issued August 26, 1924, and paid and returned satisfied by the Sheriff, Sept. 9, 1925, so that Arlington did not regard the previous sale, and deed as taken at all, and in fact to obtain this second execution and satisfaction C. Herbert Walker, under oath said in a petition that such prior execution and judgment thereon had not been paid, and (8) that on this claim and suit a general judgment against Rynda Development Company was docketed in Common Pleas Court of Essex County, and execution issued out of such court instead of Circuit Court as provided by the act, and no judgment against real property could be levied on until execution returned unsatisfied against personal

property of Rynda Development Co. The Complainants allege that the Arlington Realty Company had full notice before the delivery of the deed dated October 29, 1925, of Amalia R. Gluck's rights, title, ownerships and interests, and that such deed is a nullity and void and conveys nothing.

3. Deny the allegations in paragraph 3 of the application and bill for injunction that the "deed was never delivered" or "that said deed in an opinion rendered by Vice Chancellor Backes in this court was declared false."

4. Deny each and every the allegations and averments contained in paragraph 5 of the application and bill for injunction, except to admit that on May 6, 1926, complainants did move into the house and premises and occupies the same, that Amalia R. Gluck has had possession since November 25, 1922.

5. Deny each and every the allegations and averments in paragraph 6 of the application and bill for injunction.

6. Deny that the defendant Arlington Realty Company has not a full and adequate remedy at law.

AS AND FOR A SPECIAL AND FIRST SEPARATE DEFENSE, ALLEGE:

7. That complainants deny that the application and bill for injunction presents any equity.

AS AND FOR A SPECIAL AND SECOND SEPARATE DEFENSE, ALLEGE:

8. That the application and bill do not show or

allege any serious, or irreparable damage or injury, or anything that may not be compensated at law, if the Arlington Realty Company has any rights.

AS AND FOR A SPECIAL AND THIRD SEPARATE DEFENSE, ALLEGE:

9. That possession has at all times to the buildings and lands been since November 25, 1922, in Amalia R. Gluck, and that the Arlington Realty Company has had full notice thereof prior to the taking of any deeds, and that possession has been fully decreed to Amalia R. Gluck and as against Rynda Development Company and Arlington Realty Company, and that such decrees are *res adjudicata* between the parties, in the decisions of this Court, which held (Feb., 1924): "That Amalia R. Gluck is the equitable owner and had a right to mortgage the premises."

(March, 1924): "Mrs. Gluck is the last in lawful and peaceable possession, the permission of the Rynda Development Company, the uncompleted Sheriff's sale nor the ouster by the Arlington of Mrs. Gluck did not give the complainants (Rynda Development Co., and Arlington Realty Co.) possession."

(October, 1925): "The Chemtec Company had been let into possession, to which Mrs. Gluck apparently succeeded, and neither had been ousted, at least not to the extent of showing that the complainants were then in peaceable possession." * * * "The lien was discharged (Wheeler vs. Almond, 46 N. J. L. 161). The judgment is a nullity and the Arlington Company took nothing by the Sheriff's deed."

"The Arlington Realty Company is no better off than it was when it, with the Rynda Development Company, filed its bill to quiet the title, which was

Answer of Complainants to Bill or Application of Defendant, Arlington Realty Co., for Mandatory Injunction

dismissed because peaceable possession in them was not shown. The adverse right of possession of Amalia R. Gluck then shown has not been changed. It is true that the Arlington Company has entered and finished the building, but the entry has at all times been adverse to Mrs. Gluck's claim (Barry vs. Tunick, 127 Atl. Rep. 658)."

Wherefore, complainants aver that the defendant Arlington Realty Company's application and bill for injunction is without equity against the complainants, and humbly pray that it may hence be dismissed against these defendants, with costs and charges in this behalf most wrongfully sustained.

MICHAEL J. TANSEY,
Solicitor and of Counsel with Complainants.

State of New Jersey,
County of Essex,

Amalia R. Gluck and Maurice B. Gluck, complainants, being duly sworn according to law, on their oath, depose and say:

The matters and things set forth in the above answer so far as they relate to their own acts are true, and so far as they relate to acts of others they believe them to be true.

Signed AMALIA R. GLUCK,
MAURICE B. GLUCK.

Subscribed to and sworn to before me
this 14 day of May, 1926.
Philip A. Donnelly,
Notary Public of N. J.

(Seal)

Application of Defendant, Arlington Realty Co., for Mandatory Injunction, Affidavit of Complainant.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c. Application for Mandatory Injunction. Affidavit.

Maurice B. Gluck, of full age, being duly sworn according to law, on his oath deposes and says:

That this affidavit is made to answer, petition bill and affidavits on part of defendant Arlington Realty Company for injunctive relief. That he is the husband of Amalia R. Gluck the complainant herein; that he is an attorney and counsellor of the State of New York and that he is personally acquainted with the facts and has acted for complainant herein.

Affidavit on Application for Mandatory Injunction

That on May 1, 1922, deponent as President of Chemtec Company, Inc., made an agreement in writing for the purchase of the land in question to, with and from Rynda Development Company. That such agreement was acknowledged and not recorded. That a copy of it is attached to the bill of complainants herein, and contains the following words in its terms:

"Permission is hereby given unto the party of the second part (Chemtec Co., Inc.) by the party of the first part (Rynda Development Co.), to go into and upon said premises and to build and construct a house therein, any time prior to taking title."

That immediately thereafter Chemtec Co., Inc., by myself as President thereof, did go in, take possession and built a house and garage; various negotiations were had, and the time to close was extended to November 29, 1922. The house at that time was 90% completed. The garage was entirely completed except for doors. Negotiations were had for a loan on mortgage. Treaties were made to and with Rynda Development Company to furnish a deed to Amalia R. Gluck, the complainant as the assignee of Chemtec Co., Inc., the Chemtec Co., Inc., having assigned the house, garage, etc., and contract to Amalia R. Gluck. The Rynda Development Company on Nov. 25, 1922, made and executed a deed to Amalia R. Gluck, the complainant, which was a Saturday afternoon (a copy of the deed dated Nov. 25, 1922, is attached to complainant's bill herein) and there being no one to take the acknowledgment, it was taken on Monday morning following by Jacob Hauptman. On that Saturday afternoon the deed was given to him executed, it being understood that the balance of the purchase price, some $700 in cash and $1,400 in a subordinated

mortgage were to be given at closing of loan (first mortgage) to Rynda Development Company. On Monday, Nov. 27, 1922, after the acknowledgment by Jacob Hauptman, he took the deed and had photostatic copies made thereof, and later in the day Mr. Jacob Hauptman came to New York and went with him to get the deed from the photographer. He (Mr. Gluck) got the deed and delivered it to Frank Hancock Hennessy for the Franklin Society for Home Building and Savings, who were placing on the property the first mortgage. Mr. Hauptman was present to arrange that the balance of the purchase price be paid out of such first mortgage loan. At that time the closing date of the first mortgage loan was then fixed for December 24, 1922. December 24, 1922, fell on Sunday, and Christmas day was Monday, so the matter was fixed as December 26, 1922. Later—on December 18, 1922, Chemtec Co., Inc., assigned over two contracts for other pieces of land and received a credit of $400.00 on the purchase price. On December 26, 1922, complainant and deponent went to the office of Frank Hancock Hennessy to close the loan, etc., and were then told that on December 21, 1922, Jacob Hauptman had come over and taken the deed. Demand was made for the return, and on failure to return same so that no person might be harmed and to give record notice, the photostatic copy of the deed was placed on record in the office of the Register of deeds for Essex County. The photostatic copy was attached to a mortgage from complainant to Frieda Horn.

After the assignment and deed by Rynda Development Co., to complainant, the complainant and Chemtec Co., Inc., made a contract for finishing the building and same was filed in County Clerk's office, on

Nov. 28, 1922, reciting the giving of deed and the assignment by Chemtec Co., Inc., to Amalia R. Gluck, the complainant. Complainant took possession of the land and buildings on Nov. 25, 1922, and was recognized as the assignee and owner by both Chemtec Co., Inc., and Rynda Development Co.

Various liens were filed upon the land and building. No suit was ever started in which the complainant was ever served with process, although complainant resided at all times mentioned at 39 Lincoln Park, Newark, N. J. In all such liens filed and complaints made in such suit Amalia R. Gluck is mentioned as the then present owner. By arrangement between Jacob Hauptman representing the Rynda Development Company and Thomas Fitzsimmons, representing four lienors, they both being very friendly and both having been clerks in Riker & Riker's office, consent judgments, specially against the "right, title and interest of Rynda Development Company" were entered and in two of the cases executions were issued to Sheriff.

In the first of such executions, that upon the lien of Geo. G. Salmon & Co., a sale was held by Sheriff on Oct. 9, 1923, and it was bid in by C. Herbert Walker, another friend of Jacob Hauptman, both of whom had been clerks together in the office of Hon. Charles Stewart, and bid in name of corporation Arlington Realty Company of which C. Herbert Walker was president. It then appeared that the Arlington Realty Company had bought these four judgments of these four alleged liens. At such Sheriff sale on October 9, 1923, there were read out the notice of complainant warning all persons that the house and garage were her property and of the delivery and recording of the deed giving the book and page number

of the record. From testimony of previous hearings it was also brought out that Thomas Fitzsimmons, Esq., in selling and assigning these judgments informed C. Herbert Walker fully of the facts.

The Rynda Development Company and Arlington Realty Company then joined in a bill to remove the deed from record as a cloud on the title, and Vice Chancellor Backes held that Amalia R. Gluck was the equitable owner of the land and premises and had a right to mortgage it, that such mortgage and deed could not be removed, and gave them leave to amend bill to one to quiet title under the statute, which they did and after hearing Vice Chancellor Backes held (March, 1924):

"Mrs. Gluck is the last in lawful and peaceable possession, the permission of the Rynda Development Company, the uncompleted Sheriff's sale nor the ouster by the Arlington of Mrs. Gluck did not give the complainants (Rynda Development Co., and Arlington Realty Co.) possession."

On January 15, 1924, on another of these judgments and executions, that of Lally & Trahmer Co., a corporation, the Sheriff again sold "the right, title and interest of Rynda Development Co." therein. Notice by complainant was served on Sheriff, the same as read out on previous sale, and again the Arlington Realty Company became the purchaser.

In September, 1924, the Arlington Realty Co. took the deed from the Sheriff on first sale, but before doing this went into the premises and started to make it habitable, converting the contractors' materials, etc. Deponent (and his attorney present) warned C. Herbert Walker at a number of times to stay off the premises, and told all working men there to get off,

but C. Herbert Walker refused to get off, and deponent was advised by his attorney not to breach the peace. After Arlington Realty Co. obtained the deed from the Sheriff they placed it on record to becloud the title, and started another action in chancery to quiet the title under the Statue, and after hearing Vice Chancellor Backes held (October, 1925):

"The Chemtec Company had been let into possession, to which Mrs. Gluck apparently succeeded, and neither had been ousted, at least not to the extent of showing that the complainants were then in peaceable possession." * * * "The lien was discharged (Wheeler vs. Almond, 46 N. J. L. 161). The judgment is a nullity and the Arlington Company took nothing by the Sheriff's deed."

"The Arlington Realty Company is no better off than it was when it, with the Rynda Development Company, filed its bill to quiet the title, which was dismissed because peaceable possession in them was not shown. The adverse right of possession of Amalia R. Gluck then shown has not been changed. It is true that the Arlington Company has entered and finished the building, but the entry has at all times been adverse to Mrs. Gluck's claim (Barry vs. Tunick, 127 Atl. Rep. 658)."

Before this last opinion was filed by Vice Chancellor Backes in Arlington vs. Gluck above, the Arlington further beclouded the title by placing a mortgage upon the premises for $8,000.00 given by them to Dime Savings Institution of Newark, N. J. In May, 1925, the Arlington put one Mary and Louis Smith into the house and premises, under an agreement of sale, and they have occupied the same until two weeks ago. Deponent did not want to breach the

peace, but finally got them out, and these people turned over the keys to deponent on May 5, 1926, and then deponent immediately went up and changed the locks and moved in on May 6, 1926, so that these defendants could no longer continue to damage and ruin the complainant.

After the decision of Vice Chancellor Backes in Arlington vs. Gluck, the Arlington Realty Company gave another mortgage as a substitute to the Dime Savings Institution as appears on record, but continue to hold this one refusing to cancel the same. Also after this decision the Rynda Development Company made and executed for a nominal consideration a deed to Arlington Realty Company which they have placed on record.

Complainant then started this action herein which is for a declaratory judgment to settle all the questions affecting this title, specific performance, and to fix the damages done to complainant.

After the starting and filing of the bill herein, the defendant Arlington Realty Company dug from its files the sheriff's deed on the sale of January 15, 1924 on the Lally-Trehmer, a corporation lien, and recorded it. That deed and lien is even worse than the Salmon lien. It is void and a nullity: (1) The lien claim was filed in the name of Lally & Trehmer, a corporation, and the suit to perfect same was started by Lally & Trehmer, a copartnership. (2) The lien claim on its face and bill attached shows it is for materials that cannot be placed in a building, being saws, hammers, block and tackle, etc. (3) The last day for the furnishing of the materials was given as of September 30, 1922, and the action was started on February 8, 1923, over 10 days over four (4) months. (4) The certificate from the District Court

made on February 8, 1922, was not filed until February 13, 1922, which is over the time as provided by the Act, "within four (4) days from the starting of such action." (5) The summons does not describe the curtilage. (6) The lien claim contains a willful misstatement in attempt to hold deponent, alleging and brought against "Maurice B. Gluck and Francisco Geldago, co-partners under the firm name of Ruiz-Urrutia Co." (Bartley vs. Smith, 14 Vroom 321). Deponent never was a partner of Ruiz-Urrutia Co., and does not know any Geldago. (7) While execution was issued on Nov. 16, 1923, and sale held Jan. 15, 1924, and deed given March 20, 1924, deed only recorded March 11, 1926, Book W. 73, p. 398, another execution on same judgment was issued August 26, 1924, and paid and returned satisfied by the Sheriff, Sept. 9, 1925, so that Arlington did not regard the previous sale, and deed as taken at all, and in fact to obtain this second execution and satisfaction C. Herbert Walker, under oath said in a petition that such prior execution and judgment thereon had not been paid, and (8) that on this claim and suit a general judgment against Rynda Development Company was docketed in Common Pleas Court of Essex County, and execution issued out of such court instead of Circuit Court as provided by the act and no judgment against real property could be levied on until execution returned unsatisfied against personal property of Rynda Development Co.

At no time has the Rynda Development Company had any interest or right or title to the house and garage, as it was built by complainant's assignor Chemtec Co., Inc. So that any sale of Rynda Development Company's "right, title and interest" could only mean a sale of the balance of the purchase money,

if there was any due, which is diminished because of Rynda Development Company's acts and damages.

Complainant herein has been seriously and irreparably damaged by these defendants in withholding from her her rightful possession. With many men and the aid of the police of South Orange deponent acting for her has been prevented from such possession, and even on May 6, 1926, when deponent moved in such house and property he was arrested by policeman named Penn after having moved in such house, upon a telephone complaint of Arlington Realty Company and C. Herbert Walker, and only after much provocation and after he was assaulted by the officer, to his damage and repute in the entire neighborhood, did he obtain his release by insisting that officer go back and get a warrant. On Saturday, May 9, 1926, the municipal authorities in South Orange came to shut off all water on the order of C. Herbert Walker, and Arlington Realty Company, but decided not to do so after complainant explained.

Attached hereto and made a part hereof is the notice of Amalia R. Gluck read out at sale and before Sheriff's sale October 9, 1923 by deponent, also attached hereto and made a part hereof is a copy of an alleged escrow agreement made and exhibited by Arlington Realty Co. at prior actions. Attached hereto and made a part hereof is copy of mechanic's lien of Lally-Trahmer, a corporation, with indorsement thereon, a copy of Clerk certificate filed in County Clerk's office with endorsement, a copy of the statement made for docketing judgment, and a copy of the execution on such judgment issued August 25, 1924, and endorsement thereon.

(Signed) MAURICE B. GLUCK.

Subscribed and sworn to at Newark this
14th day of May, 1926.
Philip A. Donnelly,
Notary Public of N. J.

(Seal)

Affidavit on Application for Mandatory Injunction

To S. J. Wilson, Sheriff:

To the Sheriff of the County of Essex, State of New Jersey, Newark, N. J.:

To Whom it May Concern:

WHEREAS: A Notice of sale of premises being the Westerly thirty feet of Lot No. 32 and the Easterly thirty feet of Lot No. 31 on Map of Property of Rynda Development Company, at South Orange, N. J., made by Ira T. Redfern & Bro., Surveyors, South Orange, N. J., dated February, 1922, has been advertised in the "Newark Star Eagle," known as Circuit C-103, under writ of the Circuit Court of Essex County, to be made by you at 2 P. M., October 9, 1923, in the matter of the lien claim, etc., of George Salmon Co., a corporation, plaintiff and Chemtec Co., Inc., a New York Corporation, Rynde Development Company, a New York Corporation, *et al.*, defendants, under the Mechanics' Lien Law of the State of New Jersey, and for the benefit of other and various lienors, etc., and

WHEREAS: Such writ of *fierie facias* is a special writ as against the property only, of the right, title and interest only, of the Rynda Development Company, a corporation of New Jersey and no other rights of any or of any other defendants, owners, mortgagees or other persons holding interests therein are or can be sold:

NOTICE is hereby given that such sale, if any, shall be for only such rights, title and interest of the said Rynda Development Company, a New Jersey Corporation, as they may or be made to appear, and specifically subject to the claims, title, ownership and/or posses-

sion of any other claimants, owners, mortgagees or other persons holding interests therein, etc., as made or whether made parties herein or therein.

SPECIFICALLY FOR THIS PURPOSE ONLY, WITHOUT ANY GENERAL APPEARANCE, ETC., WITHOUT WAIVER OF ANY KIND, AND WITHOUT WAIVER OF ANY RIGHTS ACCORDING TO LAW, NOTICE is hereby given you by the undersigned as Owner in full possession of the said premises, its appurtenances, and hereditaments, the personal property unattached to buildings and not yet fixtures, and the buildings thereon, that a deed dated the 25th day of November, 1922, was delivered for good and valuable considerations from the Rynda Development Company, and duly acknowledged by its officers the 27th day of November, 1922, and that possession was duly given to her by the party in possession as well as the former owner, and that from such time she has been and still is in active and open ownership and possession, that while such deed is said to be and claimed to be destroyed or lost, a photostatic copy thereof is recorded in the office of the Register of the County of Essex in Book 147 of Mortgages at pages 520-522, and is full and sufficient notice of the execution and delivery thereof, and the said owner and undersigned demands that the Sheriff at or prior to the sale make such facts known to any possible or intended purchaser by announcing the same before or at such or any sale, and that the or any sale be subject to such rights, title, ownership and/or possession, and full notice thereof be given to any possible purchaser.

Dated, the 9th day of October, 1923.

AMALIA R. GLUCK,
Owner.

Affidavit on Application for Mandatory Injunction

November 28, 1922.

File 2576.

Received from Rynda Development Company instruments as follows:

Deed—Rynda Development Co. to Amalia R. Gluck.

Mtge.—Amalia R. Gluck to Rynda Development Co.

Bond—Amalia R. Gluck to Rynda Development Co.

The above instruments referring to premises in the Village of South Orange, Essex County, N. J., on Rynda Road 177 feet from Ridgewood Road, are to be held in escrow and to be used as the closing instruments in the closing of the Franklin Society's loan to the said Amalia R. Gluck in the amount of $10,000 to be closed on December 4th.

On the delivery of the above instruments and the release from the present blanket mortgage $780 out of the first advance on the said Franklin Society's loan is to be forwarded to the Rynda Development Co.

F. H. HENNESSY.

The above instrument received back from Frank H. Hennessy this 21st day of December, 1922, and all liability of Frank H. Hennessy in the premises is hereby released.

JACOB HAUPTMAN,
Attorney for Rynda Development Company.

Lien Claim.

LALLY & TRAHMER, a corporation, Claimant, vs. MAURICE B. GLUCK and FRANCISCO DELDAGO, trading as Ruiz Urrutia Company, builders, CHEMTEC CO., Inc. (a corporation), RYNDA DEVELOPMENT CO. (a corporation), and AMELIA R. GLUCK, Owners.	Lien Claim. Recorded, Mechanic's Lien, Book 14, page 227.

Be It Known that Lally & Trahmer, a corporation organized under the laws of the State of New Jersey, with principal office in the Village of South Orange, hereby claims a lien upon the building and lands hereinafter described, pursuant to the statute in such case made and provided and for a debt contracted and owing to it for materials furnished for the erection and construction of a certain building described as follows:

FIRST: The said building is a two and one-half story dwelling and is located upon a lot of land or curtilage situated in the Village of South Orange, in the County of Essex and State of New Jersey and more particularly described as follows:

BEGINNING at a point on the northeasterly side of Rynda Road distant (177.78) northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road produced with the northeasterly side of Ridgewood Road produced thence (1) along said side of Rynda Road N. 48 deg. 37′ West

60 ft.; thence (2) N. 41 deg. 23′ East 140 ft.; thence (3) South 48 deg. 37′ East 60 ft.; thence (4) South 41 deg. 23′ West 140 ft. to the point or place of Beginning being the westerly 30 ft. of Lot #32 and Ely 30 ft. of Lot #31 of map of prop. of Rynda Development Co. of South Orange, N. J., made by Ira T. Redfern, and Bros., Surveyors, So. Orange, N. J., dated Feb., 1922.

SECOND: The names of the owners of the land and the estate therein on which said lien is claimed are Rynda Dev. Co., a corporation and Amelia R. Gluck.

THIRD: The names of the persons who contracted said debt, and for whom, and at whose request the said materials were furnished for which the aforesaid lien is claimed are Maurice B. Gluck and Francisco Geldago, trading as Ruiz Urrutia Company and Chemtec Co., Inc. Amount justly due $113.53. All of the above materials were furnished between August 1, 1922, and Sept. 30, 1922.

LALLY & TRAHMER,
by JOSEPH A. LALLY.

Filed Jan. 17, 1923.
John H. Scott,
Clerk.

(Indorsed on back): Suit in Dist. Court started Feb. 8, 1923. Filed Feb. 13, 1923.

Lien Claim

LALLY & TREHMER.

Sold to Ruiz Urrutia,
93 Warren St.
New York City.

	Date		Description	Charges	Credits	Total
	Aug.	1	8½ x 3″ lag screws	.32		
		2	1 paint brush	.80		
			1 6″ rule	.75		
			1 padlock	.25		
			1 lasp & staple	.20		
			1 pencil	.05		
			1 steel square	2.75		
			1 small "	.60		
20			1 qt. liquid gloss white paint	.95		
		3	1 3′ disston cross cut saw	3.05		
		11	1 rip saw	3.25		
			9 lbs. 4d nails	.54		
			11 lbs. 4d nails	.66		
			16 5/8 x 10 bolts	1.92		
			1 6′ white rule	.65		
			½ doz. carp's pencils	.60		
		12	1 drill	.18		
30			2½ " block pulleys	2.55		
			30 yd. ½″ rope	2.03		
			1 keg 8d nails	4.05		
			1 5′ rule	.60		
			3 carp's chalk	.15		
		17	Credit 1 keg 20d nails		3.75	
			50 lbs. 4d nails	2.25		
			1 lantern	1.25		
			1 gallon of kerosene oil	.18		
40			1 1 gallon can	.39		
			1 funnell	.10		

Lien Claim

	24	2 hatchets	2.80	
		1 saw	2.50	
		25 lbs. putty	.45	
	25	15 sheets #00 sand paper	.45	
		15 " #0 " "	.20	
		2 sheets emory cloth	.90	
		1 qt. white paint	2.90	10
	29	47 yds. ½" rope 10 bls. @ 29	2.55	
		2½" block pulleys	3.50	
		20 lbs. 3d extra fine nails	.50	
		10 lbs. plaster paris		
Sept.	1	122′ x 16" galv. Iron 218 lbs. @ 950 per m.	20.71	
	2	1 pr. snips	3.00	
		2 lbs. 1" #18 brads	.26	
		1 lb. ¾" #18 brads	.16	20
		3 lbs. Plaster Paris	.15	
		1 qt. glue	1.50	
		4 ¾" x 4" bolts	.16	
		5 lbs. 8d nails	.48	
		55 lbs. 8d nails	2.75	
	5	1 rule	.25	
	6	1 6′ rule	.55	
		4 doz. 1½" screws	.16	
		6 pencils	.16	30
	7	1½ pr. 4¼ butts	.68	
		1 brush	.45	
		2 hanks line	.70	
		2 ½ x 6" bolts	.15	
		2 lag screws	.08	
		4 lbs. shingle nails	.32	
		8 lbs. shingle nails	.64	
		1½ pr. 4x4 butts #241F	.68	
		1 qt. glue	1.50	40

Lien Claim

	8	2 hanks line	.70	
		1 mop	.15	
		1 doz. 1½" #9 screws	.10	
		½ pr. 2x2 butts	.08	
		2 putty knives	.80	
	9	1 doz. screws	.10	
10		1 rule	.50	
		10 clamps	.50	
		1 14" mill file	.40	
		3 lbs. yellow ochre	.36	
		10 lbs. plaster paris	.50	
		1 lb. rosin	.15	
		2 lbs. glue	.70	
		1 roll wire	.85	
		10 lbs. red metallic	.90	
20		5 gallons O. S. white paint	17.50	
		1 gal. turp.	1.65	
		1 gal. linseed oil	1.15	
		2 cans	.60	
		6 doz. cup hooks	.72	
		2 doz. cupboard latches	.40	
		4 hooks & eyes	.16	
		6 pr. 2x2 hinges	1.80	
		10 glass knobs	3.00	
30		7 glass knobs	3.20	113.53

40

Action on Lien Claim.

SECOND DISTRICT COURT OF CITY OF NEWARK.

JAMES LALLY & FRED TRAHMER, partners, trading as Lally & Trahmer, Plaintiffs, v. MAURICE B. GLUCK & FRANCISCO GELDAGO, trading as Ruiz Urrutia, builders, CHEMTEC CO., Inc. (a corporation), RYNDA DEVELOPMENT CO. (a corporation), and AMELIA R. GLUCK, owners, Defendants.	Action on Lien Claim.

I hereby certify that on the 8th day of February, 1923, a suit was commenced in the Second District Court of the City of Newark on the lien claim filed in the Essex County Clerk's office on the 17th day of January, 1923, by James Lally and Fred Trahmer, Partners, trading as Lally & Trahmer, Claimant, versus Maurice B. Gluck and Francisco Geldago, trading as Ruiz Urrutia, builder's, Chemtec Co., Inc. (a corporation) and Amelia R. Gluck, Owners, and that Summons thereon was sealed and issued on said 8th day of February, 1923.

Witness my hand and the seal of the 2nd District Court of the City of Newark, this 8th day of February, 1923.

JAMES E. GARRIGAN,
Clerk of 2nd District
Court of City of Newark.

(Indorsed on back): Filed Feb. 13/1923.

Docket and Execution.

SECOND DISTRICT COURT,

CITY OF NEWARK.

Between

JAMES LALLY and FRED TRAHMER, partners, trading as Lally & Trahmer,

Plaintiffs,

and

MAURICE B. GLUCK and FRANCISCO GELDAGO, trading as Ruiz Urrutia Company, builder, CHEMTEC Co., Inc. (a corporation), RYNDA DEVELOPMENT Co. (a corporation) and AMELIA R. GLUCK, Owners,

Defendants.

Plaintiff's Costs	$ 4.50
Mileage	
Listing fee	1.50
Atty.'s fee	6.00
Witness fee	
Total	$12.10

Lien Claim on Contract. Riker & Riker, Atty. for Pltfs. Jacob Hauptman, Atty. for Defs.

A summons in the above stated cause was issued on the eighth day of February, 1923, returnable on the 19th day of September, 1923, wherein the plaintiff demands of the defendant the sum of

Dollars. The Plaintiff filed a state of demand , 1923.

The Summons was served and returned as follows:

The President or other head officer not being found I served the within Summons, Sept. 14, 1923, on Mr. Traen, he being Secretary of Ruiz Urrutia, *et al.*, the within named defendant by reading it to him and giving him a copy thereof. September 27th: Stipulation filed to enter judgment and a special judgment

is hereby entered in favor of the Plaintiffs and against the defendant, the Rynda Development Co., in the sum of One hundred twenty dollars and fifty-three cents.

1923
Nov. 14th, Statement for Docketing

Common Pleas. Execution on Docketed Judgment.

The State of New Jersey,
Essex County, ss:

To the Sheriff of the County of Essex, GREETINGS:

We commend you, that of the goods and chattels, rights and credits of

Rynda Development Co., defendant in your county, you cause to be made the sum of $120.53.

James A. Lally and Fred Trahmer partners trading as Lally & Trahmer, plaintiffs, lately on our Second District Court holden before Louis R. Freund, Esquire, Judge of said Court of the City of Newark in and for our said County of Essex by the judgment of said Judge recovered against the said defendant, which judgment was afterwards docketed in our Court of Common Pleas, in and for our said County of Essex, pursuant to the statute in such case made and provided, as appears to us of record; and also the sum of three dollars and fifty-eight cents costs of docketing the said judgment and of issuing Execution thereon, and if sufficient books and chattels, rights and credits of the said defendant, in your County you cannot find whereof to make the damages aforesaid then we command you that you cause the whole or the residue as the case may require, of the moneys aforesaid to be made of the lands, tenements, heredita-

ments and real estate whereof the said defendant was seized on the 17th day of September in the year of our Lord One Thousand Nine Hundred Twenty-three or at any time afterwards, in whosoever hands the case may be; And have you those moneys, before our Court of Common Pleas aforesaid at Newark aforesaid the 3rd Tuesday of September next, to render unto the said Plaintiff, for and costs aforesaid, and have you there and then this writ.

Witness Dallas Flanagan, Esquire, Judge of our said Court of Common Pleas, at Newark, aforesaid the 25th day of August, in the year 1924.

JOHN H. SCOTT,
Clerk.

C. Herbert Walker,
Atty.

ESSEX COMMON PLEAS.

(A #414)

JAMES LALLY & FRED TRAHMER as Lally & Trahmer vs. RYNDA DEVELOPMENT CO.	*Fi, Fa, de bo et ter* on Docketed Judgment.

Returnable Sept. Term, 1924. C. Herbert Walker, Atty.

Levy in District Court, Costs	do	$120.53
Int. from Sept. 17, 1923, till said May 29/25		12.34

Cost of Docketing & Execution	3.48
Int. from	
Besides Sheriff's Execution fee	8.82
	$145.17

Rec. in the clerk's office of the County of Essex on 26th day of Aug. A. D. 1924, and recorded in Book 8 of Execution for said County, page 239.

JOHN H. SCOTT,
Per E. B.,
Clerk.

Rec. Aug. 26th, at 2:30 P. M. 1924.
HARRY B. O'CONNELL.

I hereby appoint Sheriff and Deputy Oliver Werkheniser to serve the within writ.

Witness my hand and seal this 26th day of Aug., 1924.

HARRY B. O'CONNELL,
Sheriff,
By AUGUST C. WALKER,
Under Sheriff.

Sheriff Fees.

Served the within writ in the manner required by Law, August 27, 1924, at 9:30 A. M. in the presence of Michael J. A. Doyle (a credible person) as will appear by inventory and appraisement hereunto annexed.

HARRY B. O'CONNELL,
Sheriff,
By OLIVER WERKHENISER,
Special Deputy.

(Across face) : Satisfied. Harry B. O'Connell, Sheriff.

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction.

(Filed May 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN; J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c. Application of Defendant, Arlington Realty Co., for Injunction. Affidavit.

State of New Jersey,
County of Essex, ss:

Philip A. Donnelly, of full age being duly sworn according to law on his oath deposes and says that he made a true copy of the Summons and Complaint filed in the Second District Court of the City of Newark, in the Mechanics' Lien claim of Lally & Trahmer

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction.

vs. Gluck *et als.*, the following is a true copy of said Summons and Complaint filed in the said suit:

THE STATE OF NEW JERSEY,

To:

Maurice B. Gluck and Francisco Geldago, trading as Ruiz-Urrutia Company, builders, Chemtec Co., Inc. (a corporation), Rynda Development Co. (a corporation), and Amalia R. Gluck, Owners.

L. S.

You, Maurice B. Gluck and Francisco Geldago, trading as Ruiz-Urrutia Company, builders and Chemtec Co., Inc. (a corporation); Rynda Development Company, a corporation, and Amalia R. Gluck, owners are summoned to answer the annexed complaint of James Lally and Fred Trahmer, partners trading as Lally & Trahmer (the claimants), in an action at law in the Second District Court of the City of Newark, in which said James Lally and Fred Trahmer, partners, trading as Lally & Trahmer, claim a building lien on certain buildings and lands of said Chemtec Co., Inc., Rynda Development Co., and Amelia R. Gluck, described in said complaint. And take notice that unless you file an answer to said complaint with the clerk of said Court at Newark within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, Louis R. Freund, Judge of said Court at Newark, aforesaid this 8th day of February, in the year one thousand nine hundred and twenty-three.

JAMES E. GARRIGAN,
Clerk.

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction

Complaint.

SECOND DISTRICT COURT OF THE CITY OF NEWARK.

JAMES LALLY and FRED TRAHMER, partners, trading as Lally Trahmer, Plaintiffs, vs. MAURICE B. GLUCK and FRANCISCO GELDAGO, trading as Ruiz-Urrutia Company, builders, CHEMTEC Co., Inc. (a corporation), RYNDA DEVELOPMENT COMPANY, a corporation, and AMELIA R. GLUCK, Owner, Defendants.	Action on Lien Claim. Complaint.

Plaintiffs, James Lally and Fred Trahmer, partners, trading as Lally & Trahmer, of the Village of South Orange, in the County of Essex and State of New Jersey, say that:

1. That on August 1, 1922, they entered into a contract with the defendants Maurice B. Gluck and Francisco Geldago, trading as Ruiz Urrutia Company, and Chemtec Co., Inc. a corporation, to furnish the hardware material necessary in the construction of a house upon premises known as 122 Rynda Road, South Orange, N. J., and more particularly described hereinafter.

2. That said contract was not in writing and was not filed in the Clerk's Office of the County of Essex in accordance with the provisions of the Act herein referred to.

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction

Complaint

3. That on the fifteenth day of October, 1922, plaintiffs completed the delivery of the hardware material in accordance with said verbal contract and demanded payment of the sum of $113.53, which payment has been refused.

4. That at the time of the commencement of said house, the title to said premises was in the name of the Rynda Development Company, a corporation, which corporation thereupon entered into a contract with Maurice B. Gluck, to convey the said premises on the completion of said house to the Chemtec Corporation, one of the above defendants, which agreement was made in writing and a substantial payment made by the said Chemtec Corporation in consideration thereof; that the said Rynda Development Company, consented in writing to the construction of said building by the said Maurice B. Gluck and Francisco Geldago, trading as Ruiz Urrutia Co., and thereby agreed that the said lands might if necessary be subjected to a lien for the erection and construction of said house.

5. On or about November 28, 1922, at the request of said Maurice B. Gluck, the said Rynda Development Company executed a deed to said premises to Amelia R. Gluck, wife of said Maurice B. Gluck, in trust, for the said Chemtec Corporation, but plaintiff is informed that said deed was never recorded and has since been recalled by the said Rynda Development Company, the owners of record.

6. The said building is a two and one-half story single frame dwelling house in connection with which there is a two car garage located on a lot of land or a curtilage situated in the Village of South Orange in the County of Essex and State of New Jersey, and more particularly described as follows:

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction

Complaint

BEGINNING at a point on the northeasterly side of Rynda Road distant one hundred and seventy-seven and seventy-eight hundredths foot (177.78) northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road produced with the northeasterly side of Ridgewood Road produced; thence (1) along said side of Rynda Road north forty-eight degrees thirty-seven minutes West sixty feet; thence (2) north forty-one degrees twenty-three minutes East one hundred and forty feet; thence (3) south forty-eight degrees, thirty-seven minutes east sixty feet; thence (4) south, forty-one degrees twenty-three minutes west one hundred forty feet (140) to the point or place of beginning.

Being the westerly thirty feet of lot No. 32 and easterly thirty feet of lot No. 31 on property of Rynda Development Company of South Orange, New Jersey, made by Ira T. Redfern & Broas, surveyors, South Orange, N. J., dated February, 1922.

7. That said debt is a lien on said building and land by virtue of the provisions of an act entitled "An act to secure mechanics and others payment for their labor and material in erecting any building (Revision 1896) and the supplements thereto and amendments thereof."

8. Plaintiffs have performed all the terms of said contract and are entitled to the sum of $113.53, which is the reasonable value of the material furnished.

Plaintiffs demand as damages, the sum of $113.53 together with interest from October 15, 1922 and costs of this action.

RIKER & RIKER,
Attorneys for Plaintiff.

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction

Complaint

LALLY & TRAHMER

Sold to

Ruiz Urrutia,
97 Warren St.,
New York City.

Date		Description	Charges	Credits	Total
Aug.	1	8½ x 3″ lag screws	.32		
	2	1 paint brush	.80		
		16′ rule	.75		
		1 padlock	.25		
		1 hasp & staple	.20		
		1 pencil	.05		
		1 steel square	2.75		
		1 small square	.60		
		1 qt. liquid gloss white paint	.95		
	3	1 3′ disston cross cut saw	3.05		
		1 rip saw	3.25		
	11	9 lbs 4d nails	.54		
	11	11 lbs 4d nails	.66		
		16-5/8 x 10	1.92		
		1 6′ white rule	.65		
		½ doz. carp's pencils	.60		
	12	1 drill	.18		
	16	2½″ block pulleys	2.55		
		30 yards ½″ rope	2.03		
		1 keg 8d nails	4.05		
		1 5′ rule	.60		
		3 carp's chalk	.15		
	17	Credit 1 keg 20d nails		3.75	
		50 lbs 4d nails	2.25		
		1 lantern	1.25		
		1 gallon of Kerosene Oil	.18		

			1 gallon can	.39
			1 funnel	.10
		24	2 hatchets	2.80
			1 saw	2.50
10			25 lbs putty	2.50
		25	15 sheets ♯00 sand paper	.45
			15 sheets ♯0 sand paper	.45
			2 sheets of emory cloth	.20
			1 qt. white paint	.90
		29	47 yds. ½″ rope 10 lbs @ 29	2.90
			2½″ block pulleys	2.55
			20 lbs 3d extra fine nails	3.50
			10 lbs plaster paris	.50
20	Sept.	1	122′ x 16″ galv. Iron 218 lbs @ 950. per M.	20.71
			1 pr. snips	3.00
		2	2 lbs 1″ ♯18 brads	.26
			1 lb ¾″ ♯18 brads	.16
			3 lbs plaster paris	.15
			1 qt. glue	1.50
			4-¾ x 4″ bolts	.16
			5 lbs 8d nails	.40
30		5	55 lbs 8d nails	2.75
		6	1 rule	.25
			1 6′ rule	.55
			4 doz. 1½″ screws	.16
			6 pencils	.30
			1½ pr. 4 x 4 butts	.68
			1 brush	.45
			2 hanks line	.70
			2½ x 6″ bolts	.15
40			2 lag screws	.08
			4 lbs shingle nails	.32
			8 lbs shingle nails	.64

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction

Complaint

7	1½ pr. 4 x 4 butts #241F		.68		
	1 qt. glue		1.50		
	2 hanks line		.70		
	1 mop	.15			
	1 doz. 1½" #9 screws	.10			10
	½ pr. 2 x 2 butts	.08			
	2 putty knives	.80			
9	1 doz. screws	.10			
	1 rule	.50			
	10 clamps	.50			
13	1 14" mill file	.40			
	3 lbs yellow ochre	.36			
	10 lbs plaster paris	.50			
	1 lb. rosin	.15			20
	2 lbs glue	.70			
	1 roll wire	.85			
Oct. 15	10 lbs red metallic	.90			
	5 gallon O. S. wh. paint	17.50			
	1 gallon turp.	1.65			
	1 gallon linseed oil	1.15			
	2 cans	.60			
	6 doz. cup hooks	.72			
	2 doz. cupboard latches	.40			30
	4 hooks & eyes	.16			
	6 pr. 2 x 2 hinges	1.80			
	10 glass knobs	3.00			
	7 glass knobs	3.20			
				$113.53	

(Back.)

The President or other head officer not being found, I served the within summons Sept. 14, 1923, on Mr. Trahmer, he being sect. of Ruiz Urrutia *et al.*, the within named defendant by reading it to him and giving him a copy thereof. 40

SAM AKEN,
Constable.

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction

Complaint

SECOND DISTRICT COURT OF THE CITY OF NEWARK.

JAMES LALLY and FRED TRAHMER, partners, trading as Lally & Trahmer,
Plaintiffs,
vs.
MAURICE B. GLUCK and FRANCISCO GELDAGO, trdg. as Ruiz Urrutia *et als.*,
Defendants.
} Complaint.

Action on Lien Claim.

Complaint.

RIKER & RIKER,
Attorneys for Plaintiffs,
164 Market Street,
Newark, N. J.

Deponent further says that he made a true copy of the indices of Mortgages in the Register's Office of Essex County in Series No. 5, from 1922 to 1925 inclusive against the Rynda Development Co. (a New Jersey Corporation), as mortgagors, the following is a true copy of said mortgage index:

Date of Record	Mortgagor	Mortgagee	Liber-page-daily
1922			
Apr. 19,	Rynda Development Co.	Abraham Hauptman	W45-508 58

Affidavit on Application of Defendant, Arlington Realty Co., for Mandatory Injunction

Complaint

1923						
Jan. 4,	"	"	"	Frieda Horn	I47-520	2
Sept. 14,	"	"	"	Lucy T. Fenner	L49-194	8
Sept. 14,	"	"	"	Frank Fenner & *al.*,	L49-197	9
Nov. 13,	"	"	"	do	M49-495	63
1924						
May 8,	"	"	"	I. N. L. B. & L. Assn.	Q51- 13	60
May 9,	"	"	"	Lackawanna B & L	G51-277	7
May 9,	"	"	"	do	G51-279	8
May 9,	"	"	"	do	G51-281	9
June 4,	"	"	"	Charles Atkinson	F51-488	138
1925						
Mar. 25,	"	"	"	J. Herbert Reynolds & *al.*	Q53-272	65
July 15,	"	"	"	Ella M. Weeks	U54-150	85
July 15,	"	"	"	do	U54-151	86
Oct. 7,	"	"	"	Howard M. Crowell	N55-224	48

Deponent further says, that the above records set forth are true to the best of his knowledge and belief.

PHILIP A. DONNELLY.

Sworn to and subscribed
before me this 17th day of May, 1926.
Ella Tansey,
Notary Public
of New Jersey.
(Seal)

(Exhibit presented to Court on this application for complainant, certified copy of the mortgage and photostatic copy of deed attached to mortgage not reprinted here, being Exhibit C7, printed in this case at page 384 following.)

Notice of Amended Petition of Arlington Realty Co., for a Mandatory Injunction.

(Filed June 8, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

AMELIA R. GLUCK and her husband MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN; J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c.
On Petition of Arlington Realty Co., for Injunction.
Notice.

To Micheal J. Tansey, Esq., Solicitor for Complainants, 164 Market St., Newark, N. J.:

Please Take Notice that on Tuesday, June 1, 1926, at ten o'clock in the forenoon (Daylight Saving Time) or as soon thereafter as Counsel can be heard, we shall move before his Honor Vice Chancellor Maja Leon Berry at the Chancery Chambers in the Prudential Building, Newark, N. J., for leave to file an amended petition in the above matter, a copy of which is attached hereto and made a part hereof.

RIKER & RIKER,
Solicitors for Defendant Arlington Realty Co.

Amended Petition for Injunction-Application of Defendant, Arlington Realty Co., for Mandatory Injunction.

(Filed June 8, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

AMELIA R. GLUCK and her husband MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill, &c. Amended Petition for Mandatory Injunction.

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

Your petitioner Arlington Realty Co., a corporation of the State of New Jersey, one of the defendants in the above stated cause respectfully shows:

1. Petitioner is one of the defendants in the above matter.

Amended Petition for Injunction-Application of Defendant, Arlington Realty Co., for Mandatory Injunction

2. A bill was filed by the complainants in the above entitled cause praying for the specific performance of a contract for the sale of premises located in the Village of South Orange, Essex County, this state, and known as No. 122 Rynda Road in said Village, which contract was entered into between Rynda Development Co., one of the above named defendants and Chemtec Co., Inc., complainants' asignor.

3. Petitioner is now the owner of said premises by reason of a certain deed executed by Harry B. O'Connell, Sheriff of the County of Essex, dated January 15, 1924, which deed has been recorded in the Register's office of Essex County and also by deed executed by Rynda Development Co., to your petitioner dated October 29, 1925, and also recorded in said Register's Office of Essex County.

4. This cause has been set down for a hearing in this court by his Honor Vice Chancellor Berry to whom the same was referred for the twenty-third day of June, 1926.

5. The whole controversy in this cause is the right to title and possession of the premises described above.

6. At the time suit was started possession of said premises was in your petitioner and the same were occupied by Lewis M. Smith and Mary Ford Smith, his wife, under an agreement of sale with your petitioner. Complainants falsely and fraudulently represented to the said Lewis M. Smith and Mary Ford Smith, his wife, that they were the owners of said premises and obtained possession of the keys and went into possession of said premises notwithstanding the pendency of the above suit.

Amended Petition for Injunction-Application of Defendant, Arlington Realty Co., for Mandatory Injunction

7. Complainants are by force of arms attempting to obtain part of the relief which they seek in this court prior to the determination of the above action by this court.

Your petitioner therefore prays that:

A mandatory injunction may issue out of this honorable court directed to Amelia R. Gluck and her husband Maurice B. Gluck as such, the above named complainants, enjoining, commanding and directing them to forthwith and pending the final determination of the issues involved in this cause to vacate said premises and remove therefrom and further enjoining said Amelia R. Gluck and her husband, Maurice B. Gluck, as such, complainants in the above action, from entering or trespassing upon said premises or any part thereof pending the final determination of said cause and that your petitioner may have such other and further relief as this Court may deem equitable and just.

RIKER & RIKER,
Solicitors for Petitioner Arlington Realty Co.

Service of a copy of the within Notice and Petition is hereby acknowledged this 25 day of May, 1926.

MICHAEL J. TANSEY,
Solr. for Complainants.

Amended Petition for Injunction-Application of Defendant, Arlington Realty Co., for Mandatory Injunction

(Filed June 8, 1926.)

State of New Jersey,
County of Essex, ss:

C. Herbert Walker, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the President of the Arlington Realty Co., a corporation of New Jersey, one of the defendants in the above entitled cause, and am duly authorized to make this affidavit.

2. Said Arlington Realty Co., is the owner of property located at 122 Rynda Road, in the Village of South Orange, in the County of Essex and State of New Jersey, over which a suit has been commenced and is now pending in the Court of Chancery of New Jersey, wherein Amelia R. Gluck and her husband Maurice B. Gluck as such, are complainants, and the Rynda Development Co. (a New Jersey Corporation), Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Building and Savings (a New York Corporation), Frank Hancock Hennessy, Dime Savings Bank (a New Jersey Corporation) and said Arlington Realty Co., are defendants.

3. The cause of action referred to in paragraph 2 above was started by the complainants for the specific performance of a contract for the sale of lands mentioned above which contract was entered into between Rynda Development Co., one of the above named defendants and Chemtec Co., Inc., complainants' assignor.

4. That said Arlington Realty Co., acquired title to said premises by deed executed by Harry B. O'Connell, Sheriff of the County of Essex to it, dated Janu-

ary 15th, 1924; and also by a deed executed by Rynda Development Co., to said Arlington Realty Co., dated October 29th, 1925, and recorded in the Register's Office of Essex County on December 7th, 1925.

5. This cause has been set down for a hearing in this Court by his Honor Vice Chancellor Berry to whom the same was referred for the twenty-third day of June, 1926, and the whole controversy involved is the right to title and possession of said premises.

6. At the time suit was started possession of said premises was in defendant Arlington Realty Co., and the same were occupied by Lewis M. Smith and Mary Ford Smith his wife, under an agreement of sale with said defendant Arlington Realty Co., Complainants falsely and fraudulently represented to the said Lewis M. Smith and Mary Ford Smith, his wife, that they were the owners of said premises and obtained possession of the keys and went into possession of said premises notwithstanding the pendency of the above suit.

7. The said Amelia R. Gluck and her husband Maurice B. Gluck as such, have no right or title to said premises and their occupation thereof pending the determination of the suit in this Court is contrary to law and detrimental to the interest of said Arlington Realty Co.

8. I have read the attached petition and know the contents thereof and the matters and things therein set forth are true.

C. HERBERT WALKER.

Sworn and subscribed to before me
this 1st day of June, 1926.
Samuel P. Watson,
Notary Public of N. J.
(Seal)

Amended Petition for Injunction-Application of Defendant, Arlington Realty Co., for Mandatory Injunction

(Filed June 8, 1926.)

IN CHANCERY OF NEW JERSEY.

State of New Jersey,
County of Essex, ss:

Thomas E. Fitzsimmons, of full age, being duly sworn according to law on his oath deposes and says:

I am a member of the firm of Riker & Riker, solicitors for Arlington Realty Co.; that on Tuesday, May 25, 1926, I had a conversation with Maurice B. Gluck in the lobby outside of the Chancery Chambers in the Prudential Building, Newark, at which conference Jacob Hauptman was present; that I accused said Maurice B. Gluck of representing to Lewis M. Smith and Mary Ford Smith his wife that he and his wife were the owners of the property over which this suit has been brought; that he admitted to me that he made such representation, secured the keys and caused the Smiths to vacate said premises.

THOS. E. FITZSIMMONS.

Sworn and subscribed to before me,
this 1st day of June, 1926.
Samuel P. Watson,
Notary Public of New Jersey.
(Seal)

Amended Petition for Injunction-Application of Defendant, Arlington Realty Co., for Mandatory Injunction

(Filed June 8, 1926.)

State of New Jersey,
County of Essex, ss:

Jacob Hauptman, of full age, being duly sworn according to law on his oath deposes and says:

I am the solicitor for Rynda Development Co., Abraham Hauptman, J. Lewis Fiacre and appear for myself all defendants in the above matter; that I live at 118 Rynda Road, South Orange which premises immediately adjoin the property over which this suit is brought; that on May 6, 1926 at about six P. M. I saw furniture being moved into said premises by the complainants and that I personally saw both of said complainants in and about the said premises since that time; that on Tuesday, May 25, 1926, I was present during a conversation held in the lobby outside of the Chancery Chambers in the Prudential Building, Newark, between Thomas E. Fitzsimmons and Maurice B. Gluck and that said Gluck admitted that he stated to Lewis M. Smith and Mary Ford Smith, his wife, who were the occupants of the premises over which this suit has been brought under an agreement of sale with Arlington Realty Co., that he and his wife were the owners of said premises and that he demanded and received the keys to the same and caused the said Lewis M. Smith and Wife to deliver possession thereof.

JACOB HAUPTMAN.

Sworn and subscribed to before me,
this 1st day of June, 1926.
Chas. T. Jacobs,
A Notary Public of New Jersey.
(Seal)

(Endorsed on back): Served by Riker & Riker on Frank Tansey, 6/1/26, Arlington Realty Matter.

Answer to Second and Amended Bills or Application of Defendant, Arlington Realty Co., for Injunction.

(Filed June 8, 1926.)

IN CHANCERY OF NEW JERSEY.

Between: AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill. Answer to (Second and Amended) Bill or Application of Defendant, Arlington Realty Co. for an Injunction.

The complainants Amelia R. Gluck and her husband Maurice B. Gluck, as such of No. 122 Rynda Road, South Orange, Essex County, answering, says:

1. Deny that the allegations in paragraph 3, of the application or bill for injunction, and deny that the Arlington Realty Company is the owner either legal or equitable or that it has any interest therein, and further allege that Amelia R. Gluck is the owner in

fee simple, the owner of the entire legal estate and uses, and the full equitable owner and that Amelia R. Gluck acquired such ownership, (a) by the assignment of the contract of sale between Rynda Development Company and Chemtec Co., Inc., for the building lot, which contained a deed of the entire use and an easement, which contract of sale and deed was duly acknowledged, (b) by the assignment from Chemtec Co., Inc., of the house, buildings, garage and appurtenances thereto, (c) by the assignment of possession and the possession of the uses, (d) by the delivery of the deed Rynda Development Company to Amelia R. Gluck, dated November 25, 1922, and recorded in the Essex County Register's office, and (e) by the presumption in Equity of the delivery of such deed and completion of contract of sale, as the full equitable owner; and allege that the deed of January 15, 1924, was a Sheriff's deed upon a judgment founded upon a Mechanic's lien of Lally & Trahmer, a corporation, which judgment was a special judgment against the Rynda Development Company only, was a nullity therefor as Rynda Development Company had no interest or title in the said land, nor any ownership in the buildings and appurtenances thereon, and defendant Arlington Realty Company had notice of Amalia R. Gluck's title, ownership interest and equitable ownership, and allege as well that such judgment was a nullity and void in that (1) the lien claim was filed in the name of Lally & Trahmer, a corporation, and the suit to perfect same was started by Lally & Trahmer, a co-partnership. (2) The lien claim on its face and bill attached shows it is for materials that cannot be placed in a building, being saws, hammers, block and tackle, etc. (3) The last day for the furnishing of the materials was given as of September 30, 1922 and the

action was started on February 8, 1923, over 10 days over four (4) months, (4) certificate from the District Court made on Feb. 8, 1922 was not filed until Feb. 13, 1922 which is over the time as provided by the act, "Within four (4) days from the starting of such action," (5) the summons does not describe the curtilage, (6) the lien claim contains a willful misstatement in attempt to hold deponent, alleging and brought against "Maurice B. Gluck and Francisco Geldago, co-partners under the firm name of Ruiz-Urrutia Co" (Bartley vs. Smith, 14 Vroom 321). Deponent never was a partner of Ruiz-Urrutia Co. and does not know any Geldago. (7) While execution was issued on Nov. 16, 1923 and sale held Jan. 15, 1924 and deed given March 20, 1924, deed only recorded March 11. 1926, Book W. 73, p. 398, another execution on same judgment was issued August 26, 1924 and paid and returned satisfied by the sheriff, Sept. 9, 1925, so that Arlington did not regard the previous sale, and deed as taken at all, and in fact to obtain this second execution and satisfaction C. Herbert Walker, under oath said in a petition that such prior execution and judgment thereon had not been paid, and (8) that on this claim and suit a general judgment against Rynda Development Company was docketed in Common Pleas Court of Essex County, and execution issued out of such court instead of Circuit Court as provided by the act, and no judgment against real property could be levied on until execution returned unsatisfied against personal property of Rynda Development Co. The complainants allege that the Arlington Realty Company had full notice before the delivery of the deed dated October 29, 1925 of Amalia R. Gluck's rights, title, ownerships and interests, and that such deed is a nullity and void and conveys nothing.

Answer to Second and Amended Bill or Application of Defendant, Arlington Realty Co., for Injunction

2. Deny each and every allegation and averments contained in paragraph 6 of the application and Bill of Injunction, except to admit that Mary Ford Smith under an agreement of sale from petitioner occupied the premises at time of starting this suit, and that on May 6, 1926, complainants did move into the house and premises, and occupies the same, and allege that Amalia R. Gluck has had possession since November 25, 1922.

3. Deny each and every the allegations and averments in paragraph 7 of the application and Bill for Injunction.

AS AND FOR A SPECIAL AND FIRST SEPARATE DEFENSE, ALLEGE:

4. That complainants deny that the application and Bill for injunction presents any equity.

AS AND FOR A SPECIAL AND SECOND SEPARATE DEFENSE, ALLEGE:

5. That the application and bill do not show or allege any serious, or irreparable damage or injury, or anything that may not be compensated at law, if the Arlington Realty Company has any rights.

AS AND FOR A SPECIAL AND THIRD SEPARATE DEFENSE, ALLEGE:

6. That possession has at all times to the buildings and lands been since November 25, 1922 in Amalia R. Gluck, and that the Arlington Realty Company has had full notice thereof prior to the taking of any deeds, and that possession has been fully decreed to Amalia R.

Gluck and as against Rynda Development Company and Arlington Realty Company, and that such decrees are *res adjudicata* between the parties, in the decisions of this Court, which held (Feb., 1924): "That Amalia R. Gluck is the equitable owner and had right to mortgage the premises."

March, 1924: "Mrs. Gluck is the last in lawful and peaceable possession, the permission of the Rynda Development Company, the uncompleted sheriff's sale nor the ouster by the Arlington of Mrs. Gluck did not give the complainants (Rynda Development Co., and Arlington Realty Co.) possession."

October, 1925: "The Chemtec Company had been let into possession, to which Mrs. Gluck apparently succeeded, and neither had been ousted, at least not to the extent of showing that the complainants were then in peaceable possession." * * * "The lien was discharged (Wheeler vs. Almond, 46 N. J. L. 161). The judgment is a nullity and the Arlington Company took nothing by the sheriff's deed."

"The Arlington Realty Company is no better off than it was when the Rynda Development Company filed its bill to quiet the title, which was dismissed because peaceable possession in them was not shown. The adverse right of possession of Amalia R. Gluck then shown has not been changed. It is true that the Arlington Company has entered and finished the building, but the entry has at all times been adverse to Mrs. Gluck's claim (Barry vs. Tunick, 127 Atl. Rep. 658)."

WHEREFORE, complainants aver that the defendant Arlington Realty Company's application and Bill for Injunction is without equity against the complainants, and humbly pray that it may hence be dismissed against these defendants, with costs and charges in this behalf most wrongfully sustained.

MICHAEL J. TANSEY,
Solicitor and of Counsel with Complainants.

Affidavit Answering the Amended and/or (2) Petition for Injunction-Application of Defendant, Arlington Realty Co., for Mandatory Injunction.

(Filed June 8, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill. Affidavit.

State of New Jersey,
County of Essex, ss:

Amalia R. Gluck, of full age being duly sworn according to law, on her oath deposes and says:

That this affidavit is made to answer the amended and/or second petition, application and bill for manda-

tory injunction. That she reavers the answer to said petition, application and bill for mandatory injunction and believes the same to be true. That as a part of this answering affidavit, she reavers etc., and makes a part hereof, (1) The affidavits of Maurice B. Gluck, of May 14, 1926 and all exhibits attached, and the affidavit of June 7, 1926, (2) the affidavit of Michael J. Tansey dated June 7, 1926, (3) the affidavit of Philip A. Donnelly of May 17, 1926 and June 7, 1926 and all exhibits therein contained, (4) the answer under oath of complainants dated May 14, 1926 made in answer to the first application and bill for mandatory injunction, (5) the certified copy of the Record of Mortgage from Amalia R. Gluck to Frieda Horn and the photostatic copy of deed from Rynda Development Co., to Amalia R. Gluck thereto attached, (6) the certified copies of the dockets, state of demand, executions etc., of District Court of East Orange.

That she denies that she had personally ever any conversations with Mary Ford Smith or Lewis M. Smith or ever made any representations to them.

(Signed) AMALIA R. GLUCK.

Subscribed and sworn to at Newark
this 7th day of June, 1926.

Philip A. Donnelly,
Notary Public of New Jersey.

Affidavit Answering the Amended and/or (2) Petition for Injunction-Application of Defendant, Arlington Realty Co., for Injunction.

(Filed June 8, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill.

State of New Jersey,
County of Essex, ss:

Maurice B. Gluck, of full age, being duly sworn, according to law, on his oath, deposes and says:

Affidavit

This affidavit is made to answer the amended, etc., and/or (2) application and bill for injunction and made a part hereof as though fully written out herein, and with all the exhibits thereto attached in addition to the affidavit of deponent made the 14th day of May, 1926, the answer to the original bill for injunction under oath of 14th day of May, 1926, the affidavit of Philip A. Donnelly of May 17, 1926, showing the exhibits and copies of the Second District Court, and the certified copy of Record of Mortgage from Amalia R. Gluck to Frieda Horn with photostatic copy of deed from Rynda Development Company to Amalia R. Gluck, all of which are reaverred as a part of this affidavit and to answer such amended and/or (2) petition.

Deponent denies that he in any way or that complainants, in any way, "falsely and fraudulently represented to Lewis M. Smith and Mary Ford Smith, his wife that they were the owners." The Arlington Realty Co. brought an action against them for failure to pay rent and put them out. On October 28, 1925, at about 4:30 P. M., deponent saw Mary Ford Smith and told her the circumstances and read her the opinion and decision of Vice Chancellor Backes and especially the parts: "The Chemtec Company had been let into possession, to which Mrs. Gluck apparently succeeded, and neither had been ousted, at least, not to the extent of showing that the complainants were then in peaceable possession" * * * "The lien was discharged—Wheeler vs. Almond, 46 N. J. L. 161. The judgment is a nullity and the Arlington Company took nothing by the sheriff's deed."

"The Arlington Realty Company is no better off than it was when it, with the Rynda Development Company, filed its bill to quiet the title, which was dismissed because peaceable possession in them was not

shown. The adverse right of possession of Amalia R. Gluck then shown has not been changed. It is true that the Arlington Company has entered and finished the building, but the entry has at all times been adverse to Mrs. Gluck's claim—Barry vs. Tunick, 127 Atl. Rep. 658" (decided on October 18 or 19, 1925). She said she had studied law and was an attorney of New Jersey herself, and that she would move out and give me the keys. At that time she told me of a mortgage that Dime Savings Institution had put on property. Next morning deponent served a notice on Dime Savings Bank to take their mortgage off record. On November 13, 1925, deponent saw Mr. Richards in Louis Schlessinger's office, who had acted as agent on sale from Arlington Realty Co., to Smiths, and he notified me later that he had examined the matter and informed Mrs. Smith that she must vacate. Then later she had her lawyer named Sisselman write to me and he said later that he had examined the title etc., and advised her to move. On December 7, 1925, deponent examined the records in the Register's office of Essex County, and found the Arlington Realty Co. had given another mortgage to substitute the one on the premises, recorded November 4—No. 36, being a second mortgage on an apartment house in East Orange, deponent then went to Dime Savings Institution and saw Vice President Williams and protested that the mortgage on premises be cancelled, he said that Mr. Williams had kept them in the dark about the matter but would bring it up. On the same day deponent again saw Mr. Sisselman who assured deponent that Mrs. Smith was looking for a place and would move. On December 7, Mr. Sisselman showed me two summons against the Smiths by Arlington Realty Co., in District Court of East Orange. On

December 11, 1925, deponent again saw Mr. Sisselman who said Mrs. Smith would move out but said that Mr. C. Herbert Walker of the Arlington Realty Co., had on December 7, 1925, recorded a deed from Rynda Development Co., to Arlington Realty Co., deponent went to court house and examined this deed, recorded December 7, No. 21, which had been acknowledged December 2, 1925, and dated back to October 29, 1925. Deponent then started the bill herein immediately and on December 14, 1925, filed same. On Saturday, December 12, 1925, deponent again saw Mrs. Smith at premises and she assured me that she would move out as soon as she obtained another place to move into and promised me that she would turn over the keys to me. From information given by the driver of the Alderney Dairy Co., deponent learned, that on Friday, April 30, 1926, he had in the morning delivered milk and when he came there on Saturday, May 1, 1926, the place was empty. Mr. Michael J. Tansey informed me that a Mr. Rupert C. Hullett, an attorney for Smiths, had been to see him and offered the keys and that I should see Mr. Rupert C. Hullett, who would get the keys for me. I saw Mr. Hullett, and on Wednesday, May 5, 1926, he gave me the keys, whereupon deponent went to the premises that afternoon with workman and changed the locks, on May 6, 1926, deponent moved into the premises. That deponent has read the affidavits of Thomas J. Fitzsimmons and Jacob Hauptman both dated June 1, 1926, and denies that he had or made the admissions made or claimed to be made and further denies that Jacob Hauptman was present at any conversation respecting the premises.

(Signed) MAURICE B. GLUCK.

Subscribed and sworn to, at Newark, this
7th day of June, 1926.

Philip A. Donnelly,
Notary of New Jersey.

Affidavit Answering the Amended and/or (2) Petition for Injunction-Application of Defendant, Arlington Realty Co., for Injunction.

(Filed June 8, 1926.)

IN CHANCERY OF NEW JERSEY.

Between:

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill.

State of New Jersey,
County of Essex, ss:

Michael J. Tansey, of full age, being duly sworn, according to law, on his oath, deposes and says:

That he is a solicitor and counsel of this Court for

complainants herein. That this affidavit is made to answer the amended and/or second petition, application and bill for mandatory injunction.

That sometime prior to May 1, 1926, Mr. Rupert M. Hulett, an attorney in State of New Jersey, voluntarily came to see me without any solicitation on my part and said he represented Mary Ford Smith and Lewis M. Smith, and that he had examined into the matter respecting the title, etc., under their agreement of purchase from Arlington Realty Co., and that he was satisfied that Arlington Realty Co. had nothing that they could convey, and would advise his clients to move and if complainants desired the keys they would turn them over to Mr. Gluck. He said further that default judgments against the Smiths had been obtained by Arlington Realty Co., in District Court of East Orange, and that Arlington Realty Co. was putting the Smiths out and that he would try to open such default judgments. Sometime later, I believe on May 3, 1926, I informed Mr. Maurice B. Gluck to see Mr. Hulett and he would give him the keys.

(Signed) MICHAEL J. TANSEY.

Subscribed and sworn to, at Newark, this
7th day of June, 1926.

Philip A. Donnelly,
Notary Public of New Jersey.

Affidavit

39620

DISTRICT COURT,

EAST ORANGE, N. J.

ARLINGTON REALTY CO., Plaintiff, and LEWIS M. SMITH, MARY FORBES SMITH, Defendant.	In On Contract Demand $300.

C. H. Walker

Plaintiff's Attorney.

	Plaintiff's Costs
Summons,	2.50
Mileage,	.60
Listing Fee,	1.50
Witness Fee,	
Attorney's Fee,	15.00
Total Cost,	19.60
Execution,	1.60
Statement,	1.60

122 Rynda Rd.
So. O.

Summons issued 12/1	1925
Returnable 12/10	1925
Demand Filed 12/1	1925

Affidavit

SUMMONS RETURNED AS FOLLOWS:

The said defendant not being found, I served the within Summons Dec. 4, 1925, by leaving a copy thereof at his residence with a member of his family, above the age of fourteen years, who was informed of its contents.

M. E. LEAHY,
Sergeant-at-Arms.

I served this Summons Dec. 4, 1925, by reading the same to the defendant, and delivering to her a copy thereof.

M. E. L.,
Sergeant-at-Arms.

12/10/25:

Case listed and called, Defendant did not appear. The defendant failed to appear on the return day of said summons and no appearance having been entered herein by the defendant, and no sufficient cause having been assigned to the Court why the defendant did not appear and the plaintiff having filed an affidavit herein on the 15th day of December, 1925, establishing its claim against the Defendant in the sum of Three Hundred and 00/100 Dollars, It is thereupon ordered that judgment be entered in favor of the plaintiff and against the defendant in the sum of $300.00 damages besides costs of suit. Rule entered.

Affidavit

12/15/25:

EXECUTION WAS ISSUED AND RETURNED AS FOLLOWS:

I return this Execution Jan. 12, 1926, Unsatisfied: I have made diligent search and inquiry, and could not find any goods or chattels of the Defendant whereon to levy to make the debt and costs, or any part thereof.

M. EDWARD LEAHY,
S. at A.

2/4/26:

ALIAS EXECUTION WAS ISSUED AND RETURNED AS FOLLOWS:

I return this Execution Feb. 22, 1926, with a levy annexed.

M. EDW. LEAHY.

I hereby certify that the above is a true copy of case number 39620, Arlington Realty Co. vs. Lewis M. Smith and Mary Forbes Smith, given under my hand and the seal of the East Orange District Court, this 29th day of May, 1926.

DENIS L. CONROY,
Clerk of E. O. Dis. Court.

Affidavit

EAST ORANGE DISTRICT COURT.

Essex County,
The State of New Jersey, ss:

To any constable in said county or to the Sergeant-at-arms of the East Orange District Court.

Summon, Lewis M. Smith and Mary Forbes Smith to appear before the East Orange District Court of the City of East Orange, to be held in the City Hall, Main Street, in the said city on the 10th day of December, 1925, at ten o'clock in the forenoon to answer unto Arlington Realty Company in an action upon contract to the damage of the plaintiff Five Hundred Dollars. Hereof fail not.

Witness, William V. Rafferty, judge of said court at East Orange, aforesaid, the 22nd day of December, in the year One Thousand Nine Hundred and Twenty-five.

DENIS L. CONROY,
Clerk.

Affidavit

EAST ORANGE DISTRICT COURT.

ARLINGTON REALTY COMPANY, Plaintiff, vs. LEWIS M. SMITH and MARY FORBES SMITH, Defendants.	State of demand on contract.

The plaintiff demands of the defendants the sum of $500 upon a certain , a true copy of which is as follows:

Defendants entered and occupied premises at 122 Rynda Road, So. Orange, N. J., under agreement dated May 28, 1925 with plaintiff corporation, agreed to pay plaintiff the sum of One Hundred Dollars a month on the first day of each month. Plaintiff says that the installments for October, November and December have not been paid and there is now due plaintiff the sum of Three Hundred Dollars.

Judgment will be claimed for the sum of Three Hundred Dollars besides legal interest and cost of suit.

C. HERBERT WALKER,
Attorney for Plaintiff.

Endorsed on back.

I served the within summons Dec. 4, 1925, on the defendant Mary F. Smith by reading it to her and giving her a copy thereof.

M. EDW. LEAHY,
Sergeant-at-arms.

The said defendant Lewis M. Smith not being found, I served the within summons Dec. 4, 1925, by leaving a copy thereof at his residence with a member of his family above the age of fourteen years, informing her of its contents.

M. EDW. LEAHY,
Sergeant-at-arms.

Affidavit

Summons on Contract.

DISTRICT COURT OF EAST ORANGE, N. J.

ARLINGTON REALTY COMPANY,
Plaintiff,
vs.
LEWIS M. SMITH and MARY FORBES SMITH,
Defendants.

Demand	$300.00
Summons	2.50
Mileage	.60
Listing fee	1.50
Attorney fee	

Returnable December 10th, 1925.

C. HERBERT WALKER,
Attorney for Plaintiff,
9 Clinton Street.

Summons and State of Demand.

To the Defendant:

Take Notice, that the plaintiff demand that the defendant shall file a written specification of defenses intended to be made in said action on or before the time specified for appearance in the process issued in said cause.

C. HERBERT WALKER,
Plaintiff's Attorney.

A true copy.
Denis L. Conroy, clerk,
East Orange Dist. Court.

Petition of Appeal.

(Filed July 13, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between:	
AMALIA R. GLUCK, and her husband, MAURICE B. GLUCK, as such, Complainants-Appellants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDINGS AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants-Respondents.	Petition on Appeal. On Appeal from the Court of Chancery.

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

The petition of Amalia R. Gluck, Maurice B. Gluck and Frieda Horn, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree, made in the Court of Chancery of New Jersey,

by his Honor, Edwin Robert Walker, Chancellor, bearing date the 29th day of June, 1926, in a certain cause in said Court of Chancery, wherein the said Amalia R. Gluck and Maurice B. Gluck were complainants and the said Rynda Development Co. (a New Jersey Corporation), Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Buildings and Savings (a New Jersey Corporation), Frank Hancock Hennessy, Arlington Realty Co. (a New Jersey Corporation) and Dime Savings Bank (a New Jersey Corporation), were defendants and Frieda Horn was interpleaded on counterclaim, in this respect: That decree was entered against them; and petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it decreed: (a) That the complainants Amalia R. Gluck and Maurice B. Gluck are guilty of laches and the court finding that the photostatic copy of deed recorded by complainants in the Register's office of the County of Essex by attaching it to a mortgage made by the complainants to one Frieda Horn, dated January 4th, 1923, and recorded in the Register's office of the County of Essex in Book 1-47 of Mortgages for said county on pages 520-522, and that the said mortgage and photostatic copy of the deed were a fraud on the defendants and that possession of the premises hereinafter described were obtained by the defendants through fraud, and that the complainants had no right, title and interest in said premises.

(b) That the said bill of complaint of the complainants, filed herein, be and the same is hereby dismissed with costs, and further, that the motion to strike out said petition for injunction is hereby denied.

(c) That the Complainants deliver up the said mortgage made Amalia R. Gluck to Frieda Horn, dated January 4th, 1923, and recorded as aforesaid for cancellation.

(d) That the said mortgage and photostatic copy of the deed attached thereto be cancelled of record by the Register of the County of Essex, and that the same are hereby declared to be null, void and of no effect; the said land and premises conveyed by the said mortgage and photostatic copy of the deed being described as follows:

(Description of the property as in deed.)

(e) That the complainants are hereby enjoined, commanded and directed to vacate the premises herein within five days, and the complainants are further ordered and enjoined from entering or trespassing upon the said premises.

(f) That if the said complainants do not vacate the said premises within five days that a writ of assistance shall issue out of this Court directed to the Sheriff of the County of Essex, commanding the said Sheriff to forthwith eject and remove from the said premises the said complainants and all persons claiming under them or in possession of any part thereof under them and that possession thereof be delivered to the defendant Arlington Realty Company, or to its duly authorized agent.

2. And petitioners appeal from the decree of the Chancellor upon the grounds that the same is erroneous in that it should have decreed:

(A) Specific performance to the complainant Amalia R. Gluck, of the deed of November 25, 1922.

(B) That complainant Amalia R. Gluck was entitled to specific performance of the delivery of a deed under the contract of sale.

(C) That the complainant Amalia R. Gluck was entitled to specific performance against the Arlington Realty Co., and Dime Savings Institution to deliver and joinder in a deed and cancellation of their interest and mortgage as subsequent purchasers and subsequent grantees with notice.

(D) That the complainants were entitled to specific performance against the Franklin Society for Homes Building and Savings to perform their contract to accept a mortgage from complainants and pay over such monies as agreed.

(E) That complainant Amalia R. Gluck is the equitable owner of the premises and had a right to mortgage the premises to Frieda Horn and that it cannot be removed or cancelled by a subsequent purchaser with notice.

(F) That the buildings upon such land were erected by the assignor of complainant, and complainant is the owner of such buildings; that Rynda Development Company had no interest or rights in said buildings; that the Arlington Realty Company obtained no rights to said building by the Sheriff's deed of January 15, 1925; that Amalia R. Gluck the complainant was not made a party to the mechanic's lien action of Lally & Trehmore, a corporation, and any judgment or deed thereon is a nullity as against her, and her right, title, and interest in said buildings have not been foreclosed in any way; that the deed of Rynda Development Company of October 29, 1925, to the Arlington Realty Company, gave the Arlington Realty Company no right, title or interest in said buildings.

(G) That the complainant Amalia R. Gluck was the equitable owner under the contract of sale, the owner of the buildings, the owner of the possession to the land, and then in possession.

(H) That placing the parties *in statu quo* would result in placing the complainant Amalia R. Gluck in possession, and that her rights cannot be disturbed by placing an adverse claimant then trespassing against such possession, into any possession whatever, nor can this Court render any decree allowing a trespasser to obtain possession against the law of the land.

(I) That complainant Amalia R. Gluck acquired an easement in such land by the contract of sale which was duly acknowledged as required by the conveyancing acts.

(J) That complainant Amalia R. Gluck acquired an easement and irrevocable license to such land by the contract of sale and the construction of the buildings thereon.

(K) That complainant Amalia R. Gluck under the Statute of Uses (Sec. 7 of the Conveyancing Act) acquired by the contract of sale, the land being a building lot, the entire use of such land and that such contract of sale was a deed of Bargain and Sale to such building lot.

(L) That the complainant Amalia R. Gluck acquired by such contract of sale in equity as the *cestui que trust* and the title to said land and that she was such title owner in equitable conversion.

(M) That the making of the deed to complainant Amalia R. Gluck, for consideration was a delivery of such deed.

(N) That the deed was fully delivered to complainant Amalia R. Gluck, on November 25, 1922.

(O) That there was no proof or showing that any defendant was damaged, so that complainant Amalia R. Gluck was not guilty of laches.

(P) That there was no proof or showing that the complainant was guilty of any fraud or deception either actively or passively and that no defendant had been or could have been in any way defrauded, and was therefore not guilty of unclean hands.

(Q) That as between the parties, Amalia R. Gluck, Maurice B. Gluck, Frieda Horn, Rynda Development Company and Arlington Realty Company the following is *res adjudicata*:

(1) "The bill is filed to rid the record title of the cloud of the supposed deed and mortgage, as well as any other supposed interest the Glucks and Miss Horn may claim to have in the property. A previous effort was made to this end. After the Sheriff struck off the property to the Arlington and before delivering the deed, the Rynda Company and Arlington Company joined in a bill to remove the cloud from the title, which was later amended into a bill to quiet the title" (Opinion filed October, 1925). In allowing the amendment spoken of above the court ruled orally. "Mrs. Gluck is the equitable owner, she had a right to mortgage it, and the mortgage cannot be removed from record."

(2) "The proofs show that the Rynda Development Co., owner, agreed in writing to sell the land—a building lot—to the Chemtec Co., Inc., and let the purchaser into possession for the purpose of

building a house. The Chemtec Company transferred its interest to and agreed to build the house for, Amalia R. Gluck" (Opinion filed July 15, 1924).

(3) "The Arlington Company nevertheless took possession of the house, under permission of the Rynda Company, over the protest of Mrs. Gluck" (Opinion filed July 15, 1924).

(4) "Mrs. Gluck was last in lawful and peaceable possession. The Arlington Company acquired no right to possession by its incomplete Sheriff's sale purchase. The Rynda Company's permission to take possession and the Arlington Company's ouster of Mrs. Gluck did not vest a peaceable possession" (Opinion, July 15, 1924).

(R) That as between the parties, Amalia R. Gluck, Maurice B. Gluck, Frieda Horn and Arlington Realty Co., the following is *res adjudicata*:

(5) "The Rynda Development Company agreed in writing to sell the lot of Chemtec Co., in which it stipulated that the purchaser be let possession. Permission was given to construct a dwelling" (Opinion, Oct., 1925).

(6) "In the meanwhile the Chemtec Company transferred its contract to Amalia R. Gluck and the Rynda Development Company arranged to convey the land to her" (Opinion, Oct., 1925).

(7) "The Chemtec Company had been let into possession to which Mrs. Gluck apparently succeeded, and neither had been ousted, at least not to the extent of showing that the complainants were then in peaceable possession" (Opinion, October, 1925).

(8) "The Arlington Company is no better off than

it was when it, with the Rynda Company, filed its bill to quiet the title, which was dismissed because peaceable possession in them was not shown. The adverse right of possession of Amalia R. Gluck then shown has not been changed. It is true that the Arlington Company has entered and finished the building, but the entry has at all times been adverse to Mrs. Gluck's claim. (Barry vs. Tunick, 127 Atl. Rep. 658.)" (Opinion, Oct., 1925.)

(S) That as between the parties Amalia R. Gluck, Maurice B. Gluck, Frieda Horn, Rynda Development Company and Arlington Realty Company the questions of laches and unclean hands are settled and *res adjudicata* down to October, 1925, when the Court rendered a decision between the parties.

(T) That the defendant Arlington Realty Company took nothing by the deed of January 15, 1925 and deed of October 29, 1925.

(U) That the defendant Arlington Realty Company took nothing by the deed of January 15, 1925, from the Sheriff as by law it was void and according to the Mechanic's Lien Law the lien was discharged.

(V) That the defendants Rynda Development Company never rescinded or attempted to rescind the contract of sale.

(W) And declared the rights and equities, and as more particularly stated and set forth herein in various portions hereof, of the complainant under the equitable doctrines of discovery and declaratory rights, and under the act of 1924.

(X) And granted an injunction restraining the several defendants from continuing to irreparably

harm, harass and slander her title, interest and rights and from multiplying actions against complainant with respect to such buildings and land.

(Y) And determined, after determining such rights, actual damages, and as well, in its extraordinary jurisdiction, to be paid complainant from the several defendants, and including therein exemplary damages for the willful disregard of complainant's rights.

(Z) That defendant interpleaded Frieda Horn was the owner of the mortgage from Amalia R. Gluck, bona fides and for value, and that there is no proof or showing that such mortgage was without consideration and a fraud upon any party.

3. And the petitioners appeal from the decree of the Chancellor upon the grounds that the same is erroneous in that costs are decreed against complainant upon a dismissal of the complaint where the facts shown that the defendant was guilty of and caused the acts made necessary to complain of.

4. And the petitioners appeal from the decree of the Chancellor upon the grounds that the same is erroneous, in being founded upon erroneous decrees interlocutory involving the merits.

(aa) That the Court failed upon motion therefor to strike out the answers of the defendants when it had before it facts in its judicial notice that such answers were untrue, false and sham.

(bb) That the Court struck out interrogatories served, which were made to shorten the hearing and were directly in point to necessary matters to complainant's cause.

(cc) That the Court failed to strike out the petition for injunction and order to show cause therefore upon motion therefor on ground that Court had no jurisdiction to determine the legal question of title.

5. And petitioners appeal from the decree of the Chancellor upon the grounds that the same is erroneous in that:

(dd) The decree deprives petitioners of their property without due process of law and deprives petitioners of their unalienable right to acquiring, possessing and protecting property according to the uniformly and settled law of the land, the Constitution of the State of New Jersey, Art. 1, Sec. 1, and Article V of the Constitution of the United States of America.

Petitioners therefore pray that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief as to this Court may seem proper.

AMALIA R. GLUCK,
MAURICE B. GLUCK,
FRIEDA HORN,
Petitioners *pro se.*

Answer to Petition of Appeal.

(Filed July 19, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between: AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants-Appellants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants-Appellees.	On Appeal From the Court of Chancery. Answer to Petition of Appeal.

The answer of the Franklin Society for Home Building and Savings, a New York corporation, and Frank Hancock Hennessy, two of the above named appellees, to the petition of Amalia R. Gluck and Maurice B. Gluck, the above named appellants.

These appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that

a decree was, on the 29th day of June, 1926, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these appellees beg leave to refer thereto when the same shall be produced.

These appellees are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

DE TURK & WEST,
Solicitors for and of Counsel with Franklin Society for Home Building and Savings and Frank Hancock Hennessy.

Answer to Petition on Appeal.

(Filed July 26, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between: AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants-Appellants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants-Respondents.	On Appeal From the Court of Chancery. Answer to Petition on Appeal.

The answer of the defendant-appellee, Arlington Realty Co., to the petition of appeal of the above appellants:

The appellee 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 twenty-ninth day of June, 1926, made and entered in the Court of

Chancery in the cause for that purpose mentioned in said petition as is therein stated; but as to the substance and form thereof the appellee prays to refer thereto when the same shall be produced. And the appellee is advised and believes that the said decree is agreeable to equity and prays that the same may be affirmed with costs to be adjudged to it.

RIKER & RIKER,
Solicitors for Appellee,
Arlington Realty Co.

THOMAS E. FITZSIMMONS,
Of Counsel.

Answer to Petition on Appeal.

(Filed July 30, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between: AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants-Appellants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants-Respondents.	On Appeal From the Court of Chancery. Answer to Petition on Appeal.

The answer of the defendants-appellees, Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre and Rynda Development Company, to the petition of appeal of the above appellants.

The appellees not acknowledging all or any of the matters which in said petition of appeal are contained to be true for answer thereto nevertheless say and admit that a decree was on the twenty-ninth day of

June, 1926, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition as is therein stated; but as to the substance and form thereof the appellees pray to refer thereto when the same shall be produced. And the appellees are advised and believe that the said decree is agreeable to equity and pray that the same may be affirmed with costs to be adjudged to it.

JACOB HAUPTMAN,
Solicitor for Appellees, Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre and Rynda Development Co.

HARRY GRIFFINGER,
Of Counsel.

Answer to Petition of Appeal.

(Filed August 7, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between:	
AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such, Complainants-Appellants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), Defendants-Respondents.	On Appeal From the Court of Chancery. Answer to Petition of Appeal.

The answer of the defendant-appellee, Dime Savings Bank, to the petition of appeal of the above appellants:

The appellee 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 twenty-ninth

day of June, 1926, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition as is therein stated; but as to the substance and form thereof the appellee prays to refer thereto when the same shall be produced.

And the appellee is advised and believes that the said decree is agreeable to equity and prays that the same may be affirmed with costs to adjudged to it.

SAMUEL D. WILLIAMS,
Solicitor for and of Counsel with the Appellee,
Dime Savings Bank.

(Indorsed):

On Bill, &c.

On Final Decree.

NOTICE OF APPEAL.

(Sat below):

BERRY, *V. C.*

Notice of Appeal.

(Filed July 1, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between,	
AMALIA R. GLUCK, and her husband MAURICE B. GLUCK, as such, Complainants-Appellants, and RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDINGS AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants-Respondents.	On Bill, etc. Final Decree Notice of Appeal.

The complainants Amalia R. Gluck and Maurice B. Gluck hereby appeal from the whole and every part of the final decree heretofore made in the above-entitled cause, on the twenty-ninth day of June, 1926, made by the Chancellor on the advice of Vice Chancellor Berry and Frieda Horn hereby appeals from such part of said decree as decrees that the said mortgage made by Amalia R. Gluck to Frieda Horn dated

January 4, 1923, be delivered up for cancellation, and that the said mortgage is declared to be null, void and of no effect, to the Court of Errors and Appeals in the last resort in all causes.

Dated, July 1, 1926.

MICHAEL J. TANSEY,
Solicitor for Complainants-Appellants.

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

BLAIR REILEY,
Of Counsel with Appellants.

(Indorsed): On Bill &c. On Final Decree Notice of Appeal Sat below: Berry V. C.

Final Decree.

(Filed June 29, 1926.)

IN CHANCERY OF NEW JERSEY.

AMALIA R. GLUCK, and her husband MAURICE B. GLUCK, as such, Complainants, against RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDINGS AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation), Defendants.	On Bill, &c. Final Decree.

This cause coming on to be heard in the presence of Michael J. Tansey, solicitor of the complainants Amalia R. Gluck and Maurice B. Gluck, Jacob Hauptman, solicitor of the defendants Rynda Development Co., Abraham Hauptman, J. Lewis Fiacre and Jacob Hauptman, and Thomas E. Fitzsimmons, solicitor of the defendants Arlington Realty Co., and De Turk and West, solicitors of the defendants Frank Hancock Hennessy, and the Franklin Society for Home Buildings and Savings, and Samuel D. Williams, solicitor of the defendant Dime Savings Bank.

Final Decree

The Court having read and considered the pleadings consisting of a bill, counterclaim, answer and amended answer replication, and petition for injunction answer thereto and affidavits submitted on motion to strike out said petition, and having taken testimony orally and in open court and having heard and considered the arguments of counsel thereon and being satisfied (a) that the complainants Amalia R. Gluck and Maurice B. Gluck are guilty of laches *and were in default under the contract sought to be enforced* [added after service of final decree as filed in writing, italics being ours to show change, the final decree as served was used to prepare petition on appeal] and the Court finding that the photostatic copy of the deed recorded by complainants in the Register's office of the County of Essex by attaching it to a mortgage made by the complainants to one Frieda Horn, dated January 4th, 1923, and recorded in the Register's office of the County of Essex in Book 1-47 of Mortgages for said county on pages 520-522 *was obtained by fraud* [added after service of final decree as filed in writing, italics being ours to show change, the final decree as served was used to prepare petition on appeal], and that the said mortgage and photostatic copy of the deed were a fraud on the defendants and that possession of the premises hereinafter described were obtained by the defendants through fraud, and that the complainants had no right, title and interest in said premises;

It is on this twenty-sixth day of June, 1926, Ordered, Adjudged and Decreed (b) that the said bill of complaint of the complainants, filed herein, be and the same is hereby dismissed with costs, and further, that the motion to strike out said petition for injunction is hereby denied.

And it is further Ordered, Adjudged and Decreed (c) that the complainants deliver up the said mortgage made Amalia R. Gluck to Frieda Horn, dated

January 4th, 1923, and recorded as aforesaid for cancellation.

And it is further Ordered, Adjudged and Decreed (d) that the said mortgage and photostatic copy of the deed attached thereto be cancelled of record by the Register of the County of Essex, and that the same are hereby declared to be null, void and of no effect; the said land and premises conveyed by the said mortgage and *pretended so to be by said* [added after service of final decree as filed in writing, italics being ours to show change, the final decree as served was used to prepare petition on appeal] photostatic copy of the deed being described as follows:

BEGINNING at a point on the northeasterly side of Rynda Road, distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road produced with the northeasterly side of Ridgewood Road produced, thence (1) along said side of Rynda Road north forty-eight degrees, thirty-seven minutes west sixty feet; thence (2) north forty-one degrees, twenty-three minutes east one hundred and forty feet; thence (3) south forty-eight degrees, thirty-seven minutes east sixty feet; thence (4) south forty-one degrees twenty-three minutes west one hundred and forty feet to the point and place of beginning. Being the westerly thirty feet of lot #32 and the easterly thirty feet of lot #31 on map of property of Rynda Development Company, South Orange, New Jersey, made by Ira T. Redfern and Bro., surveyors, South Orange, New Jersey, dated February, 1922.

And it is further Ordered, Adjudged and Decreed (e) that the complainants are hereby enjoined, commanded and directed to vacate the premises herein within five days, and the complainants are further ordered and enjoined from entering or trespassing upon the said premises.

And it is further Ordered, Adjudged and Decreed (f) that if the said complainants do not vacate the said premises within five days that a writ of assistance shall issue out of this Court directed to the Sheriff of the County of Essex, commanding the said Sheriff to forthwith eject and remove from the said premises the said complainants and all persons claiming under them or in possession of any part thereof under them and that possession thereof be delivered to the defendant Arlington Realty Company, or to its duly authorized agent.

And it is further Ordered, Adjudged and Decreed (f) that the complainants Amalia R. Gluck and Maurice B. Gluck pay to the defendants Rynda Development Co., Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Building and Savings, Frank Hancock Hennessy, Arlington Realty Co., and Dime Savings Bank, the costs of the suit to be taxed including a counsel fee of Four Hundred ($400.00) to Jacob Hauptman, Thomas E. Fitzsimmons, De Turk and West and Samuel D. West, of counsel herein with the defendants, which is hereby allowed to the said defendants, within thirty days after service upon them of a true, but uncertified, copy of this decree and of the said taxed costs; and that in default of such payment, execution issue therefor, according to the practice of this Court against the goods and chattels, lands and tenements, hereditaments and real estate of the said Amalia R. Gluck and Maurice B. Gluck.

Respectfully advised:

MAJA LEON BERRY,
V. C.

A true copy.
Thomas A. Barber,
Clerk.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between,

AMALIA R. GLUCK, and her husband MAURICE B. GLUCK, as such,

Complainants,

against

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

Transcript of the testimony taken before the Hon. Maja Leon Berry, Vice Chancellor, at Chancery Chambers, Newark, N. J., on Wednesday, the 23rd day of June, A. D., 1926, at ten o'clock, A. M.

Appearances:

Michael J. Tansey, Esq., for complainants.

Jacob Hauptman, Esq., for Rynda Development Co., Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre.

Samuel D. Williams for Dime Savings Bank.

Thomas E. Fitzsimmons, Esq., for Arlington Realty Co.

Mr. Hauptman: Frank Hancock Hennessy is not here. He is a member of the bar of New York and New Jersey. He will be here for the Franklin Society for Home Building and Savings, and also for himself.

The Court: Now, there should not be any preliminaries in this matter. I have examined the pleadings very thoroughly and I think I am fairly familiar with the issues to be presented here. This matter has been before the Court so much that there should be no difficulty in stipulating a large portion of the facts which ordinarily would have to be proved by testimony. I am going to recite some of the facts as I understand them, which I think could very well be stipulated now, and if I recite them correctly and you are willing to stipulate them, then you may do so, without the necessity of producing any testimony.

I think there is no question but that the contract, as I recall it, dated May 1st, 1922—if you have that contract handy you might offer it in evidence and have it marked now, and I presume the assignment from the Chemtec Company to Mrs. Gluck—the agreement was between the Rynda Development Company and the Chemtec Company—

Mr. Tansey: This is the contract to which your Honor referred.

Contract offered and marked Exhibit C1.

The Court: The contract, of course, speaks for itself as to its terms. Now the date of the settlement fixed by the contract was August 1st, 1922. It appeared to me from the pleadings and affidavits that the date of the settlement was continued to December 21st, 1922. Now is that fact admitted?

Mr. Tansey: December 26th.

Mr. Hauptman: No, that is not.

The Court: All right, then, that fact is not admitted. Mr. Gluck, the complainant, was also president of the Chemtec Company?

Mr. Tansey: Mr. Gluck was the husband of the complainant.

The Court: —and also the husband of the complainant, Amalia R. Gluck. The Chemtec Company entered into possession under the contract and began the erection of a building. That, also, I presume is admitted. Mechanics' lien suits were filed against the property and a judgment was entered, and the Arlington Realty Company purchased at Sheriff's sale under a judgment on Mechanics' Lien Suit. The Arlington Realty Company entered into possession and completed the building, executed an $8,000 mortgage to the Dime Savings Institution, but its possession was taken over the protest of Mrs. Gluck, as I understand it. I presume it is also admitted that possession of the deed from Rynda Development Company to Mrs. Gluck was obtained—and I am not saying how it was obtained—but was obtained by the Glucks, and a photostatic copy thereof made and attached to a mortgage to Frieda Horn, and recorded with the mortgage in the office of the Register of Deeds in Essex County. That also, I presume, is admitted. I presume you also admit that this matter has been before this Court twice in two suits before Vice Chancellor Backes, in the first of which there was a bill filed to quiet title. The bill was dismissed because it appeared that the possession of the complainant was not peaceable possession, but was controverted by Mrs. Gluck, and that as peaceable possession was one of the jurisdictional requirements of a

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bill to quiet title, that bill was dismissed. That is my understanding of that. Then later a bill was filed to remove a cloud upon the title—bill filed by the Arlington Realty Company, the cloud being this photostatic copy of the deed, and the mortgage I have just referred to. At that trial it appeared that the judgment in the mechanics' lien suits was a nullity, because the issuance of the summons was not endorsed on the lien claim which was filed, and consequently the Arlington Realty Company took no legal title when the conveyance was made, and that bill was dismissed on that ground.

Are those the facts that you agree to?

Mr. Tansey: They are, yes, sir.

The Court: Then, subsequently, I believe, by deed dated October 25th, but acknowledged December 2nd, and recorded December 7th, 1925, the Rynda Development Company conveyed whatever interest it had in the premises to the Arlington Realty Company. Also a mechanics' lien suit was filed by the complainant Maurice Gluck, against Amalia R. Gluck and the Rynda Development Company and others, involving this same property, and that mechanics' lien suit was dismissed for want of prosecution by Judge Dungan in the Essex County Circuit Court, and that decision of Judge Dungan was afterwards affirmed by the Court of Errors and Appeals. There is no controversy about that.

I presume it is also admitted that the $160 the initial payment mentioned in the contract of sale was made, and that an additional $400 was paid by the complainant by the medium of an assignment of certain contracts which were held by either one of the complainants, Mr. or Mrs. Gluck, or the Chemtec Company, I don't recall which, to the Rynda Development Company.

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Mr. Tansey: On December 18th, 1922.

The Court: I am not concerned, particularly, with the date of that.

Mr. Tansey: There is another deed about the time that the Rynda Development Company gave the subsequent deed, for the Lally & Tremer lien claim.

Mr. Fitzsimmons: We allege that we hold this title by reason of the Rynda Development Company deed.

The Court: Just wait until I get through with my resume, and you may then admit any additional facts you want to. Now is it also admitted that after the Arlington Realty Company became the purchaser at the Sheriff's sale, under the mechanics' lien suit, and entered into possession, that it leased the property and afterwards brought a suit against the tenant in one of the District Courts and obtained a judgment of ouster? Is that admitted?

Mr. Fitzsimmons: Yes.

The Court: Is it also admitted that afterwards—after this judgment of ouster was served, the complainant, Maurice B. Gluck, obtained from the tenant the keys to the property—I am not saying how he obtained them—but he obtained the keys to the property, and he himself entered into possession of the premises.

Mr. Tansey: Yes, sir.

The Court: Now, you may stipulate in addition any facts you may agree upon.

Mr. Fitzsimmons: I would like to submit a deed from Harry B. O'Connell, Sheriff, to Arlington Realty Company, dated March 11th, 1926—rather dated January 15th, 1924, and recorded in the Register's office of Essex County on March 11th, 1926.

The Court: Is that the deed to which reference was made?

Mr. Tansey: It is in the Lally & Tremer lien claim.

Mr. Fitzsimmons: I think it should be stated that the Arlington Realty Company had purchased several judgments against the complainant.

The Court: This deed to which you have just referred, then, was not on record at the time the bill to remove a cloud on title was filed?

Mr. Fitzsimmons: No, sir. That was put on record when Vice Chancellor Backes decided that the deed was a nullity.

Mr. Hauptman: I think your Honor said that it is admitted that the $400 additional deposit was made by virtue of those two assignments of those two contracts. That is not the fact. We admit the cancellation of the two contracts, but say Mr. Gluck said he would not go through with the contracts.

The Court: You don't admit that that was a payment on account of this contract?

Mr. Hauptman: We say that it was a conditional payment, that if he went through with his contract we would give him credit for that $400.

Mr. Tansey: First of all I guess there is no question that the $400 was paid. The only question is as to their understanding.

The Court: There is no question that the contracts were assigned. The question is as to what the result of that assignment was.

Mr. Tansey: They got the benefit of that $400.

Mr. Williams: I suppose it will be admitted that the portion of the proceeds of the Dime Savings Institution mortgage was paid to the Arlington Realty Company.

Mr. Tansey: We don't know about that, Mr. Williams. It is the usual thing for the Dime Savings Institution to pay over all its money on a mortgage but we don't know about that.

Mr. Williams: Then we will prove it.

Mr. Tansey: If Mr. Williams says the money was paid over we will admit it.

The Court: Do you say so, Mr. Williams?

Mr. Williams: The facts are that of the $8,000 mortgage, $6,638.02 was paid to the Arlington Realty Company, by checks which I have here, my checks, as attorney for the bank, dated September 11th, 1925. $112.15 was paid on the same date to the Collector of Taxes, Village of South Orange, for the first half of 1925 taxes on this property. $10.00 was retained or paid to the bank as the balance on the appraisal or application fee. $400 was used for revenue stamps, $232.83 was paid to me for services and disbursements and $1,003 was retained by me for the bank to cover what I considered to be any contingency by virtue of the existence on the record of the Frieda Horn mortgage. Those figures total $8,000, and all those checks I have here.

The Court: That $1,000, then, is still retained by you?

Mr. Williams: Yes, or by the bank.

Mr. Tansey: And you were aware at that time, Mr. Williams, that the Frieda Horn mortgage was on record?

Mr. Williams: That—why, of course I was, and it was on record.

Mr. Tansey: I think that is sufficient for us, if your Honor please. In order to clear up the matter brought up by Mr. Hauptman, I have a receipt here for $400, signed by the Rynda Development Company.

Receipt offered and marked Exhibit C3.

The Court: You may proceed then, gentlemen.

Mr. Fitzsimmons: I understood your Honor to say you would hear testimony just on the petition for an injunction?

The Court: I didn't say so, but I think in view of the stipulation as to facts, we will have no difficulty in disposing of this matter today, and I want to hear the complainant first on the question of performance of the contract.

Mr. Fitzsimmons: If your Honor please, I want to enter an objection at this time to Mr. Gluck proceeding with this case before he complies with the order of this Court to pay the Special Master and various counsel.

The Court: Why haven't they been paid?

Mr. Tansey: I understood, your Honor, that those matters were to be held until final hearing.

The Court: I didn't say anything of the kind. I said, "The counsel fees have to be paid before final hearing."

Mr. Tansey: Mr. Gluck told me at that time he would do it, but he didn't have the money at that particular moment, and that is all the explanation I can offer your Honor.

The Court: It isn't any explanation at all. I am going on with the case, however, but I will dispose of that question of the counsel fee when I dispose of the case.

MAURICE B. GLUCK, duly sworn, for

Direct-examination by Mr. Tansey:

Q. Mr. Gluck, you are the husband of Amalia R. Gluck, the complainant in this case? A. I am.

Q. And what is your business? A. I am a lawyer.

Q. Practicing where? A. New York City.

Q. And you had charge of the matters in connection with the purchase of a lot from the Rynda Development Company for Mrs. Gluck? A. I had charge of the purchase of a lot for the Chemtec Company.

Q. And was that the lot now in question? A. That is the lot now in question.

Q. The Chemtec Company made the agreement which is before the Court, with the Rynda Development Company? A. Yes, that is admitted.

The Court: That is admitted.

Q. And thereafter the same came to Mrs. Gluck by assignment? A. It did, that is agreed.

The Court: That is also admitted.

Q. And after that you had some negotiations with the Rynda Development Company about passing the title? A. I did.

Q. Do you remember what you did about getting the title from the Rynda Development Company? A. I do. What I did was to obtain extensions from the closing date mentioned in the contract to various dates, until the last extension included the 29th day of November, 1922. In the meantime, on the—some day in October, I had made arrangements for Mrs. Gluck to have a loan upon the property, on first mortgage, by the Franklin Home for Savings in New York City, and had entered into a contract with them for that. And I then had a number of discussions.

Q. What was the amount of the loan which you procured? A. $9,000, which was to be a building construction mortgage, payment to be made—the second payment was to be paid to the builder.

Q. Was that loan actually granted? A. That loan was actually granted, yes.

Q. That loan was actually granted—tell us about your negotiations with the Rynda Development Company for the delivery of your deed? A. I had had all my negotiations with J. Lewis Fiacre, the secretary of the Rynda Development Company, and I saw him a few times prior to November 25th, and I told him about the fact that Mrs. Gluck was to be the assignee of the contract, and assignee of the building, and he said that he would arrange to have a deed prepared and give us a deed to her. They didn't do this with the speed I wanted and I was somewhat vexed, and at a number of conversations I insisted upon their doing it. Finally, on the 25th day of November, I felt that they were not—

The Court: Never mind what you felt.

A. I went there and I demanded that they do this and well he had an excuse—he said he couldn't do it today, so I made a tender. I had prepared a mortgage of $11,500, in accordance with the terms of the contract, a first mortgage to Amalia R. Gluck, from the Chemtec Company, and a second mortgage covering the balance of the purchase price.

Q. Which was what? A. $1,400, plus $700, and some odd dollars in cash, and I tendered that. I said, "I am going to make a tender, Lew, and I am making this tender because you are delaying me, and I am having a good deal of trouble through your delay." He said, "No," he says, "you don't need to make that tender; it isn't necessary," but I made the tender anyway. He said, "I am going to get you that deed today." So I said, "All right, very well." He had a deed which was prepared afterward and it was made

out to Amalia R. Gluck in accordance with my previous request and her special residence features, and was entirely satisfactory and he went with me to South Orange that afternoon, which was a Saturday afternoon, to see Mr. Hauptman. Mr. Hauptman was building some houses in South Orange.

Q. What Mr. Hauptman? A. Mr. Abraham Hauptman.

Q. What office did he hold in the Rynda Development Company? A. He was president of the Rynda Development Company, and we went up there and saw Mr. Hauptman and had some discussion with him, and some argument, and finally Mr. Hauptman signed the deed, and then we looked for a notary and he said, "No," he said his son would be the notary and that his son was at Harvard or somewhere at a football game and he would be back Monday morning, and he would sign it, and Mr. Lew Fiacre would come in with him and sign it. They gave me the deed, and I took the deed home with me.

The Court: Who gave you the deed?

The Witness: Mr. Abraham Hauptman and Mr. Lewis Fiacre.

The Court: It hadn't been acknowledged?

The Witness: No.

Q. That is the Jacob Hauptman, sitting here? A. Yes, Jacob Hauptman, the attorney. The following Monday, the 27th, I met Mr. Lewis Fiacre in the office of Merritt Lane, in this building, and Mr. Hauptman was then employed there, and that is the first time I met Mr. Jacob Hauptman, and he signed the acknowledgment to the deed which had been sealed by Mr. Fiacre on Saturday, and he gave me my deed, and I took it to New York. On the way to my office

I stopped at the photographers' place and had the same photostated.

The Court: Was Mr. Jacob Hauptman with you when you went to New York?

The Witness: No, sir. Later that afternoon, as we had agreed, I said Mr. Hauptman was to come over and I would take him to Mr. Hennessy's office and that I would have Mr. Hennessy give him a letter showing that he would get, or that they would give him his balance of the purchase price, and the second mortgage, when it was closed.

The Court: Just one minute before we go any further. You say that this deed was given to you by Abraham Hauptman, was afterwards signed by Mr. Fiacre, the acknowledgment attached by Mr. Jacob Hauptman, and then given to you by Mr. Hauptman?

The Witness: Came back to me.

The Court: Came back to you. Now, do you mean to say by that, that the deed was delivered to you?

The Witness: That deed was delivered to me on Saturday.

The Court: I will not receive any testimony to that effect, and I don't want you to attempt to testify to it, because it has already been judicially decided in this Court that the deed was not delivered to you. That point is *res adjudicata.*

Mr. Tansey: We don't care to stress that point, if your Honor please.

The Court: I don't want any misunderstanding about that point. Vice Chancellor Backes has already decided that that deed was not delivered.

Mr. Tansey: I think that it is *res adjudicata* myself, but the matter here is only to carry it on.

Q. Tell us what happened thereafter? A. Mr. Jacob Hauptman came to my office.

Q. Pardon me. You said you got Mr. Hennessy to send a paper, or writing, a letter referring to the balance due, $700 and some odd dollars? A. Yes, and I will come to that. Mr. Jacob Hauptman came to my office, and I had not received, as yet, the deed back from the photostat office.

The Court: Why did you have a photostatic copy of it made?

The Witness: I had a photostatic copy of it made because my past experience has been that in case it was lost by fire or other depredation, it is advisable to have a photostatic copy.

The Court: Did you have in mind the execution of this mortgage to Frieda Horn when you had this photostatic copy made?

The Witness: Certainly not.

The Court: How long after the photostatic copy was made did you execute the mortgage to Frieda Horn?

The Witness: The photostatic copy was made on the 27th of November, and the Frieda Horn mortgage was made in January, 1923, and recorded January 4th, 1923.

The Court: Did you tell Mr. Hauptman you had had a photostatic copy made?

The Witness: Yes, he was at the office. I am saying now we went from my office to the photostat office.

The Court: Did you tell him you were going to use that photostatic copy for the purpose of record?

The Witness: When?

The Court: Any time?

The Witness: I never told him anything like that, no.

The Court: Did you tell him you proposed to attach it to a mortgage and have the mortgage and deed recorded?

The Witness: No.

The Court: Well, did you tell him when you did do it?

The Witness: When I did it?

The Court: Yes.

The Witness: Yes, I believe—I don't know whether I did or not. I am under the impression—

The Court: Why did you attach the photostatic copy of the deed to the mortgage and have it recorded in that manner?

The Witness: The reasons are given in the mortgage.

Mr. Tansey: I would be glad to permit the witness to go on with the next few questions. He will get to that.

Q. You met Mr. Jacob Hauptman and you had the photostatic copy at the photostat office? A. No, at my office, and I hadn't received the photostatic copy back from the photographer, and I said, "It is on the way over to Mr. Hennessy's office, and we will stop at the photographer's office," and we did go up there and stop at the photographer's office, and I got the deed and at the same time Mr. Hauptman looked at one of these copies, these negatives and positives of this deed and he said he thought that was a very fine idea, and he suggested that he would like to have a copy. I then ordered one, which cost twenty cents—I ordered one for Mr. Hauptman, telling the photographer to mail it to Mr. Hauptman, giving him Mr. Hauptman's address.

Q. Did you have photostatic copies taken of other papers? A. I always do it, in my office. It is a very convenient thing, in New York City, to do. We always have them convenient, and I believe my bill for photostatic copies is—

The Court: Never mind that.

The Witness: Yes, every receipt—every paper of any value which goes out of my office—original papers, I have photostated.

Q. This paper was in your possession? A. Yes, sir.

Q. And it was being turned over to Mr. Hennessy? A. Yes, sir.

Q. And you had nothing to show for that paper except Mr. Hennessy's receipt? A. We never bothered with receipts.

Q. What you took was a photostatic copy to represent your deed? A. Yes.

The Court: At the time you received the deed from Mr. Hauptman the balance of the purchase price under the contract had not been paid, had it?

The Witness: Had not been paid.

The Court: And the method by which you were to make payment was through this loan which you had negotiated with Mr. Hennessy's company?

The Witness: Yes, sir. Mr. Hauptman and I went over to Mr. Hennessy's company's office. Mr. Hauptman and I had to take a seat until we were announced. I was announced, and that is the only person they knew in that office, was myself.

The Court: Why go into all this detail? Get down to facts?

The Witness: I went into the office of Mr. Hen-

nessy alone and I gave him this deed and at the time I told him, "Here is the deed, and Mr. Hauptman is outside."

The Court: Never mind what you told him if Mr. Hauptman wasn't there.

Q. Did he give a receipt of understanding on taking that deed? A. No.

Q. Was there any agreement as to how the deed should be held? A. No, no agreement between myself and Mr. Hauptman. I just understood his Honor I couldn't testify to anything that took place out of Mr. Hauptman's presence.

Q. What was said in relation to holding the deed when you turned it over to Mr. Hennessy? A. I said, "Here is the deed of the property, and this is the deed on which we are to close, and that is in performance with this agreement that we have for this loan," and I said also that "Mr. Hauptman is outside, and I ask you to give him a letter explaining to him that he was going to get seven hundred some odd dollars, as well as the $1,400 in the shape of a second mortgage," and I said, "You are to prepare that second mortgage and we will pay you for it." He agreed to do that.

Q. Well, was the letter prepared? A. No, Mr. Hennessy—I then called Mr. Hauptman in the office and introduced him to Mr. Hennessy. He said, "I am very busy today; I will write you that letter tomorrow. You will get that money." But then he said this, "You haven't given us a release of the blanket mortgage covering that property." I said to him, "Why, what mortgage?" and he said, "There is a Development Company to Abraham Hauptman, for blanket mortgage on this property from the Rynda

some $35,000, and we will have to get a release from that." I said to Mr. Jacob Hauptman, "I never heard of a mortgage on there before; why didn't you have the releases prepared for this?" Well, he said, "That will be an easy matter, we will have that prepared in a few days when it is closed." So then we left the office of Mr. Hennessy.

Q. What did you mean by a blanket mortgage, a mortgage covering other properties in this neighborhood? A. Covering this whole tract of land.

Q. This was one of the lots on that tract? A. Yes, sir. Then we left the office of Mr. Hennessy and after that I had a few conversations with Mr. Fiacre with respect to the contracts that the Chemtec Company had on other lands in the same tract, and I went to see Mr. Hennessy once or twice.

Q. Well, was the deed left with Mr. Hennessy that day? A. Oh, yes, left by me with him that day.

Q. And did he subsequently write a letter in acknowledgment of the deed? A. I don't know. He didn't write any letter to me. He was to write a letter to Mr. Hauptman the next day.

Q. Was such a letter produced in the former cases? A. There was never any letter like that in the former cases.

Q. Well, was there an escrow receipt in the former cases? A. Yes.

Q. That is what I am talking about. Where is that? A. They have that. I haven't that.

Mr. Tansey: I would like to have that produced. I would like to offer this in evidence if there is no objection. Is this your receipt, when you received it back (indicating paper to Mr. Hauptman).

Mr. Hauptman: Yes.

Mr. Tansey: I offer it in evidence.

Marked Exhibit C4.

Q. Did you have a contract with the Franklin Home for Savings Institution, or whatever they call it? A. Yes.

Q. In reference to this loan? A. Yes.

Q. The granting of it, I mean? A. Yes.

Q. Will you please produce that contract? A. (Witness produces paper, handing it to Mr. Tansey.)

Mr. Tansey: Any objection to it?

(Counsel voice no objection.)

Mr. Tansey: I offer the contract with Franklin Society for Home Savings and Amalia R. Gluck, dated the blank day of October, 1922.

Marked Exhibit C5.

The Court: You said a moment ago that Mr. Hauptman was with you when you went to Mr. Hennessy's office. Which Mr. Hauptman do you mean?

The Witness: Jacob Hauptman, the lawyer.

Q. You have now produced the escrow receipt executed by Mr. Hennessy in reference to that deed. There is a subsequent receipt on that same paper signed by Jacob Hauptman, acknowledging the return of the papers to him. Did you know anything about the return of the papers to him? A. I did not.

Q. At the time they were returned? A. I did not.

Q. Now, you say that there was a date set for the closing of the title which was after this time you delivered the deed to Mr. Hennessy. What date was that, that was set for passing the title? A. That date was set for the 24th day of December, 1922.

Q. And did Mr. Hauptman say in the meantime that he would procure a release from the blanket mortgage? A. He did.

Q. December 24th, 1922, was on a Sunday, wasn't it? A. Yes, sir.

Q. And the next day was Christmas? A. Yes, sir.

Q. And did you know whether the time was laid over until the 26th of December? A. It was. It was arranged between Mr. Hennessy and myself before I left for the Christmas holidays, that it would be on the 26th instead of the 24th.

Q. Do you remember when you left for the Christmas holidays? A. I think it was the 20th. I think it was Wednesday of that week.

Q. Did you come down to Mr. Hennessy's office on December 26th? A. I did, Mrs. Gluck and I came down, bag and baggage.

Q. From where? A. From our mountain home, up beyond Easton.

Q. You had been up in the neighborhood of Easton for the Christmas holidays? A. Yes, sir.

Q. And you and Mrs. Gluck came down on December 26th to Mr. Hennessy's office? A. We did, sir.

Q. And why did you come there? A. Came there to close the deal.

Q. Were you ready to close the deal on that day? A. Yes, sir.

Q. There were some mechanics' liens and notices had been filed affecting the property—were you prepared so far as they were concerned to take title? A. Yes, sir.

Q. In what way were you prepared? A. I was prepared to the extent that a deposit of a bond could have been furnished to cover those—any mechanics' lien.

Q. When you got to Mr. Hennessy's office on December 26th, what took place? A. When I got there I went into the office and I introduced Mrs. Gluck to Mr. Hennessy, and he closed the door and then he said, "Why that matter is not going to be closed today." I says, "Why not?" Why, he said, that Mr. Hauptman had come over and said that he was from the office of Merritt Lane and Merritt Lane and he represented us, and that we were not going on with the loan, and therefore he had assumed that it was not to be closed today, and therefore had given Mr. Hauptman back the deed because he represented us. Well, thereupon, of course we got much excited, both of us. I asked him how it come that he could give my deed away.

The Court: Is Mr. Hennessy in court now?
Mr. Hennessy: Yes.

A. (Continuing.) How dared he give my deed away, when it was my deed. He says, "You didn't give me any deed. That deed was given to me by Hauptman, that is Hauptman's deed." I says, "That is rather strange, if that is Hauptman's deed, how is it I have got a picture of it?" With that he flushed with excitement and he says, "You have got a picture of that deed?" I says, "Sure I have got a picture of the deed."

Q. Just a minute. A. The question was what happened to it.

Q. I don't care what happened between you and Mr. Hennessy. The thing I want is that Mr. Hennessy had given back the deed. Did he say that Mr. Hauptman told him anything in regard to your being willing to have the deed taken back? A. Yes, he said he represented us, the Glucks, that the Glucks were not going on with the loan.

Q. And therefore he got the deed back? A. Therefore he wanted the deed back. He assured him it would be all right.

Q. And he did give him the deed? A. And therefore Mr. Hennessy promised faithfuly that he would get back that deed for us, and close this loan.

Q. Well, did you have any talk before this time to Mr. Hauptman, or the Rynda Development Company officials, to the effect that you were not going on with the deal? A. No, sir, three days prior to their taking it back I had given them $400 in the assignment of these contracts by that receipt.

Q. And the date when it was taken back appears on the receipt to be December 21st? A. Yes, sir.

Q. 1922? A. Yes.

Q. Well, did you make subsequent efforts in regard to getting the deed? A. Yes, I made subsequent efforts to get the deed.

Q. What were they? A. I went to Lew Fiacre and I asked him to see that I got that deed. He said he would take it up with the company and let us know.

The Court: You didn't expect to get the deed until you paid for your lot?

The Witness: No, sir; not until I had paid for my lot.

The Court: You couldn't pay for your lot unless you got this money from Mr. Hennessy's company?

The Witness: I could pay seven hundred some odd dollars to him. I didn't need the first mortgage I needed the deed. I could pay him $700 and give him a second mortgage. I only had to give him $380. It could have been subordinate to any first mortgage that would have to be issued.

Q. That was in accordance with the terms of the contract? A. Yes.

The Court: What about mechanics' liens?

The Witness: There were liens filed, but they were not good liens. There isn't a good lien on the place—never was.

The Court: Mechanics' liens had been filed?

The Witness: Notices of lien had been filed but they were not good notices.

Q. How had you taken care of the mechanics' liens? A. I could have deposited the money in court, or deposited the money with a bonding company, or Mr. Hennessy could have held it out, as it is usually done. We had releases for eighty per cent of them.

Q. I understood you to say Mr. Hennessy had agreed to try and get the deed back for you? A. He had.

Q. That—did he also say anything in reference to the continuance of this loan? A. He said, as soon as this deed is back here we will give you the loan.

Q. When Mr. Fiacre said he would try and get the deed back for you, did you wait a while? A. He said he would notify me. He did notify me, by letter.

Q. Have you such a letter? A. Yes, sir (witness produces letter). Letter and envelope dated December 27th.

The Court: Will you speed this up, Mr. Tansey?

Mr. Tansey: We can finish our case in about five minutes, if your Honor please.

I offer in evidence letter dated December 27th, 1922, from J. Lewis Fiacre to the Chemtec Company, and also the envelope in connection therewith.

Marked Exhibit C6.

Mr. Hauptman: We admit the letter.

Q. What efforts, if any, did you take to bring about the proposal in that letter mentioned?

Mr. Hauptman: I object, if your Honor please.

Mr. Tansey: I will reframe the question.

Q. What efforts, if any, did you take to follow up the proposal in that letter mentioned? A. I insisted that the deed brought back to Mr. Hennessy.

Q. And to whom did you make the insistment? A. To Mr. Fiacre.

Q. And why did you do that—why did you insist it should be brought back? A. Because I had my contract and my agreement and I was not going to have them change any of the agreements.

Q. Did they bring it back to Mr. Hennessy? A. Never.

Q. Did they subsequently offer you a deed? A. Never.

Q. And did they ever make any formal tender of a deed to you? A. Never.

Q. Did they ever tender back your purchase money that you had paid? A. Never.

Q. Now, while you were waiting for them to do these things did you do anything in order to protect your own rights in the property? A. Well, I'll say I did.

Q. Well, now, I don't want any joking. What I want to know is what you did do. A. Well, I made arrangements to complete the building with the Chemtec Company, after that. I had a watchman on there for months that I paid every week.

Q. Well, I understand that at that time the building was pretty well constructed, wasn't it? A. Well, I should judge about eighty-five per cent—maybe ninety per cent.

Q. Now, I am talking about your record title. What did you do in order to protect your record title? A. Around the 4th day of January I made—

Q. 1923? A. 1923. I made arrangements to execute a mortgage on the premises to my sister, Frieda Horn, who had advanced the Chemtec Company moneys on that building and to secure her I gave her a mortgage, that is, I had Mrs. Gluck execute a mortgage on that building, and I attached to that mortgage the photostatic copy of this deed. The Vice Chancellor wanted to know whether I had informed Mr. Hauptman that I was going to attach such a photostatic copy to any deed or mortgage and have it recorded. I believe that I told Mr. Fiacre—my impression is that that was one of the conversations—I told Mr. Fiacre that I would do such a thing and that I said I was going to do it, and that would be the only way to protect myself.

The Court: My question was whether you told him at the time you got the deed in the first place.

The Witness: Oh, no, never anticipated it.

The Court: You knew you were not entitled to a deed, however, until you paid for the property?

The Witness: Oh, no.

The Court: You thought you would mix the title up a little by putting this photostatic copy on record?

The Witness: No, I wanted to secure my possession and my rights under the deed, as well as the rights under the contract, to give notice to everybody of an equitable title or delivered title.

Q. You wanted the title to the property? A. Yes, I did.

The Court: You had a contract under which you claimed you were not in default?

The Witness: Yes, sir.

The Court: Why didn't you file a bill for specific performance instead of attempting to get the title?

The Witness: I held there was a delivery of the deed.

The Court: You assumed to decide this case?

The Witness: I assumed to decide it for myself.

Q. Mr. Gluck, was that photostatic copy of the deed attached to the mortgage recorded? A. Yes, sir.

Q. In the Register's office of Essex County? A. Yes, sir, and indexed against the name Rynda Development Company.

Q. Have you that with you? A. I have the—

Mr. Fitzsimmons: That is admitted, your Honor.

The Court: It is stipulated.

Mortgage with photostatic copy of deed attached introduced in evidence and marked Exhibit C7.

Q. When the Sheriff's sale came on, on the lien claims at which the Arlington Realty Company purchased, did you attend that sale? A. I did, sir.

Q. And did you then give notice of the claim of Amalia R. Gluck to the property? A. I did, sir.

Q. Have you such notice in court? A. Why, I believe the Sheriff has that notice.

Q. Have you a copy of the notice? A. I have.

Mr. Fitzsimmons: I object to the copy, your Honor.

The Court: Well, do you deny that such a notice was given?

Mr. Fitzsimmons: No.

The Court: Well, then, why object to the copy?

Mr. Fitzsimmons: I will admit Mr. Gluck attended the sale and that he announced this mortgage was on record.

The Witness: And I read the notice, didn't I?

Mr. Fitzsimmons: I think he read the notice.

Mr. Tansey: We don't care to call the sheriff.

The Witness: The sheriff is here.

The Court: Have you got the copy? Let's see it.

The Witness: I don't seem to have the copy here.

Q. Never mind, we will introduce it later, and after the Arlington Realty Company purchased at the sale you defended two Chancery suits hereinbefore mentioned, didn't you? A. I did, sir.

Q. And the bills were dismissed in each of those, weren't they, as hereinbefore stated? A. Yes, sir.

Q. Now, did you have any subsequent talks with Mr. Samuel Williams, representing the Dime Savings Institution, in regard to a loan which they made on the premises? A. Never had any talk with Mr. Williams.

Q. Did you have any talks with anybody in authority in the Dime Savings Institution about the loan that had been made on the property? A. I talked to a gentleman—he said he was the president. I think his name was Dr. Robinson, or something like that, and I talked to a gentleman who was also the secretary.

Q. Was that before or after the making of the

loan by the Dime Savings Institution? A. That was after the making of the loan.

Mr. Williams: I object.

The Court: It is not material if it was after.

Q. How did you give them any notice of that mortgage having been made?

Mr. Williams: I object to that.

The Court: What difference does it make.

Mr. Tansey: I don't know that it makes any difference. That is all, Mr. Gluck. Cross-examine.

Q. By the way, were you ready, able and willing to take title on the 26th day of December, 1922? A. Yes, sir.

CROSS-EXAMINATION by Mr. Hauptman:

Q. You were ready, able and willing to take title on the 26th day of December, 1922? A. Absolutely.

Q. After the delivery of the deed to Mr. Hennessy, why hadn't you taken title between that time and December 26th? A. There wasn't to be any closing under the 24th. The 24th fell on a Sunday.

Q. Have you that escrow agreement? Wasn't the original date for closing, Mr. Gluck, as arranged by you and Mr. Hennessy and myself December 4th? A. No, sir.

Q. I show you the receipt—escrow receipt, from Frank H. Hennessy, dated November 28th, and ask you whether you were present when that was dictated? A. No, sir.

Q. Were you in the office of Mr. Hennessy at that time? A. No, sir.

Q. Where were you? A. On the 28th of December?

Q. On the 28th of December? A. I was trying a case, in the Bronx.

Q. Where were you on the 27th of November? A. I was at my office and then I was with you, over there at Mr. Hennessy's office.

Q. Were you in Mr. Hennessy's office with me at the time this receipt was dictated? A. No, sir.

Q. Were you with me in Mr. Hennessy's office at the time the delivery of the deed was made to Mr. Hennessy?

The Court: He said he was, on direct.

A. I said I had delivered the deed to Mr. Hennessy.

Q. And you said I was not present at the time? A. I said you were in the next room, in the outer office.

Q. In response to a question by the Vice Chancellor as to whether you had made any tender since the 26th of December, you said that you had not because you were waiting for the deed to be redelivered to Mr. Hennessy, is that right? A. I did.

Q. And when you were asked, I think by the Vice Chancellor again why you were waiting for the delivery of the deed you said that you had a contract or agreement and that you insisted on the terms of that contract being carried out. What contract did you mean? A. I meant the contract in writing, Exhibit A attached to the bill of complaint, and the continuation contract that I had agreed and Mrs. Gluck had agreed with you that the deed should be de-

livered to her, and that she would be responsible to you for the purchase price.

Q. Does that contract call for the delivery of the deed to Mr. Hennessy's office? A. The contract speaks for itself. Of course it does not call for any delivery of any deed.

Q. Then what did you mean when you said you were insisting upon the contract? A. I meant on the performance of the contract according to our agreement. I wasn't going to have you play ducks and drakes with me.

Q. Are you finished now? A. I am trying hard to answer your questions.

Q. What contract or agreement did you have under which you insisted, as you testified on direct-examination that the deed be delivered to Mr. Hennessy? A. My contract with J. Lewis Fiacre or the Rynda Development Company.

Q. Is that contract in writing? A. That his giving me that deed was a delivery and that I insisted that that delivery be made as I had fixed it.

Q. Who gave you that deed, Mr. Gluck? A. Abraham Hauptman gave me the deed.

Q. And where were you when you were given the deed? A. Rynda Road, South Orange.

Q. And had the acknowledgment of the president's signature—

The Court: That has all been gone over and answered fully and explicitly, and the question of delivery is not involved in this case because it has already been decided in the other cases.

Mr. Hauptman: We want to show that tender of the deed was made on numerous occasions but never accepted.

The Court: You may show it, if you want to.

Q. Until what date was the last written extension for the closing of this contract? A. November 29th, 1922.

Q. On direct-examination, Mr. Gluck, you said that on November 25th you had been so vexed because the deed had not been delivered to you that you insisted with Mr. Fiacre that you be given a deed, is that right? A. That is right.

Q. That was on November 25th? A. Yes, sir.

Q. With whom were you vexed, and why? A. I was vexed with Abraham Hauptman and Jacob Hauptman—rather I never knew Jacob Hauptman, but I was vexed with the whole crowd.

Q. Why? A. Because Mr. Abraham Hauptman had taken some of my lumber, had taken my lumber next door to finish part of his house. He had busted up two arrangements for loans prior to that, and had made every effort to steal this property from me by refusing to give a deed. Now, you asked for it—you got it.

Q. I got it. Is there any other reason why you were vexed? A. Except that I knew I was being stultified by the efforts of Mr. Abraham Hauptman.

Q. Have you ever told this to anybody before, in any pleadings, or have you ever testified as to it, until a minute ago? A. Nobody ever had the nerve to ask me that question.

Q. You were vexed because a deed had not been delivered to you? A. Yes, sir.

Q. These extensions until November 29th—at whose request were they made? A. At my request.

Q. All of them? A. Yes, sir, at my request.

Q. And yet you were vexed because the deed was not delivered by the Rynda Development Company? A. Yes, sir.

Q. Before November 25th did you ever make a tender to the Rynda Development Company, of each? A. No.

Q. Now, in respect to the mortgage of Frieda Horn, which is in evidence, on what date did you put that on record? A. January 4th, 1923.

Q. And before that had you made an effort to put the photostatic copy of the deed on record? A. Yes, sir.

Q. And did you speak to Mr. Dodd, the Register of Deeds, about it? A. Yes, sir.

Q. And did he refuse to accept the photostatic copy of the deed? A. He did.

Q. And did you tell him that you would get it on any way? A. Sure.

Q. And after that you went out and had this mortgage executed and attached the photostatic copy of the deed to the mortgage and put it on record, right? A. Yes.

Q. Going back, now, to the time you had the photostatic copy of the deed made, you testified—on November 27th, now, when you were at the office of Mr. Hennessy, that a receipt was given to Hauptman? A. I never said so. I said that a letter was to be sent by Mr. Hennessy to you, and that he said he was too busy to give you that letter, and that he would mail you a letter tomorrow.

Q. I beg your pardon? A. Don't put anything in my mouth, please.

Q. You are clever enough to remember what you said? A. I hope so.

Mr. Tansey: I think Mr. Hauptman ought not to characterize the witness's statement.

The Court: I didn't hear it. I wasn't paying attention to the controversy because I didn't think it was worth while.

Q. Were you present when the conversation took place that Mr. Hennessy would send me a receipt? A. Yes, sir, not that he would send you a receipt. He said he would send you a letter and don't put anything in my mouth again.

The Court: Now, you answer questions and don't argue with counsel who is examining you.

Q. Did you know what was to be in that letter? A. Yes, that letter was to state that you were to get seven hundred and some odd dollars at the closing of the mortgage loan and a bond and mortgage for $1,400 second lien.

Q. You were not there when the letter was dictated by Mr. Hennessy, were you? A. I said that he said he couldn't send you a letter like that "today."

Q. Do you mind answering my question? A. I was never there when any letter was dictated by Mr. Hennessy to you.

Q. Were you there when, what we will call the escrow receipt was dictated by Mr. Hennessy? A. No.

Q. You were not? A. No.

Q. Did you ask Mr. Hennessy for a receipt for the deed, as you say you delivered the deed? A. No.

Q. Why not? A. I didn't need to fear he would steal the deed.

Q. Why did you have a photostatic copy made? A. So that in case of fire—

Q. Were you afraid there might be a fire in Mr. Hennessy's office after you delivered the deed? A. No, because I had a photostatic copy—of course not.

Q. Do you remember this question at the previous hearing, dated March 26th, asked of you by Vice Chancellor Backes, "Why didn't you take a receipt from Mr. Hennessy for the original? A. I didn't think I needed it. Q. If you were so careful as to have a photostatic copy made, why didn't you take a receipt? A. I didn't think I needed a receipt from Mr. Hennessy. I wouldn't have asked him"? A. Go ahead, that is right.

Q. What did you mean when you said you wouldn't have asked him? A. Oh, I would trust him with a deed. He is a member of the bar of New York. I would trust him with a deed. I never anticipated he was going to give you my deed.

Q. You are sure you delivered that deed yourself to Mr. Hennessy? A. Yes, sir.

Q. And you are also sure I was not in the office with you and Mr. Hennessy when it was delivered? A. Absolutely, you were not.

Q. On November 26th, then, was the first date for the closing? A. December 26th.

Q. I beg your pardon—December 26th was the first date for the closing of your title? A. Yes, sir.

Q. Before that time there had been a number of mechanics' lien claims filed, hadn't there? A. No, sir.

Q. Notices of mechanics' lien—had they been filed? A. No, sir.

Q. Not before December 26th? A. No, sir.

Q. Are you sure of that? A. There may have been one, the Elizabeth Sash & Door induced by you to be filed on December 10th.

Mr. Hauptman: I move that be stricken out.

The Court: Strike it out; it is not responsive.

Q. Do you know E. V. Ruiz? A. Sure I know him.

Q. He was one of the employees of the Chemtec Company in the building of the house? A. No, sir.

Q. Didn't he file a lien claim? A. He filed a lien claim as general contractor against two other properties—not against this one. Lew Fiacre told me about it, the first I knew about it.

Q. Have you that letter from Mr. Fiacre, addressed to you, of December 27th? A. Yes, sir.

Q. Did you receive that letter, Mr. Gluck? A. I surely did.

Q. Did you any time after December 27th make a tender to Mr. Fiacre or any officer of the Rynda Development Company in my office, or anywhere else, in accordance with the contract?

Mr. Tansey: I object to that "in accordance with the contract."

Q. I withdraw the question. Did you ever make any tender to the Rynda Development Company? A. Yes, on the 25th day of November, 1922.

Q. And at that time Mr. Fiacre said, "Never mind the time, you don't need to make a tender"? A. Said it was unnecessary, it would be all right, "We will get along well together."

Q. Of what did you make a tender on November 25th? A. Cash, and second mortgage.

Q. In accordance with your contract with the Rynda Development Company? A. Yes, sir.

Q. And did Mr. Fiacre say why he would rather wait? A. Yes, he said, out of friendship for me he didn't want to be pressed that way, he wanted to go through and do everything nice.

Q. Didn't want to be pressed what way? A. That I should force the delivery of the deed by a tender. That it wasn't necessary.

Q. But all that remained for the satisfaction of that contract was the delivery of a deed by the Rynda Development Company to you, and your payment to the Rynda? A. $780.

Q. And a second mortgage of $1,400? A. Yes, sir, so rather than have any later difficulty with a subordination clause in the second mortgage we had this arrangement to take this money over in Mr. Hennessy's office.

Q. That subordination clause in the second mortgage is provided for in the contract, isn't it? A. Yes, it is provided that there shall be a first mortgage not exceeding a certain percentage of the cost of the house and lot and that the second mortgage shall be a second mortgage to that. Now, rather than have any difficulty later about the question of whether there should be a $9,000 or an $11,500 mortgage, he thought it had better go together this way, and the mortgage I tendered was $11,500 to Amelia R. Gluck.

Q. Why didn't you tell us that before? A. Well, you draw it out from me. I will remember everything if you draw it out.

Q. Did you ever testify to that before? A. I believe I did—quite certain. Judge Backes asked me about the tender specifically.

Q. You testified that you took the deed to New York and gave it to Mr. Hennessy? A. Absolutely.

Q. That was on the 22nd of November, wasn't it, Mr. Gluck? A. On the 25th of November.

Q. Well, you took it to New York? A. On the 27th of November—you said the 22nd.

Q. And from November 27th have you ever made a tender to the Rynda Development Company? A. No.

Q. Why not? A. My counsel advised it was not necessary.

Q. Did you at any time after November 27th demand the delivery of the deed? A. After the 27th?

Q. Of November? A. Why, I have been hollering blue murder for the delivery of that deed ever since.

Q. And did you offer to pay for that deed in accordance with the contract? A. Yes, surely, I will pay for it right now.

Q. To whom did you make that offer? A. Constantly, to Lew Fiacre. I told him he had committed absolute perjury and said, "Lew, why don't you give me the deed and I will give you the money."

Q. That was since you filed the bill? A. Yes.

Q. From November 27th, 1922, up until the date of the filing of your bill? A. Yes, I have been asking and demanding for that deed in the two actions that were brought here. I have been saying, "Give me that deed—I want that deed."

Q. And have you ever offered to pay for the deed in accordance with your contract? A. Well, that is assumed, that I have to pay the purchase price.

Q. Will you answer my question, have you ever made any such offer? A. Why, yes, the offer is a matter of course. It accompanies the offer of taking the deed. I never made any specific offer in so many words.

Q. Did you say you also made a demand for the

deed in various proceedings in this court? A. Well, I didn't make a demand on the record. They would not let me do that. I would have done it if they had let me.

The Court: Never mind what you would have done.

The Witness: No, I didn't do it.

Q. You testified on direct-examination you could have cleared up this title, at the time it was jumbled up by the payment of money into court. You said that, Mr. Gluck? A. The lien law provides you can pay the money into court.

Q. You have so testified? A. Yes.

Q. Have you ever made any payment into court? A. No.

Q. Have you ever filed any suit for specific performance in reference to this property until this present suit which we are trying here? A. No.

Mr. Hauptman: That is all.

CROSS-EXAMINATION by Mr. Fitzsimmons:

Q. You have spoken about these various lien claims. Isn't it a fact you appeared before Judge Dungan and moved to strike out all these lien claims? A. I moved to strike out certain of the lien claims.

Q. And you moved to strike out the claim of George Salmon, Lally & Trahmer and John O'Hara and served me with notice of a motion? A. I believe I did move to strike something out.

Q. And I appeared in answer to that motion? A. I don't think it covered Salmon. I think it covered Lally & Trahmer and O'Hara. I think my motion in

reference to Salmon was to compel money to be delivered.

Q. And Judge Dungan denied your motion? A. Yes.

Q. And he also denied your motion against other lien claims and Mr. Walker, representing the Arlington Realty Company argued after I did?

Mr. Tansey: I object. It does not appear whether this action of Mr. Gluck was before the 25th of December, 1922. If it was after that—

The Witness: It was years after that.

The Court: He says he has always been ready, able and willing to go on with this deal, at the time the Rynda was ready. I think this would be pertinent.

Mr. Tansey: You had releases of those liens at Mr. Hennessy's office.

CROSS-EXAMINATION by Mr. De Turck (representing the Franklin Home for Savings and Frank Hancock Hennessy):

Q. You testified on direct-examination, Mr. Gluck, that you took Mrs. Gluck to the office of the Franklin Society and had her sign a contract? A. I didn't. I said I caused an agreement to be signed by Mrs. Gluck. I didn't say I ever went to the office of the Franklin Society with Mrs. Gluck.

Q. Did you see the agreement she signed? A. Yes, it was sent to me by Mr. Hennessy.

Q. And where did she sign it? A. It may be she signed it in Easton, or maybe in New York.

Q. After you had examined the contract? A. After I had examined the contract.

Q. And I suppose you noticed at the time that she represented herself to be the owner of the property? A. Yes.

Q And that was not a fact? A. It was a fact. She was the equitable owner.

Q. And as a matter of fact she never became the real owner of the property?

The Court: I think that is a legal conclusion which he has tried to answer to his own satisfaction, before, which he should not be permitted to answer here now.

Q. No deed to this property was ever delivered to Mrs. Gluck? A. I got a delivery of that deed in spite of what all the Court of Chancery may say.

The Court: This matter has been decided by the Court of Chancery at least twice, and is not now open.

The Witness: I understand, your Honor, but your Honor gives me the privilege of answering.

The Court: I don't give you the privilege here to dispute what the Court of Chancery says is so.

Mr. Tansey: I had entered an objection to the question Mr. De Turck asked.

Q. You say that on December 26th, when you went to Mr. Hennessy's office you were prepared to close the deal? A. Yes, sir.

Q. And were you prepared to pay $780? A. Absolutely.

Q. What did you have, check or cash? A. I had a check.

Q. On what bank? A. On my Chatham & Phoenix National Bank Account, that I could have issued.

Q. Did you have a sufficient balance in the bank at that time to pay out $780? A. I don't know. I expected to get cash from Mr. Hennessy on the closing of the deal.

Q. In other words you expected to get the money from Mr. Hennessy to pay the money? A. Yes, there was plenty of money left to pay that.

Q. You had no deed in your possession? A. I had given the deed to Mr. Hennessy.

Mr. Tansey: I object; the whole facts have been testified to, as to that deed.

The Court: He has made the New York Company—I forget the name of the company—

Mr. De Turck: Franklin Society.

The Court: He has made that company a defendant on the ground that it violated its contract to furnish his money. He has also made Mr. Hennessy a defendant on the ground that he conspired with others to deprive him and his wife of this deed.

Mr. Tansey: It has been testified Mr. Hennessy had the deed.

The Court: Objection overruled.

Q. You had no deed in your possession? A. I certainly had a deed in my possession, in the hands of Mr. Hennessy.

Mr. De Turck: I move to strike out the answer as a conclusion that he cannot draw.

The Court: He is qualifying his possession, and the Court understands what the possession was any way.

Q. Did you have any releases of mechanics' liens? A. I certainly did.

Q. Did you have them in your possession then? A. Oh, yes.

Q. Did you turn them over to Mr. Hennessy? A. Yes, sir, offered them to Mr. Hennessy, in his handwriting.

Q. Have you the releases here? A. I have releases here, sure.

Q. Well, let's see them? A. (Witness hands papers to counsel.)

Q. Had you secured a release from the Elizabeth Sash & Door Company? A. No, that was one of the companies that I didn't secure a release for. That was to be paid out of the mortgage money, or deposited and held by Hennessy to pay if they succeeded in any lien. There was no valid lien. That was held afterwards to be no good.

Q. What do you know about mechanics' liens in New Jersey? A. What do I know about mechanics' liens in New Jersey?

Q. Yes? A. Well, I don't know much about mechanics' liens in New Jersey.

Q. So you were not in a position to say whether the liens were good or not? A. Oh, yes, I was. I was in a pretty good position to say that.

Q. From your own knowledge? A. From my own knowledge and own experience.

Q. In what respects were these three liens, then on the property, had? A. There wasn't three liens then on the property.

Q. How many liens were on it? A. One, Elizabeth Sash & Door.

Q. Did you have with you a release of that blanket mortgage which you testified to on direct-examina-

tion? A. No, sir. Mr. Hennessy had that release. It was given and sent to him on December 6th.

Q. How do you know that? A. I know it because it was testified to and introduced in evidence. Now, call for it, Mr. Tansey.

The Court: Why don't you let your counsel conduct your case?

Mr. Tansey: I will ask for it to be produced.

Mr. Hauptman: That was testified as returned.

Mr. Tansey: It is stipulated that the release of the blanket mortgage was in Mr. Hennessy's possession on December 6th.

Mr. Hauptman: That it was sent on December 6th, Mr. Tansey.

Q. Did either you or Mrs. Gluck ever sign a mortgage in favor of the Franklin Society? A. No. If that contract is not a mortgage, Mrs. Gluck never signed another mortgage, but I think that contract is a mortgage.

Mr. De Turck: I move to strike that out.

The Court: Which contract?

The Witness: This contract of mortgage with the Franklin.

The Court: Then when you say Mrs. Gluck executed a mortgage you mean that she executed this contract?

The Witness: If that is a mortgage, she executed this specific contract.

Q. Well, did she execute this contract? A. Well, you have the original. You bring the original. This is a copy. Let me have those releases, too, please.

RE-DIRECT EXAMINATION by Mr. Tansey:

Q. I show you four notices, Mr. Gluck, addressed to S. J. Wilson, Sheriff of the County of Essex, signed Amelia R. Gluck as to some, and Frieda Horn as to others, and also by the Chemtec Company, and ask you whether those are the notices you served on the sheriff at the time of the sale to Arlington Realty Company? A. I did, and read them out at the sale.

Q. They are the ones, are they? A. They are the ones.

Mr. Tansey: I offer them.

Four notices marked as one exhibit, Exhibit C8.

Q. The sale to which you made these objections, on which a deed was given on the Salmon judgment to the Arlington Realty Company—that is the deed that is referred to in the preceding cases in this court as being nullity, is it not? A. Yes, sir.

Q. Now, did you examine the pleadings in reference to the Lally & Trahmer deed, given in 1924, dated January 15, 1924?

Mr. Fitzsimmons: The deed was dated 1924.

A. I examined the pleadings upon which it was based. I never examined the deed—never knew—

Q. Well, you have examined the pleadings on which it was based? A. Yes, sir.

Q. Did you notice whether those proceedings were in accordance with law?

The Court: You know, Mr. Tansey, that is not proper. This man has already said he

does not qualify as an expert on the mechanics' lien law. He is not an attorney of this state. The mechanics' lien law, as you yourself know, is a very technical proposition.

Q. Well, have you those proceedings in court, Mr. Gluck?

The Court: Even if he did know he would not be permitted now to testify as to whether those proceedings were technically correct or whether they were not. The matter was before the Court and should have been attacked then.

Mr. Tansey: The deed was not before the Court. That is a subsequent deed. That is the deed to Lally & Trahmer and subsequent to the deed in relation to the Salmon Company's sale, and they are now basing their rights, if any, their title, upon the deed from Lally & Trahmer, and the subsequent deed from Rynda Development Company, so it is the Lally & Trahmer deed which we say is defective.

The Court: What are you trying to prove by this man now? You are trying to prove by him that there is some defect in these proceedings? If you will produce the record the Court will inspect the proceedings.

Mr. Tansey: Very well, then.

Q. Have you the record of the Lally & Trahmer proceedings? A. The county clerk is here under subpoena.

Mr. Tansey: That is all, Mr. Gluck.

Complainants' Witness, Maurice B. Gluck, Cross

FURTHER CROSS-EXAMINATION by Mr. De Turck:

Q. Mr. Gluck, did you and Mrs. Gluck abandon the idea of securing a loan from the Franklin Society? A. No, sir.

Q. Didn't you do so when you executed a new mortgage to Frieda Horn? A. No, sir.

Q. Did you advise the Franklin Society of the execution of this mortgage? A. Didn't need to. I could have obtained a release.

Q. Did you ever give them a release? A. No, because you never advised me you were ready to close. If you had I would come right over and close with you.

Q. So you didn't advise the Franklin Society of that? A. No, sir, it was not necessary.

The Court: You were acting in this matter for either the Chemtec Company or Mrs. Gluck?

The Witness: I was acting for Mrs. Gluck after November 25th. Up to about October 18th I was acting for the Chemtec Company, when I had made arrangements to sell to Mrs. Gluck.

The Court: Were you acting for Mrs. Gluck and the Chemtec Company in this matter?

The Witness: Both; prior to November 25th, for Chemtec Co., and after that for Mrs. Gluck alone.

The Court: With her authority?

The Witness: With her authority, so far as I know.

MRS. AMALIA R. GLUCK, duly sworn, for

Direct-examination by Mr. Tansey:

Q. Were you with Mr. Gluck on December 26th, 1922, at the office of Mr. Hennessy? A. I was; I certainly was.

Q. And for what purpose had you gone there? A. We came there to sign a mortgage to the Franklin Savings Society, so that we could close this transaction and get through with it.

Q. And were you present at the conversation between Mr. Gluck and Mr. Hennessy? A. I certainly was. I was right there, Mr. Tansey.

Q. About what time in the morning was it you got there? A. Oh, I suppose it was about eleven o'clock. We came down on the first train from Easton.

Q. From Easton? A. Easton, Pennsylvania.

Q. And what was said by Mr. Hennessy when you came in there? A. He seemed rather amazed to see us. He didn't seem to know just what to say at first.

Mr. De Turck: I move that that be stricken out.

A. (Continued.) He seemed to hesitate. Finally he said Mr. Hauptman had come over there and said he was from the office of Mr. Merritt Lane, and that Mr. Lane represented us, and that we didn't want the loan and demanded back the deed. We said we didn't know anything about it. He said he had been greatly misled and he would try to get it back. He said, "The loan will go through, everything will be fine the minute it is back in this office."

Q. And did he set any time when he thought the

matter might be closed? A. No, but he thought he could do it right away.

Q. Did you subsequently go to Mr. Hennessy's office? A. No, I haven't been there since.

Q. Did you hear from him in regard to that? A. No, nothing at all.

Q. You are now living in the place at South Orange? A. I am.

Q. You had the place constructed for your own residence, didn't you? A. Why, no, I knew nothing about it at first. I subsequently took it over. I was supposed to have a mortgage on the place.

CROSS-EXAMINATION by Mr. De Turck:

Q. You say that Mr. Hennessy said he would call up Mr. Hauptman right away? A. He certainly did.

Q. Did he call him up? A. Well, I didn't stay.

Q. So it wasn't important enough for you to stay and find out whether he did call him up? A. Well, he promised faithfully he would.

Q. And you didn't wait to find out what Mr. Hauptman's reply was? A. No, because I assumed it would be all right.

Q. How long were you in Mr. Hennessy's office? A. Oh, perhaps fifteen minutes—ten or fifteen minutes.

Q. Talking with Mr. Hennessy all that time? A. Yes, sir.

Q. In his private office? A. Yes, sir.

Q. Did he call up anybody while you were there? A. No, he did not. He seemed greatly excited that he should be misled.

Q. And then you left? A. Yes, sir.

Q. Expecting to hear from him? A. Absolutely.

The Court: Is your husband acting in this matter all the way through with your authority?

The Witness: Yes, sir.

The Court: And whatever he did in this matter he had your complete authority and consent to do?

The Witness: Yes, sir.

The Court: When did you enter into possession of this property?

The Witness: Well, I think in November, some time.

The Court: Last November, you mean?

The Witness: You mean when did I move in?

The Court: Yes.

The Witness: I moved in last month.

The Court: Well, how did you come to move in?

The Witness: Well, the place was unoccupied, so we moved in.

The Court: Who did you get the keys from?

The Witness: Mr. Gluck took care of that.

The Court: In obtaining the keys did he act with your authority?

The Witness: Yes.

The Court: You had knowledge of the fact when he obtained the keys?

The Witness: I don't know exactly when he did obtain them.

The Court: You knew he did obtain the keys?

The Witness: Yes, sir.

The Court: Did you know that previous to that time any tenant of the Arlington Realty Company had been in possession?

The Witness: Yes.

The Court: And did you know that that tenant had been put out for nonpayment of rent?

The Witness: I am not familiar with that detail. I knew some one had been in there and had been put out.

The Court: You knew that they were tenants of the Arlington Realty Company?

The Witness: I knew somebody was in there.

The Court: You knew somebody occupied the premises under the Arlington Realty Company?

The Witness: I was up there with Mr. Gluck some time last fall, and Mr. Gluck spoke to the lady and she said she was going to move out.

Mr. Tansey: Does your Honor care to hear testimony on the delivery of the key?

The Court: I may have to get that later.

Mr. Tansey: I would like to introduce in evidence the record in the case of—

Mr. Fitzsimmons: If that is going to be an attack on the Lally & Trahmer judgment in this proceeding, I want to enter an objection on the ground that it is *res adjudicata.* In the Salmon case, which Vice Chancellor Backes decided, it wasn't called to his attention that Mr. Gluck had moved before Judge Dungan to strike out the lien claims and the motion was denied, but in this case he had admitted in his cross-examination that he went before Judge Dungan and moved to dismiss the claims and Judge Dungan had denied the motion. I can't see, in this suit for specific performance, how he can bring in any testimony concerning these claims which now are sales over a couple of years old.

The Court: You are offering the record, Mr. Tansey?

Mr. Tansey: We are offering the record in the case of Lally & Trahmer. We offer the entire record, both in the District Court, and the County Clerk's office, and we ask permission of the Court if the District Court record is not here at this present time, to bring it in.

MAURICE B. GLUCK, duly recalled, for

Further direct-examination by Mr. Tansey:

Q. What are the circumstances relating to the obtaining of the key of this building by you, within the last three months? A. Why, you notified me that there had been a gentleman to see you by the name of Mr. Rupert Howlett, an attorney, and that he said he would give me the keys. You said that he would give me the keys if I went and asked him for them. I went and asked him for them and he gave me the keys.

Q. Where did you see Mr. Howlett? A. New York. New York Title & Mortgage Company.

Q. Is he a lawyer? A. I don't know. You said he was a lawyer and that he had an office in your building. I don't know whether he is a lawyer or not. I never looked up his record. He said he was the lawyer for Mrs. Smith.

Q. You got the keys from Mr. Howlett when? A. On the 5th of May, 1926.

Q. And did you go to the premises at South Orange then? A. I did.

Complainants' Witness, Maurice B. Gluck, Cross

Q. Was anybody living in them at the time? A. No, sir.

Q. They were not occupied? A. No, sir.

Q. And what did you do when you went there? A. I changed the lock upon the door—upon the front doors, on the outside doors.

Q. And thereafter did you move your family into the place? A. Mrs. Gluck moved in, yes, on the 6th.

Q. She is your family, is she? A. She is my family.

Q. And you and she have been living there since the 6th of May, 1926? A. Yes, sir.

Q. That is all there was to it? A. That is all.

CROSS-EXAMINATION by Mr. Fitzsimmons:

Q. Did you have any conversations with Mrs. Smith, the tenant, relative to her getting out? A. After the decision of Justice Backes in the second case I took the decision to her and showed it to her, and she said she was a lawyer and she understood what that meant, or that she had studied law, something like that, and she read it over a few times, and I told her she would have to vacate the premises or else I would have to start action.

Q. You told her you owned the property and she would have to get out? A. I said Mrs. Gluck owned the property.

Q. Well, Mrs. Gluck owned the property and she would have to get out? A. That we would start action to proceed to compel her to get out.

Q. And you say you got possession of the keys from Mr. Howlett, or that Mr. Tansey did? A. No, no, I got them.

Q. You got the keys? A. Yes, sir.

Q. I show you an affidavit made by you in this cause on this application for an injunction—do you recognize the paper? It is the usual bondsman's affidavit. Is that your signature? A. That is—the original is my signature.

Q. Did you take the affidavit before Philip Donnelly? A. Yes, sir.

Q. On the 5th page, second paragraph, you say, "In May, 1925, the Arlington Realty Company put one Mary and Louis Smith into the house and premises under an agreement of sale, and they have occupied the same until two weeks ago. Deponent did not want to breach the peace, but finally got them out and these people turned over the keys to deponent on May 5th, 1926, and then deponent immediately went up and changed the locks and moved in on May 6th, 1926, so that these defendants could no longer continue to damage and ruin the property of complainant." Was that statement true? A. That is true, sure.

Q. So that the keys were turned over to you by these people? A. By Howlett, for the Smiths.

Q. Why didn't you say that in your affidavit? A. Oh, I assumed that Howlett was acting with authority. I didn't know him.

Q. Did you prepare this affidavit yourself? A. I did. That was in compliance also with Mrs. Smith's agreement that she was going to turn the keys over to me.

Q. At the time you finally got these people out and went over and got possession of the keys, that was after you had started suit in this court, asking for specific performance, isn't that true? A. Yes, sir.

Q. And you felt, by your statement in your affidavit

that you wanted to prevent any further damage, that you would take the matter into your own hands instead of leaving it to the Court of Chancery, isn't that true? A. I didn't see it that way.

Q. What would you say? A. I believe under the rule of damages you have to mitigate it. The minute I found the Smiths were willing to give me the keys, I did get the keys, and moved in there to mitigate whatever damage there was.

Q. And when did you ask the Smiths for the keys? A. Oh, I asked them for the keys last December.

Q. And when did you ask them again? A. Oh, I asked them in January, probably.

Q. And how did you come to get the keys in May? A. I just explained to you that Mr. Tansey told me. Mr. Howlett had been to see him. I never saw Howlett before in my life.

Q. What was this agreement you had with the Smiths to turn the keys over to you? A. Merely that they recognized my ownership—that is, Mrs. Gluck's ownership, and they wouldn't keep it from us, so that we didn't need to make them a party in this proceeding, nor sue them in ejectment.

Q. Do you remember being visited by two policemen from the South Orange Police Department? A. Oh, yes.

Q. And what was the purpose of their visit?

Mr. Tansey: I object, how does he know.

Q. What did they say? A. A fellow by the name of Penn said he had gotten a complaint over the telephone. He didn't say who it was that made the complaint. He said he had gotten a complaint and he wanted to put me out. Thereupon I pushed him out.

Q. Are you sure it was Penn, or was it the officer named Zeigler? A. Penn was the fellow that tried to pull a gun on me.

Q. Do you remember Zeigler? A. I don't know. There was another man they called "Red." "Red" was there.

Q. And he told you a complaint had been sent to headquarters that somebody was moving into the house? A. Yes.

Q. And he asked you to come down to headquarters? A. He told me—

Q. Do you remember telling him you would like to take a "crack" at Fitzsimmons? A. I think you were the fellow that told him to come there. I did tell him that—legally I mean, not physically.

The Court: You have an idea that you can take the law in your own hands wherever you are?

The Witness: No; I have been practicing for twenty odd years and I know what I can do.

The Court: Well, your practice at the bar ought to have told you to practice with a little bit more ethics than you seem to have practiced in this case any way.

Mr. Tansey: Let me suggest that counsel is a little bit tantalizing in his method of questioning.

Q. You say you have been practicing for twenty years? A. Yes, sir.

Q. In the State of New York? A. Yes, sir.

Q. Were you ever suspended? A. Oh, yes, lots of times. I was in jail for contempt last year.

Q. Were you ever suspended in the City of New York? A. Oh, sure, I have been suspended by a number of Judges—lots of times.

The Court: Why did you change the locks on the house?

The Witness: Changed the locks so that nobody else could come in and use any other keys.

The Court: You knew the Smiths were the tenants of the Arlington Realty Company?

The Witness: No, I knew they had made some sort of agreement to purchase.

The Court: You knew they had gone into possession under the authority of the Arlington Realty Company?

The Witness: Yes, sir.

The Court: And you went to the Smiths and represented to them that the Arlington Realty Company had no rights in the premises, but the property belonged to your wife?

The Witness: Yes, sir.

The Court: And you knew that was one of the controversies in the suit?

The Witness: Mrs. Gluck has all title to the property. She has it under the Statute of Uses and has it under the Law of Easements.

The Court: Will you stop arguing with me?

The Witness: I am trying to answer your Honor's question.

The Court: Did you know at the time you obtained these keys that judgment had been entered against the Smiths in the suit of Arlington Realty Company, at law, in tenancy proceedings?

The Witness: I didn't know, no.

The Court: It was your counsel who produced these papers that I am showing you, wasn't it?

The Witness: Yes, sir.

The Court: When did you first learn of those proceedings?

The Witness: Why, I learned generally of the proceedings—Mr. Tansey had told me Mr. Howlett had said something about proceedings in the District Court.

The Court: But you knew there had been some proceedings between the Arlington, as landlord, and the Smiths as tenants?

The Witness: I knew there was some proceedings between the Arlington and Smith, not as landlord and tenant, or what relationship.

The Court: Did you know that as a result of those proceedings the Smiths were obliged to vacate the premises?

The Witness: I didn't know that until after we sent some gentleman up to investigate what the proceedings were.

The Court: Well, as incidental to the specific performance of the contract which you have asked in this Court, you expected to get possession of these premises?

The Witness: No, I had possession. Possession has been decreed.

The Court: Did you have possession while the Smiths had it?

The Witness: Yes, sir.

The Court: How?

The Witness: Theirs was an adverse possession.

The Court: I am talking about actual possession?

The Witness: Actual possession we had from the 25th day of November.

The Court: Did you have actual possession while the Smiths were there?

The Witness: Yes. They kept me out.

The Court: Did you have actual possession?

The Witness: No.

The Court: As incidental to the relief which is asked in this court you expected to get actual possession, didn't you?

The Witness: No, I expect to get damages for being withheld from possession.

The Court: This is a suit for damages?

The Witness: This is a suit for specific performance of a deed, as well as damages for failure to deliver possession.

Mr. Tansey: That is all, Mr. Gluck.

Mr. Fitzsimmons: If the Court thinks it necessary to get on the record—reference will be made to Mr. Gluck's bill of complaint, as to what he is seeking in this court.

The Court: Well, I think the bill speaks for itself.

Mr. Fitzsimmons: It asks that all the equities be determined by this Court.

Mr. Tansey: If your Honor cares to hear anything further about the negotiations with Mr. Howlett, I can testify to that.

The Court: I don't feel it is necessary, unless you feel it is necessary for your story.

Mr. Tansey: Except to explain how the negotiations with the Smiths progressed, as it has been raised inferentially by Mr. Fitzsimmons that he received the keys from the Smiths instead of Howlett.

The Court: He received the keys. There is not any question in my mind about the motive which was back of his getting them.

Mr. Tansey: We have introduced the record of the Salmon suit, the lien and complaint.

The Court: You offer it, but it is not here.

Mr. Fitzsimmons: That Salmon matter was disposed of by Vice Chancellor Backes. I raised no question about it.

Mr. Tansey: Except we might introduce it for the purpose of notice.

Mr. Fitzsimmons: That case is *res adjudicata.*

Mr. Tansey: We introduce the lien and complaint in the proceedings in the case of George B. Salmon Co. vs. The Chemtec Company, in the Essex County Circuit Court.

Marked Exhibit C9.

Mr. Tansey: We rest.

Mr. Fitzsimmons: If the Court please, I move for a dismissal of the bill of complaint on the ground—

The Court: Mr. Fitzsimmons, you are wasting time. I don't want to shut you off from any right you have, but we have got the time and we might just as well have the evidence on your side in. My mind is fully made up what I am going to do with this case, even before you put in any evidence, and I expect your evidence to bolster up my decision.

Mr. Williams: Would your Honor listen to me on a motion to dismiss as to the bank?

The Court: You may consider the motion as having been made. I will dispose of the whole matter at once.

Defendants' Case.

JACOB HAUPTMAN, being duly sworn according to law on his oath, testifies as follows, in narrative form:

Mr. Hauptman: I would like to ask your Honor's permission to testify in narrative form.

The Court: You may.

Mr. Hauptman: I am an attorney and counsellor at law and represent the Rynda Development Company, one of the defendants, Abraham Hauptman, my father, another of the defendants, and who is president of the Rynda Development Company, J. Lewis Fiacre, who is the Secretary and Treasurer of the Rynda Development Company, and also a defendant personally, and also myself, as a defendant.

I first came into contact with these negotiations a day or two previous to—that is my first contact with Mr. Gluck was about November 25th, 1922. He had telephoned me on one or two occasions in reference to continuations of extensions of time for the closing of the contract which was marked Exhibit A in Mr. Gluck's bill of complaint, and attached to Mr. Gluck's bill of complaint. I had not met Mr. Gluck, so far as I remember, at that time.

On November 24th my father and Mr. Fiacre were in touch with me—that was a Friday, and told me to prepare from the Rynda Development Company a deed to Amelia R. Gluck for the premises the company had contracted to sell, that Mr. Gluck would be around on the following day to close the matter—the following day would be Saturday, November 25th. I had the deed prepared. I was at that time associated with Mr. Lane, upstairs. The deed was prepared and dated

November 25th, but on that day I was not in town, and the deed was in my office—was in Mr. Lane's office. On November 27th, Monday morning, Mr. Fiacre and my father, immediately after nine o'clock, were in my office upstairs, my father signed the deed as president of the Rynda Development Company, Mr. Fiacre attested that signature and the seal of the Rynda Development Company, and on that same morning at the same time I took the acknowledgment of Mr. Fiacre on the proof. Sometime later in the morning, almost at noontime, Mr. Gluck came into my office. That was the first time, I believe, I spoke to him—I may have seen him around up in South Orange, and he asked me for the deed. I told him I had the deed, that it had been executed and that I was ready to close. He said that the closing was to take place at the office of Mr. Frank Hancock Hennessy, in New York City, on Park Row, and asked me to give him the deed so that he might take it to Mr. Hennessy and leave it there, that Mr. Hennessy would send the Rynda Development Company a check. That I refused to do, because I had been told by Mr. Fiacre and my father, both, that I was not to deliver the deed to Mr. Gluck unless a tender, under the contract, was made. I then telephoned, in Mr. Gluck's presence, to my father and told him the situation, and my father said he would leave it to me, to use my judgment, and I got his permission to go to New York and deposit the deed with Mr. Hennessy, in escrow. I then left my office and went with Mr. Gluck, so that there is no doubt—we walked up to the tube station, and on the way Mr. Gluck invited me to have lunch with him, but I preferred to get to New York. We went on the tube train, and while on the train Mr. Gluck asked me to let him see the deed,

which I did. He then said that it would be a careless thing to have this deed lying around, or deliver it to Mr. Hennessy, whom he didn't know and whom I didn't know, and we never could tell what would happen, and he suggested that we take the deed to an office—a photographer, who would make a photostatic copy of the deed. I didn't see any reason for it, but I saw no reason against it, and Mr. Gluck said that it would be a good way to protect both of us. I went with Mr. Gluck from the tube station at Cortlandt Street to a place on Warren Street. I am not certain now that that was Warren Street, or a street in that vicinity, but it was east of Broadway, and one of the downtown streets right near Cortlandt Street. We took the deed upstairs and a photostatic copy, that is a photograph was made while we were there. We went immediately from there—Mr. Gluck and I walked over to the office of Frank Hancock Hennessy, on Park Row. I had never been in Mr. Gluck's office. I have never been in Mr. Gluck's office at any time. I went with Mr. Gluck from the photographer's office to Mr. Hennessy's office. When we came there Mr. Gluck introduced me to Mr. Hennessy, and we, both Mr. Gluck and I, went with Mr. Hennessy, into his inner office. We there discussed the matter, and I left with Mr. Hennessy. I gave Mr. Hennessy, myself, the deed in question and Mr. Gluck then gave Mr. Hennessy a mortgage and a bond from Amelia R. Gluck to the Rynda Development Company. That was the first time I had seen any such mortgage, but he gave it to Mr. Hennessy in my presence, and Mr. Hennessy was to give me a receipt. Mr. Hennessy had very courteously let us come in at that time, because he was very busy and there were a number of other people waiting. He said he didn't have time—

by the way, he had called his secretary in, dictated what we had called an escrow agreement, and these negotiations were on November 27th. I decided I would not wait for the receipt, but that Mr. Hennessy could mail it to me and he did so. It was mailed and I had it a day or two later, in my office.

At the time Mr. Gluck and I were with Mr. Hennessy we discussed very carefully the situation and Mr. Gluck was told by me that the title must close on December 4th, in accordance with that agreement on that day, that we wouldn't give any further extensions, and Mr. Gluck said to me, "If we can't take title on December 4th we never will be able to take title." That is all the extension I made. That was the conversation on the way over to New York. At the time we were at Mr. Hennessy's office there was also a discussion as to a blanket mortgage held by my father, covering eight or nine lots, of which this one in question is one, and Mr. Hennessy mentioned to me that he would need a release of that particular part of the premises from that mortgage. I promised to get that for him and he also told Mr. Gluck at that time—no, I am ahead of my story. At any rate, on December 4th I telephoned Mr. Hennessy and asked whether the title was closed or was about to be closed, and Mr. Hennessy said no, that Mr. Gluck had not as yet brought in releases of the materialmen and laborers as he had promised. That request was made of Mr. Gluck, in my presence on November 27th. Mr. Gluck promised faithfully to have those. He said Mr. Gluck hadn't sent those things, and then Mr. Hennessy said, "By the way, you haven't sent me the release of the premises in question from your father's mortgage." I had forgotten it, and I immediately got in touch with my father, had a release executed and mailed it

to Mr. Hennessy. Mr. Hennessy asked me. I think the receipt is in evidence. I believe it was received by Mr. Hennessy on December 6th, or I mailed it on December 6th, and at the time I spoke to Mr. Hennessy on December 4th he said he had not heard from Gluck, and if Gluck would clear up these liens, etc., he would close it. I told Mr. Hennessy if it was just a matter of a few days we would be content to wait. I telephoned on a number of occasions thereafter until December 21st, when I got in touch with Mr. Hennessy again and asked him what was being done. Mr. Hennessy told me that nothing was being done about the thing, that the whole thing, to use his words, "smelled bad," and that the Franklin Society was getting tired of the situation, and that Gluck had not come through with the releases of materialmen and laborers. On the 20th I think I went—I am not sure whether it was the day before, or again on the 21st, but I went to Mr. Hennessy's office to speak to him about it, and he wasn't there and I spoke to his secretary, and I came back, I don't know whether on the next day or afternoon of the first day, but on the 21st I saw Mr. Hennessy and he returned the deed to me, and I told him we were just as disgusted as he seemed to be, but if Mr. Gluck should make a tender to us, or show himself ready to take title we would still deliver a deed to him. I signed, then, a receipt which Mr. Hennessy had given me for these papers.

The Court: Now, Mr. Hauptman, while no objection has been made to your testimony along this line, you, as an attorney, know that you have no right to repeat conversations between yourself and Mr. Hennessy, or between you and any other persons when Mr. or Mrs. Gluck were absent.

The Witness: I didn't realize that I did that. On

the previous conversation, Mr. Gluck was there. The latter one, he was not there. That brings me to December 21st. Subsequently, I think on the morning of the 27th of December, Mr. Fiacre, the secretary and treasurer of the company telephoned me and told me Gluck was in his office at 828 Broad Street and that he was upset that the deed had been returned and Mr. Gluck got on the telephone and I spoke to him. I told him that he himself had told me that if he didn't go through with it on the 4th he never would go through with it, that we waited from the 4th of December up to the 27th, that nothing had been done, and then Mr. Gluck threatened to have me disbarred, and was going to take a "crack" at me, but I think he meant legally and not physically, and Mr. Fiacre got on the telephone and said that on the 18th of December, three days before I had gotten the deed back from Mr. Hennessy, that Mr. Gluck, after negotiating for many, many weeks, had cancelled two other contracts which he had for two other parcels on that tract, because he couldn't go through with them, and Mr. Gluck said we pulled a dirty trick on him, and he said he had cancelled these two contracts because he couldn't go through with them, and the Rynda Development Company then gave him credit for the deposits of $200 each, if he went through with this other one. We had given the credit. I think that was the extent of the conversation with Mr. Gluck on that day, but I immediately told Mr. Fiacre to tell Mr. Gluck that if he could take title and offer us the money due us under the contract, and the second mortgage we would still deliver the land, and I instructed Mr. Fiacre to write him a letter to that effect, and that Mr. Fiacre did, and that letter is dated December 27th, 1922, and is in evidence here, signed by Mr. Fiacre as

secretary of the Rynda Development Company. In that letter he sets the date for January 15th, until then—that Mrs. Gluck may have until January 15th. Since then no offer has been made of any tender to any one in the Rynda Development Company, so far as I know, and certainly not to me. Through this period of almost four years, Mr. Gluck has done nothing, or Mrs. Gluck on their own initiative, to communicate with me or the Rynda Development Company in any way to demand the deed or to offer to live up to their end of the contract and so get the deed.

The Court: Did you know anything about the pendency of these mechanic's lien suits?

The Witness: Oh, yes.

The Court: When was the first one instituted, to your knowledge?

The Witness: I think November 18th. I think the date I was at Mr. Hennessy's with Mr. Gluck and delivered the deed, in 1922, I think there was already a lien claim but I am not sure. But I know if it wasn't that day it was within a very few days thereafter.

The Court: Were any mechanic's lien suits begun or pending on January 18th, 1923?

The Witness: There were, and I know that definitely because I went to the hospital on January 15th, 1923, and immediately before that I had served notice on a number of what I considered fake lien claimants to institute their suit under the statute and I know that on my return from the hospital sometime in February, I had those notices discharged because of failure to issue the summonses. I would like to enter a denial on the record in regard to Mr. Gluck's testimony, that the lien claim of the Elizabeth Sash & Door Company was instigated by myself. I knew

nothing of any such lien claim until a Mr. Eisenberg, from Elizabeth, an attorney for the Elizabeth Sash & Door Company, came to me and said he had known me and that he was about to file a lien claim against the property and knew that I represented the Rynda Development Company, that my father was in it, and wanted to know what the situation was. That was the first lien claim that I came into contact with in this matter and I held Mr. Eisenberg off for a few days, but he did eventually file a lien claim and subsequently I think I filed an answer, but after looking up the law, I found under Section Seven of the Mechanic's Lien Law, the Rynda Development Company was liable for that particular piece of land because of their interest in the contract to build before title had passed, and I felt I had no right to hold my answer under those circumstances, and as a matter of fact, in a number I filed no further answers, but I did file answers against lien claims filed by Mr. Gluck on some vacant land on which the ground had never been scratched. That lien claim was one of the lien claims that was dismissed by Judge Dungan and I think that is the very one that went to the Court of Errors and Appeals. I think I have told it straight, so far as I know it.

CROSS-EXAMINATION by Mr. Tansey:

Q. Mr. Hauptman, the date December 4th was subsequently changed by your consent because you didn't have a release there until December 6th? A. Yes, I agreed to that.

Q. And you agreed to further extensions until on December 18th there was a further payment made on the part of the Glucks on account of this lot? A. I

didn't know anything about that further payment until Mr. Gluck telephoned me on the 27th.

Q. Then when you went over and got that deed, you didn't know if any further payment had been made? A. I didn't know.

Q. How much more was due on the lot? A. It was just a matter of $380, and the second mortgage of $1,400.

Q. And provision had been made for the payment of that $380 to you upon the passing of title through Mr. Hennessy's office? A. No, the provision was not for $380 at all. The provision was for $780, the balance of $780, actually specified in that agreement, the sum $780.

Q. And after $400 was credited upon it, it would have made it $380? A. Yes, sir.

Q. Was it credited? A. Yes, the Rynda Development Company credited him with that on condition he would take this other lot.

Q. Is any such condition mentioned in this receipt? A. I think so. I don't remember. Let me read it.

Q. Whatever the condition was, you didn't know about it when you took the deed back? A. No, I did not.

Q. And you didn't know about this payment having been made? A. No, except that I did know that negotiations had been going on for two months for the cancellation of those other two contracts.

Q. And when you went over there and got the deed, you had not told Mr. Gluck you were going to get the deed? A. I told Mr. Gluck on November 27th when we were at Mr. Hennessy's office that if the matter were not closed on December 4th, we would take the deed back and negotiations would end entirely. I also telephoned him subsequently in reference to the com-

mission and I then told him we would wait a few days and not more than a few days, and there would be no further delivery of deeds to anybody unless we were paid.

Q. But you hadn't told him, "I am going over on December 21st and get the deed"? A. No, absolutely.

Q. And it wasn't assented to in the escrow agreement? A. No, it had not, it was drawn as an actual mutual consent.

Q. The actual fact was that you left it with Mr. Hennessy to close it up at his discretion? A. I didn't testify to any such thing. I testified it was to be closed December 4th and thereafter I told Mr. Hennessy if it were closed within a few days I would consent, otherwise we wanted the deed back.

Q. And the next time you heard about it was on December 27th, that Mr. Gluck was advised about it? A. Mr. Fiacre telephoned and Mr. Gluck spoke to me.

Q. Didn't you testify as follows on the last hearing, "Question by Mr. Tansey, 'Mr. Hauptman, what was the circumstances of the last extension given under this agreement which I have just shown you? A. The last extension, as I remember it, was given by me when I delivered the deed to Mr. Hennessy. Q. What was the date of that? A. That was about the 27th of November.' "

The Court: The agreement between the two companies?

The Witness: Between the Rynda and the Chemtec, yes, sir. And at that time I went to Mr. Hennessy and delivered the deed to him under an escrow receipt. I don't remember the first date on which the title was to close, but that was early in December and that—

Mr. Hennessy was to hold the deed for us until the loan was actually granted.

Q. And yet you say that it was fixed as the 4th of December, 1922, when title was to pass? A. Certainly I do. I don't see any discrepancy there, or any conflict.

Q. Didn't you say a few moments ago that you telephoned to Mr. Hennessy that after you took back the deed, if the Glucks came in, in a few days you were satisfied to carry the matter through? A. I said I told Mr. Hennessy at the time I took the deed if the Glucks came to me, or got in touch with us in the next few days, we would still do it. We were anxious to get rid of this thing. The Rynda Development Company was not enjoying this idiotic chasing around.

Q. Wasn't that on the occasion Mr. Hennessy asked you to return the deed to him? A. Mr. Hennessy never asked me to return the deed to him, so far as I remember.

Q. You had no further talk with Mr. Gluck in relation to this agreement than what you have testified to now? A. I may have, I don't remember any, Mr. Tansey.

Q. In so far as taking this deed back is concerned? A. Oh, no, I don't think so.

Q. And the thing discussed with him was what occurred November 27th? A. Yes, and the one around December 4th, when I talked to Mr. Gluck in reference to the release to be signed by my father, and which I did get and sent out December 6th.

Q. Did you, after having taken back this deed, at any time offer to return to Mr. and Mrs. Gluck the money deposit which they had made? A. Why of course not.

Q. And so far as you know the Rynda Development Company still holds title to it? A. If you can call that holding it. I suppose they have spent twice as much as it is worth in defending these suits of Mr. Gluck's.

Q. And the tenders you speak about, of having been made of the deed, is what you refer to in this letter of December 27th? A. No, of course not. There were four or five tenders.

Q. Did you ever make a tender of a deed to Mr. Gluck? A. Yes, I did, Mr. Tansey. Mr. Gluck came into my office November 27th, and I offered him the deed.

Q. I mean subsequent to the taking back of the deed from Mr. Hennessy? A. Since that?

Q. Yes. A. I don't think so. I didn't. Perhaps Mr. Fiacre did. I asked Mr. Fiacre to write. Anyway, on December 27th Mr. Fiacre did write to Mr. Gluck and offer to give him the deed if he would live up to his end of the contract on or before January 15th.

CROSS-EXAMINATION by Mr. De Turck:

Q. Mr. Hauptman, I show you Exhibit C4 and ask if that was dictated in your presence. A. It was, and that of Mr. Gluck.

Q. And Mr. Gluck was there? A. He was.

Q. Who else was there? A. Mr. Hennessy, Mr. Gluck, Mr. Hennessy's secretary and myself.

Q. Who dictated it? A. Mr. Hennessy.

Q. Mr. Gluck has testified you represented to Mr. Hennessy in order to get these papers back that you represented Mr. Gluck. A. Of course not. Mr. Hennessy knew that I was—that I had an adverse interest.

The Court: It is not a question of whether Mr. Hennessy knew. It is a question of what representation you made.

The Witness: No, I didn't make any such representation, ever.

FURTHER CROSS-EXAMINATION by Mr. Tansey:

Q. Well, did you tell him Mr. Gluck did not expect to go on with the deal? A. No, it was sort of mutually decided that he wouldn't go on with the deal. He hadn't done anything he had promised Mr. Hennessy, and he hadn't done anything he had promised to us.

Q. And you both agreed Mr. Gluck was not going on with the deal? A. Yes, and there were lien claims filed which Mr. Gluck had not taken care of.

Q. You are the man who told Mr. Hennessy that Mr. Gluck was not going on with the deal? A. I said we had discussed it.

Q. That Mr. Gluck was not going on with the deal? A. That he couldn't. I said even after that if Mr. Gluck would come to us and live up to his end of the contract we would be glad to give him a deed and get rid of it.

The Court: Let me be clear on this one point. I understand you said when this photograph of the deed was made, the photographer gave it back to you?

The Witness: Yes, sir; I took it back.

The Court: And you personally had it, and you personally delivered it to Mr. Hennessy?

The Witness: Yes, sir. I am ready to say Mr. Gluck never had that deed in his hand after it was

executed, unless he was in my office when I was not, before me, but from the time he left my office until we got to Mr. Hennessy's office he didn't have that deed in his hand, except when he looked it over on the tube train.

The Court: Who gave it to the photographer?

The Witness: I did. I remember it very distinctly. I remember Mr. Gluck explaining the machinery, and my giving the deed to the photographer and my taking it back, and my delivering it, also, to Mr. Hennessy.

FRANK HANCOCK HENNESSY, duly sworn as a witness for

Direct-examination by Mr. De Turck:

Q. Mr. Hennessy, you are a member of the New York bar? A. Yes, sir.

Q. And also a member of the New Jersey bar? A. Yes, sir.

Q. Do you recall the 27th of November, 1922? A. Yes, sir.

Q. And do you recall that on that date Mr. Gluck came to your office? A. Yes, sir.

Q. Who was with him? A. Mr. Hauptman.

Q. Jacob Hauptman? A. Yes, sir.

Q. The New Jersey attorney? A. Yes, sir.

Q. And what was done in your office in the presence of Mr. Gluck? A. Well, as I recall, when I was told Mr. Gluck was in the outer office I first had Mr. Gluck come in and he said, "I have got outside a representative of the company I am buying this property from, and he has got a deed which he wants to leave

with you, because he doesn't want to be bothered to attend at the closing of the loan, so for his convenience he is going to leave it with you."

Q. Had you met Mr. Hauptman prior to that date? A. I had not.

Q. Who introduced Hauptman to you? A. Mr. Gluck sent out for Mr. Hauptman and Mr. Hauptman came into my private office and was introduced to me.

Q. Who had the deed to the property? A. Mr. Hauptman.

Q. Is there any question about that in your mind? A. No, none whatever.

Q. And who handed it to you? A. Mr. Hauptman.

Q. After you had been given the deed what did you do? A. After they had told me what the arrangement was to be I called in my secretary and dictated an escrow agreement.

Q. I show you a paper marked Exhibit C5 and ask you if the first part of this is the escrow receipt which you dictated? A. Yes, that is the receipt I dictated at the time.

Q. When was that sent out? A. Sent out the next day. I had interrupted a closing in order to see Mr. Hauptman and Mr. Gluck, and for the convenience of all parties it was arranged that I would mail the receipt the next day.

Q. And was Gluck there at that time? A. Yes, sir.

Q. Was he within hearing distance? A. Yes, sir.

Q. What date, after November 27th, was fixed for the closing? A. The first date was December 4th.

Q. Was any attempt made to close the title on that date? A. Yes, the papers were sent up to me by my client, the Franklin Society, but Mr. Gluck was not in a position to close on that date.

Q. Why not? A. Well, in the first place, he had not straightened out the matter of mechanic's liens. I was in receipt of a report from the title company—the Essex County Title Guarantee & Trust Company had examined the title for me—in which they reported this lien for two thousand odd dollars filed by the Elizabeth Sash Door & Supply Company.

Q. Did you advise Mr. Gluck of that fact? A. Well, I don't recall whether Mr. Gluck came in personally on December 4th, or whether we agreed over the telephone that it would be impossible to close on December 4th.

Q. Because of this lien? A. Well, it was that, and I had not yet received the release from the blanket mortgage. I didn't get that until about the 7th of December. I had also sent Mr. Gluck a special form which we use, of consent, to subordinate liens and I had not received that from Mr. Gluck.

Q. Well, how long did you hold this deed which had been delivered to you by Mr. Hauptman? A. Until the 21st of December.

Q. And to whom did you return it? A. Mr. Hauptman.

Q. And at that time did you secure a receipt from Mr. Hauptman? A. I did.

Q. And is that a part of Exhibit C5? A. That is the receipt which appears on the same page.

Q. What date is that? A. December 21st, 1922.

Q. When did you next see Mr. Gluck? A. On December 26th.

Q. Where did you see him? A. At my office.

Q. Who was with him? A. Mrs. Gluck.

Q. What was said by Mr. Gluck to you and what was said by you to Mr. Gluck? A. Well, I had—prior to the 21st I had agreed with Mr. Gluck to close the

loan on the 26th, giving him a closing date. Then, meanwhile, I had returned the deed to Mr. Hauptman. I had obtained the knowledge, from my talks with Mr. Hauptman that he was in discussion with Mr. Gluck, and that Mr. Gluck had known I didn't have the deed any more, and it would be therefore impossible to close and I neglected to notify Mr. Gluck I wouldn't be able to close on the 26th. I didn't have the time, so I was very much surprised when Mr. and Mrs. Gluck walked into my office on December 27th, apparently ready to close.

Q. Was there any other reason why you couldn't close? A. So far as I knew the title was still encumbered by these liens.

Q. Did Mr. Gluck deliver releases of these lien claims? A. No, sir; he did not.

Q. Did he say anything about releases? A. I don't recall discussing releases because I don't think we got down to any details of closing at all. The fact that the deed was not there absolutely precluded any chance of closing.

Q. Did you tell Mr. and Mrs. Gluck that Hauptman had come to your office representing that he represented Merritt Lane, for Mrs. and Mr. Gluck, and through that representation had gotten back the deed delivered to you? A. No, I didn't make any such statement.

Q. Did Mr. Hauptman make any such representation? A. He did not. The nearest statement of any sort that would imply anything of that character was that I assumed Mr. Hauptman and Mr. Gluck were in communication with each other, and Mr. Gluck knew this deed was being returned to Mr. Hauptman.

Q. But Mr. Hauptman didn't tell you that? A. I don't recall whether Mr. Hauptman told me he had

advised Mr. Gluck he was going to demand the deed back or not. I don't think he did.

Q. Did you promise to call up Mr. Hauptman and secure the return of the deed? A. I think possibly I did. I remember I was very much surprised at that time to find that Mr. Gluck seemed to think he had some right in that deed, and that he had cause for grievance against me because I had returned the deed to Mr. Hauptman.

Q. Why did you return the deed to Mr. Hauptman? A. Because it had never occurred to me that Mr. Gluck had any interest in the deed whatever. The negotiations in my office on the 27th didn't indicate any right of Mr. Gluck in that deed.

Q. Did you call up Hauptman? A. I did. I said, "Mr. Gluck is making a terrible row over this."

Q. Was Mr. Gluck there at the time? A. No, I think I called up Hauptman a couple of days later and said, "Gluck is raising an awful holler about this deed, and he seems to want it back."

CROSS-EXAMINATION by Mr. Tansey:

Q. If you didn't think Mrs. Gluck had any rights in the deed, why did you ask that a release be signed by Mr. Hauptman at the bottom of the escrow agreement? A. Because he was the only one to whom I felt any responsibility.

Q. But you were delivering back the deed to him, and that would more than release any liability you had to him. A. But suppose Mr. Hauptman had claimed I had not returned the deed to him.

Q. His receipt was there, and why did you append a release of liability? A. Because he was the only one who could hold me responsible.

Q. And you felt it necessary to put a release on it? A. I certainly did. If that deed had been lost and gotten into Mr. Gluck's possession, Mr. Hauptman would hold me responsible.

Q. He would hold you responsible? A. If I hadn't a receipt.

Q. You didn't need a release, did you? A. When I accepted that deed, I accepted some responsibility to collect money for it, and when I returned the deed to him I wanted to be released from that responsibility.

Q. Wouldn't the return of the deed be sufficient for that? A. How could I prove I had returned it to him?

Q. By the receipt. A. But he had my receipt for the deed.

Q. Why did you append a release? A. Because I wanted a release from responsibility in this whole transaction. I was watching everybody in it.

Q. Well, in that escrow agreement you acknowledged not only a deed from the Rynda Development Company, but a mortgage and a bond, I think? A. Yes, sir.

Q. And you told us you got the deed from Mr. Hauptman, is that correct? A. Yes, sir.

Q. Did you also get the bond and mortgage from Mr. Hauptman? A. I don't know—I don't recall that.

Q. But you acknowledged you had received a deed from the Rynda Development Company? A. Yes, sir; it was all part of the same transaction.

Q. And you are not sure whether you received the mortgage and the bond from Mr. Hauptman? A. I am not.

Q. What makes you so sure you received the deed from Mr. Hauptman? A. Because the whole negotiation in and about that discussion indicated that here

was Mr. Hauptman's company delivering the deed to Mr. Gluck and leaving it with me, in escrow.

Q. Your recollection is grounded upon how the thing should have been. A. My recollection is grounded, because so far as I have testified about this thing, it is still—

Q. Have you any independent recollection of having received the deed from Mr. Hauptman? A. Yes, sir.

Q. Now what about the bond and mortgage? A. I don't remember whether it was Mr. Hauptman or Gluck who handed them to me. I was not assuming any responsibility about the bond and mortgage.

Q. You acknowledged having received them in the same receipt as you did the deed? A. Yes, but they were blanks.

Q. And you acknowledged them as coming from the Rynda Development Company? A. Yes, sir.

Q. And now you are not sure whether they came from the Rynda Development Company or Gluck? A. No, I am not.

Q. You are sure that the deed came from Hauptman? A. I am sure of that because it impressed itself upon me.

Q. When Mr. Hauptman came to you, you also had a recollection of a day, that Mr. Gluck was aware of his coming for the deed, you say? A. I got that impression, yes.

Q. Now, who gave you that impression? A. From what Mr. Hauptman said at the time.

Q. And what he said at that time led you to believe Mr. Gluck knew he was coming for the deed? A. Not that he was coming for the deed, but that Mr. Gluck knew there was trouble brewing between the Rynda Development Company and Gluck. I remem-

ber Hauptman telling me that Mr. Gluck's building was in violation of the restrictions against the property. That was one of the reasons.

Q. Let us confine ourselves to what you assumed. What you thought was that he knew there was trouble between him and the Rynda Development Company? A. Yes, naturally, I didn't see how there could be trouble.

Q. Did you get an impression that he knew Mr. Hauptman was coming for the deed? A. No, I got the impression that Mr. Hauptman had, or would let Mr. Gluck know that he was getting the deed.

Q. Did you get the impression from anything he said that he had let him know he was taking back the deed? A. I wouldn't state that he stated in so many words that he did let Gluck know.

Q. Did he say Gluck wouldn't go on with the transaction? A. No.

Q. What did he say? A. He never indicated that Gluck had taken that position.

Q. But you are quite sure he said something to lead you to believe that Gluck knew he was coming for the deed? A. No, I say there was trouble between Gluck and the Rynda Development Company and then I assumed Gluck knew about that. I didn't see how there could be a disagreement between them without Gluck knowing something about it.

Q. When you turned over the deed to Mr. Hauptman you had no belief that Mr. Gluck knew about it? A. I had no direct knowledge of it from Mr. Hauptman. I only had the inference that Mr. Hauptman would let Gluck know he had the deed back in his possession.

Q. When Mr. Hauptman called you up on the telephone or later when you called him up on the telephone

and told him that the Glucks were very angry about it, what did he say to you? A. I don't recall that conversation very distinctly, and, as I think I said in my previous testimony, I only recall having called him up indistinctly. I am not absolutely certain that I did. That is the only point in which Mr. Hauptman and I disagree. He said I didn't; my recollection is that I did.

Q. But you have a recollection that you called him up and said that Mr. Gluck was making a fuss about it? A. Yes, in view of the fact he seemed to feel there was some responsibility on my part, whether it wasn't possible for him and Mr. Gluck to get together and send the deed back to me.

Q. And what is your recollection of what was said? A. I don't recall what the tenor of his answer was.

Q. Mr. Gluck had said to you, that as soon as you got the deed back, he was ready to close, didn't he? A. I don't remember whether he said that or not.

Q. That was his attitude, wasn't it? A. Oh, his attitude was that he had a right to get it back so he could go ahead with the closing, yes.

Q. You had in your contract relating to the loan by the Franklin Society for Home Building and Savings, a provision that you could hold back sufficient to pay mechanic's liens, didn't you? A. Yes.

Q. And any other liens? A. If we saw fit to do so. We didn't have to do it, but we might use that as a means of effecting a closing.

Q. You also prepared in your own handwriting releases of mechanic's liens on the Franklin Society for Home Building, which you have to Mr. Gluck to get executed? A. That, strictly speaking, is not a release; it is merely a consent to subordinate.

Q. That is what you wanted in order to push your

loan through? A. Yes, I told him we would require that as one of the conditions of closing.

Q. Were these the ones you wrote in your own handwriting? A. I don't think that was, but I recognize my handwriting in the upper part of this release. I don't know anything about this down here.

Q. This release, the first that you say you think wasn't in your handwriting, is a release of lien? A. There is no handwriting on it at all.

Q. It is in typewriting, but the signature is here, and dated the twenty-fifth of November, 1922, and the one that you recognize as yours, made out in your handwriting on the form of the Franklin Society for Home Building and Savings, is dated the twenty-ninth of November, 1922, apparently executed by a number of persons having claims on the property on Rynda Road, South Orange; were those presented to you about the time of their date, by Mr. Gluck? A. No.

Q. When were they presented to you? A. They never were.

Q. When was this first one, which you say is your handwriting, prepared by you and given to Mr. Gluck? A. I assume it was prepared on November 29, because it bears that date.

Q. And that is in typewriting, isn't it? A. Yes, sir.

Q. And it is further in typewriting, the affidavit to it, or acknowledgment? A. I don't know anything about that; I didn't take the affidavit.

Q. Did it have any typewriting in it when you let it out of your possession? A. I don't think so; if there is any necessity for doing it, I would have written the date in, the same as I did the rest of the blank.

Q. You think you gave it to him before November 29? A. I think I gave it to him sometime before December 4th.

Q. It was the intention to have this executed, so as to release the land from the possibility of persons building there? A. I told him I would require that as one of the conditions of closing.

Q. You think Mr. Gluck didn't give this to you? A. No.

Mr. Tansey: I offer this for identification.

Marked Exhibits A and B for identification.

The Witness: I don't remember having seen them until one of these trials—I mean with the signatures on.

Mr. Hauptman: I was about to call the secretary and treasurer of the company, and I wondered whether Mr. Tansey will consent to the admission of the testimony of Mr. Fiacre at the previous hearing, and save time. It is merely a corroboration of what he testified before.

Mr. Tansey: I don't think there is any of that relevant. The testimony could be made very short.

The Court: Call the witness.

J. LEWIS FIACRE, sworn for defendants.

Direct-examination by Mr. Hauptman:

Q. Mr. Fiacre, what office do you hold in the Rynda Development Company? A. Secretary and treasurer.

Q. Were you secretary and treasurer at the time of the beginning of the negotiations with Mr. Gluck in reference to this property in question? A. Yes.

Q. Did you on behalf of the Rynda Development Company execute a contract for the premises in question with Mr. Gluck for the Chemtec Company? A. Yes.

Q. Did you also negotiate with Mr. Gluck to have Mrs. Gluck substituted for the Chemtec Company as purchaser? A. Yes.

Q. Do you know when the closing date was set down in that contract for the passing of title? A. The original contract was August 1, 1922.

Q. And why wasn't it closed on that day? A. Mr. Gluck asked for numerous postponements, which he got in writing.

Q. Until what time, do you know? A. I don't remember the last date.

Q. Coming down now to the date of the execution of a deed from the Rynda Development Company to Amalia R. Gluck, did you sign that deed as secretary and treasurer of the Rynda Development Company? A. I did.

Q. Do you remember where you signed that deed? A. I went to your office and signed it.

Q. My office in this building? A. Yes.

Q. Do you know who took the acknowledgment on that deed? A. Yes; you did.

Q. Do you know what was done with that deed after you signed it and after your acknowledgment was taken, after the seal was put on? A. It was left with you to close title for us.

Q. And you and I were with my father at the time you signed? A. Yes, he signed it and I signed it.

Q. You say it was left with me for closing up title? A. Yes.

Q. Did you ever give that deed to Gluck? A. I did not.

Q. Did you ever see that deed in Gluck's hands? A. I did not.

Q. Did Mr. Gluck ever tender payment, as he testified, to you of $780 in cash, and a second mortgage for $1,400? A. He did not.

Q. Would you have accepted the tender if it had been given? A. I would have made a date with you so as to close it at your office.

Q. You are sure that Mr. Gluck never made a tender to you? A. I am positive.

Q. Up to the date he testified, November 25, 1922? A. I am sure of that.

Q. Did Mr. Gluck ever make any tender to you after November 25, 1922? A. He never made any tender to me at any time.

Q. Did he to your knowledge make it to anybody else, in behalf of the company? A. Not to my knowledge.

CROSS-EXAMINATION by Mr. Tansey:

Q. You knew, or did you know that the deed was turned over to Mr. Hennessy until the title was closed? A. That was left entirely with our attorney, Mr. Jacob Hauptman.

Q. Didn't you know anything about these matters after Mr. Hauptman had the deed? A. No.

Q. You did, however, receive this payment of $400 on December 18, 1922? A. That was finally arranged with Mr. Gluck; he had also—

Q. The question is, did you receive the payment? A. I signed the agreement as applying those two deposits on account of that lot.

Q. Is this your signature on Exhibit C3? A. Yes.

Q. You were at that time secretary and treasurer of the Rynda Development Company? A. Yes.

Q. Have you ever tendered back the purchase money paid by Mr. or Mrs. Gluck which was paid on account of these lots? A. No, sir.

Q. As far as you know, the Rynda Development Company still holds the money? A. You mean the deposit money?

Q. Yes, the deposit money paid on the lots? A. Yes, they do.

MRS. MARY F. SMITH.

Direct-examination by Mr. Fitzsimmons:

Q. Did you formerly live at 122 Rynda Road, South Orange? A. Yes.

Q. Did you sign this contract, dated May 28, 1925, between the Arlington Realty Company, and yourself and husband? A. Yes.

Q. For the purchase of those premises? A. Yes.

Mr. Fitzsimmons: I offer that contract in evidence.

Marked Exhibit C.

The Court: Was it under that contract you went into possession?

The Witness: Yes.

Q. Your husband signed the contract also, did he? A. Yes.

Q. How long did you occupy the premises? A. Nine months.

Q. When did you vacate the premises? A. The fifteenth of April.

Q. Did you know Mr. Gluck? A. I met him twice.

Q. When did you first meet him? A. Early in the fall, shortly after we occupied the property, about three or four months.

Q. It was in the fall of 1925? A. Yes.

Q. Did he say anything to you about this property? A. Yes, he told me he was the owner of the property, and that I was a trespasser on his property.

Q. Did he tell you you would have to get out? A. Yes, he did.

Q. Did he ask you to turn the keys over to him? A. He said that he would take possession of the property; he wanted us to leave at once, and if we didn't leave, he would have a van up there and move us out.

Q. And you say that was in the fall of last year? A. Yes, in the fall of last year, I believe probably in October.

Q. When did you vacate the premises; what month of this year? A. April.

Q. And did you see Mr. Gluck at any time or a short time before you got out? A. No, I did not.

Q. You failed to make payments under the contract, did you not? A. Yes, we did.

Q. The Arlington Realty Company took action against you in the District Court? A. Yes.

Q. And was your failure to make those payments in accordance with the terms of the contract due to what Mr. Gluck told you?

Mr. Tansey: I object.

The Court: Objection overruled.

A. It was.

Q. And were you willing to proceed with the conclusion of that contract if Mr. Gluck had not interfered? A. Certainly we were.

Defendants' Witness, Mary F. Smith, Cross

CROSS-EXAMINATION by Mr. Tansey:

Q. You had a lawyer representing you, didn't you? A. I did.

Q. You did have a lawyer representing you? A. Yes.

Q. And his name was Sisselman? A. Yes.

Q. You later had a lawyer named Howlett, didn't you? A. He didn't represent me on this case with the Arlington Realty Company; it was Sisselman, and he failed to file an answer.

Q. Mr. Sisselman represented you in the case where the Arlington Realty Company sued you in the District Court, didn't he? A. He was supposed to represent us, but he didn't file his answer.

Q. And then later on, Mr. Howlett represented you? A. Mr. Howlett is our attorney at the present time.

Q. And his idea was to have the judgment opened, wasn't it? A. I believe so.

Q. So you had two lawyers, Mr. Sisselman and Mr. Howlett? A. Yes, because Mr. Sisselman didn't do his duty.

Q. Did you know whether Mr. Howlett got the keys of the place from you? A. I did know he got the keys from me.

Q. Mr. Howlett got the keys? A. Yes.

Q. You turned them over to your lawyer? A. Yes.

Q. Do you know whether or not he turned them over to Mr. Gluck? A. That I cannot say.

Q. Did you see the opinion of the Court in the former case in connection with the premises? A. Yes, I did.

Q. And was it turned over to your lawyer? A. My lawyer, I believe, obtained a copy from Mr. Tansey.

Q. And that lawyer was Mr. Sisselman? A. Yes.

Q. Do you know whether or not Mr. Howlett saw Mr. Tansey after that? A. I believe he did.

Q. You think he did? A. Yes.

Q. And it was after he saw Mr. Tansey that you left the premises, was it? A. After I had received notice to move, from the Arlington Realty Company, we moved; they started suit.

Q. Did you get any advice from Mr. Sisselman about it? A. No, I did not, because he was not my attorney at that time.

Q. Did you get any advice after that from Mr. Howlett? A. Yes, he told us to move.

Q. Mr. Howlett told you to move? A. Yes.

Q. What you heard from Mr. Gluck last fall, you didn't act on that? A. I didn't get right out at that time, because—

Q. Before leaving, you conferred with your lawyer, Mr. Howlett? A. Yes.

Q. And it was under Mr. Howlett's advice that you left the premises? A. Because we had this notice served upon us, a notice from the Court.

Q. And he told you to go ahead out? A. Yes, from the Court.

Q. And you did go out? A. I did.

Q. And turned the keys over to Mr. Howlett? A. Yes.

Q. That is all you know about it? A. Yes.

RUPERT F. HOWLETT, sworn.

Direct-examination by Mr. Fitzsimmons:

Q. Mr. Howlett, you represented Mrs. Smith in this

transaction with the Arlington Realty Company? A. Why, no, I wouldn't say that I represented Mrs. Smith; I represented the company, which had dealings with Mrs. Smith, and Mrs. Smith came down to us and requested that we give her some advice with reference to something outside.

Q. Do you know Mr. Gluck? A. Yes, I have met the gentleman twice.

The Court: Are you a member of the bar?

The Witness: Yes.

Q. How did you happen to turn over the keys to that house on Rynda Road, South Orange, to Mr. Gluck? A. I received in my Newark office a message from Mr. Tansey that he desired to see me, and I was unable to see him; later, Mr. Gluck came over to my office in New York and requested me, if Mrs. Smith had a duplicate key, or if she had some keys, would she turn it over to him, and I said I didn't see any objection to that. I understood—I got the impression from Mr. Gluck, that he desired to investigate the house, with a view to an element of damage entering into this case or some other case.

Q. Did you turn those keys over to him without knowing whether he was the owner or not? A. No, Mr. Gluck presented some evidence, that is, verbal evidence of ownership; I made no attempt to pass upon it either way.

The Court: You mean he presented some evidence —did he represent to you that he owned the property?

The Witness: He did.

Q. When did that take place? When did you turn the keys over? A. I should judge about a month or month and a half ago.

CROSS-EXAMINATION by Mr. Tansey:

Q. Didn't you come to my office to find out something in relation to the suits? A. I did. I came to your office, also to Mr. Walker's office.

Q. And you were at that time investigating the judgment which had been entered against Mrs. Smith in the East Orange District Court? A. I was investigating it up to a certain point.

Q. I ask you particularly about the judgment entered against Mrs. Smith? A. Yes.

Q. And your idea was to open it, if possible? A. No, my—

The Court: What difference does it make.

A. (Continuing.) No, the main reason that I investigated the whole affair was, that Mrs. Smith came down to me and said that there were divers claimants to the title and she wanted to know what she could do.

Q. And after you came to see me, or at the time you came to see me, did you borrow any cases from me or anything? A. I think you gave me two or three citations, which I did look up.

Q. Did you examine the citations thereafter? A. Yes.

Q. And did you relate to this case? A. I should say it had a bearing on this present case. I am not clear what the substance was at present; I wouldn't say.

Q. Was it the former suits between the parties in this case? A. I believe it was.

Q. And after you had examined those papers, Mr. Gluck came to see you? A. Yes, that was subsequent to that.

Q. And when you turned the keys over to Mr.

Gluck, you were in possession of whatever facts had been tried out in this court in the former case? A. No, I wouldn't say I was in full possession of the facts.

Q. You had examined the opinions? A. Yes.

Q. You did it for the purpose of learning what had transpired, didn't you? A. Yes.

Q. And Mr. Gluck, when he came to see you, and asked you for the keys, didn't tell you anything, except what you had seen in the opinions, didn't he? A. Yes, I made some inquiries with relation to this case when it came up, and he answered those questions.

Q. As to this present case or what? A. I think this case; I wouldn't say.

EXAMINATION by the Court:

Q. Did Mr. Tansey tell you anything about who was entitled to those keys? A. When I talked with Mr. Tansey, I don't think he mentioned the keys.

Q. Did he tell you anything about who was entitled to the property? A. Yes, he said that in his opinion Mr. Gluck was entitled to it.

Q. Did he tell you that this suit was pending? A. Yes, I think he told me this suit or some other suit was pending.

Q. You knew this suit was pending at the time you gave Mr. Gluck the keys? A. Yes, I think I did.

Q. Did you know that Mrs. Smith had obtained the keys from Arlington Realty Company? A. No, I didn't know where she obtained the keys. I supposed she did.

Q. Did you know that she did not obtain the keys from Mr. Gluck? A. To the best of my knowledge I didn't think that she obtained the keys from Mr. Gluck.

Q. You knew that the title and possession of this

property was in controversy in this court, didn't you? A. No, I didn't know that this Court was going to pass upon this. I didn't know the nature of this action.

Q. Did you know that there was a controversy respecting the ownership of this property? A. I didn't know whether it was a case involving damages or case involving—

Q. Why did you deliver the keys to Mr. Gluck? That is what I want to know. A. I was disinterested in the whole affair. Mrs. Smith had two sets of keys, and Mr. Gluck said that he wanted to go in the house with a view of seeing what the condition of it was, as an element of damage in this case or in some other case.

Mr. Tansey: In view of Mr. Howlett's testimony, it is not necessary for me to go on the stand.

I want to ask Mr. Hennessy a question which I forgot.

FRANK HANCOCK HENNESSY recalled for

Further cross-examination by Mr. Tansey:

Q. You mentioned having received a report from the Essex Title Guaranty & Trust Company, referring to some lien claims, and a blanket mortgage, didn't you? A. Yes.

Q. I have here what purports to be a copy of such report, dated December 7, 1922; have you the original report? A. I think so.

Q. If you have the report, please refer to it. The report is in the form of a letter, dated December 7,

and you are quite sure you didn't get that before December 7th, aren't you? A. I assume I didn't get it before it was dated.

Q. The chances are you didn't get it until the eighth? A. Yes.

Q. So that you were not ready to pass title on December 4 nor December 6, were you? A. If you notice this letter, it says, "Supplementing our report of October 14." I have another report, dated October 14.

Q. Nor you didn't have this final report on December 6? A. This is what happened; about December 4, I called them on the telephone; I had previously arranged for the title to close on the fourth, and bring it down to date and I got a report over the telephone.

Q. I am only figuring on the date, now; you are quite sure you didn't have this report on December 6, are you? A. This particular one?

Q. Yes. A. Yes, I am quite sure I didn't have any report in writing.

Q. You might have had the substance of it on the telephone? A. Yes.

Q. You waited, however, to close until you got the written report, didn't you? A. Yes. I had, by the way, noticed, if you are driving at this matter of this lien, and I had a letter from Mr. Henry Eisenberg, the attorney for Elizabeth Sash Door and Supply Company, dated November 28, advising me that they had filed a lien, or were about to file it, and see that they were taken care of on the closing.

Q. You waited until after December 4 before you closed title? A. Yes.

Q. And you waited until after December 6th? A. Yes.

Q. And you waited until after December 8th? A. I waited for Mr. Gluck to get his title in shape.

Q. And you were willing to wait until the twenty-sixth of December, were you not, to close the title? A. Yes.

Q. There wasn't anything particular as to the day fixed having elapsed? A. No, we had long stated to Mr. Gluck, that "You must close by a certain date, or you cannot close at all," but after insisting I had returned the deed to Mr. Hauptman, I couldn't close.

Mr. Tansey: We offer the report in evidence.

The Court: Offer the report of October 14 also, or offer them both.

(Two reports marked Exhibits C and D.)

Mr. Tansey: We would like to offer the letter from the attorney who represented the lien claimant.

No objection.

Marked Exhibit D.

Mr. Tansey: I offer the record in the District Court in the lien claim suit of Trahmer against the Rynda Development Company.

Mr. Fitzsimmons: I object.

The Court: I thought you offered that this morning. It will be received.

(Lien claim suit No. 60,969.)

MAURICE B. GLUCK recalled for

Further direct-examination by Mr. Tansey:

Q. I have here, Mr. Gluck, releases of mechanics' liens, one marked Exhibit A for identification, and Ex-

hibit B for identification, and ask you whether these lien releases apply to the premises in question? A. They do.

Q. When were they signed? A. On the date taken by J. Charles O'Brien, Commissioner of Deeds up in South Orange.

Q. And Exhibit A, when was that signed? A. That was signed on November 29th, 1922.

Q. And Exhibit B? A. Exhibit B was signed on the 25th day of November, 1922, or before.

Q. Referring to Exhibit A, Mr. Hennessy produced that and he says that is in his handwriting, a portion of it; where did you obtain that? A. I obtained that from Mr. Hennessy, prior to the 25th day of November, 1925.

Q. And where did you obtain the other one? A. The other one was made up on a form of Grover Brothers. I had prepared that, in preparing to get releases for myself and showed it to Mr. Hennessy, and had it dated November 25, in advance of the closing, and he suggested that I also get one that he wrote out, so I had to run around to these other people who signed, and them to sign that as well.

Q. When did you produce them to Mr. Hennessy? A. I produced them to Mr. Hennessy on the twenty-sixth day of December, 1922.

Q. And did that comprise liens against these premises? A. That comprised the greater part of the lienors; the only ones that weren't included in that are O'Hara, Wilfred Allen, Lally & Trahmer and Salmon and Elizabeth Sash and Door.

Q. What about them? A. They were not good liens.

Q. You had questioned those liens? A. Yes, and I had instructed Mr. Hennessy to retain that much

money to pay those liens. There was ample funds, and we would have got back two or three thousand dollars out of the second payment, even if he retained it all.

Q. So there was plenty of money in Mr. Hennessy's hands to take up all the liens that you hadn't released, if the deal had gone through? A. Liens that I had objected to. The only one lien—I wanted Mr. Salmon to get his money; the others were liens that I didn't recognize.

Mr. Tansey: I offer these in evidence.

CROSS-EXAMINATION by Mr. DeTurck:

Q. Who asked Mr. Delgato to secure these signatures? A. I secured them.

Q. Who got Mr. Delgato to swear to the signatures? A. I did.

Q. You told him what persons had claims against your building? A. No, we went around together.

Q. He went with you? A. Yes.

Q. And you got him to swear to an affidavit in which it is stated that every person who had a claim against that building has signed the release? A. He swore to an affidavit as it is stated in there; I don't know what is in it.

Q. Didn't you notice that it reads this way, "That he knows of his own knowledge that all persons who furnished any help or material going into the construction of said dwelling house, have signed the within consent, and there are no persons whatsoever who can establish any lien or claim against the said premises by reason of labor and material furnished to date." A. Except as to those indicated in the affidavit.

Q. What affidavit do you refer to? A. That was an affidavit that he made on the same day.

Q. Where is it? A. I gave it to Mr. Hennessy; I never got it back.

Q. When did you give it to Mr. Hennessy? A. I don't know what date.

Q. What year? A. It was in 1922; it was about that time.

Q. What month? A. In December, 1922.

Q. Beginning or latter part of December? A. It may have been in the middle of December, I wouldn't say; I don't remember exactly; I don't remember exactly enough to say it, but it specifies it.

Q. You remember it detailed the conversation between yourself and Mr. Hennessy on December 26, don't you? A. I have every reason to remember that conversation; I should say so.

Q. Haven't you any reason to remember the date?

The Court: Is it material?

BOTH SIDES REST.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between,

AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,

Complainants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),

Defendants.

On Bill for Injunction. Conclusions.

Appearances:

Michael J. Tansey, Esq., for complainants.

Jacob Hauptman, Esq., for Rynda Development Co., Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre.

Samuel D. Williams, for Dime Savings Bank.

Thomas T. Fitzsimmons, Esq., for Arlington Realty Co.

Frank Hancock Hennessy, Esq., of the New York bar, for the Franklin Society for Home Building and Savings, and *pro se*.

Opinion

BERRY, V. C. (Orally):

I will dispose of this matter now. I have allowed the fullest latitude in the trial of this case, because I thought it best to have a complete record of the whole transaction, so that there will be no question hereafter as to the basis of this decision.

This bill seeks the specific performance of a contract for the sale of land, entered into between the defendant Rynda Development Company as vendor and Chemtec Company as vendee. The complainant, Amelia R. Gluck, is the assignee of the Chemtec Company. The complainant, Maurice B. Gluck, is her husband, and, I believe, the real party in interest. The agreement was dated May 1, 1922, and provided for the sale and purchase of a lot of land 60 feet in front by 140 feet in depth, located at South Orange, New Jersey, known and designated as Lot 31, on Map of Rynda Development Company. The purchase price of the lot was $2,340.00, of which $160 in cash was paid on the date of the agreement and the contract provided for the payment of $780 in cash on the day of settlement and the balance of $1,400 by the execution and delivery to the Rynda Development Company of a mortgage, payable one-third in one year and the balance at the end of the second year, together with interest at 6%, and which mortgage was to be subject to a proposed first mortgage in an amount not exceeding 80% of the cost of a house to be erected on the lot. It was stipulated in the agreement that the purchaser was to be let into possession for the purpose of constructing a dwelling. The date fixed for final settlement under the contract was August 1, 1922, but the date of settlement was continued from time to time until sometime in December, 1922. The

exact date to which it was continued is a little uncertain, as neither party agrees to the particular date on which settlement was to be finally had, but as I look at this case, it does not make much difference whether it was December 21st or December 26th. The complainant, Maurice B. Gluck, was the president of Chemtec Company, the vendee under the agreement of sale. The Chemtec Company entered into possession and began the construction of a building, but became financially involved; mechanics' lien suits were instituted and prosecuted to final judgment and the defendant, Arlington Realty Company, became the purchaser of the property at Sheriff's sale held under an execution issued on the mechanics' lien judgment, and received a deed from the Sheriff of Essex County. The complainants allege tender of performance by them and refusal of the defendant Rynda Development Company to perform. Complainants also allege the delivery of a deed by the defendant Rynda Development Company to them, redelivery by the complainants to this defendant and unlawful retention of that deed by this defendant. Some phases of this controversy have already been before this Court in at least two suits in which three opinions were filed by Vice Chancellor Backes. The files in these cases have been produced here in court today and are respectively Docket 54, page 565, and Docket 56, page 535, and some phase of this matter has also been before the Essex County Circuit Court in various mechanics' lien suits and in particular one brought by the complainant, Maurice B. Gluck, against the complainant, Amelia R. Gluck, the defendant, Rynda Development Company, and others, and which suit was dismissed by Judge Dungan for failure to prosecute within the year. This judgment was affirmed by the Court of

Errors and Appeals on Judge Dungan's opinion in May of last year and the report of that case will be found in 3 N. J. Adv. Rep. 997.

The purchase price stipulated in the agreement was never paid by the vendee or its assignee. The only payments on account of the purchase price shown to have been made are the payment of $160 on the execution of the contract and the payment of $400 by the Chemtec Company by virtue of an assignment of certain other contracts by that company to the defendant, Rynda Development Company, and for which this defendant gave the Chemtec Company a credit of that amount. Complainant, Gluck, contends that the $1,400 mortgage referred to was executed and tendered with the purchase price of $780 in cash and that that tender was made to the Rynda Development Company on or about November 25th. This is denied by the Rynda Development Company's officers. I find as a fact that no such tender was ever made. The reasons for my finding against Mr. Gluck on this point will appear later. Sometime in November, 1922, the complainants had arranged for a loan from the defendant, Franklin Society for Home Building and Savings, with the proceeds of which it was intended to complete the purchase of the lot in question and also to complete the buildings. In order to facilitate the consummation of this loan and the settlement, the defendant, Rynda Development Company, delivered to the defendant, Hennessy, in escrow a deed for the lot in question, duly executed by the Rynda Development Company, which was to have been delivered to the complainant, Amelia R. Gluck, only upon completion of the whole transaction and the payment of the balance of the purchase price according to the terms of the agreement. By subterfuge, the com-

plainant, Maurice B. Gluck, obtained possession of this deed from a representative of the defendant, Rynda Development Company, to whom it was entrusted for delivery to Mr. Hennessy, had a photostatic copy thereof made and then returned the deed to this representative or induced the representative to have a copy made himself; but in the view I take of the matter, it does not make any difference, in the legal effect, which of these statements is true. Sometime thereafter the complainants executed to one Frieda Horn, a sister of Mr. Gluck, a mortgage on the premises in question for $850, and attached this photostatic copy of the deed to the mortgage and recorded the mortgage with the copy of the deed attached in the office of the Essex County Register of Deeds. And prior to this, Mr. Gluck had attempted to have the photostatic copy recorded as a deed, but this was refused by the Register of Deeds and Gluck left the Register's office vowing that he would get the copy of the deed on record in spite of such refusal. The arrangement with the defendant, Franklin Company, whereby the complainant, Amelia R. Gluck, was to obtain a loan from that company was never consummated and the deed which had been delivered to Mr. Hennessy in escrow was returned to the Rynda Development Company and destroyed. The mechanics' lien suit and Sheriff's sale at which defendant, Arlington Realty Company, became the purchaser, followed. The Arlington Realty Company entered into possession of the premises over the protest of Mrs. Gluck, completed the building and thereafter executed a mortgage for $8,000 to the defendant, Dime Savings Institution. The Arlington Company then filed its bill to quiet title to the land. This bill was dismissed when it appeared at the trial that the complainant was not

in peaceable possession, its possession being disputed by Mrs. Gluck, and actual peaceable possession being the jurisdictional requirement of the statute. It was held in that suit, however, that the deed, photostatic copy of which was made and recorded by the complainant, Maurice B. Gluck, was never delivered and that the copy was a fraud. This bill was dismissed without prejudice, with the leave to the complainants to present a properly drawn bill charging that the Glucks claimed title under the deed, the photostatic copy of which was on record, and that that record constituted a cloud on the title, and praying that the original and photostatic copy of the deed be declared null and void, and indicating that under such circumstances relief would be granted. Subsequently the Arlington Realty Company did file such a bill but it also was dismissed because in that suit it was shown from the record of the mechanics' lien suit that the issuing of the summons was not endorsed on the lien claim as the statute requires and consequently the lien was discharged; and as the judgment was, therefore, a nullity, no title passed by the Sheriff's deed. In that suit Vice Chancellor Backes, in reciting the facts found by him, said:

"In the meanwhile the Chemtec Company transferred its contract to Amelia R. Gluck and the Rynda Development Company arranged to convey the land to her. Mrs. Gluck negotiated with a New York concern for a mortgage; the time was fixed for the passing of the title at the office of the lender's attorney in New York, and the deed was left with the attorney to be delivered on payment of the balance of the purchase money. The mortgage loan was not affected, the purchase price was not paid, and the deed was sur-

rendered by the attorney to the Rynda Company. Before delivering the deed to the New York attorney, Maurice B. Gluck, Mrs. Gluck's husband, a New York lawyer, who represented her in all the transactions, persuaded the representative of the Rynda Company to permit him to have a photostatic copy of it made, upon the representation that it would be a protection against the New York attorney. Gluck then had his wife execute a mortgage to one Frieda Horn and annexed to it the photostatic copy of the deed and recorded it in the Essex County Clerk's office. The Glucks make the claim that the deed was delivered but that is false."

Following this decision the Rynda Development Company conveyed all of its interest in the lot in question to the Arlington Realty Company by deed dated October 29, 1925, and acknowledged December 2, 1925, and recorded on December 7, 1925. It also now appears that the Arlington Company on January 15, 1924, received another deed for that property from the Sheriff of Essex County under another mechanics' lien judgment. This deed was not recorded until March 11, 1926. No reason is assigned for the delay in recording this deed. The validity of this deed is now attacked by the complainants because of alleged defects in that mechanics' lien proceeding. It is unnecessary, however, to decide this question now, in the view I take of the matter, and also because the Arlington Company now has a deed from the Rynda Development Company, in which company rested the legal title if the Sheriff's deed did not convey it. Complainants have made defendants in this action, the Rynda Development Company, because of its contract, Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre, who are officers of that com-

pany, on the theory that they were conspiring to deprive Mrs. Gluck of her deed; the Arlington Realty Company, because of its record title; and the Dime Savings Institution, on the theory that its mortgage was taken with notice of the complainants' claims and is, therefore, subject thereto. The Rynda Company, while admitting the agreement and possession of Chemtec Company for a time and partial completion of the building, denied the tender of complainants to perform, denied delivery of the deed and alleged complainants' complete failure to comply with the terms of the agreement of sale. The defendant, Arlington Realty Company, denies all the material allegations of complainants' bill so far as applied to that defendant and filed a counterclaim against the complainants, alleging that the complainants obtained possession of the deed from the Rynda Company by fraud, had a photostatic copy thereof made, which was annexed to the Frieda Horn mortgage and recorded, and that this mortgage was without consideration and void, and that the mortgage and deed constituted a cloud on this defendant's title and asks that they both be declared null and void and cancelled on the record. Issue on this counterclaim is joined by both the complainants and Frieda Horn. The defendant, Dime Savings Institution, denies all knowledge of the equities between the complainants and other parties and claims priority on its $8,000 mortgage. Defendants, Franklin Society and Hennessy, deny all pertinent allegations of the bill except that they admit the agreement for the mortgage loan, but allege failure of complainants to comply with the terms of this agreement, and laches.

By reference to the opinion of Vice Chancellor Backes in the two Chancery suits above referred to,

it will be seen that it has already been judicially found that the deed from the Rynda Company to Mrs. Gluck, which was delivered to Mr. Hennessy in escrow, was fraudulently obtained by Mr. Gluck and that the claim of Mr. Gluck that this deed was delivered is false. This part of the controversy is, therefore, *res adjudicata.* Mrs. Gluck obtained no rights in the premises by the recording of the photostatic copy of that deed; nor did Frieda Horn, Mrs. Gluck's mortgagee, obtain any rights in this property by virtue of her mortgage which are superior to the rights of the defendants. Whatever rights she had must be derived from the Glucks themselves and can rise no higher than their source.

After issue was joined in this suit the complainant served interrogatories on three of the defendants, so voluminous in character as to immediately raise the question as to their propriety. On motion to strike out the interrogatories, which were 287 in number, the matter was referred to a Master of this Court to examine and report to the Court which of the interrogatories, if any, should be stricken out. As a result of the Master's report, all of the interrogatories were stricken out with leave to the complainants to reframe them, the reframed interrogatories to include only certain interrogatories specifically mentioned by the Master as of probable pertinence.

This bill was filed on December 15, 1925. At that time the premises in question were occupied by a tenant of the Arlington Realty Company, although the right to possession of the Arlington Realty Company was disputed by the complainants. This tenancy arose by virtue of a contract of sale between the Arlington Realty Company and the tenant. Because of representations of Mr. Gluck to this tenant, the ven-

dee under that agreement of sale, she defaulted in her payments thereunder. She suffered herself to become in default because Mr. Gluck claimed that he was the real owner of the property. Subsequently, after default, the tenant was ousted from the premises at the suit of the Arlington Realty Company because of nonpayment of rent under the agreement. On the vacation of the premises by this tenant, she was interviewed by the complainant Maurice B. Gluck, who represented to her, in effect, that the Arlington Realty Company had neither right nor title to the premises. This representation was made either to Mrs. Smith, the tenant, or to her attorney, I am not just clear which, but the effect is just the same. He also represented that Mrs. Gluck was the rightful owner and was entitled to possession; and later, as a result of that conversation, and on the advice of complainants' solicitor, they obtained the keys to the building and themselves moved into it and are now in possession. Immediately after possession was thus taken by these complainants, the Arlington Realty Company filed a petition in this cause reciting these facts and praying for a mandatory injunction removing the complainants from possession of the premises. An order to show cause was issued on this petition and on its return answering affidavits were filed by the complainants and their counsel. The complainants then moved to strike out this petition; first, on the ground that possession was a matter of legal right, and that this Court had no jurisdiction to determine the legal right to possession; and second, on the ground that the petition showed no right to equitable relief. The disposal of this order was held pending final hearing of the cause. The affidavits of the complainants and their counsel submitted on the return of this order and the

testimony of the complainant Maurice B. Gluck at this hearing but confirm the allegations of the petition.

It appears to me from the evidence submitted in this cause that complainants were hopelessly in default under their contract of purchase and that there is not now presented to this Court a situation which would justify a decree for specific performance; but irrespective of whether or not under the evidence the vendor or the vendee is in default, and irrespective of the rights of complainants to specific performance, there are other circumstances in this suit respecting the conduct of the parties which effectually preclude the complainants from any relief in this tribunal. The complainants have sought relief in a court of equity. A court of equity is a court of conscience. The conscience of the applicant for relief in this court is always open to the scrutiny of the Chancellor. One of the most wholesome and beneficent principles of a court of equity finds voice in the maxim that "He who comes into equity must come with clean hands," and this maxim means not only must one seeking equitable relief enter the portals of this court with clean hands, but he must keep them clean after his entry and until the final determination of the issue.

While both the complainant Mr. Gluck, who is an attorney of the New York bar, and his counsel here should be perfectly familiar with the elementary maxim to which I have referred, and with its application in a court of conscience, it is apparent that they are not as familiar as their calling would lead one to presume.

Mr. Tansey: I object to your Honor's statement.

The Court: I don't care if you do. It does not make any difference. You had complete knowledge

of this whole affair, and on your own statement here in court today, you at least advised and connived with Mr. Gluck to obtain these keys from Mr. Smith. I will not brook any interruption from you now.

In view of this situation, I think it is quite appropriate not only for the enlightenment of the complainant, but for the enlightenment of his counsel as well that I should advert to certain judicial pronouncements and comments of eminent writers on equitable jurisprudence in the discussion and application of this fundamental principle. These authorities I took occasion to examine in connection with the order to show cause for a mandatory injunction already referred to, and noted them for use at this trial, and this portion of my conclusions, I may say, while orally delivered, is very much like the famous "extemporaneous" reply of Webster to Hayne, in that it was prepared in advance, and in commenting on the law applicable to this case, I do so only after due consideration. I have carefully examined the complete file in this case and read with extreme interest the voluminous affidavits submitted by all parties. The facts which developed at the hearing today are not materially different from those appearing from an analysis of the pleadings and affidavits.

This doctrine of clean hands is of ancient origin (BENTLEY V. TIBBALS, 223 Fed. 247), and broad application (21 *Corpus Juris,* 182).

In DEWEESE V. REINHARD, 165 U. S. 386 (41 *Lawyers' Ed.* 757), Mr. Justice Brewer said:

> "A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he

possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity."

In EATON ON EQUITY, page 74, it is said:

"Equity will refuse its aid in the enforcement of a contract where the plaintiff has practiced fraud on the defendant, and also where the plaintiff has been guilty of an unconscionable conduct which does not amount to legal fraud."

In POMEROY'S EQUITY JURISPRUDENCE, Section 398, it is said:

"Whatever may be the strictly accurate theory concerning the nature of equitable interference, the principle was established from the earliest days, that while the Court of Chancery could interpose and compel a defendant to comply with the dictates of conscience and good faith with regard to matters outside of the strict rules of the law, or even in contradiction to those rules, while it could act *upon the conscience* of a defendant and force him to do right and justice, it would never thus interfere on behalf of a plaintiff whose own conduct in connection with the same matter of transaction had been unconscientious or unjust, or marked by a want of good faith, or had violated any of the principles of equity and righteous dealing which it is the purpose of the jurisdiction to sustain. While a court of equity endeavors to promote and enforce justice, good faith, uprightness, fairness and conscientiousness on the part of the parties who occupy a defensive position in judicial controversies, it no less stringently demands the same from the litigant parties who come before it as plaintiffs or actors in such controversies.

> This fundamental principle is expressed in the maxim, 'He who comes into a court of equity must come with clean hands.' "

And further in Section 404:

> "It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with the controversy to which he is a party, will repel him from the form whose very foundation is good conscience."

In PRIMEAU V. GRANFIELD, 193 Fed. Rep. 911, 913 (56 *Lawyers' Ed.* 1267), the Court said, in discussing the application of this maxim:

> "The Court must consider it, not because it is a matter of defense to the defendant, but because it is against public policy to hear the case if the charge be established. The Court acts for its own protection rather than for the protection of the defendant. When fraud or illegality is disclosed in a case, public policy requires a court to refuse its aid irrespective of the state of the pleadings and regardless of the fact that with fraud and illegality absent the plaintiff might appear entitled to relief."

In HAUTZ V. HILLMAN, 228 Mo. 655-671 (128 S. W. 1001), the Court said:

> "The maxim is enforced by the Chancellor *ex mere motu,* and because of public policy, when the facts call it into use, though the disclosures are made at the trial as happened in this case. Sometimes it is applied where both plaintiff and defendant have knowingly made a contract tainted with illegality; sometimes it is applied where only the party seeking to enforce is in fault; but it proceeds always on

> the theory that the dignity of the Court is touched to the quick, and that courts of equity will not countenance inequity."

In COMMONWEALTH V. FILIATREAU, 161 Ky. 431-433 (170 S. W. 1182), it was held that:

> "The maxim is broad enough to demand that he who prays from the Chancellor protection, as well as he who seeks affirmative aid, must openly and frankly, without reservation or evasion, yield to the Chancellor that full measure of confidence and truth which is prerequisite to the assertion and exercise of chancery powers and the lack of which must necessarily repel him from a forum whose very foundation is mutual confidence and good faith."

In BEARIE V. DUX OIL COMPANY, 166 Pacific Reporter 199, application was made for a temporary injunction and the complainant falsely alleged that it was in possession of the premises involved in the suit to obtain the process of the Court to enable it to regain possession. The Supreme Court of Oklahoma, on appeal, held that the complainant had not come into equity with clean hands and was not entitled to any relief, citing, among other cases, Michigan Pipe COMPANY V. TREMONT, 111 Fed. 284, in which case Judge Sanborn said:

> "A suit in equity is an appeal for relief to the moral sense of the Chancellor. A court of equity is the forum of conscience. Nothing but good faith, the obligations of duty, and reasonable diligence will move it to action. Its decree is the exercise of discretion—not of an arbitrary and fickle will, but of a wise judicial discretion, controlled and guided by the

established rules and principles of equity jurisprudence. One of the most salutary of these principles is expressed by the maxim, 'He who comes into a court of equity must come with clean hands,' and 'He who has done inequity cannot have equity.' A court of equity will leave to his remedy at law—will refuse to interfere to grant relief to—one who, in the matter of transaction concerning which he seeks its aid, has been wanting in good faith, honesty or righteous dealing. While in a proper case it acts upon the conscience of the defendant, to compel him to do that which is just and right, it repeals from its precincts remediless the complainant who has been guilty of bad faith, fraud or any unconscionable act in the transaction which forms the basis of his suit."

In LITTLE V. CUNNINGHAM, 92 S. W. Rep. 734 (Mo. Appeals), a bill was filed for an injunction enjoining the defendants from maintaining a call bell and private telephone in connection with the main line of an unincorporated, voluntary association owning a small telephone line for mutual convenience in Knox County, and the Court held that complainants were entitled to relief. Before decree, complainants removed the offending telephone without authority from anyone. Notwithstanding this the Court granted a decree which would give the right to the complainants to do the thing which they had in fact done. Appeal was taken. The Appellate Court, notwithstanding the complainants were entitled to relief which they asked in their bill, reversed the decree below and dissolved the injunction, because of the conduct of the complainants in removing the telephone before decree. In passing on the issues involved in that case, the Court said:

"Notwithstanding the conclusive showing that the plaintiffs had thus proceeded *vi et armis* to administer for themselves a portion at least of the relief for which they pray in the bill, the Court decreed a perpetual injunction.

"Indeed it is true that the plaintiffs-in-error were the wrongdoers, but the doctrine that a prior wrong on the part of one will justify a subsequent wrong on the part of the other certainly can have no countenance in a court of equity where the principles that 'he who seeks equity must do equity' and 'he who seeks equity must come with clean hands,' guide and direct the Chancellor. It is manifest from the record that the cause of the defendant in error became polluted during the pendency of the suit with the same character of wrongful conduct towards the rights of the plaintiffs-in-error as had the cause of the plaintiffs-in-error been polluted by the prior misconduct on their part, and the cause of the defendants-in-error having thus become soiled by their own inequity, they could have no equity.

"One of the ancient and familiar maxims of equity jurisprudence is that 'He who comes into equity must come with clean hands.' The maxim has been otherwise stated, 'Who does inequity shall not have equity.' * * * They must come with clean hands, with a conscionable regard for the rights of others, ready to do equity on their part and seeking only equity at the hands of the Court. * * * And in discussing the salutary principle, it is said, tion of equity has been attempting to secure his ends by means resembling those which he seeks to enjoin he will be denied relief. * * * The principles of equity, identical with the principles of justice and truth as they are, are applied by a court of conscience on the status of the case and the parties as they are revealed at the time the relief is administered by de-

> cree, rather than at the date of the institution of the suit, inasmuch as by virtue of these wholesome principles arise the conditions which are imposed by the Court as the price of the decree it gives; and if unfavorable circumstances have arisen by the wrongful conduct of the parties during the pendency of the suit, the Court will take such circumstances into account at the final reckoning. * * * It is palpable that the defendants-in-error, by their unwarranted intrusion in cutting the wire and thus cutting the plaintiffs-in-error from the main telephone line during the pendency of the suit and thus assuming to themselves by force of arms the relief which they had prayed the Court by their bill to grant, place themselves as much beyond the pale of conscionable conduct as had plaintiffs-in-error by their acts complained of in the bill."

In HARTAN V. McKEE, 73 Fed. Rep. 556, relief was denied because the plaintiff for the purposes of the case, had changed the date of certain letters, although on the facts he would have been entitled to relief if his hands had been clean.

In the English case of COLLINS V. BLANTON, 2 Wils. C., p. 347, 95 Reprint, 850, the Court said:

> "All writers upon our law agree in this, no polluted hand shall touch the pure fountain of justice; and those entering the temple will be expelled with the anathema, 'Procul, O, Procul este profani.' "

An adverse claimant of land who purchases a lease or procures a tenant to attorn to him gains no rights in equity by the possession so obtained.

> LATHAM V. NORTHERN PACIFIC REALTY COMPANY, 45 Fed. Rep. 721.
> STETSON V. COOK, 39 Mich. 750.

Opinion

In the case at bar, it will be noted that the complainants have obtained possession of the premises involved in this suit by fraudulently procuring what amounts to tornment by the tenant; namely, the delivering up of the keys. The unconscionable character of the transaction between the parties need not be pleaded by the defendant. Whenever it is disclosed the Court will, of its own motion, apply the maxim and it does not matter at what stage of the proof or in what order a lack of clean hands is discovered. 21 *Corpus Juris,* p. 186,

But the authorities on the doctrine of unclean hands are not, by any means, confined to foreign jurisdictions. This principle has been repeatedly expounded and applied in this court and its exposition and application repeatedly affirmed by our Court of Errors and Appeals. Examples of its application will be found in CUTLER V. TUTTLE, 19 N. J. Eq. 549; JOHNS GRAVES, 43 N. J. Eq. 268; BROOK V. COOPER, V. NORRIS, 22 N. J. Eq. 102; WATSON V. MURRAY, 23 N. J. Eq. 257; ELLICOTT V. CHAMBERLAIN, 38 N. J. Eq. 504; WINANS V. 50 N. J. Eq. 761; HILDERAND V. WILLY, 64 N. J. Eq. 723; VULCAN DETINNING COMPANY V. AMERICAN CAN CO., 70 N. J. Eq. 588, reversed, but not on principle, in 72 N. J. Eq. 387; PENDLETON V. GONDOLF, 85 N. J. Eq. 308, where Vice Chancellor Leaming reviewed a number of cases and see the later case of CLICKNER V. CLICKNER, 95 N. J. Eq. 479, where Vice Chancellor Buchanan denied relief to a petitioner for annulment on the ground that he had, by his testimony, been guilty of an attempt to fraudulently impose upon the Court.

Measured by the standard of these eminent author-

ities the complainants' conduct falls far short of equitable requirements warranting the exercise of the extraordinary powers of this Court in their behalf. It is baldly apparent that not only did the complainants not come into this court with clean hands but they have not kept them unsoiled since their entry. They were guilty of fraud and unconscionable conduct in connection with this particular transaction when they induced Mr. Hauptman, the representative of the defendant Rynda Development Company, to have a photostatic copy of the deed, which was in his possession, made, and then obtained the photostatic copy and attached it to the mortgage and then had both recorded. This deed was obtained by trickery and stealth, by false pretenses, which is nothing more nor less than a form of stealing. I say,"they" because Mr. Gluck was either the real party in interest, as claimed by the defendant, or his wife's agent, acting with her full knowledge and authority. Mr. Hauptman had no idea of their intention in obtaining the deed or he would not have permitted a photostatic copy of it to have been made. He acted in good faith, but they did not. The subsequent execution of the mortgage and the recording of it, and the photostatic copy of the deed together indicates an attempt by the complainants to arbitrarily appropriate to themselves rights to which they could not be entitled except upon complainants' complete performance of the terms of the contract. This conduct has already been twice stamped as fraudulent by this court and as already indicated is *res adjudicata.* Having, in effect, *stolen* the deed they then attempt to *steal* the property, represented by it, through the medium of the recording acts, knowing that the Register of Deeds would not accept a photostatic copy of the deed itself for record,

they resort to the scheme of executing a mortgage and attached the copy of the deed to it for purpose of reference and in this was procured the deed to be recorded. In view of this situation, it is perfectly plain to me that complainants' hands were not clean when this bill was filed nor have they kept them clean since coming into court. As incidental to the relief for which they have prayed, one of the rights which it was their purpose to obtain was *the right to the possession* of the premises in controversy. Notwithstanding the fact that they sought these rights in a court of conscience, they have, as was said in LITTLE V. CUNNINGHAM, *supra,* "proceeded *vi et armis* to administer for themselves a portion at least of the relief for which they pray in the bill."

It is apparent that the complainants had little faith that this court would award to them the full measure of relief to which they claim they were entitled and their conduct in attempting to appropriate to themselves by force and arms rights which they claimed and which were, incidentally, here in controversy, is unconscionable. *Their hands are now not only not clean, they are dripping with filth and slime, and I denounce their conduct as bordering on rascality and as repellent to every sense of righteousness and fair dealing.*

As to Mr. Gluck himself, I do not consider him worthy of belief. While he is an attorney of the New York bar, he boasts of the fact that he has on numerous occasions been suspended by the New York Courts, and has been at least once jailed for contempt. His conduct here on the stand today would justify his commitment, and if I had been less charitably inclined, he would have been committed this morning.

The defendants claim, however, that this court has

no jurisdiction to remedy the wrong thus imposed on the defendant Arlington Realty Company, because, as they claim, the right to possession is a legal right, enforceable only in a court of law because it involves a right of title; *and while this theory, as a general proposition, may be true, it is unconscionable for the complainants to now attempt to assert it.* If this contention is correct then my conception of the principle lying at the foundation of this court's jurisdiction is a completely mistaken one. It is unheard of that this court cannot maintain the *status quo* during the pendency of any suit properly before it. Such an assertion is a denial of the right to the issuance of preliminary injunctions, a right freely exercised in this tribunal. The complainants themselves have sought relief in this court and thereby submitted themselves and this controversy in all its phases to the jurisdiction of this court and it does not lie in their mouths to deny the court's right to dispense justice to all the parties involved. It should be borne in mind that the remedy by specific performance in this court is discretionary. The question is not, what must the court do, but what, in view of all the circumstances of the case in judgment, should the court do to further justice.

PLEMER V. KEPPLER, 24 N. J. Eq. 481.

For the reasons above stated the complainants' bill will be dismissed with costs. The prayer of the counterclaim of the Arlington Realty Company will be allowed and the complainants and Frieda Horn will be directed to deliver up and surrender for cancellation the mortgage and photostatic copy of the deed which have been recorded and they will be declared null and void. I will also advise a decree directing that the

complainants forthwith vacate the premises in question and in the event of their failure to comply therewith, a writ of assistance may issue as in foreclosure cases. If the complainants have any rights at all they may pursue their remedies at law, but under the circumstances the discretionary powers of this court will not be exercised in their behalf. The motion of the complainants to strike out the petition of Arlington Realty Company will, of course, be denied, I will hear counsel on the question of the form of the decree and counsel fee next Tuesday.

Mr. Tansey: Will you grant a stay?

The Court: I will grant no stay whatever with respect to possession of the property.

Exhibit C1.

Contract of sale, Rynda Deveolpment Co. to Chemtec Co., Inc., attached to bill of complaint. See this record, page 10. Introduced in evidence, stenographer's testimony, page 2, this record, page 250.

Exhibit C2.

(First.)

To All Persons to Whom These Presents shall come or whom they may Concern:

I, Harry B. O'Connell, Sheriff of the County of Essex, in the State of New Jersey, send Greeting:

WHEREAS, on the Sixteenth day of November, in the year of our Lord one thousand nine hundred and Twenty-three, a certain writ of *Fieri Facis* was issued out of the Essex County Circuit Court which said writ was directed and delivered to me Harry B. O'Connell, then and still being Sheriff of the said County of Essex, and which said writ is in the words or to the effect following—that is to say:

(L. S.) Essex County, ss.

The State of New Jersey to the Sheriff of the County of Essex, Greeting: We command you, that of the goods and chattels of Rynda Development Company, a corporation in your County, you cause to be made the sum of One Hundred and Twenty Dollars and Fifty-three Cents, and $14.60, costs, which to James A. Lally and Fred Trahmer, partners trading as Lally & Trahmer, Plaintiffs, lately in our Second District Court in the City of Newark, in and for our said County of Essex, were adjudged in an action at law for damages which they had sustained, whereof the defendant is convicted as appears to us of record; and if sufficient goods and chattels of the said Defendant in your County you cannot find whereof to make the damages aforesaid, then and in that case we command you that you cause the whole or the residue as the case may require, of the damages afore-

said, to be made of the lands, tenements, hereditaments and real estate of the said Defendant in your County whereof the said defendant Corporation is seized on the 15th day of November, A. D. One Thousand Nine Hundred and Twenty-three, and said real estate is more particularly described as follows: All that tract or parcel of land and premises, situate, lying and being in the Village of South Orange, Essex County, New Jersey:

BEGINNING at a point on the Northeasterly side of Rynda Road distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road produced with the Northeasterly side of Ridgewood Road produced; thence (1) along said side of Rynda Road north forty-eight degrees thirty-seven minutes West sixty feet; thence (2) North forty-one degrees thirty-three minutes East one hundred and forty feet; thence (3) South forty-eight degrees thirty-seven minutes East sixty feet; thence (4) South forty-one degrees twenty-three minutes West one hundred and forty feet to the point and place of Beginning.

Being the westerly thirty feet of Lot No. 32 and the Easterly thirty feet of Lot No. 31 on Map of property of Rynda Development Company, South Orange, New Jersey, made by Ira T. Redfern & Brother, Surveyors, South Orange, New Jersey, dated February, 1922.

And have you those moneys before our Circuit Court aforesaid, in the County of Essex aforesaid, the Third Tuesday of December next, to render unto the said Plaintiff for said damages aforesaid, and have you then and there this Writ.

Exhibit C2

Witness, Frederic G. Stickel, Esquire, Judge of our said Court, in the County of Essex aforesaid, the 16th day of November, A. D. One Thousand Nine Hundred and Twenty-three.

C. HERBERT WALKER
JOHN H. SCOTT,
Clerk.

This Judgment was assigned by James A. Lally and Fred Trahmer, partners trading as Lally & Trahmer, to Arlington Realty Company, a corporation of the State of New Jersey, by Assignment of Judgment dated October 4th, 1923, and recorded in the Clerk's Office of the County of Essex on the Twenty-third day of January, A. D. 1924, in Book 7 of Assignments for said County, page 185.

As by the record of the said Writ of *Fieri Facis* in the Office of the Clerk of the said Court, in Book Z-2 of Executions for said County, page 112, doth and may more fully appear.

WHEREUPON, I, the said Harry B. O'Connell, as such Sheriff as aforesaid, did on the Sixteenth day of November A. D, 1923, levy upon all the right, title and interest of the within named defendant, of, in and to, all the hereinbefore described tract or parcel of lands and premises, situate, lying and being in the Village of South Orange, Essex County, New Jersey.

AND WHEREAS, I, the said Harry B. O'Connell, as such Sheriff as aforesaid, did, in due form of law, advertise the said lot of land and premises to be sold under and by virtue of the said writ of *Fieri Facis*, at public vendue, to be held at the Court House, in the City of Newark, on Tuesday, the Eighth day of January, A. D. Nineteen Hundred and Twenty-Four,

at two o'clock in the afternoon of that day, by public advertisements signed by myself, and put up in five or more public places in the said County of Essex, one of which was in the Village where said real estate is situated, of the time and place appointed for such sale, for at least one month preceding the time appointed for said sale, and publishing the same in the "Newark Evening News" and "South Orange Home News," two of the newspapers printed and published in said County, where the lands above described are situated, the same being designated for the publication of the laws of this State, and circulating in the neighborhood of said real estate, for at least four weeks successively, once in each week, next preceding the time so appointed for selling the same, one of which said newspapers, to wit: "Newark Evening News," is printed and published at Newark, the County seat of said County, at which time and place I did adjourn said sale until Tuesday the Fifteenth day of January, A. D. 1924, at the same hour and place, at which last mentioned time and place I did accordingly offer and expose the said lot of land and premises for sale at public vendue, under and by virtue of the said Writ of *Fieri Facias*. And thereupon: Arlington Realty Company, a corporation of the State of New Jersey, of the City of Newark, County of Essex and State of New Jersey, did bid for the same the sum of Two Hundred Dollars ($200.00);—and no other person bidding as much, I did then and there, openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, strike off and sell the said lot of land and premises for the said sum of Two Hundred Dollars ($200.00);—to the said Arlington Realty Company, a corporation of the

State of New Jersey, it being then and there the highest bidder for the same.

Now, Therefore, Know Ye, That I, the said Harry B. O'Connell, as such Sheriff as aforesaid, under and by virtue of the said writ of *Fieri Facias,* and in execution of the power and trust in me reposed, and also for and in consideration of the said sum of Two Hundred Dollars ($200.00);—to me in hand paid, the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate and forever discharge the said Arlington Realty Company, a corporation of the State of New Jersey, its successors and assigns, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said Arlington Realty Company, a corporation of the State of New Jersey, its successors and assigns, all and singular, the said lot of land and premises, with the appurtenances, privileges and hereditaments thereto belonging or in any way appertaining;

To Have and Hold the same, unto the said Arlington Realty Company, a corporation of the State of New Jersey, its successors and assigns, to its and their only proper use, benefit and behoof forever, in as full, ample and beneficial a manner as by virtue of the said writ of *Fieri Facias* I may, can or ought to convey the same.

And I, the said Harry B. O'Connell, for myself, my heirs, executors and administrators, do hereby covenant, promise and agree to and with the said Arlington Realty Company, a corporation of the State of New Jersey, its successors and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be done, any act, matter or thing

whereby the estate hereby intended to be conveyed in and to the said lot of land and premises, with the appurtenances is, may or can be changed, charged, encumbered or defeated in any way whatsoever.

IN WITNESS WHEREOF, I the said Harry B. O'Connell, as such Sheriff as aforesaid have hereunto set my hand and seal this Fifteenth day of January, in the year of our Lord, nineteen hundred and Twenty-four.

HARRY B. O'CONNELL,
Sheriff LS

Signed, Sealed and Delivered
in the Presence of:
Philip R. Van Duyne.
H. B. O'C.
50¢
Revenue Stamp
Cancelled
Mar 20 1924

New Jersey, Essex County, ss.

I, Harry B. O'Connell, Sheriff of the County aforesaid, do solemnly swear that the land and real estate described in this deed, made by me to Arlington Realty Company, a corporation of the State of New Jersey, of the City of Newark, County of Essex and State of New Jersey, was by me sold by virtue of a good and subsisting execution, as is therein recited, that the money ordered to be made has not been, to my knowledge or belief, paid or satisfied, that the time and place of sale of the said land and real estate was by me duly advertised, as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

HARRY B. O'CONNELL,
Sheriff.

Exhibit C2

Sworn before me, one of the Masters in Chancery of the State of New Jersey, on this thirty-first day of January in the year of our Lord nineteen hundred and twenty-four and I having examined the Deed above mentioned, do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

PHILIP R. VAN DUYNE,
Master in Chancery of New Jersey.

Received Register's Office
Mar 11 1926 1 28 PM
Essex County
Newark, N. J.

DEED
Harry B. O'Connell, Sheriff
to
Arlington Realty Company, a corporation of the State of New Jersey

Received in the Register's Office of the County of Essex, N. J., on the 11th day of March at 1:28 P. M. 1926, and recorded in book W 73 of Deeds for said County, pages 398-400

HOWARD S. DODD
Register

Consideration—$200.00
Dated, January 15th, 1924.

Exhibit C2

(Second.)

THIS INDENTURE, made the Twenty-ninth day of October, in the year of Our Lord, One thousand Nine Hundred and twenty-five, BETWEEN Rynda Development Company, a corporation of the State of New Jersey, in the County of Essex and State of New Jersey, of the First Part; AND Arlington Realty Company, a corporation of the State of New Jersey, of the City of Newark, in the County of Essex and State of New Jersey, 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 it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to its successors and assigns forever, ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of South Orange, in the County of Essex and State of New Jersey.

Beginning at a point on the Northeasterly side of Rynda Road distant one hundred and seventy-seven feet and seventy-eight hundreds of a foot Northerly as measured along said side of Rynda Road from

the intersection of said side of Rynda Road produced with the Northeasterly side of Ridgewood Road produced; thence (1) along said side of Rynda Road North forty-eight degrees thirty-seven minutes West sixty feet; thence (2) North forty-one degrees thirty-three minutes East one Hundred and forty feet; thence (3) South forty-eight degrees thirty-seven minutes East sixty feet; thence (4) South forty-one degrees twenty-three minutes West one hundred and forty feet to the point and place of beginning.

Being the westerly thirty feet of Lot No. 32 and the Easterly thirty feet of Lot No. 31 on Map of property of Rynda Development Company, South Orange, New Jersey, made by Ira T. Redfern and Bro., Surveyors, South Orange, New Jersey, dated February, 1922.

TOGETHER with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appurtaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above described premises and every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors, heirs and assigns forever, to the only proper use, benefit and behoof of the said party of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first

part has caused these presents to be signed by its President and attested by its Secretary and its common seal to be hereto affixed the day and year first above written.

RYNDA DEVELOPMENT
by ABRAHAM HAUPTMAN
President

(Seal.)

Signed, Sealed and Delivered
in the presence of

Attest:
J. Lewis Fiacre
Secretary and Treasurer

(50¢ Rev. Stamp, cancelled 12/13/25.)

State of New Jersey,
County of Essex, ss:

BE IT REMEMBERED, That on this Second day of December, in the year of Our Lord One Thousand Nine Hundred twenty-five, before me, the subscriber, a Master in Chancery of New Jersey, personally appears J. Lewis Fiacre, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of the Rynda Development Company, the grantor named in the foregoing deed; that the seal thereto affixed is the proper corporate seal of said company; that the same was so affixed thereto and the said deed signed and delivered by Abraham Hauptman, who was at the date and execution thereof, the President of said company, in the presence of the said deponent, as the voluntary

act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

J. LEWIS FIACRE.

Sworn and subscribed before me at
Newark the date aforesaid.
Jacob Hauptman,
Master in Chancery of New Jersey.

DEED.

RYNDA DEVELOPMENT COMPANY,
a corporation of the State of
New Jersey,
to
ARLINGTON REALTY COMPANY,
a corporation of the State of
New Jersey.

Dated, October 29, 1925.

Received in the Register's Office of the County of Essex, N. J., on the 7th day of December, A. D. 1925, at 12:34 o'clock, in the afternoon and Recorded in Book H-73 of Deeds for said County, on pages 544-545.

HOWARD S. DODD,
Register.

Exhibit C3.

Receipt for $400.00, dated Dec. 18, 1922. Introduced in evidence, Gluck, direct, page 9 of original stenographer's testimony, this record, page 255.

(Receipt of $400.00)

Member of Real Estate Board, Newark, N. J.

J. LEWIS FIACRE

NEWARK AND SUBURBAN REAL ESTATE

INSURANCE LOANS

PROPERTY MANAGED

828 Broad St., Newark
Suite 400-404
Phone Market 2369

Branch Office
588 Prospect St.
Maplewood
Phone So. Orange
708

Dec. 18th, 1922

Received from the Chemtec Company Four Hundred Dollars ($400.00), to apply on account of agreement of purchase of part of lot number 32 and part of lot number 31, as shown on Map of Property of the Rynda Development Company, South Orange, N. J., made by Ira T. Redfern & Bro., Surveyors, South Orange, N. J., February 1922. It being understood and agreed that this was the amount of the deposits given by said Chemtec Company, under two agreements, calling for the purchase of lots numbers 38,

37 and part of 36, as shown on above mentioned map, and it further being agreed that the said Chemtec Company are to assign the last two mentioned agreements to the Rynda Development Company at the time of Signing this receipt.

(Seal of Rynda Development Co.)
CHEMTEC COMPANY
MAURICE B. GLUCK
RYNDA DEVELOPMENT COMPANY
J. LEWIS FIACRE
Sec. & Treas.
A. HAUPTMAN,
President.

Thomas P. O'Hara
Witness
Thomas P. O'Hara
Witness

Exhibit C4.

Escrow agreement, not reprinted here. Printed on page 177, of this record. Introduced in evidence, page 21 of the original stenographer's testimony, page 266 of this record.

Exhibit C5.

Agreement and mortgage loan, not reprinted here. Printed on page 19 of this record. Same as copy attached to bill of complaint. Introduced in evidence, page 22 of the original stenographer's testimony, page 266 of this record.

Exhibit C6.

Letter of Dec. 27, 1922, and envelope. Introduced in evidence, page 27 of the original stenographer's testimony, page 270 of this record.

(Letter and Envelope from J. Lewis Fiacre to Chemtec Company, Dated Dec. 27, 1922.)

Member of Real Estate Board, Newark, N. J.

J. LEWIS FIACRE

NEWARK AND SUBURBAN REAL ESTATE

INSURANCE LOANS

PROPERTY MANAGED

828 Broad St., Newark
Suite 400-404
Phone Market 2369

Branch Office
588 Prospect St.
Maplewood
Phone So. Orange
708

Exhibit C6

December 27, 1922

Chemtec Company,
Mr. Morris B. Gluck,
97 Warren Street,
New York City.

Gentlemen:

This is to advise you that the Rynda Development Company held a meeting to discuss the matter of sale of lot on Rynda Road, South Orange, to you upon which you have started building and said Rynda Development has instructed me to advise you that we are ready and willing and hereby offer you a deed for said property.

In as much as you are to give us a mortgage back on said property, it will be necessary for you to pay all claims now a lien against said property.

We will expect you to do this on or before January 15th, next, as we will not make the offer to present the deed binding after said January 15th, next.

Kindly advise as soon as you are ready for said deed and do not ask us to leave it in escrow, as we do not wish to do it.

All future dealings must be with our Counsellor, Mr. Jacob Hauptman in the Prudential Building, Newark.

Yours very truly,
J. LEWIS FIACRE
Sec. Rynda Development Co.

JLF/L

Exhibit C7

(Envelope.)

J. Lewis Fiacre [Newark]
Real Estate [Dec. 27]
828 Broad Street (Suite 400-404) [7 P. M.]
Newark, N. J. [3 1922]
[N. J.]

Mr. Morris B. Gluck,
Chemtec Company,
97 Warren St.,
New York City.

Exhibit C7.

Mortgage of Frieda Horn and photostatic copy of deed attached. Introduced in evidence, page 30 of the original stenographer's testimony, page 273 of this record.

THIS INDENTURE, made this 2nd day of January, in the year of our Lord One Thousand Nine Hundred and Twenty-three, as for and on behalf of Rynda Development Company, a corporation of the State of New Jersey, having its principal place of business in the City of Newark, County of Essex, and State of New Jersey, under and by virtue of the subrogated rights under a Deed of Warranty, a photostatic copy of which is hereto attached and made a part hereof following: Amalia R. Gluck, of the City of Easton, in the County of Northampton, State of Pennsylvania, party of the first part, and Frieda Horn, of the City

of Newark, in the County of Essex and State of New Jersey, party of the secon dpart:

WHEREAS, the party of the first part is justly indebted to the party of the second part, in the sum of Eight Hundred and Fifty Dollars, lawful money of the United States, secured to be paid by her certain bond or obligation bearing even date with these presents, in the penal sum of Seventeen Hundred Dollars, to the said party of the second part conditioned for the payment of the said sum of Eight Hundred and Fifty Dollars, to the said party of the second part, her heirs, executors, administrators and assigns, on the 15th day of March, 1923, and interest thereon, to be computed from the 2nd day of January, 1923 at the rate of six per centum per annum;

AND IT IS THEREBY EXPRESSLY AGREED, that should any default be made in the payment of interest, or any part thereof, on the day whereon the same is made due, then and from thenceforth the principal sum with all its arrearages of interest, shall at the option of the party of the second part, or her heirs, legal representatives or assigns become and be due and payable immediately thereafter.

NOW, THIS INDENTURE WITNESSETH: That the said party of the first part for the better securing the payment of the sum of money mentioned in the condition of the said bond or obligation with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of One Dollar, to her in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these pres-

ents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to her heirs, and assigns forever, ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of South Orange in the County of Essex, and State of New Jersey.

BEGINNING at a point on the northeasterly side of Rynda Road distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road produced with the Northeasterly side of Ridgewood Road produced, thence (1) along said side of Rynda Road North 48 degrees, 37 minutes West three feet; thence (2) North 41 degrees, 23 minutes East One Hundred Feet; thence (3) 48 degrees, 37 minutes West forty feet; thence (4) South 41 degrees, 23 minutes West One Hundred Feet; thence (5) along said side of Rynda Road North 48 degrees, 37 minutes West Seventeen feet; thence (6) North 41 degrees, 23 minutes East one hundred and forty feet; thence (7) South 48 degrees 37 minutes East sixty feet; thence (8) South 41 degrees, 23 minutes West one hundred and forty to the point or place of beginning.

SUBJECT to the restrictions on said property.

BEING the same and part of the premises conveyed to Amalia R. Gluck by deed from the Rynda Development Company, the original of which is said to be destroyed or lost, and not on record, a photostatic copy thereof made after delivery, is hereby and herewith attached following and made part hereof.

THIS INDENTURE, made the Twenty-fifth day of November, in the year of Our Lord One Thousand Nine Hundred and twenty-two.

Exhibit C7

BETWEEN Rynda Development Company, a Corporation, organized under the laws of the State of New Jersey located in the City of Newark in the County of Essex and State of New Jersey of the First Part;

AND Amalia R. Gluck, of the City of Easton, in the County of Northampton and State of Pennsylvania 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 it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to her heirs and assigns forever.

ALL that certain tract or parcel of land and premises, after particularly described, situate, lying and being in the Village of South Orange in the County of Essex and State of New Jersey.

BEGINNING at a point on the northeasterly side of Rynda Road, distant one hundred and seventy-seven feet and seventy-eight hundredths of a foot northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Road produced with the northeasterly side of Ridgewood Road produced, thence (1) along said side of Rynda Road north forty-eight degrees, thirty-seven minutes west sixty feet; thence (2) north forty-one degrees, twenty-three minutes east one hundred and forty feet; thence (3) south forty-eight degrees, thirty-seven minutes

east sixty feet; thence (4) south forty-one degrees twenty-three minutes west one hundred and forty feet to the point and place of beginning. Being the westerly thirty feet of lot #32 and the easterly thirty feet of lot #31 on map of property of Rynda Development Company, South Orange, New Jersey, made by Ira T. Redfern and Bro., surveyors, South Orange, New Jersey, dated February, 1922.

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, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. And the said party of the first part does for itself and its successors, covenant and grant to and with the said party of the second part, her heirs and assigns, that the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in

Exhibit C7

any way whatsoever, except restrictions of record as contained in deed from the party of the first part as recorded in Essex County Register's office in Book of Deed K 66, page 455, etc.

And Also, that the said party of the first part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid.

And Also, that the said party of the first part will warrant, secure and forever defend the said land and premises unto the said party of the second part, her heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In Witness Whereof, the said party of the first part has caused these presents to be signed by its president and attested by its secretary and its common seal to be hereto affixed, the day and year first above written.

RYNDA DEVELOPMENT CO.
Abraham Hauptman,
President.
Attest: J. Lewis Fiacre,
Secretary.

(Seal of Rynda Development Co.)

State of New Jersey,
County of Essex, ss:

Be It Remembered, that on this twenty-seventh day of November in the year of Our Lord One Thousand Nine Hundred and twenty-two before me, an attorney at law of the State of New Jersey, personally appeared J. Lewis Fiacre, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well

knows the corporated seal of the Rynda Development the grantor named in the foregoing deed; that the seal thereto affixed is the proper corporate seal of said company; that the same was so affixed thereto and the said deed signed and delivered by Abraham Hauptman who was at the date and execution thereof, the president of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

J. LEWIS FIACRE.

Sworn and subscribed before me at
Newark, the date aforesaid.
Jacob Hauptman,
Attorney at Law
of New Jersey.

(Deed.)

RYNDA DEVELOPMENT COMPANY
to
AMALIA R. GLUCK.

Dated, November 25th, 1922.

Received in the office of the County of on the day of A. D., 19 , at o'clock noon and recorded in Book of Deeds for said county, on pages in the

Exhibit C7

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; And Also all the right, estate, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances, unto the said party of the second part her heirs and assigns, to her and their own use, benefit and behoof, forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, her heirs, legal representatives or assigns, shall well and truly pay or caused to be paid unto the said party of the second part, her heirs, legal representatives and assigns, the said money mentioned with interest, that then these presents and the estate hereby granted, shall cease, determine and be void, and the said Amalia R. Gluck, for herself, her heirs legal representatives and assigns does covenant and agree to pay unto the said party of the second part her heirs, executors admissioner of deeds for New Jersey in New York, per-interest, as mentioned and expressed in the conditions of said bond.

The Party of the First Part hereby agrees that she, nor her legal representatives or assigns will claim, demand or receive any credits out of any part of this money hereby secured for so much of the terms assessed against such lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof.

In Witness Whereof, the said party of the first part

Exhibit C7

has hereto set her hand and seal the day and year first above written.

AMALIA R. GLUCK.

Signed, sealed and delivered
in the presence of
Henry A. Bingham.

State of New York,
County of New York, ss:

BE IT REMEMBERED, that on this 2nd day of January, in the year of Our Lord One Thousand Nine Hundred and Twenty-three, before me, a foreign commissioner of deed for New Jersey in New York, personally appeared Amalia R. Gluck, 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.

HENRY A. BINGHAM,
A Foreign Commissioner of Deeds
for New Jersey in New York.

(Seal of
Henry A. Bingham
A Foreign Commissioner of Deeds
for New Jersey in New York.
Oradell, New Jersey.)

Exhibit C8

Mortgage.

RYNDA DEVELOPMENT COMPANY
a corporation of New Jersey,
AMALIA R. GLUCK,

to

FRIEDA HORN.

Compared by
25 d2

Dated, January 2nd, 1923.

Received in the Register's Office of the County of Essex, N. J. on the 4th day of January, A. D. 1923, at 9:15 o'clock, in the forenoon, and recorded in Book 1-47 of Mortgages for said County on pages 520-522.

HOWARD S. DODD,
Register.

Record and return to
M. B. Gluck,
Attorney at Law,
No. 97 Warren St.,
New York City, N. Y.

Exhibit C8.

Notices at Sheriff's sale, read at Sheriff's sale on Salmon lien to Arlington Realty Co., and all whom may concern. Introduced in evidence page 52, on original stenographer's testimony, page 291 of this record.

Exhibit C8

To S. J. Wilson, Sheriff:

To the Sheriff of the County of Essex, State of New Jersey, Newark, N. J.:

To Whom it May Concern:

WHEREAS: A notice of sale of premises being the Westerly thirty feet of Lot No. 32 and the Easterly thirty feet of Lot No. 31 on Map of Property of Rynda Development Company, at South Orange, N. J., made by Ira T. Redfern & Bro., Surveyors, South Orange, N. J., dated February, 1922, has been advertised in the "Newark Star Eagle," known as Circuit C-103, under writ of the Circuit Court of Essex County, to be made by you at 2 P. M., October 9, 1923, in the matter of the lien claim, etc., of George Salmon Co., a corporation, plaintiff and Chemtec Co., Inc., a New York Corporation, Rynda Development Company, a New York Corporation, *et al.*, defendants, under the Mechanics' Lien Law of the State of New Jersey, and for the benefit of other and various lienors, etc., and

WHEREAS: Such writ of *fierie facias* is a special writ as against the property only, of the right, title and interest only, of the Rynda Development Company, a corporation of New Jersey and no other rights of any or of any other defendants, owners, mortgagees or other persons holding interests therein are or can be sold:

NOTICE is hereby given that such sale, if any, shall be for only such rights, title and interest of the said Rynda Development Company, a New Jersey Corporation, as they may or be made to appear, and specifically subject to the claims, title, ownership and/or posses-

Exhibit C8

sion of any other claimants, owners, mortgagees or other persons holding interests therein, etc., as made or whether made parties herein or therein.

SPECIFICALLY FOR THIS PURPOSE ONLY, WITHOUT ANY GENERAL APPEARANCE ETC., WITHOUT WAIVER OF ANY KIND, AND WITHOUT WAIVER OF ANY RIGHTS ACCORDING TO LAW, NOTICE is hereby given you by the undersigned as Owner in full possession of the said premises, its appurtenances, and hereditaments, the personal property unattached to buildings and not yet fixtures, and the buildings thereon, that a deed, dated the 25th day of November, 1922, was delivered for good and valuable considerations from the Rynda Development Company, and duly acknowledged by its officers the 27th day of November, 1922, and that possession was duly given to her by the party in possession as well as the former owner, and that from such time she has been and still is in active and open ownership and possession, that while such deed is said to be and claimed to be destroyed or lost, a photostatic copy thereof is recorded in the office of the Register of the County of Essex in Book 147 of Mortgages at pages 520-522, and is full and sufficient notice of the execution and delivery thereof, and the said owner and undersigned demands that the Sheriff at or prior to the sale make such facts known to any possible or intended purchaser by announcing the same before or at such or any sale, and that the or any sale be subject to such rights, title, ownership and/or possession, and full notice thereof be given to any possible purchaser.

Dated, the 9th day of October, 1923.

AMALIA R. GLUCK,
Owner.

Exhibit C8a.

To: S. J. Wilson, Sheriff

To: The Sheriff of the County of Essex, State of New Jersey, Newark, N. J.

To: To Whom It May Concern

WHEREAS: A Notice of sale of premises, the Westerly thirty feet of lot No. 32 and the Easterly thirty feet of lot No. 31 on Map of property of Rynda Development Company, at South Orange, N. J., made by Ira T. Redfern & Bro., Surveyors, South Orange, N. J., dated, February 1922, has been advertised in "The Newark Star Eagle," known as Circuit C103, under writ of the Circuit Court of Essex County, to be made by you at 2 P. M. October 9, 1923, in the matter of the lien claim, etc., of George Salmon Co., Plaintiff and Chemtec Co., a New York Corporation, Rynda Development Company, a New Jersey Corporation, *et al.*, under the Mechanics' Lien Law of the State of New Jersey and for the benefit of other and various lienors, etc., and

WHEREAS: such writ of *fierie facias* is a special writ as against the property only, of the right, title and interest only, of the Rynda Development Company, a corporation of New Jersey, and no other rights of any other of defendants owners, mortgagees or other persons holding interests therein, are or can be so sold:

NOTICE Is hereby given that such sale if any, shall be only such rights; title and interest of the said Rynda Development Company, a New Jersey Corporation, as they may or be made to appear, and specifically subject to the claims, title and ownership and possession of other claimants, owners, mortgagees

Exhibit C8a

or other persons holdings interest, etc., as made or whether made parties herein.

WITHOUT WAIVER OF ANY RIGHTS ACCORDING TO LAW, NOTICE is hereby given you by the undersigned as Mortgagee, holding a mortgage from the owner in possession of the said premises, appurtenances and Buildings thereon, being to wit: Amalia R. Gluck, bearing date the 2nd day of January, 1923 and Recorded in the office of the Register of the County of Essex the 4th day of January, 1923, in Book 147 of Mortgages for said County of Essex on pages 520-522, and containing therein and thereto securely attached a photostatic copy of the delivered deed, from the Rynda Development Co., dated the 25th day of November, 1922 by Deed of Warranty, free from all manner of incumbrances duly acknowledged the 27th day of November. 1922, and the undersigned certifies that there is due to and owing the principal sum of $850, with interest thereon at six per cent to date, demands that the Sheriff make such facts known at the and prior to the or any sale, and that any sale be subject to such notice, rights, etc., and be made with full notice to any possible purchaser.

Dated, the 9th day of October, 1923.

FRIEDA HORN.

Exhibit C8b.

To: S. J. Wilson, Sheriff,

To: The Sheriff of the County of Essex, State of New Jersey, Newark, N. J.

To: To Whom it May Concern:

WHEREAS: A Notice of Sale of Premises the Westerly thirty feet of lot No. 32 and the Easterly thirty feet of Lot No. 31 on Map of property of Rynda Development Company, at South Orange, N. J., made by Ira T. Redfern & Bro., Surveyors, South Orange N. J., dated, February, 1922, has been advertised in "The Newark Star Eagle," known as Circuit C. 103, under writ of the Circuit Court of Essex County, to be made by you at 2 P. M., October 9th, 1923, in the matter of the lien claim, etc., of George Salmon Co., a corporation, Plaintiff and Chemtec Co., a New York Corporation, Rynda Development Company, a New Jersey Corporation, *et al.*, under the Mechanics' lien law of the State of New Jersey and for the benefit of other and various lienors, etc., and

WHEREAS: Such writ of *fierie facias* is a special writ as against the property only, of the right, title and interest only, of the Rynda Development Company, a corporation of New Jersey, and no other rights of any or other of any other defendants, owners, mortgagees or other persons holding interests therein, are or can be so sold:

NOTICE: is hereby given that such sale if any, shall be only such rights title and interest of the said Rynda Development Company, a New Jersey Corporation, as they may or be made to appear, and specifically subject to the claims, title and ownership and possession of any other claimants, owners mortgagees or other persons holding interests, etc., as made or whether made parties therein.

Exhibit C

WITHOUT WAIVER OF ANY RIGHTS ACCORDING TO LAW, NOTICE is hereby given you by the undersigned as owner and in possession of the unattached personal property and not yet fixtures as well as tools, etc., upon the said premises, and that a Building Contract is on file in the Office of the County Clerk of the County of Essex from the owner to us, and further that we have been in possession as prior owners, etc., of said premises since the starting of the said buildings, and sold such possession, etc., to Amalia R. Gluck, who is now in possession as such owner, and we demand that the Sheriff at any sale make known these facts to any possible purchaser, and by prior announcement of these facts herein contained give full and fair notice that they may beware, and that any sale be subject to such notice, rights, etc., and be made with full notice to any possible purchaser.

Dated, the 9th day of October, 1923.

CHEMTEC CO., INC.,
By MAURICE B. GLUCK,
Treas., Pres.

(Seal Chemtec Co., Inc., Incorporated New York, 1918.)

Exhibit C.

Record of papers in Lally & Trehmor, a corporation, lien claim suit. Not reprinted here because printed in this record, page 183, and page 195 inclusive. Introduced in evidence, page 60, on original stenographer's testimony, this record, page 333.

Exhibit C9.

Mechanic's Lien and Complaint in Salmon Mechanic's Lien suit. Introduced in evidence page 71 of original stenographer's testimony and in this record, page 306.

Filed April 1st, 1923.

No indorsements showing suit, etc.

IN THE

OFFICE OF THE CLERK OF THE COUNTY OF ESSEX.

COUNTY OF ESSEX.

GEO. G. SALMON, a corporation, Claimant, vs. CHEMTEC CO., *Inc.* (a corporation), Builder, and RYNDA DEVELOPMENTS (a corporation) and AMELIA R. GLUCK, Owners.	Lien claim.

County of Essex.

Be it known, that Geo. G. Salmon Co., a corporation having its principal office in the Village of South Orange, in said County, claims a lien upon the buildings and lands hereinafter described, pursuant to the provisions of an "Act to secure to mechanics and

Exhibit C9

others, payment for their labor and materials in erecting any building." And the several supplements thereto, for a debt contracted and owing to it for labor performed and materials furnished for the erection and construction of said building as hereinafter set forth, to wit:

FIRST: The said building is a two and one-half story frame dwelling on a lot of land or curtilage, situated in the Village of South Orange, in the County of Essex and State of New Jersey, and more particularly described as follows: BEGINNING at a point in the Northeasterly side of Rynda Road, distant 177 and 78/100th of a foot northerly as measured along said side of Rynda Road from the intersection of the said side of Rynda Road produced with the northeasterly side of Ridgewood Road produced; thence (1) along said side of Rynda Road north 48 degrees, 37 minutes west 60 feet; thence (2) north 41 degrees, 33 minutes east 140 feet; thence (3) south 48 degrees, 37 minutes west 60 feet; thence (4) south 41 degrees, 23 minutes west to the point and place of beginning. Being the westerly thirty feet of lot No. 32 and the easterly thirty feet of lot No. 31 on the map of the property of Rynda Development Co., South Orange, N. J. made by Ira T. Redforn & Bro., Surveyors, South Orange, N. J. February, 1922.

SECOND: The name of the owner of the said land and the estate therein, on which said lien is claimed is Rynda Development Co., a corporation, and Amelia R. Gluck, who has an estate in fee simple therein.

THIRD: The name of the person who contracted the said debt and for whom and at whose request the said labor was performed, and materials furnished, for

Exhibit C9

which the aforesaid lien is claimed, is the said Chemtec Co., Inc., a corporation.

FOURTH: Attached hereto is a bill of particulars of the aforesaid labor performed and materials furnished by the said Geo. G. Salmon Co., claimant, the amount and kind of labor performed and furnished and given credit for all the payments thereupon and deductions that ought to be made therefrom and exhibiting the balances just due to it from the said Chemtec Co. Inc.

All of the said labor was performed and materials furnished between the 13th day of July, 1922 and 21st day of December, 1922.

GEO. G. SALMON CO.,
By GEO. G. SALMON,
President.

State of New Jersey,
County of Essex, ss:

George G. Salmon, President of Geo. G. Salmon Co., of South Orange, N. J., of full age, being duly sworn, on his oath saith, that he is President of Geo. G. Salmon Co., the claimant mentioned in the foregoing claim; that the attached bill of particulars and statements therein set forth are true; that the same is for labor performed and materials furnished by the claimant in the erection of the building in the said claim described, at the times therein specified and that the amount as claimed therein is justly due and owing from the said Chemtec Co., Inc., a corporation, to the claimant.

GEO G. SALMON.

Sworn and Subscribed before me,
this 22nd day of March, 1922.
Thos. E. Fitzsimmons,
Attorney at Law of
New Jersey.

Exhibit C9

Schedule "A."

GEO. G. SALMON CO.

Sold to Messrs. Chemtec Co. Inc.,
99 Warren Street,
New York City.

July	13	6996	13600 1½" Stone	2.85	19.38
		6995	12550 Sand	2.80	17.57
		147012	50 Bags Cement	.81¼	40.62
		7018	3 yds. Cinders	2.25	6.75
		7008	11325 Sand	2.80	15.85
		7009	13400 1½" Stone	2.85	19.09
		7068	13200 1½" Stone	2.85	18.81
		7067	11675 Sand	2.80	16.34
		7077	10 Gal. Roof Coating (5 gal.)	3.75	7.50
		7030	7 yds. Cinders	2.25	15.75
		7006	12175 Sand	2.85	17.04
		6999	80 8 x 12 x 16 S. F. Blocks	.33	26.40
"	14	7010	200 8 x 12 x 16 S. F. "	.33	66.00
		7055	200 8 x 12 x 16 S. F. "	.33	66.00
		7077	200 8 x 12 x 16 S. F. "	.33	66.00
		7085	200 8 x 12 x 16 S. F. "	.33	66.00
"	25	7906	25 Bags Cement	.81¼	20.31
		7906	150 8 x 8 x 16 S. F. "	.26	39.00
"	26	8036	100 8 x 8 x 16 S. F. "	.26	26.00
"	28	8197	2 column 7' 6"	3.50	7.00
"	31	8395	2500 Natl. Brick	26.00	65.00
			78 ft. 8 x 8 Flue	.30	23.40
Aug.	5	9083	120 8 x 12 x 16 S. F. Blocks	.33	39.60
"	8	9067	10,900 1½" Stone	3.85	15.53
		9083	10 Bags Limoid	.45	4.50
			2 Stones Column Bases	.65	1.30
			25 Bags Cement	.81¼	20.31

Exhibit C9

"	17	9226	60 " Adamant	.77	46.20
			10 " Limoid	.45	4.50
			1 Ash Dump		1.00
Nov.	16	18095	20 lbs. Red Color		.60
Dec.	5	19692	6 Bags Tiger	.60	3.60
			4 " Cement	.87½	3.50
			25 Plaster Boards	.23	5.75
			8 Bags Adamant	.77	6.16
"	14	20277	5 Bags Tiger	.60	3.00
"	21	20548	24 Bags Cement	.87½	21.00
					$842.36

CREDITS

July	31	4.88	
Nov.	13	7.50	12.38
			$829.98

State of New Jersey:

Chemtec Co., Inc., a New York Corporation, Rynda Development Company, a New Jersey Corporation, and Amelia R. Gluck, you, Chemtec Co., Inc. (a New York Corporation), Rynda Development Company (a New Jersey Corporation) and Amelia R. Gluck,

Are summoned to answer the annexed complaint of Geo. G. Salmon, Co., in an action at law upon a mechanics lien claim in the Circuit Court in and for the County of Essex, in which said Geo. G. Salmon

Exhibit C9

Co., claims a lien on certain buildings and lands and the interests in lands of the said Rynda Development Company, and Amelia R. Gluck described in the lien as follows:

Situated in the Village of South Orange in the County of Essex, and State of New Jersey, and more particularly described as follows: BEGINNING at a point on the Northeasterly side of Rynda Road, distant 177 and 78/100th of a foot northerly as measured along said side of Rynda Road produced with the Northeasterly side of Ridgewood produced; thence (1) along said side of Rynda Road North 48 degrees, 37 minutes west, 60 feet; thence (2) North 41 degrees, 33 minutes east 140 feet; thence (3) south 48 degrees, 37 minutes east 60 feet; thence (4) south 41 degrees, 33 minutes west 140 feet to the point and place of Beginning. Being the westerly thirty feet of lot No. 32 and the easterly thirty feet of lot No. 31 on the map of property of Rynda Development Company, South Orange N. J. February, 1922.

And Take Notice that unless you file your answer to the said complaint with the Clerk of said Court, at Newark, within Twenty Days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, Worrall F. Mountain, Judge of the said Circuit Court at Newark, this 2nd day of April, 1923.

JOHN H. SCOTT,
Clerk.

Riker & Riker,
Attorneys.

Exhibit C9

Action on Lien Claim.

ESSEX COUNTY CIRCUIT COURT.

GEO. G. SALMON CO. (a corporation),
Plaintiff,
vs.
CHEMTEC CO., Inc. (a New York corporation), RYNDA DEVELOPMENT COMPANY (a New Jersey corporation) and AMELIA R. GLUCK,
Defendants.
} Complaint.

Plaintiff a corporation having its principal place of business and office in the Village of South Orange, in the County of Essex and State of New Jersey, makes known its claim and says:

1. That at all the times hereinafter mentioned in the following Bill of Particulars, attached hereto and marked "A" and specifically made a part hereof, that the plaintiff at the special instance and request of the defendant, the Chemtec Co. Inc., furnished and supplied the goods, wares and merchandise, to wit: the said building materials therein set forth at the various times to the said defendants, their agents and servants, at and to the buildings hereinafter described in and at No. 122 Rynda Road, South Orange, upon the curtilage herein described, and that the said materials were so used and intended to be used thereat, and they did agree to pay for the same at the prices so charged and that they were the agreed and reasonable

value of $842.36 upon which deductions and credits were allowed them $12.38, making the total still due and owing from the defendants to the said plaintiffs the full sum and amount of $829.98 together with interest from the 20th day of November, 1922, the same being sold them on open account.

2. That although duly demanded no part of the above debt has been paid, and payment thereof has been specifically refused.

3. That the plaintiff performed each and every thing of any kind and manner or nature that was required to be performed by them as a condition precedent to the debt herein becoming due or demandable, or being made the proper basis of any suit or action.

4. That on the first day of July, 1922 and at the commencement of the said house, and at the time of plaintiff's starting the work on said house, the fee and title was vested in the Rynda Development Company, a corporation, and that there was an agreement in writing to and with the said Rynda Development Company and the Chemtec Co. Inc., a New York Corporation, the Builders, to purchase such lands and said Rynda Development Company to sell such lands and deliver such lands upon certain events, and such contract was in writing, duly signed, sealed and delivered and acknowledged according to law, so that it could have been placed on record, although not so placed for the purposes best known between the parties, and which written contract contained the following words: "Permission is hereby given unto the party of the second part (Chemtec Co.), by the party of the first part (Rynda Development Company) to go into and upon said premises and build and construct a house

therein, any time prior to taking title." That under such contract they obtained possession of the premises and possession was given them by said Rynda Development Company. That said Rynda Development Company did thus in writing consent to the building and construction of such buildings, and the work, labor, and the said lands be subjected to liens for the erection and construction of such buildings, and the work labor, and materials done, performed or furnished therefor.

5. That the said Rynda Development Company did execute and acknowledge a deed to one Amelia R. Gluck by deed or Warranty, dated November 25th, 1922, with full notice on the part of both grantor and grantee of the right of plaintiff's lien for the debt herein set forth.

6. That there are no other estates in said lands that may be cut off by this lien and the right of lien and that have not actual notice of plaintiff's lien and the right of lien for the debt hereinabove set forth, and one Abraham Hauptman who possibly may claim a prior lien therein, is the same person who as president of the Rynda Development Company executed a full warranty deed to said Amelia R. Gluck, and who executed the said agreement herein before mentioned between Rynda Development Company and Chemtec Co., Inc., and who is thereby estopped from claiming on any alleged prior mortgage or other lien.

7. That in compliance with the provisions of an Act entitled: "An Act to secure to mechanics and others payment for their labor and materials in erecting any building." And the supplements and amendments thereto, this plaintiff on the 22nd day of March, 1923 duly filed a lien claim, according to the Statutes

made and provided, in the Clerk's office of the County of Essex, State of New Jersey at Newark, which was within four months after the date of the last work done, labor performed or materials furnished as therein showed to be on the 21st day of December, 1922, and which contained a full Bill of Particulars of the above debt, showing the kind and manner of the work done, labor performed and materials furnished, and this suit herein was started by the issuance of the summons within four months after the date therein set forth so that the date of the last work done, labor performed and materials furnished and the date of the issuance of this suit is so noted on such lien claim, and attached hereto and made a part hereof, marked "A" is a copy of such Bill of Particulars, and which is a full itemized bill of the above debt.

8. That the said debt is by virtue of the provisions of an act entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building" and the supplements and amendments thereto a lien upon such buildings, lots and curtilage, being a two and one-half story building frame dwelling with a double car garage upon such curtilage and herewith following described, as in said lien claim described, to wit:

Situated in the Village of South Orange, in the County of Essex, and State of New Jersey, more particularly described as follows: BEGINNING at a point in the Northeasterly side of Rynda Road, distant 177 and 78/100th of a foot northerly as measured along said side of Rynda Road from the intersection of the said side of Rynda Road produced with the northeasterly side of Ridgewood Road produced; thence (1) along said side of Rynda Road north 48 degrees,

Exhibit C9

37 minutes west 60 feet; thence (2) north 41 degrees, 33 minutes east 140 feet; thence (3) south 48 degrees, 37 minutes west 60 feet; thence (4) south 41 degrees, 23 minutes west to the point and place of Beginning, being the westerly thirty feet of lot No. 32 and the easterly thirty feet of lot No. 31 on the map of the property of Rynda Development Co., South Orange, N. J., made by Ira T. Redforn & Bro., Surveyors, South Orange, N. J., February, 1922.

Plaintiff demands as damages in judgment the sum of $829.98 together with interest thereon from the 21st day of December, 1922, and costs of this action.

RIKER & RIKER,
Attorneys for Plaintiff.

Schedule "A."

GEO. G. SALMON CO.

Sold to Messrs. Chemtec Co. Inc.,
99 Warren Street,
New York City.

July 13	6996	13600 1½" Stone	2.85	19.38
	6995	12550 Sand	2.80	17.57
	147012	50 Bags Cement	.81¼	40.62
	7018	3 yds. Cinders	2.25	6.75
	7008	11325 Sand	2.80	15.85
	7009	13400 1½" Stone	2.85	19.09
	7068	13200 1½" Stone	2.85	18.81
	7067	11675 Sand	2.80	16.34
	7077	10 Gal. Roof Coating (5 gal.)	3.75	7.50
	7030	7 yds. Cinders	2.25	15.75
	7006	12175 Sand	2.85	17.04
	6999	80 8 x 12 x 16 S. F. Blocks	.33	26.40

Exhibit C9

"	14	7010	200 8 x 12 x16 S. F. "	.33	66.00
		7055	200 8 x 12 x12 S. F. "	.33	66.00
		7077	200 8 x 12 x 16 S. F. "	.33	66.00
		7085	200 8 x 12 x 16 S. F. "	.33	66.00
"	25	7906	25 Bags Cement	.81¼	20.31
		7906	150 8 x 8 x 16 S. F. "	.26	39.00
"	26	8036	100 8 x 8 x 16 S. F. "	.26	26.00
"	28	8197	2 Columns 7' 6"	3.50	7.00
"	31	8395	2500 Natl. Brick	26.00	65.00
			78 ft. 8 x 8 Flue	.30	23.40
Aug.	5	9083	120 8 x 12 x 16 S. F. Blocks	.33	39.50
"	8	9067	10900 1½" Stone	3.85	15.53
		9083	10 Bags Limoid	.45	4.50
			2 Stones Column Bases	.65	1.30
			25 Bags Cement	.81¼	20.31
"	17	9926	60 " Adamant	.77	46.20
			10 " Limoid	.45	4.50
			1 Ash Dump		1.00
Nov.	16	18095	20 lbs. Red Color		.50
Dec.	5	19692	6 Bags Tiger	.60	3.60
			4 " Cement	.87½	3.50
			25 Plaster Boards	.23	5.75
			8 Bags Adamant	.77	6.16
"	14	20277	5 Bags Tiger	.60	3.00
	21	20548	24 Bags Cement	.87½	21.00
					$84.36

CREDITS

July	31	$4.88	
Nov.	13	7.50	12.38
			$842.36

Exhibit C9

I hereby appoint and depute Fred E. Ober to serve the within writ.

Witness my hand and seal this 3rd day of April, 1923.

SAMUEL F. WILSN,
Sheriff,

By ALFRED W. C. WALKER,
Under Sheriff.

Sheriff fees. $3.66.

Served the within Summons and Complaint April 4th, 1923, personally upon Jacob Hauptman registered agent of the Rynda Development Company, a New Jersey Corporation the within named defendant at his office #763 Broad Street, Newark, New Jersey.

SAMUEL F. WILSON,
By FRED E. OBER,
Sheriff, Special Deputy.

Exhibits A and B.

Releases of Mechanics' Liens. Introduced in evidence, page 105, of original stenographer's minutes, of this record page 330.

"A."

WHEREAS, Ruiz-Urritia Company, a copartnership, of which Francisco Delgado is one of the copartners and managers, and which copartnership has as contractors by a contract in writing, agreed to erect for Chemtec Co., Inc., a New York corporation, as equitable owner, a building situate on Rynda Road in the Village of South Orange, County of Essex and State of New Jersey, known as No. 122 Rynda Road, being 177 and 78/100 of a foot northerly from the intersection of Rynda Road and Ridgewood Road, running thence northerly along said Rynda Road 60 feet, thence rearwardly 140 feet, thence parallel with said Rynda Road sixty feet, and thence to the street or Rynda Road 140 feet to the point or place of beginning, and we the undersigned, have done work and furnished materials for the erection and construction thereof.

NOW THEREFORE, in order to enable the said contractor and/or owners or *als.* to collect and receive and consideration of one dollar to each of us paid, we hereby jointly and severally release and discharge the said building, and the lot or curtilage whereon the same is erected, of and from any and all liens held by us thereon, by virtue of the Mechanic's Lien Law of New Jersey, for the payment of any debt contracted and owing to us for labor heretofore performed and materials furnished by us for the erection and construction of such building.

Witness our hands and seals this 25th day of November, One Thousand Nine Hundred and Twenty-two.

Exhibits A and B

Witnesses	Signatures of materialmen	Journeymen and laborers
[illegible]. Charles O'Brien	Ruiz-Urrutia Co. by Francisco Delgado	(L. S.)
[illegible]. L. O'Rourke	R. Sukley Son	
	Apex Color Works, Inc.	(L. S.)
[illegible]M. B. Gluck	A. Liedaker, Pres.	(L. S.)
[illegible]M. B. Gluck	E. V. Ruiz Company	
[illegible]M. T. Bella	by E. V. Ruiz, Pres.	(L. S.)
[illegible]M. B. Gluck	Marbe Trading Corp.	
[illegible]E. V. Ruiz	by M. T. Bella Treas.	(L. S.)
[illegible]M. T. Bella	M. B. Gluck	(L. S.)
	The Electric Co., Carl Brinz	(L. S.)
[illegible]Eugene Brauer	Louis Giusto	(L. S.)
[illegible]Maurice B. Gluck	P. C. Langton	(L. S.)
[illegible]Maurice B. Gluck		

"B."

The undersigned having furnished labor and mate[illegible]rial entering into the construction of the dwelling house [illegible]now being erected upon premises now of Amalia R. [illegible]Gluck, on North Side of Rynda Road, 177 feet from [illegible]Ridgewood Road, in the Village of South Orange, in [illegible]he County of Essex, and State of New Jersey, hereby [illegible]consent that any lien which we may have upon the [illegible]said premises by reason of labor or material so fur[illegible]nished or to be furnished hereafter shall be subordinate [illegible]o the lien of the mortgage made, or about to be made [illegible]o the Franklin Society for Home Building and Sav[illegible]ngs by the said Amalia R. Gluck, and given to se[illegible]cure the sum of $10,000.00.

This release shall refer not only to the first advance [illegible]of $3,333.00 made or to be made by the Franklin So[illegible]ciety for Home Building and Savings, but also to all [illegible]future advances to the full amount of the said loan,

unless the said Franklin Society for Home Building and Savings or its attorney, Frank H. Hennessy, of 15 Park Row, New York City, shall have been advised in writing of the withdrawal of this consent.

It is understood that this consent shall not operate as a release of lien but merely subordinate such lien of the mortgage to the Franklin Society for Home Building and Savings.

Dated, the 29th day of November, 1922.

Ruiz Urrutia Co.
by Francisco Delgado
Ral. Sukly Son

E. V. Ruiz Company
by E. V. Ruiz, Pres.
Marbe Trading Corp.
by M. T. Bella, Treas.

Apex Color Works, Inc.
A. Liedeker Pres.

The Electric Co., Carl Prinz

Alexander Morrison & Co.
Co.
C. Z. Alender Sec.
51 Clinton St.
Newark.

Louis Giusto
P. C. Lagnton

State of New Jersey,
County of Essex, ss:

Francisco Delgado of full age, being duly sworn, says that he is the Builder having full personal supervision of the dwelling house under course of construction upon premises of No. 122 Rynda Road, Village of So. Orange referred to in the within consent. That he knows of his own knowledge that all persons who furnished any labor or material entering into the construction of the said dwelling house have signed the within consent and that there are no persons whatsoever who can establish any lien or claim against

the said premises by reason of labor or material furnished to date. This affidavit is made to induce the Franklin Society for Home Building and Savings to advance moneys upon the mortgage herein referred to. Except as to those indicated in affidavit of deponent made this even date, as a further consideration and to present the fullest knowledge to the above Society for the purposes hereinabove set forth.

FRANCISCO DELGADO

Subscribed and sworn to before me
this 29th day of November, 1922.
J. Chas. O'Brien,
Comm. of Deeds,
Essex Co., N. J.

(Seal.)

Exhibit C.

Contract of sale, Arlington Realty Co. to Mary Smith. Introduced in evidence, page 107, on original stenographer's testimony, this record, page 333.

ARTICLES OF AGREEMENT, made the twenty-eighth day of May in the year of Our Lord One Thousand Nine Hundred and twenty-five BETWEEN Arlington Realty Company, a corporation of New Jersey of the City of Newark in the County of Essex and State of Essex of the First Part; AND Lewis M. Smith and Mary Forbes Smith of the City of East Orange in the County of Essex and State of New Jersey of the Second Part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Sixteen Thousand Five Hundred Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said part of the second part, doth agree to and with the said party of the second part, that the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrance except as hereinafter on or before the first day of April next ensuing the date hereof, all that lot, tract, or parcel, of land and premises, hereinafter particularly described, situate, lying and being in the Village of South Orange in the County of Essex and State of New Jersey.

Being one-family house and two-car garage on plot 60 feet by 140 feet at 122 Rynda Road, South Orange,

AND the said Lewis M. Smith and Mary Forbes Smith, for themselves, their heirs, executors and administrators, doth covenant, promise and agree to and

with the said party of the first part, its successors and assigns, that the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part the said sum of Sixteen Thousand Five Hundred Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: One Hundred Dollars on signing of this agreement and one hundred dollars monthly starting July 1st, 1925 until title is closed as hereinafter provided:

On September 1, 1925 party of the second part to pay two thousand five hundred dollars to party of the first part.

On or before April 1, 1926, party of the second part to pay two thousand five hundred dollars and the balance of eleven thousand five hundred dollars to be on bond and mortgage at six per cent; the party of the first part to place a first straight mortgage of not exceeding nine thousand dollars and to take a second mortgage of difference said second mortgage to be for a period of three years, five hundred dollars to be paid on account of principal at end of first year and second year, and it is further understood and agreed that the one hundred dollars a month shall be first applied to pay taxes, water, and fire ins. interest on unpaid purchase price from and after June 1st, 1925, Party of first part allows party of second part $200 for galvanized steel screens and $20 for grading rear yard. Party of first part to schellac floors and put shower in bathroom.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said

land and premises on the first day of June next ensuing the date hereof, and from thence take the rents, issues and profits to and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at 9 Clinton Street, Newark, N. J., between the hours of ten in the forenoon and four o'clock in the afternoon on the said first day of April next ensuing the date hereof.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of Three Thousand Dollars which they hereby fix and settle as liquidated damages therefor.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

ARLINGTON REALTY CO. (L. S.)
by C. HERBERT WALKER, Pres.
LEWIS M. SMITH (L. S.)
MARY FORBES SMITH (L. S.)

Signed, Sealed and Delivered
in the presence of
Albert J. Richards
as to all signatures.

Exhibits C and D.

Reports for closing to Franklin. Two reports for closing from searcher. Introduced in evidence, page 118, of original stenographer's testimony, this record, page 342.

Exhibit D.

Letter from Eisenberg to Hennessy. Introduced in evidence, page 118, of the original stenographer's testimony, this record, page 342.

"D."

ESSEX TITLE GUARANTY AND TRUST COMPANY

483 Bloomfield Avenue

Montclair, N. J.

October 14, 1922.

Mr. Frank H. Hennessy, Counsellor at Law
15 Park Row, New York City

Re: Title No. 12501—Gluck.

Dear Sir:

We have completed our search to premises located in the Village of South Orange, located on the Easterly side of Rynda Road, 177.78 feet from Ridge-

wood Road, and we find the title of the same vested in the Rynda Development Company by Deed dated May 23, 1922, recorded in Deed book K-66, page 454, subject to the following liens and encumbrances:

1. Mortgage for $3,500 held by Abraham Hauptman and recorded in Mortgage book W-45, page 508.

2. Taxes and assessments. The official tax search dated October 3rd, 1922, shows the following:

First half 1922 taxes paid. Second half 1922 taxes amounting to $476.80 due December 1st, 1922.

Prospective Street assessments, Kingsland Terrace and prospective Street assessments Ridgewood Road and paving and curbing Ridgewood Road.

Water charges $88.75 up to June 7, 1922. Current water rates from that date.

3. Judgments. Our search in judgments is clear to October 7th, 1922.

We have also searched the name of Maurice B. Gluck in judgments and we find the following judgments against him:

Frederick D. Stoutenburgh, Frank L. Stoutenburgh and Marianna Gleason, etc., trading as Stoutenburgh & Co.	G. J. 15-222
	Ent. June 23, 1911
	Damages $132.16
vs.	Costs 10.20 $142.36
	Filed June 27, 1911
Maurice B. Gluck	Harry P. Day, Atty.

Exhibit D

Maurice B. Gluck vs. Mary A. Martin, William C. Armstrong, Madison Trust Co., Franklin Savings Inst. & Charles A. Rathbern	C. C. 91-566 Ent. Oct. 31-1912 Costs $31.43 Barrett & Barrett, Attys.
Maurice B. Gluck vs. Mary A. Martin, William C. Armstrong, Madison Trust Co., Franklin Savings Inst. & Chas. A. Rothbern	C. C. 91-569 Ent. Nov. 2, 1912 Costs $31.43 Pitney, Hardin & Skinner, Attys.
Maurice B. Gluck vs. (Non Suit) William C. Armstrong	C. C. 92-274 Ent. Jan. 7, 1914 Costs $57.51 A. Leslie Price, Atty.
Maurice B. Gluck vs. Mary A. Martin, William C. Armstrong, Madison Trust Company, Franklin Savings Inst. & Chas. A. Rathbern	C. C. 92-305 Ent. Feb. 7, 1914 Costs $57.51 A. Leslie Price, Atty

Exhibit D

4. Subject to restrictions as follows:

Deed K66-455, dated May 23-1922, made by Rynda Development Co. to Wm. H. Altemus and Milton T. Burnett conveying the Easterly 20 feet of lot No. 32 and the Westerly 40 feet of lot No. 33, is conveyed subject to the following covenants on the part of the party of the second part, which covenants shall be taken to be real covenants running with the premises hereby conveyed and every part thereof, and which shall be binding upon the party of the second part, their heirs, executors, administrators and assigns, and any person or persons in possession under their title and shall continue in full force and effect until January 1st, 1970.

(1) That the said party of the second part shall not nor will use or cause, suffer or permit the premises hereby granted or any part thereof to be at any time used for other than private residence purposes, and shall not or will erect or cause, suffer or permit to be erected on the said premises or any part thereof any building except one one-family dwelling house and one private garage for use in connection with said dwelling to each 50 feet of street frontage, except that one dwelling and one garage may be erected on each of the lots Nos. 9, 12 and 13, as shown on the Map of the property of Rynda Development Co. So. Orange, N. J. made by Ira T. Redfern & Bro. Surveyors, So. Orange, N. J. dated Feb. 1922.

(2) That the said parties of the second part shall not nor will erect on the said premises or any part thereof any dwelling house, the cost whereof shall be less than $7,000.00 and shall not nor will erect nor cause nor suffer to permit to be erected on said premises or any part thereof any dwelling whatsoever with a roof of the style designated in the building trade

as a flat roof, a garage may be attached to or made part of any dwelling.

(3) That the said parties of the second part shall not nor will erect or cause or suffer to be erected on the said premises any dwelling house the main foundation wall of which shall at any point be within 30 feet from the street line on which the appointed lot fronts, provided, however, that the main foundation wall of the dwelling houses on lots Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, on the above mentioned map shall not at any point be within 25 feet from Kingsland Ter.

(4) That the said parties of the second part shall not nor will erect or cause or suffer to be erected or maintain upon the said premises any garage within 100 feet from the line of the street upon which the lot on which it is erected fronts, except that on Lots, Nos. 1, 2, 3, 12, 13, 14, 15, 16, 28, 29, 37, 38, 41, 42, on appointed map on which premises the garage shall be not less than 75 feet from the street on which they front; that on Lots Nos. 1 and 24 on the appointed map no garage shall be erected nearer than 25 feet from Kingsland Terr. that on Lots Nos. 38, 42 and 25, no garage shall be erected nearer than 35 feet of Kingsland Terr; that on Lot No. 29, no garage shall be erected within 40 feet of Rynda Road.

(5) That the said party of the first part hereby reserves to itself, its successors and assigns the right to erect, keep and maintain upon rear line each of the premises herein above described a pole with one or more cross arms attached thereto to be used by the said party of the first part its successors or assigns, for the purpose of sustaining therein telephone or electric line wires across said lots for said pole to other poles in the vicinity in all directions.

Exhibit D

(6) It is further covenanted and agreed by the parties of the second part, that Lots Nos. 4, 5, 6, 7, 8 and 9 on the appointed map shall be and are considered to be fronting on Kingsland Terr, and that the dwellings on Lots Nos. 4, 5, 6, 7, 8 and 9 shall face Kingsland Terr, provided however that garages erected on Lots Nos. 4, 5, 6, 7, 8 and 9 shall not be restricted as to the distance from Ridgewood Road, on which they may be erected. It is hereby covenanted and agreed by the party of the first part that the appointed restrictions shall run with the premises of all the land described in the map made by Ira T. Redfern & Bros. South Orange, N. J., for the Rynda Development Co. and dated Feb., 1922, except Lots Nos. 10 and 11.

5. Subject to the rights of adjoining owners to a drain which runs through the premises in question, as mentioned in deed dated June 22, 1921, and recorded in E65, page 584.

6. We will require copy of resolutions from the Rynda Development Company, authorizing sale, etc., and an affidavit that the Corporation is still in good standing.

7. Subject to the rights of present tenants, if any.

8. Liability to Mechanics' liens. Proof is required that at the date of the instrument conveying the premises, no new buildings have been erected on the premises in question and that no alteration, additions or repairs have been made to existing buildings, within a period of four months prior thereto.

(9) Subject to state and municipal requirements relating to buildings, their construction and uses.

Very truly yours,

(Signed) WM. J. KANE,

Settlement Officer.

WJK:RB

Exhibit C.

ESSEX TITLE GUARANTY AND TRUST COMPANY

483 Bloomfield Avenue

Montclair, N. J.

December 7, 1922

Mr. Frank H. Hennessy,
Counsellor at Law
15 Park Row
New York City

My dear Sir:

Re: Title #12501—Gluck

Supplementing our report of October 14th would say that on continuation of search to November 4th. we have found of record the following:

1. Amelia R. Gluck and Chemtec Co., Inc., a corporation	Cont. #4300. Cons. $4000. Date Nov. 27, 1922 Filed " 28, " Spec. Filed Nov. 28, 1922

Finish the house and premises known as #122 Rynda Road, South Orange, N. J., now being in the state of partial completion, being a new building, and will complete all the work therein to be done agreeable to the specifications, etc.

Exhibit C

Payments:

Within 60 days after the full completion of all the work necessary to fully complete the work on the said premises to the full and sole satisfaction of the party of the first part agreeably to the specifications.

2. Elizabeth Sash, Door & Supply Co., a corp., Claimant, vs. Maurice B. Gluck & Francisco Geldago, trading as Rutz, Urrutia Co., Builder, Clemetec Corp. and Rynda Development Co., a corp. and Amelia R. Gluck, Owners.	M. L. 14-160 Lien Claim Am't. due $2,095.14 Rec'd. Nov. 29, 1922 All the labor was performed and material furnished between Aug. 1/22 and Oct. 6/22.

The said building is a 2 1/2 story frame dwelling house in connection with which there is a two-car garage, which said dwelling is also known as 122 Rynda Road, on a lot or curtilage situated in the Village of So. Orange, N. J. more particularly described as follows:

Beginning at a point on the northeasterly side of Rynda Road, distant 177.78′ feet northerly as measured along said side of Rynda Road from the intersection of said side of Rynda Rd. produced with the northeasterly side of Ridgewood Road produced; thence along said side of Rynda Road North 48 degrees 37 minutes West 60 feet; thence North 41 degrees 23

Exhibit C

minutes East 140 feet; thence South 48 degrees 37 minutes East 60 feet; thence South 41 degrees 23 minutes West 140 feet to the place of beginning.

Being the westerly 30 feet of lot #32 and easterly 30 feet of lot #31 on map of property of Rynda Development Co. of South Orange, N. J., made by Ira T. Redfern & Bros., Surveyors, So. Orange, N. J., dated Feb., 1922.

In reference to the mortgage in the amount of $35,000.00 from the Rynda Development Company to Abraham Hamptman, let us advise that this mortgage is drawn for three years at 6%, dated April 17, 1922, acknowledged the same date and recorded April 19, 1922. This mortgage, through error in our report, is set down as being for $3,500.00 instead of $35,000.00.

Very truly yours,

(Signed) WM. J. KANE

Settlement Officer.

WJK:RB

Exhibit D2.

(Introduced page 342.)

HENRY H. EISENBERG

ATTORNEY AT LAW

132 Broad Street

Elizabeth, N. J.

Nov. 28, 1922

F. H. Hennessey, Esq.,
15 Park Row,
New York, N. Y.

Elizabeth Sash, Door & Supply Company vs. Maurice B. Gluck, trading as Ruiz Urrutia Company.

Dear Mr. Hennessey:

Confirming our telephone conversation of Tuesday afternoon November 28th, I am herewith enclosing an itemized list of materials furnished to the Ruiz Urrutia Company by order of Maurice B. Gluck of #97 Warren Street, New York City.

My clients are known as the Elizabeth Sash, Door and Supply Company, a corporation of the State of New Jersey. The Ruiz Urrutia Company is run as I understand entirely by Mr. Gluck, who is also the president of the Chemtec Corporation, the people who originally bought the property from the Rynda Development Company and later it seems that the contract was assigned to Amelia Gluck, wife of Maurice B. Gluck, who now holds a deed from the Rynda Development Company.

Exhibit D2

You will note that our itemized bill is in the amount of $2,095.14. I wish to state that we have served stop notice upon the Chemtec Corporation which stop notice is in the amount of $1,900 and some odd dollars, the difference of about $188.80 from the bill I am herewith enclosing. The reason for the difference being that we have neglected to add to the amount of the stop notice the amount of mill material that was furnished in the sum of $188.80. If there is any further information you would like to have in this matter I will gladly furnish the same.

Thanking you for any courtesy that you may show to me in this matter, I remain

Very truly yours,

(Signed) HENRY H. EISENBERG

HHE:AMF

P. S. The amount of the mechanic's lien which is on file by this time is $2,095.14.

H. H. E.

NEW JERSEY COURT OF ERRORS AND APPEALS

BETWEEN AMELIA R. GLUCK and her husband, MAURICE B. GLUCK, as such *Complainants-Appellants,* *and* RYNDA DEVELOPMENT CO. (A New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDINGS AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation), *Defendants-Respondents.*	Appeal from Decree in Court of Chancery Brief for Defendant-Respondent Arlington Realty Co.

FACTS.

This case is an appeal from a final decree of the Court of Chancery dismissing the bill of complaint filed by appellants in the Court of Chancery and further allowing the prayer of the counterclaim of defendant-respondent Arlington Realty Co.

The case arose out of a certain agreement dated May 1, 1922, made between defendant-respondent Rynda Development Co., as vendor and a certain corporation known as "Chemtec Company" as vendee. Appellant, Amelia R. Gluck, is the assignee of the Chemtec Company and the appellant, Maurice B. Gluck, is her husband. The agreement pro-

New Jersey State Library

vided for the sale and purchase of a lot of land sixty feet front by one hundred forty feet deep located on Rynda Road, South Orange, this state. The Chemtec Company received permission to construct a dwelling on said premises for Mrs. Gluck and shortly after the commencement of the work on said building said company became involved in financial difficulties and various mechanic's lien suits were filed against the property. Subsequently, arrangements were made with respondent, Franklin Society for Home Buildings and Savings, a New York concern, to grant a loan on the property, but said company later refused to advance the money for the reason that the property was encumbered on account of the various lien claims. In order to facilitate the consummation of the above loan, Rynda Development Co., delivered to defendant-respondent, Frank Hancock Hennessey, who was the attorney for the loan society, in escrow a deed for the premises in question duly executed by the Rynda Development Co., which was to have been delivered to the appellant, Amelia R. Gluck, only upon completion of the whole transaction, and the payment of the balance of the purchase price in accordance with the terms of the agreement. The testimony shows that on the way to Mr. Hennessy's office, appellant, Maurice B. Gluck, persuaded a representative of Rynda Development Co. to have a photo-static copy made of the deed stating to him that it was the prac-

tice in New York to obtain photographs where original papers were delivered. The original deed was delivered to Mr. Hennessy at his office and he in turn gave a receipt therefor to the representative of said Rynda Development Co. Later, on account of the failure of the transaction to go through, the Rynda Development Co. demanded and received the return of the deed.

Subsequently the appellant, Maurice B. Gluck, visited the Register's Office of Essex County and offered the photo-static copy of said deed for recording. The Register refused to accept the same and Mr. Gluck, the testimony shows, left the office of the Register, making the statement that he would get said deed on record. The appellants then executed a mortgage on said premises to one Frieda Horn, a sister of Mr. Gluck, for the sum of Eight Hundred Fifty Dollars and attached the photo-static copy of the deed to the mortgage and recorded said mortgage with the copy of the deed attached in the office of the Essex County Register of Deeds.

In the meantime, defendant-respondent, Arlington Realty Co., purchased several judgments and proceeded to purchase the property at a sheriff's sale. On account of the mortgage and photo-static deed being on record said Arlington Realty Co. filed a bill in the Court of Chancery to quiet title to the land. The bill was dismissed when it appeared at

the trial that said company was not in peaceable possession, its possession being disputed by Mrs. Gluck, and actual peaceable possession being the jurisdictional requirement of the statute. It was held in that suit, however, by Vice Chancellor Backes that the deed, photostatic copy of which, was never delivered and the copy was a fraud. The bill was dismissed without prejudice with leave to Arlington Realty Co. to present a properly drawn bill charging that the Glucks claim title under the deed, the photo-static copy of which was on record and that that record constituted a cloud on the title and praying that the original and photo-static copy of the deed be declared null and void, which opinion indicated that under such circumstances relief would be granted. Subsequently the Arlington Realty Co. did file such a bill but it also was dismissed because in that suit it was shown from the record of the mechanic's lien suit that the date of the issuing of the summons was not endorsed on the lien claim as the statute requires and consequently the lien was discharged and as the judgment was therefore a nullity no title passed by the sheriff's deed.

In view of this decision which held that the deed of Amelia R. Gluck was a fraud and further that the sheriff's deed of Arlington Realty Co. was void, legal title remained in defendant-respondent, Rynda Development Co., and on October 29, 1925, said company executed a

deed to Arlington Realty Co., by which it conveyed all of its interests in the lot in question. In the meantime, Arlington Realty Co. had proceeded to a sale on another judgment and secured a sheriff's deed. Prior to the sale, appellants appeared before his Honor Nelson Y. Dungan and moved to dismiss the several lien claims for various reasons. This motion was denied by Judge Dungan. No appeal was taken from that decision.

On December 15, 1925, appellants filed a bill in Chancery seeking specific performance of the contract entered into with Rynda Development Co., which was dated May 1, 1922, an injunction to restrain the defendants-respondents from doing various things, that all of the equities of the parties be declared and decreed by the Court of Chancery and that damages be allowed the appellants.

It appears also that defendant-respondent, Arlington Realty Co., took actual possession of the property and completed the erection of the building thereon. Subsequently and before the filing of the appellants' bill the premises were occupied by a tenant of said Arlington Realty Co. This tenancy arose by virtue of a contract of sale between said Arlington Realty Co. and the tenant. During the pendency of the suit in the Court of Chancery and after the same had been referred to Vice Chancellor Barry, the testimony shows that the tenant

was forced to vacate said premises by reason of representations of the appellants that they owned the property. Thereupon said appellants obtained possession of the keys and moved into actual possession of the premises in question. The defendant-respondent then filed a petition in the Court of Chancery praying that a mandatory injunction issue directing and commanding the appellants to forthwith and pending the final determination of the issues involved in the Court of Chancery to remove from said premises and further to prevent said appellants from entering or trespassing upon said premises or any part thereof pending the final determination of the case in the Court of Chancery. This application was continued to final hearing and disposed of at that time.

It appears also that in said Chancery action brought by appellants a motion was made before Vice Chancellor Backus to strike out the answers filed by the various defendants-respondents and also the counterclaim filed by Arlington Realty. The motion was denied with costs and counsel fees and no appeal was taken from that decision. Said costs and counsel fees have not been paid.

Appellants also served interrogatories on three of the defendants which were two hundred eighty-seven in number. The court referred said interrogatories to a master of the

court to examine and report which of the interrogatories if any should be stricken out. As a result of said master's report all of the interrogatories were stricken out with leave to the appellants to reframe them, the reframed interrogatories to include only certain interrogatories specifically mentioned by the master as being of probable pertinence to the issue. The appellants failed to reframe the interrogatories as suggested.

After final hearing the decree mentioned herein was filed and it is from this decree that appellants take an appeal.

POINT I.

The appellants having failed to appeal from the Court's refusal to strike out the various answers of defendants-respondents, have waived any of their rights in that connection.

The law is so well settled on the above point that we do not feel it necessary to spend any time in stating cases and, even if the appellants have the right to raise said question on this appeal, they have lost that right by reason of their action in taking possession of the property in question pending the suit in Chancery, and, therefore, are guilty of violating the equitable maxim that "He who comes into equity must come with clean hands." Therefore, there is no merit in the first four points set forth in the brief of said appellants.

POINT II.

Interrogatories must be material to the issue and the Court has authority to refer said interrogatories to a special master for a report as to their materiality.

The above point is so well disposed of by the lower court in its opinion that it seems hardly necessary to offer any further comment in this brief other than to say that it is well established that the lower court acted well within its authority in referring the question as to the materiality of the interrogatories to a special master for a report. By so doing there was no delegation of power as the court still retained the right to overrule the conclusions of said special master. It would seem, therefore, that there is no merit in Points V and VI raised by appellants as causes for reversal.

POINT III.

A Court of Equity has full and complete jurisdiction to determine a dispute as to equitable rights in real estate.

In Point VII of the brief filed by appellants the point is raised that the application of defendant-respondent, Arlington Realty Co., should have been dismissed because the court had no jurisdiction to try title to land.

In the present case the court was not called upon to determine a legal title to the land in

question. The bill of complaint filed in Chancery by the appellants sought specific performance and a determination of all of the equities of the parties involved in the litigation. The only title which the appellants had was an equitable one which arose out of the contract of sale between Rynda Development Co. and Chemtec Company of which appellant Amelia R. Gluck was the assignee. The question as to whether or not the original deed was delivered was decided by Vice Chancellor Backus in two opinions filed in the Court of Chancery, one reported in 2 N. J. Misc. Rep. 681 decided July 15, 1924, and the other reported in 131 Atl. Rep. 809 decided October 20, 1925. In both of these cases the court found that there was never a delivery of a deed from Rynda Development Co. to Amelia R. Gluck, that the claim was false and that the recorded copy of said deed was a fraud. No appeal was taken from those decisions within the time prescribed by statute and the rules of this court, and therefore, that question became res adjudicata. Further the appellants submitted to the jurisdiction of the Court of Chancery by requesting that court to determine all of the equities of the parties in interest. Issue was joined on the various answers filed and the counterclaim of defendant-respondent, Arlington Realty Co., and the answer thereto filed by appellants and the filing of a replication brought before the court the question of removal of the mortgage and pho-

to-static copy of the deed referred to herein from the records in the Register's Office of Essex County. Therefore, in the present case the substantial dispute, the determination of which would prove or disprove the right of Arlington Realty Co. to have the appellants ousted from the property is, as to the existence or non-existence of an equitable estate, in the appellants. That the Court of Chancery has full and complete jurisdiction to determine a dispute as to equitable title is fundamental.

The case of BURRELL v. MIDDLETON, 72 N. J. Eq. 774 (Aff. in 73 N. J. Eq. 741) states on page 776 as follows:

> "This court will not assume jurisdiction to try a converted title to an easement of way, but where the substantive right which the complainant seeks to enforce or protect consists of an equitable estate in lands this court has primary jurisdiction."

And even though the title in dispute in the instant case be considered a legal title, it is submitted that the Court of Chancery still had jurisdiction in the premises as the situation now presented is embraced within the eighth class of cases as classified by Mr. Justice Dixon in the case of HART V. LEONARD, 42 N. J. Eq. 416, in which it was held that courts of equity may by decree and injunction

protect and enforce legal rights in real estate. That class as defined in that case consists of cases where the right to be protected or enforced arose out of the express or implied terms of a contract so that the court can entertain jurisdiction by virtue of its power to compel specific performance.

POINT IV.

"He who comes into equity must come with clean hands."

The above maxim is one of the oldest and most sacred of legal maxims and its purposes have been strictly guarded by the courts of this state for many years. In the present case appellants were not only guilty of violating this rule before entering the Court of Chancery for relief by reason of their recording the photo-static copy of the deed delivered in escrow, but were further guilty of unconscionable conduct after seeking relief in that court by ousting the tenant of defendant-respondent, Arlington Realty Co., and taking possession of the premises in question pending the decision of the Court of Chancery. The above point is so well and brilliantly covered in the decision filed by Vice Chancellor Berry in the court below that it would be an imposition on the court's time to discuss this point further in this brief and for that reason we respectfully refer the court to the decision of the learned Vice

Chancellor for a full discussion of the maxim quoted above.

POINT V.

The defendant - respondent, Arlington Realty Co., had legal title to the premises in question.

The appellants are estopped from raising any question in the present case as to the validity of the deed delivered by the Sheriff of Essex County to defendant-respondent, Arlington Realty Co., upon the lien claim of Lally & Trahmer Company as that question was res adjudicata by reason of a decision of Judge Dungan upon a motion to strike out the lien claim and as no appeal was taken from this title the question could not be raised in the court below and certainly cannot be considered in this court.

But assuming that the contention of appellants is true as to that particular deed, the fact remains that under date of October 29, 1926, Rynda Development Co., executed a deed to defendant-respondent Arlington Realty Co., conveying all of its interest in the property in question. This conveyance was absolutely valid and there is no question but that Rynda Development Co. had legal title. This is plainly evident by reason of the fact that Vice Chancellor Backes held that the original deed from Rynda Development Co. to Amelia R.

Gluck was never delivered and he further held that the first deed received by Arlington Realty Co. from the Sheriff of Essex County was also void. Therefore, the legal title must have reverted to the original owner, Rynda Development Co., and certainly a conveyance from said company to Arlington Realty Co. was proper.

POINT VI.

A bill for specific performance for the sale of land must be promptly filed after a definite refusal to perform.

The general proposition of law stated above is well settled. In the present case the agreement was dated May 1, 1922. The contract stated that title would pass on August 1, 1922, but on the date of settlement was continued from time to time until some time in December, 1922. The bill in Chancery for specific performance was filed by appellants on December 15, 1925, a period of more than three years from the date set in the contract for closing title. Under the decisions of our courts, it has been repeatedly held that a complainant who seeks specific performance must bring his action within a reasonable time after the vendor has refused to perform the contract. If there was any failure to perform this contract on the part of Rynda Development Co., it occurred in December, 1922, when that company took back the deed which it had delivered to

defendant-respondent, Mr. Hennessy. Subsequently various suits were started in the Court of Chancery and, if the appellants in this case desired specific performance of the original contract, they should have filed a counterclaim in those suits praying specific performance. Instead, however, said appellants elected to base their claim to title to the premises on the ground that the original deed was delivered, a photo-static copy of which was recorded in the Register's Office of Essex County and, therefore, they are deemed to have elected a remedy and the court having found that the original deed was never delivered the appellants were estopped from seeking specific performance in the bill filed in the Court of Chancery on December 15, 1925.

In the case of STORCH v. TEPPERMAN, ET AL., 131 Atl. 626, Vice Chancellor Backes held as follows on page 628:

> "A bill for specific performance for the sale of land must be promtply filed after a definite refusal to perform." KETCHAM v. OWEN, 55 N. J. Eq. 344; AGENS v. KOCH, 74 N. J. Eq. 528.

In the case of KETCHAM v. OWEN, Vice Chancellor Emery held at page 349 as follows:

> "The laches of complainant, the remaining ground, is the main reason why relief must be refused, for while it is

settled that time of performance is not generally of the essence of the contract, it is also settled that time may become essential by the express contract of the parties, and also may be made essential by the action of the parties after the contract. 3 Pom. Eq. Jur. par. 1408, and cases cited. One of the recognized methods by which time may become essential by action of the parties after the contract is by one party giving notice to the other to complete the performance within a reasonable time. 3 Pom. Eq. Jur. par. 1408; Pom. Spec. Perf. par. 395, etc. Another, action of one party to the contract which will make time essential is a plain and direct notice to the other that he does not intend to perform the contract. Pom. Spec. Perf. par. 412. The general rule as to application to a court of equity for specific performance is that the complainant must show himself 'ready, desirous, prompt and eager,' the language which has been constantly repeated in the decisions from the time of its first use in 1801 by Lord Alvanley, M. R. in MILWARD v. EARL THANET, 5 Ves. 720, note; and where one party, arbitrarily or otherwise, notifies the other that he will not perform the contract, the bill, as the cases say, must be filed 'speedily,' unless, indeed, the party to whom notice is given be in possession under the contract, in which case the con-

tinuance of possession will be considered as a continual assertion of right under the contract and exclude the notion of acquiescence in the abandonment. Pom. Spec. Perf. par. 412 and cases cited.

"In SOUTHCOMB v. BISHOP OF EXETER, 6 Hare *213, the purchaser had given notice in January, 1842, that he rescinded the contract; a bill filed August 30th, 1843, was held to be too late. Vice Chancellor Wigram says (at p. 218): 'Whatever the leaning of the court in earlier times may have been, the tendency of the modern cases has been to hold parties seeking the assistance of the court on bills for specific performance to the rule of equity which requires them to be prompt in asking such assistance.' In EADS v. WILLIAMS, 4 De G., M. & G. 674, Lord Chancellor Cranworth said (at P. 691) that where the purchaser repudiated the contract and quitted possession a delay of three and a half years by the vendor in filing the bill was fatal. And in the English courts, a year seems to have been fixed as the limit of time for filing a bill, where one party has repudiated a contract admittedly made, and acquiescence for this period in the rescission is fatal to the remedy of specific performance. WATSON v. REID, 1 Russ. & M. 236."

It is, therefore, respectfully submitted that the appellants having failed to file a bill for specific performance within a reasonable time after the refusal of Rynda Development Co. to perform its contract and further having failed to file a counterclaim in the various suits in Chancery previously decided are now prevented from obtaining any relief.

It is, therefore, submitted that the decree appealed from be affirmed with costs.

RIKER & RIKER,

Attorneys for and of Counsel with Defendant-Respondent, Arlington Realty Co.

THOS. E. FITZSIMMONS,

of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS

BETWEEN
AMELIA R. GLUCK and her husband,
MAURICE B. GLUCK, as such
Complainants-Appellants,
and
RYNDA DEVELOPMENT CO. (A New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDINGS AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation) and DIME SAVINGS BANK (a New Jersey Corporation),
Defendants-Respondents.

Appeal from Decree in Court of Chancery.

Brief for Defendants-Respondents Rynda Development Co., Abraham Hauptman Jacob Hauptman J. Lewis Fiacre, Franklin Society for Home Buildings and Savings and Frank Hancock Hennessy.

ABSTRACT OF CASE.

This case presents an appeal from a decree in Chancery (Pg. 245) dismissing the bill for specific performance based upon a contract for the sale of premises by the defendant-respondent Rynda Development Co. to the Chemtec Co., assignors of the complainant Amelia R. Gluck (Pg. 10). The said contract was entered into on the first day of May, 1922, and provided for the conveyance by the Rynda Development Co. to the Chemtec Co. of the premises therein described, upon the payment by the Chemtec Co. of the sum of Two Thousand Three Hundred and Forty Dollars ($2,340.00) (Pg. 12), as follows:

"$160.00 in cash at the time of the signing of this agreement, the receipt whereof is hereby acknowledged.

$780.00 in cash at the time of passing title."

It provided further that a mortgage be given to the Rynda Development Co. by the Chemtec Co. in the sum of Fourteen Hundred Dollars ($1400.00) which mortgage was to be postponed and made second in lien to a First mortgage, not to exceed eighty per cent of the cost of the said land and the house to be erected thereon. The said contract further provided as follows: "**Permission is hereby given unto the party of the second part by the party of the first part to go into and upon the said premises and to build and construct a house therein any time prior to the taking of title.**", and it further provided, "**the said deed shall be delivered and received at the office of J. Lewis Fiacre, 828 Broad Street, New Jersey*** * * between the hours of ten in the forenoon and four in the afternoon of the **First day of August next ensuing the date hereof.**" (Pg. 13). At the request of the complainants-appellants, and with the consent of the Chemtec Co., the Rynda Development Co. agreed to accept the said complainants-appellants as the assignees of the said Chemtec Co.

Complainants requested an extension of

time for closing of the said contract and this was granted until the 22nd day of August, 1922 (pg. 15); and further extensions were obtained by the complainant until the 4th day of December, 1922. On November 25th, 1922, a deed for the premises in question was executed and acknowledged by the defendant Rynda Development Co. and given to its representative to be left in escrow for delivery to the complainants upon the complainants meeting the terms of its contract by December 4th, 1922 (pg. 177). Complainants did not perform on or before the 4th day of December, 1922, and defendant Rynda Development Co. communicated with the defendant Frank Hancock Hennessy, with whom the deed had been left under the said escrow agreement (pg. 177), and since the complainants defaulted and made no effort to meet the said conditions precedent to the delivery of the deed, by Decembr 4th, 1922, although tender had been made on November 25th by the Rynda Development Co. and although further time was given complainants until December 21st, complainants still failed to perform and on said date of December 21, the defendent Rynda Development Co. received back the deed from the defendant Frank Hancock Hennessy, and considered the contract of May 1st, 1922, as cancelled. Subsequently complainants again communicated with the defendant Rynda Development Co. and a further extension was again given on

December 27th, until January 15th, 1923 (Exhibit C 6-pg. 383).

At the time of the execution of the said deed complainants induced the representative of the Rynda Development Co. to permit a photo-static copy of the deed to be made upon representation that it would be a protection against the New York attorney with whom the deed was to be left. Subsequent to the return of the said deed to the Rynda Development Co. complainants attempted to have the photo-static copy of the deed placed on record claiming a delivery from the defendant Rynda Development Co. to complainants. The Register of the County of Essex refused to accept the photo-static copy of the deed for record and complainant, Maurice B. Gluck, vowing that he would get such deed on record executed a mortgage upon the premises to his sister, Frieda Horn, and attached the photo-static copy of the deed to the said mortgage, placing the same on record. (pg. 279).

Mechanics liens had been filed against the said premises by materialmen and laborers and suits on such liens had been commenced. Defendant, Rynda Development Co., having given consent in writing to the complainants to go upon the said premises and construct a building thereon (pg. 13), the land in question became liable to mechanics liens under Section 7 of the Mechanics Lien Act (C. S. pg. 3299-

3300) "if any building be erected by a tenant or a person other than the owner of the land, then only the building and estate of such tenant or other person so erecting such building shall be subject to lien created by this act and provision thereof unless such building be erected by the consent of the owner of such lands in writing." Defendant Rynda Development Co. therefore had no defense to the said mechanics lien actions, and consented to the entry of special judgments under the Mechanics Lien Act, after suits had been started on the said liens.

Defendant Franklin Society, through its attorney and agent, defendant Frank Hancock Hennessy, refused to pay out to the complainants on the mortgage granted by the Franklin Society until releases had been produced from mechanics liens and other conditions agreed upon were satisfied by the complainants. This, the complainants never did.

Before the return of the deed from the said Frank Hancock Hennessy to the defendant Rynda Development Co. mechanics liens had already been filed. Some of the liens went to judgment and Sheriff's sale was had thereon and subsequently the Arlington Realty Co. purchased the property at the Sheriff's sale.

The mortgage to Frieda Horn and the photo-static copy of the deed thereto attached,

having been put on record, the said Arlington Realty Co. filed a bill in the Court of Chancery to quiet title to the land. The bill was dismissed when it appeared at the trial that the said company was not in peaceable possession, its possession being disputed by Mrs. Gluck, and actual peaceable possession being the jurisdictional requirement of the statute. It was held in that suit, however, by Vice Chancellor Backes that the deed, photostatic copy of which had been put on record, was never delivered and the recording of the copy was a fraud. The bill was dismissed without prejudice with leave to Arlington Realty Co. to present a properly drawn bill charging that the Glucks claimed title under the deed, the photostatic copy of which was on record and that that record constituted a cloud on the title and praying that the original and photostatic copy of the deed be declared null and void, which opinion indicated that under such circumstances relief would be granted (2 N. J. Misc. Rep. 681). Subsequently the Arlington Realty Co. did file such a bill but it also was dismissed because in that suit it was shown from the record of the mechanic's lien suit that the date of the issuing of the summons was not endorsed on the lien claim as the statute requires and consequently the lien was discharged and as the judgment was therefore a nullity no title passed by the sheriff's deed.

In view of this decision which held that the

deed of Amelia R. Gluck was a fraud and further that the sheriff's deed of Arlington Realty Co. was void, legal title remained in defendant-respondent, Rynda Development Co., and on October 29th, 1925, said company executed a deed to Arlington Realty Co., by which it conveyed all of its interests in the lot in question. In the meantime, Arlington Realty Co. had proceed to a sale on another judgment on Mechanics Lien and secured a sheriff's deed. Prior to the sale, appellants appeared before his Judge Nelson Y. Dungan in Essex County Circuit Court and moved to dismiss the several lien claims for various reasons. This motion was denied by Judge Dungan. No appeal was taken from that decision.

On December 15th, 1925, appellants filed a bill in Chancery seeking specific performance of the contract entered into with Rynda Development Company which was dated May 1, 1922, an injunction to restrain the defendants-respondents from doing various things, and praying that all of the equities of the parties be declared and decreed by the Court of Chancery and that damages be allowed the appellants (p. 9-10).

It further appears that on February 20th, 1926, complainants served defendant Rynda Development Co. with notice of motion to strike out the answer, which motion was denied by order advised by Vice Chancellor

Backes, dated March 26th, 1926 (pg. 63).

POINT I.

A motion to strike out an answer is in the nature of a demurrer. Sufficient facts were set up in answer of Rynda Development Co. specifically denying the allegations of complainants, which in the discretion of the court required proof on hearing. Said motion having been denied, complainants failed to appeal specifically from order denying such motion and have consequently waived whatever rights they may have had in this connection.

Under the present practice a motion to strike out a bill or counter claim is substituted for, and takes the place of a demurrer in the former practice and is the exact equivalent of a demurrer. Under the old practice an objection to an answer was made by filing exceptions thereto, but the act of 1915 introduced into effect a demurrer to an answer. (Tipton v. Randall 87 N. J. Eq. p. 387, Commonwealth Title Co. v. N. J. Lime Co. 86 N. J. Eq. p. 450, 456, P. L. 1915 p. 195, Rule 51, Weibmann Silk, etc. Co. v. East Jersey Water Co. 88 N. J. Eq. p. 397; affirmed 89 N. J. Eq. 541). Claimants having moved to strike the answers, admitted all material allegations well pleaded.

A motion to strike an answer addresses itself to the discretion of the court, "on hearing

of such motion the court in its discretion, may order application to stand over until the hearing" (P. L. 1915 p. 195).

An "answer need not answer the allegations of the bill of complaint further than is necessary to support such defense" (P. L. 1915 Sec. 53 p. 195).

The answer of the defendant Rynda Development Co. besides denying the material allegations of the complainants' bill of complaint, set up sufficient defense to warrant the taking of testimony at final hearing; defendant Rynda Development Co. alleging tender of the deed as admitted by complainants, in that complainants allege actual delivery of the deed by the defendant Rynda Development Co. to the complainants. Certainly an allegation of delivery must contain therein the elements of tender. Defendant Rynda Development Co. admits tender but denies delivery. Complainants admitted no offer to accept deed and pay therefor, except on one occasion of December 25th, 1922, this, defendant Rynda Development Co. denied, but, complainants further alleged that although an offer was made by complainants to pay for the deed yet the defendant Rynda Development Co. refused to accept payment but still delivered the deed.

Complainants, if objecting to the order refusing to strike out the answer, should have

appealed directly from this order as provided in 1 C. S. 450 Sec. 111 as amended by P. L. 1914 p. 133, which provides that "all persons aggrieved by any order of the Court of Chancery may appeal from the same, or any part thereof, to the Court of Errors and Appeals; and all appeals, except from final decrees, shall be made within forty days after filing order or decree appealed from"; complainants having failed to appeal from the said order within forty days after the filing thereof waived whatever rights they may have had.

Moreover court below on final hearing, found as a matter of fact that allegations contained in the bill of complaint and denied by answer were false and material facts alleged in answer were found to be true.

POINT II.

Point II, III, and IV of the appellants' brief are answered in Point I herein.

POINT III.

Interrogatories must be material to the issue and the court has authority to refer such interrogatories to a special master for a report as to their materiality.

Complainants addressed 287 interrogatories to the defendant Rynda Development Co.

which on their face were so irrelevant, immaterial and frivoluous, and most of which questions were within the knowledge of the complainants as shown by the allegations in complainants' bill of complaint, that it would be an imposition on the time of the court to ask the court to go into each question seriatim; and consequently under the rules of the court such interrogatories might be and were properly referred to a Special Master. The order of the court in striking out the interrogatories gave leave to the complainants to reframe the interrogatories to make them proper (pg. 151) as outlined in the Master's report. This, complainants failed to do. Furthermore complainants could have taken exception to the Master's report and appealed therefrom as has been discussed in the point preceding, and this, complainants failed to do.

There was a further ground for the striking out of the interrogatories in that the order denying the motion to strike out the answer of defendants allowed costs and counsel fees to defendants on said motion, which costs and counsel fees were not paid by the complainants after demand by the defendants, and the complainants wholly failed to comply with the order of the court ordering said complainants to pay to the respective solicitors of the defendants counsel fees. Furthermore complainants themselves must have been convinced of the immateriality and irrelevency of

their interrogatories because less than one-fourth of the questions therein propounded were attempted to be asked at the final hearing. Complainants by obeying the order of the court in paying counsel fees and in reframing their interrogatories as outlined in the Master's report might have had its proper remedy.

POINT IV.

Point VI. of the complainants' brief is answered in preceding point herein.

POINT V.

Point VII. of the complainants' brief does not involve these defendants and will be answered in brief of Arlington Realty Co.

POINT VI

Point VIII. of the complainants' brief does not involve these defendants and will be answered in brief of Arlington Realty Co.

POINT VII.

Point IX. of the complainants' brief does not involve these defendants and will be answered in brief of Arlington Realty Co.

POINT VIII.

The court having found in three decrees that

the deed though tendered by the Rynda Development Co. was never accepted, and consequently never delivered, legal title in the premises remained in Rynda Development Co. or was transferred by sheriff's deed.

In two opinions filed by Vice Chancellor Backes it was held that the deed from the Rynda Development Co. was never delivered to the complainants and that complainants' contention that the said deed was delivered was false, and that the recorded photostatic copy was a fraud, and legal title still remained in the Rynda Development Co. (**Opinon** Vice Chancellor Backes: **Arlington Realty Co. v. Gluck, et al.** 130 Atl. 809, **Rynda Development Co. et al. v. Amelia R. Gluck, et al.** 2 N. J. Misc. Rep. 681).

The complainants consequently having gone into possession of the premises under the contract of May 1st, 1922, had nothing except an equitable interest in the premises, which equitable interest was declared by the court to be non-existent, complainants having forfeited their rights by breach of their covenant and failure to take title, by laches and on the doctrine of unclean hands. Subsequently the court held that the sale of the premises by the sheriff's sale conveyed no title to the purchaser Arlington Realty Co. because of the failure to endorse upon the lien claim, upon which sale was had, the date of issuance of summons.

Consequently if the sheriff's sale passed no title, legal title still remained in the Rynda Development Co. and Rynda Development Co. by its quit claim deed conveyed its legal title to Arlington Realty Co. (p. 376).

POINT IX.

..Point XI. of the complainants' brief is answered in the preceding point herein.

POINT X.

A prayer for specific performance addresses itself to the discretion of the court and may be denied in the court's discretion for causes of unclean hands, laches or default in the contract, each of which grounds were found to exist.

That the deed had never been delivered to the complainant was res adjucata (2 N. J. Misc. Rep. 681, 130 Atl. Rep. 809).

To support a prayer for specific performance it is necessary that within a reasonable time after the date set for passing of title, vendee shall offer to accept the deed and demand its delivery **FORSE vs. DUTCHER** (18 N. J. Eq. 401 at 405).

Complainants' testimony was that one such offer was made on the 25th of November, 1922. This was denied by Defendant Rynda Devel-

opment Co. Is it credible that complainants would have offered to pay for the deed in accordance with its contract and that defendants would refuse to accept payment but would yet deliver the deed to complainants without payment as is alleged by complainants?

Testimony of complainant Maurice B. Gluck, pg. 279:

> Q. Before December 25th (1922) did you ever make a tender to the Rynda Development Co.? A. No.

Page 282:

> Q. Did you ever make any tender to the Rynda Development Co.? A. Yes. On the 25th of November, 1922.
>
> Q. And at that time Mr. Fiacre (Secretary of the Rynda Development Co.) said, "Never mind this time, you don't need to make a tender"? A. Said it was unnecessary, it would be all right, "We will get along well together."

The court has found, upon denial by the Rynda Development Co. that such tender as alleged by the complainants was not made. On page 284 Maurice B. Gluck's testimony is as follows:

> Q. And have you offered to pay for

the deed in accordance with your contract? A. Well that is assumed that I have to pay the purchase price.

Q. Will you answer my question, have you ever made any such offer? A. Why, yes, the offer is a matter of course. It accompanies the offer of taking the deed. I never made any specific offer in so many words.

Q. Did you also say that you made a demand for the deed in various proceedings in the court? A. Well, I didn't make a demand on the record. They would not let me do that I would have done it if they had let me.

The Court: Never mind what you would have done.

The Witness: No, I didn't do it.

Page 278:

Q. These extensions until November 29th, at whose requests were they made? A. At my request.

Q. All of them? A. Yes sir. At my request.

Page 284:

Q. And from November 27th have you ever made a tender to Rynda Development Co.? A. No.

Complainant further testifies that although he received a letter) C 6 pg. 82) which extended the time of passing title until the 15th day of January, complainant never made an offer to defendant Rynda Development Co. to accept the deed and pay therefor. Although this letter offered to hold the deed and to deliver it any time up to January 15th, upon payment therefor. Each extension was at complainants' own request, and each time was reasonable notice to complainant to perform.

"The right to its specific performance is not absolute, like the right to recover a legal judgment. The granting the equitable remedy is, in the language ordinarily used, a matter of discretion, not of an arbitrary, capricious discretion, but of a sound judicial discretion, controlled by established principles of equity, and exercised upon a consideration of all the circumstances of each particular case." (Pomeroy's Eq. Juris. Vol. IV. Sec. 1404, pg. 3329).

"A party who would seek specific performance must be prompt in asking the aid of the court. Unreasonable delay will, of itself, be often a bar to a suit of this character." (Merritt v. Brown, 21 N. J. Eq. p. 401).

"A party seeking the specific performance of a contract, must show that he has performed, or been ready and willing to perform all the essential terms of his contract." (Crane v. De Camp 21 N. J. Eq. p. 415.

"The remedy by specific performance is discretionary; the question is not, what must the court do, but what, in view of all the circumstances of the case in judgment, should it do to further justice." (Plummer v. Keppler 26 N. J. Eq. p. 481).

The fact that the complainants had been let into possession would be a material consideration if the agreement or contract of sale had been parol. The fact of the complainants' possession might aid in the taking of the case out of the Statute of Frauds, but is not material here, in that contract is a written one and admitted.

It is true that time was not of the essence of this contract, but, this does not mean that the complainant might delay the matter so long as he pleased before making a demand for the delivery of the deed. Time, though not the essence, is material, and it is essential that he who seeks specific performance must have been ready, willing and able to accept the delivery of the deed, and when complainant himself is guilt of a breach of contract in failing to live up to its terms, he cannot seek the as-

sistance of this court.

In King v. Ruchman, 20 N. J. Eq. 316, it was held that "The established doctrine of equity is, that, in general, time is not of the essence of a contract for the sale of lands. But it may become of the essence of the contract, either by being made so by the contract itself or from the nature and situation of the subject matter of the contract, or by express notice given, requiring the contract to be closed or rescinded at a stated time, which must be a reasonable time according to the circumstances of the case." In the instant case complainants' own testimony is that each extension of time for passing of title was at the complainants' request and after the deed was left with the attorney in New York, for delivery to the complainants upon satisfying the terms of the contract, complainant himself set the 4th day of December, 1922, for closing. After complainants failed to take title on such date complainants communicated with the Rynda Development Co. and was given a further extension until January 15th, 1923, and this was given at their own request. Complainant further testified that he never made any offer to accept the deed after November 25th, 1922, and this offer as claimed by the complainant is denied by the defendant Rynda Development Co., and found to be false as a matter of fact by the court after the final hearing.

"In order that a default may not defeat a party's remedy, the delay which occasioned it must be explained and accounted for. The doctrine is fundamental that a party seeking the remedy of specific performance, and also the party who desires to maintain an objection founded upon the other's laches, must show himself to have been 'ready, desirous, prompt, and eager' ". (Pomeroy's Eq. Juris. Vol. IV. pg. 3344, and cases therein cited including Ludlum v. Buckingham 35 N. J. Eq. 71).

"Where the stipulations are mutual and dependent,—that is where the deed is to be delivered upon payment of the price,—an actual tender and demand by one party is necessary to put the other in default." (Pomeroy's Eq. Juris. Vol. V. pg. 4981, and cases there cited).

"Resting upon the doctrine that the court in a suit for specific performance has at all times a discretionary power upon equitable principles either to grant or refuse relief, each case is determined from its own circumstances, as to what delay by the plaintiff is material, or what excuse is insuffcient. In general, the plaintiff must not have been grossly negligent, the delay must not have been too great, nor must it have seriously injured defendant's interest; the conduct or delay of the plaintiff must not indicate an intention to abandon the contract; and the plaintiff must show

a reasonable excuse for the default; and show that he came into equity promptly when he was in a position to perform. The same rule applies whether the plaintiff in default is vendor, failing to convey at the day set by the contract, or the vendee, failing to complete the payment of the purchase-money at the time agreed upon. * * * * Where the delay of the vendor or vendee in seeking performance is for a speculative purpose, to await until time shall determine whether or not it is to his advantage to have the benefit of the contract, it is held by a considerable group of cases that equity will not aid him by any relief against his failure to perform, whatever the situation otherwise." (Pomeroy's Eq. Juris. Vol. V. Sec. 814 pgs. 4989, 4990, 4991, 4995, and the numerous cases there cited. Earl v. Halsey 14 N. J. Eq. 332, 21 N. J. Eq. 118 (where two and one-half years was considered fatal), Penrose v. Leeds, 46 N. J. Eq. 294, Lozier v. Hill, 68, N. J. Eq. 300).

In the instant case complainants have been in default so that each of the elements herein discussed were present. The complainant has attempted to take the law in his own hands, and to await the result of this action before bringing specific performance, he has never made a tender or an offer to accept the deed and pay therefor, from the original date set for closing until the filing of the bill in equity, over three years after the original date of clos-

ing, he has not explained in any way his delay, nor given reason therefor; his conduct after the execution of the contract, in attempting to place a photostatic copy of the deed on record after it had been refused, and in conniving to achieve this result by executing a fraudulent mortgage to his sister and attaching the photostatic copy of the deed thereto, was a fraud on this court, which in itself, would be sufficient to bar complainant from relief; and although there were two actions in Chancery against the complainants, to which the complainants filed answers, he did not, as he could have, ask for specific performance at that time, by counter claim, but, was willing to wait and delay matters as long as he possibly could, and he did not see fit to bring the action for specific performance until after the Arlington Realty Co. had taken possession of the premises, had completed the buildings thereon, after a great outlay of money, and had contracted to sell the premises.

POINT XI.

Point XIII. of the complainants' brief is answered supra.

POINT XII.

The deed was left with the defendant Frank Hancock Hennessy to be delivered by him to the complainants upon the satisfying of certain conditions.

On the 27th day of November, 1922, defendant, Rynda Development Co. executed and acknowledged a deed for the premises to the complainants and offered to deliver it to the complainants, but they were not in a position to accept it, not having sufficient funds to do so. Defendant Rynda Development Co. through its representative then agreed to leave the deed with the attorney for the Franklin Society, which was to grant a loan to the complainants on the premises. The Rynda Development Company's representative went with the complainant to the office of Frank Hancock Hennessy in New York, and received a receipt for the deed and it was agreed that the said deed was to be left with Mr. Hennessy to be delivered to the complainants when the complainants had satisfied the conditions precedent to receiving a loan to be granted by the Franklin Society and when the said Mr. Hennessy would retain sufficient money and a second mortgage to pay the Rynda Development Co. for the deed. This agreement, called the escrow agreement (pg. 177) called for the closing of title on December 4th, 1922. Complainants were not ready. Rynda Development Co. gave further time until December 21st. Again complainants were not ready and the deed was returned by Mr. Hennessy to the Rynda Development Co. Subsequently at the request of the complainants a further extension was given by the Rynda Development Co. until January 15th, as

has been referred to. Complainants never made an offer to pay for the said deed from that time until the filing of the bill of complaint for specific performance by the complainants on December 15th, 1925, over three years after the date for closing as specified in the contract of May 1st, 1922.

Complainant never was ready to accept the deed. Lien claims were filed against the premises as early as November 18th, 1922, which lien claims were an encumbrance against the premises and which would have to be discharged before the Rynda Development Co. could be asked to deliver a deed. These lien claims have never been discharged.

Complainanats never satisfied the conditions precedent for the delivery of the deed and there is no allegation in any of the pleadings nor in the testimony of any court showing that these conditions had been satisfied and that the complainants were ready and willing to pay for and accept the deed.

POINT XIII.

Complainants were hopelessly in default under the contract.

The court found (pg. 356) "It appears to me from the evidence submitted in this case that complainants were hopelessly in default under

their contract or purchase and that there is not now presented to this Court a situation which would justify a decree for specific performance; but irrespective of whether or not under the evidence the vendor or the vendee is in default, and irrespective of the rights of complainants to specific performance, there are other circumstances in this suit respecting the conduct of the parties which effectually preclude the complainants from any relief in this tribunal." Repeated here as part of this point as though fully reprinted is Point XII preceding.

Although time was not of the essence of the contract yet there was a duty on the part of the complainants seeking specific performance to offer to satisfy the conditions of the contract and to accept the deed and for a period of nearly four years complainants failed to do this. Defendants repeat here as part of this point and as though fully reprinted Point X.

POINT XIV

Complainants are guilty of unclean hands.

In the first place after the complainants had fraudulently induced the representative of the Rynda Development Co. to permit them to have a photostatic copy of the deed made, complainants attempted to place upon record this photostatic copy. The Register of Essex County refused to accept the photostatic copy

of the deed for record. The complainant, Maurice B. Gluck, left the office of the Register vowing that he would get such deed on record in spite of such refusal (opinion pg. 350 line 19 et. seq.). Subsequently complainant fradulently had said photostatic copy of the deed recorded by attaching the same to a mortgage given by the complainant Amelia R. Gluck to her sister-in-law, Freida Horn, and having the said mortgage placed on record with the photostatic copy of deed attached thereto.

That this was a fraud is res adjucata, having been decided in two actions hereinbefore referred to and reported in 2 N. J. Mics. Rep. 681 and 130 Atl. Rep. 809. Thus were the complainants guilty of unclean hands before their bill of complaint was filed for relief.

After the Arlington Realty Co. took possession of the premises and had completed the buildings thereon and had let into possession a tenant under contract of sale, and after the complainants had filed their bill asking for specific performance, and general relief, and a declaration of the equities of the parties, complainants through fraud and misrepresentations connived and induced the said tenant in possession to leave the premises and to deliver the keys for the building thereon to the complainants and the complainants took the law into their own hands by going into

possession while the very suit in which they were asking for relief was still pending.

It is needless to burden this court with citations on this point involving the doctrine of unclean hands and this court is respectfully referred to the opinion filed by the court below on pages 356-367, inclusive.

POINT XV.

Point XVII. of the complainants' brief is answered in Point X of the within brief and the said Point X. is here repeated as though it were fully reprinted.

POINT XVI.

Complainants' right, title and interest in the buildings upon the premises were wiped out by Mechanics Liens, as hereinbefore been referred to.

POINT XVII.

Although the contract of sale and the taking possession by the complainants, under the contract, may have given an equitable interest in the premises to the complainants, complainants lost whatever interest they might have had by their default under the contract, under the doctrine of unclean hands, and by laches, as has hereinbefore been discussed.

POINT XVIII.

Complainants not only failed to offer to ac-

cept the deed to pay therefor but refused to pay for the deed.

How the complainants have been hopelessly in default has been discussed in the preceding points, but, complainants by alleging that the deed had been actually delivered, and in attempting to have recorded the photostatic copy of the deed, which has been found to be a fraud, showed clearly that they would refuse to pay for the deed; and coupled with their failure to pay, their refusal to take the deed at the numerous various dates set for closing, permitted defendant Rynda Development Co. to consider the contract cancelled, and this is particularly true in view of the fact that for a period of three years, complainant had abandoned the buildings partially erected by them and had done not one thing to complete them, nor in any way did they make an offer to pay for the said deed in accordance with their contract.

Furthermore complainants had three different opportunities when this matter was before the Court of Chancery to tender payment for the deed and this also complainants failed to do.

POINT XIX.

Complainants were hopelessly in default in reference to the Franklin Society for Home Buildings and Savings.

The conditions precedent to the granting of a loan upon mortgage by the Franklin Society to the complainants were never satisfied. Complainants were to have the title free of all encumbrances. There were numerous mechanics lien claims filed against the premises which were never discharged by the complainants. Complainants were to furnish the defendant Franklin Society with releases from lien claims from laborers and materialmen and this, the complainants failed to do and complainant never got legal title to the premises upon which a mortgage loan granted by the Franklin Society could be based.

POINT XX.

Point XXII. of the complainants' brief has heretofore been answered. Complainants addressed themselves to the discretion of the court and were entitled to no relief because they were in default, because they came into court with unclean hands and because they were guilty of laches.

POINT XXI.

Contract was cancelled and rescinded by the Rynda Development Co. as based on the actions of the complainants themselves.

Complainants were told that the extension to January 15th, 1923, was a final one and that the contract would be at an end unless com-

plainants paid for and accepted the deed on or before the 15th day of January, 1923. This, the complainants failed to do. There was an anticipatory breach of contract entitling the Rynda Development Co. to consider the contract at an end by the actions of the complainants in claiming a delivery of the deed to them when it had not been so delivered, and in attempting to place a photostatic copy of the deed upon record to show such a delivery, and in attaching the photostatic copy of said deed to a mortgage and so getting it on record. Certainly from this the defendant Rynda Development Co. was entitled to infer that complainants would not live up to their contract, particularly in view of the fact that complainants failed to accept the deed or any one of the numerous occasions upon which is was offered them.

It was not necessary for the Rynda Development Co. to tender back the deposit on account of the purchase price which had been received by them upon execution of the contract of May 1st, 1922. Defendant Rynda Development Co. could consider this as liquidated damages.

POINT XXII.

Complainants were not entitled to any relief. This has been thoroughly discussed heretofore.

POINT XXIII.

There was no title in the complainants upon which to base the mortgage to Freida Horn.

This mortgage was fradulant on its fact in that complainants, the Glucks, were willing to give and the complainant Freida Horn, was willing to accept a mortgage on the premises to which the complainants had no title. Complainants, Mr. Gluck, by his own testimony show that upon failing in his attempt to have the photostatic copy of the deed placed on record, he left the office of the Register of Deeds for Essex County, vowing that he would get the deed on record somehow. (Pg. 279 and pg. 350 line 19 et. sq.).

In the two decrees by Vice Chancellor Backes reported in 2 N. J. Misc. Rep. p. 681 and in 130 Atl. Rep. p. 809, this was held to be a fraud, and if the deed upon which the mortgage to Freida Horn was based was a fraud, and since there never was any legal title in the complainants, the mortgage itself was fraudulent. It is obvious from the testimony of Gluck that this mortgage was given and placed on record merely as a scheme by which the complainant could succeed in having the fraudulent photostatic copy of the deed placed on record and so constitute a cloud on the title of the Rynda Development Co.

POINT XXIV.

It is fundamental for the Court of Chancery to allow costs and counsel fees to the successful party.

The case cited in Point XXVI of the complainants' brief under this point is not applicable here. That case disallowed costs to the successful party because the successful party had been guilty of unconscionable conduct. In the instant case the complainants were guilty of fraud, laches, unclean hands and were in default on the contract and the defendants (as shown by the complainants own testimony) had offered the deed and the complainants were not ready to accept and pay for it. How could the complainants claim, as they do, on one hand that the deed was actually delivered to them by the Rynda Development Co., and on the other hand that the defendant Rynda Development Co. was in default for failure to deliver the deed.

Furthermore it was obvious, and it was so found as a matter of fact by Vice Chancellor Berry that the complainants Maurice B. Gluck was the real party in interest. On pages 347 the Vice Chancellor held that "the complainant Maurice B. Gluck is her (Amelia R. Gluck's) husband and, I believe, the real party in interest."

The original purchaser under the contract

was the Chemtec Co. and Maurice Gluck was the president of the said Company; the complainants Amelia R. Gluck was accepted as the purchaser by the Rynda Development Co. at Maurice Gluck's instance. Amelia R. Gluck never was in direct communication with the Rynda Development Co. and all negotiations were always had with Maurice B. Gluck. And it was Maurice B. Gluck who fraudulently procured the photostatic copy of the deed and attempted to have it placed on record and who finally attached it to a mortgage and so had it placed on record. It was Maurice B. Gluck who connived at and succeeded in driving the Arlington Realty Company's tenant from the premises and it was he who procured the keys to the said premises and who changed the locks on the said premises to keep the Arlington Realty Co. out, and this last while the instant cause was pending in the Court below.

POINT XXV.

Point XXVII. of the complainant's brief is answered in the preceding point.

POINT XXVI.

Points XXVIII. and XXIX. of the complainants' brief have heretofore been answered.

Respectfully submitted,

JACOB HAUPTMAN,

Of Counsel with Rynda Development Co., Abraham Hauptman, Jacob Hauptman, J. Lewis Fiacre, Franklin Society for Home Building and Savings, and Frank Hancock Hennessy.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between:

AMALIA R. GLUCK, *and her husband,* MAURICE B. GLUCK, as such,
Complainants-Appellants,

and

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDINGS AND SAVINGS, (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),
Defendants-Respondents.

Appeal from Decree in Court of Chancery.

APPELLANT'S BRIEF.

Abstract of Case.

The case presents an appeal from a decree in Chancery dismissing a bill for specific performance of various contracts involving the same property. The bill asks for general relief and declaration of the rights of the parties, agrees to accept compensation if declared a lack of title, asks for injunctive relief against irreparable injury and multiplying of actions, and asks for damages

for wrongfully withholding the use and right of possession, and in its extraordinary jurisdiction asks from the Court of Chancery exemplary damages for a wanton and reckless destruction in fraud of complainants' rights. Upon answer, the complainants moved to strike out the answers on the grounds that they were frivolous, untruthful and sham, and raised no defense. This motion was denied and it raises upon the merits, the question of practice upon motions to strike out and for decrees *pro confesso,* under the various relief claimed, and under the new declaratory Act of 1924, the question of the vested rights of complainant in equity, under her contract to a grant of an estate, and to matters claimed to have been made *res adjudicata* by prior litigation; the question of joining a husband as a necessary party to complete the contracts; the question of the defenses that such answers do raise if any; the question of the estoppel by acknowledgment of a deed; the question of going behind the corporate identity in fraud to get at the individual responsible; the question of notice to subsequent purchasers; the question of what such purchasers must allege in their answer to raise a defense; the questions on a counterclaim claiming title, whether the counterclaim is one to quiet a title, remove a cloud or really an ejectment; the question upon a deed from Sheriff where the lien was discharged; the question upon a deed from complainant's vendor when subsequent purchaser had notice; the question on the lack of defenses; the question of a delivery in escrow where the depository has returned the deed to vendor without notice to vendee and rights of vendee therein; the question of whether

a vendor is bound, and when, in a contract of sale for mechanic's liens on improvements placed there by his assent; the question of laches; and the question of whether there may be specific performance of a contract to loan money on security and when the exception will be made.

After the motions to strike out the answers were denied complainant served interrogatories, which were stricken out by the Court and which raised a question of merits, and whether the Vice Chancellor had jurisdiction to refer to a Master a matter heard before him because he had himself been referred the case; the question of whether the interrogatories were "material to an issue"; and the questions of how each of such interrogatories were material to a specific issue, involving many subjects of law and equity. The question whether the decree should not be reversed as having been unnecessary, had the answer been stricken out, if held proper.

The defendant, Arlington Realty Co., applied for a mandatory injunction. The matter was held to final hearing and is included in final decree and raises the question whether the Court should not have dismissed these bills because it lacked jurisdiction to try title; the question of what was *res adjudicata* between the parties; the question of possession of complainant as decreed by prior decisions in actions between the parties; the question of whether the Court could give a trespasser such an injunction; the question of what the petition, answer and affidavits show; and the question of the difference between an injunction and putting a party back "*in statu quo.*"

The hearing was held and the testimony, and

opinion raise the question of laches, unclean hands, fraud, default, rescission, abandonment; the question of the *res adjudicata* rights, vested and grant of estate that complainant had; the question of the ownership of the buildings; the question what rights the defendants took; the question of fraud worked upon a vendee who improves the land in expectation of title; the question of delivery of the deed; the question of damages and exemplary damages; question of specific performance of a contract to loan money on security; the question of declaratory judgment under the Chancery Act and Act of 1924; the question of declaring the deed in trust and to be re-executed; the question on injunction; the question of costs; the question of bona fides of mortgage; the question of husband added to join as necessary only to complete papers for inchoate rights and costs against him; and the questions as to how far petitioners' rights are deprived by decree without due process of law and unconstitutionally.

Specifications of Errors in Decree.

The decree is erroneous in that it decreed that the complainants, Amalia R. Gluck and Maurice B. Gluck, are guilty of laches and were in default under the contract sought to be enforced, and the Court finding that the photostatic copy of deed recorded by complainants in the Register's Office of the County of Essex by attaching it to a mortgage made by the complainants to one Frieda Horn, dated January 4th, 1923, and recorded in the Register's Office of the County of Essex in Book I-47 of Mortgages for said county on pages

520-522 was obtained by fraud and that the said mortgage and photostatic copy of the deed were a fraud on the defendants and that possession of the premises hereinafter described were obtained by the defendants through fraud, and that the complainants had no right, title and interest in said premises (Case, p. 246).

The decree is erroneous in that it decreed that the said bill of complaint of the complainants, filed herein, be and the same is hereby (denied) with costs, and further, that the motion to strike out said petition for injunction is hereby denied (Case, p. 246).

The decree is erroneous in that it decreed that the complainants deliver up the said mortgage made by Amalia R. Gluck to Frieda Horn, dated January 4th, 1923, and recorded as aforesaid for cancellation (Case, pp. 246-247).

The decree is erroneous in that it decreed that the said mortgage and photostatic copy of the deed attached thereto be cancelled of record by the Register of the County of Essex, and that the same are hereby declared to be null, void and of no effect; the said land and premises conveyed and pretended so to be by the said mortgage and photostatic copy of the deed being described as follows:

(Description of the property as in deed, Case, p. 247.)

The decree is erroneous in that it decreed that the complainants are hereby enjoined, commanded and directed to vacate the premises herein within five days, and the complainants are further ordered and enjoined from entering or trespassing upon the said premises (Case, p. 247).

The decree is erroneous in that it decreed that

if the said complainants do not vacate the said premises within five days that a writ of assistance shall issue out of this Court directed to the Sheriff of the County of Essex, commanding the said Sheriff to forthwith eject and remove from the said premises the said complainants and all persons claiming under them or in possession of any part thereof under them and that possession thereof be delivered to the defendant, Arlington Realty Company, or to its duly authorized agent (Case, p. 248).

The decree is erroneous in that it should have decreed, and did not decree, specific performance to the complainant, Amalia R. Gluck, of the deed of November 25, 1922.

The decree is erroneous in that it should have decreed, and did not decree, that complainant, Amalia R. Gluck, was entitled to specific performance of the delivery of a deed under the contract of sale.

The decree is erroneous in that it should have decreed, and did not decree, that complainant, Amalia R. Gluck, was entitled to specific performance against the Arlington Realty Co. and Dime Savings Institution to deliver and joinder in a deed and cancellation of their interest and mortgage as subsequent purchasers and subsequent grantee with notice.

The decree is erroneous in that it should have decreed, and did not decree, that the complainants were entitled to specific performance against Franklin Society for Home Buildings and Savings to perform their contract to accept a mortgage from complainants and pay over such monies as agreed.

The decree is erroneous in that it should have

decreed, and did not decree that the complainant, Amalia R. Gluck, is the equitable owner of the premises and had a right to mortgage the premises to Frieda Horn and that it cannot be removed or cancelled by a subsequent purchaser with notice.

The decree is erroneous in that it should have decreed, and did not decree, that the buildings upon such land were erected by the assignor of complainant, and complainant is the owner of such buildings; that Rynda Development Company had no interest or rights in said buildings; that the Arlington Realty Company obtained no rights to said building by the Sheriff's deed of January 15, 1925; that Amalia R. Gluck, the complainant, was not made a party to the mechanic's lien action of Lally & Trehmore, a corporation, and any judgment or deed thereon is a nullity as against her, and her right, title, and interest in said buildings have not been foreclosed in any way; that the deed of Rynda Development Company of October 29, 1925, to the Arlington Realty Company, gave the Arlington Realty Company no right, title or interest in said buildings.

The decree is erroneous in that it should have decreed, and did not decree, that the complainant, Amalia R. Gluck, was the equitable owner under the contract of sale, the owner of the buildings, the owner of the possession to the land, and then in possession.

The decree is erroneous in that it should have decreed, and did not decree, that placing the parties *in statu quo* would result in placing the complainant, Amalia R. Gluck, in possession, and that her rights cannot be disturbed by placing an adverse claimant then trespassing against

such possession, into any possession whatever, and should have decreed that the Court cannot render any decree allowing a trespasser to obtain possession against the law of the land.

The decree is erroneous in that it should have decreed, and did not decree, that complainant, Amalia R. Gluck, acquired an easement in such land by the contract of sale which was duly acknowledged as required by the conveyancing acts.

The decree is erroneous in that it should have decreed, and did not decree, that complainant, Amalia R. Gluck, acquired an easement and irrevocable license to such land by the contract of sale and the construction of the buildings thereon.

The decree is erroneous in that it should have decreed, and did not decree, that complainant, Amalia R. Gluck, under the Statute of Uses (Sec. 7 of the Conveyancing Act) acquired by the contract of sale, the land being a building lot, the entire use of such land; that such contract of sale was a deed of bargain and sale to such building lot.

The decree is erroneous in that it should have decreed, and did not decree, that the complainant, Amalia R. Gluck, acquired by such contract of sale in equity as the *cestui que trust* the title to said land and that she was such title owner in equitable conversion.

The decree is erroneous in that it should have decreed, and did not decree, that the making of the deed to complainant, Amalia R. Gluck, for consideration was a delivery of such deed.

The decree is erroneous in that it should have decreed, and did not decree, that the deed was

fully delivered to complainant, Amalia R. Gluck, on November 25, 1922.

The decree is erroneous in that it should have decreed, and did not decree, that there was no proof or showing that any defendant was damaged, so that complainant, Amalia R. Gluck, was not guilty of laches.

The decree is erroneous in that it should have decreed, and did not decree, that there was no proof or showing that the complainant was guilty of any fraud or deception either actively or passively and that no defendant had been or could have been in any way defrauded, and was therefore not guilty of unclean hands.

The decree is erroneous in that it should have decreed, and did not decree, that as between the parties, Amalia R. Gluck, Maurice B. Gluck, Frieda Horn, Rynda Development Company, and Arlington Realty Company the following is *res adjudicata*:

> "(1) The bill is filed to rid the record title of the cloud of the supposed deed and mortgage, as well as any other supposed interest the Glucks and Miss Horn may claim to have in the property. A previous effort was made to this end. After the Sheriff struck off the property to the Arlington and before deliving the deed, the Rynda Company and Arlington Company joined in a bill to remove the cloud from the title, which was later amended into a bill to quiet the title" (Opinion filed October, 1925). In allowing the amendment spoken of above the Court ruled orally: Mrs. Gluck is the equitable owner, she had a right to mortgage it, and the mortgage cannot be removed from record."

"(2) The proofs show that the Rynda Development Co., owner, agreed in writing to sell the land—a building lot—to the Chemtec Co., Inc., and let the purchaser into possession for the purpose of building a house. The Chemtec Company transferred its interest to, and agreed to build the house for, Amalia R. Gluck" (Opinion filed July 15, 1924).

"(3) The Arlington Company, nevertheless, took possession of the house, under permission of the Rynda Company, over the protest of Mrs. Gluck" (Opinion filed July 15, 1924).

"(4) Mrs. Gluck was last in lawful and peaceable possession. The Arlington Company acquired no right to possession by its incomplete Sheriff's sale purchase. The Rynda Company's permission to take possession and the Arlington Company's ouster of Mrs. Gluck did not vest a peaceable possession" (Opinion, July 15, 1924).

The decree is erroneous in that it should have decreed, and did not decree, that as between the parties, Amalia R. Gluck, Maurice B. Gluck, Frieda Horn and Arlington Realty Co., the following is *res adjudicata*:

"(1) The Rynda Development Company agreed in writing to sell the lot of Chemtec Co., in which it stipulated that the purchaser be let possession. Permission was given to construct a dwelling." (Opinion, Oct., 1925).

"(2) In the meanwhile the Chemtec Company transferred its contract to Amalia R. Gluck and the Rynda Development Company arranged to convey the land to her." (Opinion, Oct. 1925.)

"(3) The Chemtec Company had been let into possession to which Mrs. Gluck apparently succeeded, and neither had been ousted, at least not to the extent of showing that the complainants were then in peaceable possession." (Opinion, October, 1925).

"(4) The Arlington Company is no better off than it was when it, with the Rynda Company, filed its bill to quiet the title, which was dismissed because peaceable possession in them was not shown. The adverse right of possession of Amalia R. Gluck then shown has not been changed. It is true that the Arlington Company has entered and finished the building, but the entry has at all times been adverse to Mrs. Gluck's claim. *Barry vs. Tunick,* 127 Atl. Rep. 658" (Opinion, Oct., 1925).

The decree is erroneous in that it should have decreed, and did not decree, that as between the parties, Amalia R. Gluck, Maurice B. Gluck, Frieda Horn, Rynda Development Company and Arlington Realty Company the questions of laches, default, and unclean hands are settled and *res adjudicata* down to October 20th, 1925, when the Court rendered a decision between the parties.

The decree is erroneous in that it should have decreed, and did not decree, that the defendant, Arlington Realty Company, took nothing by the deed of January 15, 1925, and deed of October 29, 1925.

The decree is erroneous in that it should have decreed, and did not decree, that the defendant, Arlington Realty Company, took nothing by the deed of January 15, 1925, from the Sheriff as by law it was void and according to the Mechanic's Lien Law the lien was discharged.

The decree is erroneous in that it should have decreed, and did not decree, that the defendant, Rynda Development Company, never rescinded or attempted to rescind the contract of sale.

The decree is erroneous in that it should have decreed and declared, and did not decree and declare, the rights and equities, and as more particularly stated and set forth herein in various portions hereof, and of the complainant under the equitable doctrines of discovery and declaratory rights, and under the Act of 1924.

The decree is erroneous in that it should have decreed and granted, and did not decree and grant, an injunction restraining the several defendants from continuing to irreparably harm, harass and slander her title, interest and rights and from multiplying actions against complainant with respect to such buildings and land.

The decree is erroneous in that it should have decreed and determined, and did not decree and determine, after determining such rights actual damages, and as well, in its extraordinary jurisdiction, to be paid complainant from the several defendants, and including therein exemplary damages for the wilful disregard of complainant's rights.

The decree is erroneous in that it should have decreed, and did not decree, that defendant interpleaded Frieda Horn was the owner of the mortgage from Amalia R. Gluck, bona fides and for value, and that there is no proof or showing that such mortgage was without consideration and a fraud upon any party.

The decree is erroneous in that it decreed that costs are decreed against complainant upon a dismissal of the complaint where the facts show that

the defendant was guilty of and caused the acts made necessary to complain of (Case, p. 248).

The decree is erroneous in that it decreed and was founded upon erroneous decrees interlocutory involving the merits:

1. That the Court failed upon motion therefor to strike out the answers of the defendants when it had before it facts in its judicial notice that such answers were untrue, false and sham.

2. That the Court struck out interrogatories served, which were made to shorten the hearing and were directly in point to necessary matters to complainants' cause.

3. That the Court failed to strike out the petition for injunction and ordered to show cause therefor upon motion therefor on ground that Court had no jurisdiction to determine the legal question of title.

The decree is erroneous in that it decreed depriving petitioners of their property without due process of law and depriving petitioners of their unalienable right to acquiring, possessing and protecting property according to the uniform and settled law of the land, the Constitution of the State of New Jersey, Article 1, Section 1, and Article V of the Constitution of the United States of America.

POINT I.

The refusal to strike out the answer of the Rynda Development Co., *et als.*, involved merits in that it, in effect determined that the answers were sufficient to overcome the vested rights, the rights in equity and the matters made *res adjudicata* between the parties in prior litigation. The order denying the motion to strike out the answer of the Rynda Development Company, etc., should be reversed.

The present practice upon motion to strike out answers in equity and for decree *pro confesso* has been said to be in harmony with the practice in courts of law provided by the Practice Act (*Penrose vs. Absecon Land Co.,* 94 N. J. E. 436, E. & A.). That is, it is to be assimilated. It is no longer a matter of mere discretion, and where there is presented a case of equitable right (or legal right) and the answers disclose no defense to such rights, may be sham, frivolous or untruthful the Court should grant a decree *pro confesso* (*Penrose vs. Absecon Land Co.,* 94 N. J. E. 436, E. & A.). This Court has laid down the rule in specific performance, that sound discretion will consider the distinction between "what the court must do, and what in view of all circumstances, it ought to do" of little or no practical importance, that the court is chiefly concerned with the equities, and that it is as much a matter of course for courts of equity to decree performance of the contract as it is for courts of law to give damages for a breach of such contract (*Page vs. Martin,* 46 N. J. E. 585, E. & A.). In the action for a bill of discovery or declaratory

of rights (this action is for such as well, see Bill, Case, p. 9), the same rules should be followed. The Chancery Act while it provides *"may"* shall never be "must," under the old bill for declaratory rights, such a construction cannot be had where the bill for declaratory rights may be under the new declaratory rights act of 1924, where there is no limitation on the word "may," and which was provided as uniform legislation in all states where passed or agreed to be passed to give a declaration of such rights as a matter of course, meaning *"matter of course"* as a *"matter of right."* In the action for damages in equity in its extraordinary jurisdiction (this action is also for such, see Prayer, Case, p. 9) the court could under its powers and jurisdiction have the same found by reference and additional testimony (*Penrose vs. Absecon Land Co.,* 94 N. J. E. 346, E. & A.).

Where there are vested rights shown, equitable rights, that is growing out of the principles of equity as distinguished from rights growing out of equitable remedies, shown, and where the court has before it, the conclusive rights made *res adjudicata* between the parties, to refuse to strike out the answer which does not show a defense to such rights, is to refuse complainant his substantial rights, in fact to take them away, for the inference is, that he has no such rights, and imposes a burden upon complainant of proving such rights (*Oberon Land Co. vs. Dunn,* 56 N. J. E. 749).

The Court had before it the contract of sale of lands, duly executed, sealed and acknowledged (Case, p. 10). The contract had in it the following (Case, fol. 10, p. 13):

> *"Permission is hereby given unto the party of the second part by the party of the first part to go into and upon the said premises and to build and construct a house therein, any time prior to taking of title."*

This was an independent covenant in the contract, supported by the consideration of the contract and running to the successors and assigns of the party of the second part (Case, fol. 10, p. 13).

> "It has been said that there are three classes of independent covenants now recognized—those in which the acts to be performed by the respective parties are to be performed at a fixed time or happening of certain events which bear no relation to one another; those in which the covenant does not form the entire consideration for the contract on the part of the adverse party, but forms a minor part of the consideration; those in which parties intend performance of their respective covenants without regard to performance by the adverse party of unrelated covenants. A covenant on the part of a vendee would be independent where he could pay up and demand his deed without showing that he had performed the covenant. 5 *Page Cont.* (2d ed.), §§2971-2973."

It gave unto Chemtec Co., and its successors the immediate possession of the premises, a building lot, and the right to build thereon, at any time before taking title, and thereby gave an interest and estate which ran with the land, *not dependent upon taking title, but whether title would be taken or not.* It is admitted that complainant and her successor did enter and build a house and garage, and that this was done with the acquiescence of

the Rynda Company, grantor. The grant being in writing, under seal and acknowledged, conforms to method under the law of passing such grant, and it being a building lot, 60 x 142 (Contract, Case, p. 14). and the only purpose its use being, for such buildings, it was a grant of the full use of such land. At common law, the grant of all the use and profits of land passes the land itself (*Co. Litt* [1] & [2]; *Buszard vs. Capel,* 8 B. & C. 141). Our Statute of Uses (Act Respecting Conveyances, Rev. 1898), Sec. 7, provides:

> "Conveyance of Uses to Land to be Held to Transfer Possession Thereof. All and every person or persons, *to whom the use or uses* of any tract or *tract* of lands within this state have been *sold, given, limited, granted,* released or *conveyed* by deed, *grant* or *other legal conveyance whatsoever,* such *grantees,* their heirs *and assigns,* shall be *deemed, taken and esteemed* to be in *full and ample possession* of such lands, tenements and hereditaments, to all intents, constructions and purposes, as if such grantees, their heirs and assigns, were possessed thereof by solemn livery of seizen and possession, any usage or custom to the contrary notwithstanding (*P. L. 1898,* p. 672)."

This covenant made of the contract a conveyance. It was a legal conveyance giving the fee (*Mellick vs. Pidcock,* 44 N. J. Eq. 525, at p. 542). It was a bargain and sale deed (*Haven vs. Sea Shore Land Co.,* 47 N. J. Eq. 365). It is a direct grant under seal (*Standard vs. Buchi,* 66 Atl. 422).

Some Courts might hold that it would not grant a fee, or that it is questionable whether it does

grant a fee, but the Statute of Uses makes this construction necessary in law, and equity will follow the law. These Courts might say: "It is a grant to the use. It is a possession of the use. It is in writing under seal and duly acknowledged. It is an interest and estate in the land. It may be called (not strictly) an easement in gross, with the right to profit a prendre, is assignable and inheritable, and its term is forever so long as the house may remain, and partaking of the nature of an estate in the land itself" (*Buszard vs. Capel,* 8 B. & C. 141; *Reilly vs. Booth,* 44 Ch. Div. 12; *Cobb vs. Davenport,* 33 N. J. L. 223; *Lawerence vs. Springer,* 49 N. J. E. 289; *Standard vs. Buchi,* 66 Atl. 422; *Trustees of 3rd Presb. Cong. vs. Andruss,* 21 N. J. L. 325; *Newhoff vs. Mayo,* 48 N. J. Eq. 619; *Camden and Amboy R. R. Co. vs. Stewart,* 18 N. J. Eq. 489; *Veghte vs. Raritan Power Co.,* 19 N. J. Eq. 142, affd. 21 N. J. E. 643; *Goldman vs. Beach Front Realty Co.,* 83 N. J. L. 97; *Sked vs. Pennington Spring Water Co.* [E. & A.], 73 N. J. Eq. 676). As such any purchaser takes it subject to such estate (*Delux vs. Bradbury,* 25 N. J. E. 70).

If it were but a mere license, even under a mere parol contract it would still be one that in equity, the party having on the strength of it gone into possession and made the improvements, would be irrevocable (*Veghte vs. Raritan Water Power Co.,* 19 N. J. Eq. 142, affd. 21 N. J. E. 643 [E. & A.]; *Sked vs. Pennington Spring Water Co.,* 73 N. J. Eq. 676 [E. & A.]; *Van Horn vs. Clark,* 56 N. J. E. 476; *Polakoff vs. Halpin,* 83 N. J. E. 126).

Whichever it be, it is a vested right in complainant, continuous in her until a superior estate has foreclosed her rights.

In equity too, there is in complainant under the contract the equitable estate and conversion (equitably) to her of the full title.

This is not a mere right derived from an equitable remedy, it is a right vested in complainant in equity by the very law of equity (*Miller's Administ. vs. Miller,* 25 N. J. E. 354), so long as there is a valid contract, no fraud or unconscionable conduct in the inception (and in this case the Court of Errors and Appeals refused relief on account of laches, yet the principle of equitable conversion was held to bind the court, *Keep vs. Miller,* 42 N. J. E. 160). It is—"The contract is regarded, for most purposes, as if specifically executed. The purchaser becomes the equitable owner of the lands, which are devisable by vendee and descendable to his heirs as real property, and the vendor becomes the owner of the purchase money, which the personal representatives of vendor at his death takes as personalty" (*Houghwout vs. Murphy,* 22 N. J. E. 531 [E. & A.]; *Keep vs. Miller,* 42 N. J. E. 160; *Huffman vs. Hummer,* 17 N. J. E. 263; *Pomeroy's Eq. Jur.* [4th ed.], Sec. 1261; *Millville Aerie vs. Weatherly,* 82 N. J. E. 455). So firmly is this held that an attachment or levy against vendor does not attach any right or interest in the land, but only against the purchase money and mere legal title held by a naked trustee. In *Toweley vs. McDonald,* 32 Barb. (N. Y.) 604 at page 11, it is said, "After August 20, 1855, the date of the contract between B and defendant, B was in equity the trustee of the legal title for defendant and defendant the trustee for Behan for the unpaid purchase money. This relation continued until B assigned this contract to Cadman, March

17, 1856; and after this assignment the defendant was trustee of Cadman as to such unpaid purchase price and Behan's (Cadman's) position was that of a mere naked trustee of legal title with no right or interest in the lands on which a lien or judgment could attach.'' This is upheld in this state in *Atlantic City vs. Johnson*, 73 N. J. Eq. 767, 65 Atl. 719; and *Fitchauer vs. Metropolitan Fireproofing Co.*, 70 N. J. Eq. 429.

The complainant also in this position was vested in equity with the rights under a resulting trust. This is not a mere right derived from a remedy—but a right in the very law of equity (*Force vs. Dutcher*, 17 N. J. Eq. 165; *Wittington vs. Lighthipe*, 46 N. J. E. 429; *Fitchauer vs. Metropolitan Fireproofing Co.*, 70 N. J. Eq. 429; *Atlantic City vs. Johnson*, 73 N. J. E. 767). She became the *cestui que trust* and in possession of the land, which was notice to the whole world (*Wittington vs. Lighthipe*, 46 N. J. E. 429).

Between the parties there were prior to this action for specific performance, etc., two actions. By them the defendants were concluded and estopped by law to deny the complainants' rights therein adjudicated, and as to these issues they became *res adjudicata*. The first action was Rynda Development Co. and Arlington Realty Co. against Amalia R. Gluck, Maurice B. Gluck and Frieda Horn, the opinion in which is printed in 2 N. J. Misc. Rep. 681, decided July 15, 1924. Here the Rynda, *et als.*, sued Amalia R. Gluck as the assignee, and a claimant of possession, interest and claims, and to remove same as a cloud upon the title. On motion to dismiss the bill (April, 1924) the motion of defendants was granted and the Court rendered the verbal opinion from the

bench, "That Amalia R. Gluck is the equitable owner and had a right to mortgage the premises." Giving leave for complainants, Rynda, etc., to amend the bill to an action quiet title under the statute. This made *res adjudicata,* the facts (1) that Amalia R. Gluck was the assignee of Chemtec Co., Inc., of the contract of sale; (2) that Amalia R. Gluck was the equitable owner of the land and had by the law in equity been converted to such land; (3) Amalia R. Gluck was the *cestui que trust* of such land; (4) that the Rynda was the owner of the purchase money; (5) that the Rynda was the mere naked trustee of the legal title, with no interest in the land to which a judgment, execution, levy, attachment, could attach; (6) that Amalia R. Gluck had a right to mortgage the land to Frieda Horn; and (7) that Frieda Horn had a right to lend her money upon that mortgage as security. The amended bill was filed April 9, 1924, and the answer thereto of defendants denied that the complainants or either of them had peaceable possession, and after hearing the Court on July 15, 1924, rendered the following opinion (the interlineations, italics, separations, etc., and numbers, are made by us so that what is concluded and made *res adjudicata* can be the more easily found by the Court; they were not part of such opinion):

> "Backes, V. C. (2 N. J. Misc. Rep. 681, decided July 15, 1924):
>
> "(1) The amended bill is to quiet the title to land.
>
> "(2) The complainants' allegation of peaceable possession is denied.
>
> "(3) The proofs show that the Rynda Development Company, owner, agreed in writing to sell the land.

"(4) A building lot—to the Chemtec Company, Inc., and

"(5) Let the purchaser into possession for the purpose of building a house.

"(6) The Chemtec Company transferred its interest to, and agreed to build the house for, Amalia R. Gluck, and partly built it.

"(7) The Rynda Company thereupon negotiated with her as buyer but the deal was not consummated, each blaming the other for the failure to conclude it.

"(8) Materialmen filed mechanic's liens, recovered judgments and sold the property under special *fi. fa.*

"(9) It was struck off to the Arlington Realty Company, which refused to take title until it could be determined what title it would get under the Sheriff's deed.

"(10) The Arlington Company nevertheless took possession of the house, under permission of the Rynda Company, over the protest of Mrs. Gluck.

"(11) Mrs. Gluck was last in lawful and peaceable possession.

"(12) The Arlington Company acquired no right to possession by its incomplete Sheriff's sale purchase,

"(13) The Rynda Company's permission to take possession, and

"(14) The Arlington Company's ouster of Mrs. Gluck did not vest a peaceable possession.

"Actual peaceable possession, not a disputed possession under a claim of right of possession, is the jurisdictional test in actions under the statute. *Fitchauer vs. Metropolitan Fireproofing Co.*, 70 N. J. Eq. 429.

"The complainants have failed to meet the statutory requirement and the bill will be dismissed, but without prejudice.

"If the complainants will present a properly drawn bill charging that the defendant Gluck claims title to the property under the deed, the photostatic copy of which is on record, and that it is a cloud on the title, and prays that the original and photostatic copy be declared null and void, relief may be granted. I am satisfied that the original deed was never delivered and that the recorded copy is a fraud."

The Court in this action was limited to find "peaceable possession of the complainants" when such was denied, as a jurisdictional fact, and beyond that it could not go, it did not have the jurisdiction to do so. It could to determine peaceable possession determine that it was in some one else than complainants and who that person was and why that other person had possession, and therefore that complainants had or had not "peaceable possession under the statute." Peaceable possession is the test of jurisdiction, and where the Court of Errors and Appeals finds the court below has exceeded that, it, of its own motion, will reverse; there is no jurisdiction beyond that point, it is *coram non judice,* and must do so (*Penrose vs. Absecon Land Co.* [E. & A.], 94 N. J. E. 436; *Fitchauer vs. Metropolitan Fireproofing Co.,* 70 N. J. E. 429; *Oberon Land Co. vs. Dunn,* 56 N. J. E. 749). On the subject of dictum in opinions and decisions, the following is by Chancellor Walker, in *In re Chadwick's Will,* 80 N. J. E. 168:

"'Dictum' is of two kinds—'*obiter*' and 'judicial.' '*Obiter*' is an expression upon a collateral, not directly involved, argu-

> ment, while 'judicial dictum' is an opinion on a question directly involved. While neither is binding, that is even 'judicial dictum' where it is deliberately passed upon by a court and not necessary to decision, yet 'judicial dictum' is entitled to a greater weight and should not be lightly disregarded. To be binding it must be necessary to a decision in a particular case and directly in issue and passed upon, then it is *res adjudicata.*''

In 90 N. J. E. 433, *Sarson vs. Maccia,* Vice Chancellor Backes sets the rule as:

> ''But where the second action is upon a different claim or demand, but between the same parties, the judgment in the prior operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the findings or verdict was rendered'' * * * ''the inquiry must always be as to the point or question actually litigated and determined, for it is only upon such matters as were actually litigated and determined that the judgment is conclusive.''

While upon this subject it may not be amiss to call the Court's attention to rule of Chief Justice Marshall in *Cohens vs. Virginia* (6 Wheaton 264, 399), the cases of *Cromwell vs. County of Sac* (94 U. S. 351), mentioned in 90 N. J. E. 433; *Northern Pac. R. R. Co. vs. Slaight* (205 U. S. 122); *Virginia Chemical Co. vs. Kirven* (215 U. S. 252); and to *Campell vs. Hall* (16 N. Y. 575), where it is held all privies are bound by estoppels, same as *res adjudicata,* and where Selden, J., wrote:

> ''The grantee in such a case is estopped by the act or admission of his grantor, or by a judgment, decree, etc., against him

> because he holds a derivative title from such grantor and cannot therefore be in a better situation than the party from whom he obtained his rights (*Bac.-Abr. Ev.*)."

The facts made *res adjudicata* between the parties were:

(3) There was a valid contract, one that equity would enforce, there was no abandonment, no default, no rescission and nothing shown as unclean or laches that would render the contract nonenforceable in equity. That Amalia R. Gluck's predecessor, Chemtec Co., is the equitable owner of the land, and the *cestui que trust* under the trusteeship of Rynda Development Co. That the Rynda is owner of the purchase money and merely a naked trustee of the title.

(4) That the land in question was a building lot, and its sole use was to build a house thereon.

(5) That the vendee was given full possession and a grant of the sole use to build such a house. That the vendee was let into, did go into and take such possession of the sole use.

(6) That Amalia R. Gluck was the assignee of the contract, the owner of the grant, the equitable owner, and *cestui que trust,* the owner of the building, and that she was in possession.

(7) That the Rynda recognized Amalia R. Gluck and her rights therein.

(8-9) The complainant, Arlington Realty Company, claims a sale to it under a *fi. fa.* upon a mechanic's lien, but not yet completed until it could determine what title, if any, it would get under

such deed. The Arlington Company admits notice of the contract of sale, admits notice of Amalia R. Gluck's rights, and elects to pursue this remedy rather than to take Sheriff's deed and sue at law in ejectment, etc.

(10) The Arlington Company over the protest of Amalia R. Gluck has entered the lands and house. This was done under a claim that it is not a trespass by obtaining the permission of the Rynda to do so. The Rynda is joining here to give such permission and claims thereby a joint peaceable possession in the land, but probably not in the buildings. They have both, thereby, wrongfully kept and withheld her from her full possession.

(11) Amalia R. Gluck's possession must be upheld as superior, she was last in lawful and peaceable possession under the contract, grant, uses and ownership of the buildings. Her rights have in no way been foreclosed. It is her possession and not complainants'. Possession to be good at all, must come through her.

(12) The uncompleted Sheriff sale gave no right of possession to Arlington.

(13) The Rynda had no possession and has none, having given it away, and therefore no kind of permission or anything else they may do, will give Arlington possession.

(14) The Arlington's trespass and going into her land and buildings did not give them any possession that the court by law can recognize. Possession is ownership, it must be acquired legally. The Arlington nor the Rynda have, therefore,

any peaceable possession, nor in fact any at all.

This is all that was made *res adjudicata,* but that was made so, and by the act is made "the final determination * * * shall fix and settle the rights of the parties in said lands and the same shall be binding and conclusive" (*Brady vs. Carteret Realty Co.* [E. & A.], 82 N. J. Eq. 629); all the other matter in the opinion was "*obiter.*"

No appeal was taken to the decree by either the Rynda or Arlington.

The following October, 1924, the Arlington started another Chancery action to quiet title under the statute, against Amalia R. Gluck, Maurice B. Gluck and Frieda Horn, which too came to hearing and finally decided October 20, 1925, the opinion of Vice Chancellor Backes being found in 130 Atl. at page 809. Here again peaceable possession was denied, which the Court insisted upon ignoring (*Penrose vs. Absecon Land Co.* [E. & A.], 94 N. J. E. 436). The Court had no jurisdiction, even had it been consented to, which in any event was not the case, to hear anything but the jurisdictional test, "peaceable possession under the statute," and finally had to rule the complainant, Arlington, had no such possession and failed to meet the requirement, dismissing the bill. Of course the Court could hear and determine the possession of another than the complainants, as incidental thereto to decide if complainants had peaceable or any possession, the fact that peaceable possession being in another, would of a certainty bar the complainants, and it was proper to ascertain the possession of Amalia R. Gluck, to determine that she had possession and then see whether or not the complainant had obtained a

foreclosure of her possession or a superior right thereto. But it is fundamental that a court must take judicial notice of its own acts. It will take notice of the matters made *res adjudicata* (Backes, V. C., in *Sarson vs. Maccia,* 90 N. J. E. 433), but it refused to do so in this action. The matter being *res adjudicata* as to possession in Amalia R. Gluck and she being last in lawful and peaceable possession, and there being no showing that she had been foreclosed or a superior right over hers obtained, the bill should have been dismissed then and there, but the Court insisted upon holding and despite the jurisdictional test, insisted upon a jurisdiction which it had not, but finally decided that it had not jurisdiction.

From Paragraph First of page 23, down to and including page 24, are repeated here as though actually reprinted here, to urge the Court's consideration.

The only facts that were made *res adjudicata* in this opinion in second action, and most of them were a reiteration of the matters made *res adjudicata* in the prior case, could be those facts necessary or incidental to finding the complainant's "peaceable possession under the statute" (*Mayor, etc., Jersey City vs. Gardiner* [E. & A.], 33 N. J. E. 622; *Allaire vs. Ketcham,* 55 N. J. E. 168; *Oberon Land Co. vs. Dunn,* 56 N. J. Eq. 749; *Penrose vs. Asbecon Land Co.* [E. & A.], 94 N. J. E. 436). The following is the opinion in full (whatever interlineations, italics and numbers there are ours and were not in the opinion and are put in here to aid the Court in finding more easily the facts made *res adjudicata*):

"BACKES, V. C. (130 Atl. Rep. 809, decided October 20, 1925):

"(1) This bill is to quiet the title to land. (2) The Rynda Development Company agreed in writing to sell the lot to the Chemtec Company, in which it was stipulated that the purchaser be let possession. (3) Permission was given to construct a dwelling. (4) The Chemtec Company contracted debts in the construction of the building, and Salmon and Company, materialmen, filed a lien claim, recovered judgment specially against the land, and under execution the property was sold and conveyed to the complainant. (5) In the meanwhile the Chemtec Company transferred its contract to Amalia R. Gluck and the Rynda Development Company arranged to convey the land to her. Mrs. Gluck negotiated with a New York concern for a mortgage; the time was fixed for the passing of title at the office of the lender's attorney in New York, and the deed was left with the attorney to be delivered on payment of the balance of the purchase money. The mortgage loan was not effected; the purchase price was not paid; and the deed was surrendered by the attorney to the Rynda Company. Before delivering the deed to the New York attorney Maurice B. Gluck, Mrs. Gluck's husband, a New York lawyer, who represented her in all the transactions, persuaded the representative of the Rynda Company to permit him to have a photostatic copy of it made, upon the representation that it would be a protection against the New York attorney. Gluck then had his wife execute a mortgage to one Frieda Horn and annexed to it the photostatic copy of the deed and recorded it in the Essex County Clerk's office. The Glucks make the claim that the deed was delivered, but that is false. The bill is filed

to rid the record title of the cloud of the supposed deed and mortgage, as well as any other supposed interest the Glucks and Miss Horn may claim to have in the property. A previous effort was made to this end. After the Sheriff struck off the property to the Arlington Realty Company and before delivering the deed, the Rynda Company and the Arlington Company joined in a bill to remove the cloud from the title, which was later amended into a bill to quiet the title. It was dismissed because the complainants failed to show peaceable possession. (6) The Chemtec Company had been let into possession, to which Mrs. Gluck apparently succeeded, and neither had been ousted, at least not to the extent of showing that the complainants were then in peaceable possession. (7) The Arlington Company thereafter took the deed from the Sheriff, and after recording it filed the present bill to quiet the title, which, after amendments, was brought to a hearing on the issue of peaceable possession. (8) Later the defendants were given permission to set up their title and they put in proof to support it. I now notice for the first time that in their answer they ask for a trial by jury. That request comes too late.

"(9) The record of the mechanic's lien suit shows that the issuing of the summons was not endorsed on the lien claim, as the statute requires, and, consequently, the lien was discharged. *Wheeler vs. Almond,* 46 N. J. L. 161. The judgment is a nullity and the Arlington Realty Company took nothing by the Sheriff's deed. The judgment is attackable in these proceedings. *Raymond vs. Post,* 25 N. J. Eq. 447; *Gerard vs. Birch,* 28 N. J. Eq. 317. Under the statute to quiet title there are no necessary pleadings

except those therein provided for. (10) At the hearing the complainant set up its title under the Sheriff's deed to defeat the defendants' rights under their contract of sale, and it was quite admissible to attack the judgment on which the deed rests to show the futility of the complainant's efforts.

"(11) The Arlington Realty Company is no better off than it was when it, with the Rynda Company, filed its bill to quiet the title, which was dismissed because peaceable possession in them was not shown. (12) The adverse right of possession of Amalia R. Gluck then shown has not been changed. (13) It is true that the Arlington Company has entered and finished the building, but the entry has at all times been adverse to Mrs Gluck's claim. *Barry vs. Tunick,* 127 Atl. Rep. 658.

"The complainant has failed to meet the statutory requirement and the bill will be dismissed."

(1, 11, 12) The bill is to quiet the title to land, the jurisdiction is limited to "peaceable possession." The Arlington is no better off than when it and the Rynda filed their bill to quiet title, which is *res adjudicata,* even though upon a different claim or demand, because peaceable possession was shown then to be in Amalia R. Gluck and possession has not been changed. There is no default, no abandonment, no rescission shown and she has not lost any rights by any unclean hands or laches. She is still the equitable owner, the *cestui que trust.* She has all the rights which she had before. Her possession is absolute. The Arlington continues to trespass and withhold possession from Amalia R. Gluck.

(2-3) The Rynda Company made a valid contract that equity will enforce, and it gave away possession and the full use.

(4, 7, 9-10) There were alleged lien claims filed, and a sale under a claim of Salmon & Co., upon an execution specifically against the right, title and interests in the land of Rynda only, and not against any of the buildings, the Arlington bid it in, and after the prior action the Arlington took a conveyance from the sheriff and recorded it, and then with full notice and of the settled rights of Amalia R. Gluck filed this bill to quiet title. The judgment is a nullity and the Arlington took nothing by the sheriff's deed. The judgment was attacked properly to show the Arlington took nothing by such sheriff's deed, and obtained no right against Amalia R. Gluck by it, nor any possession.

(5-6) Amalia R. Gluck was the assignee of the contract, the owner of the grant under the contract, under seal and duly acknowledged, the equitable owner, the *cestui que trust,* in full possession, the owner of the buildings, and had been recognized by the Rynda.

(8) The defendants gave proof of their title but it is not necessary to a determination here, there is no jurisdiction to determine it here, and is therefore not determined.

(13) The Arlington has continued to trespass upon Mrs. Gluck's possession. It acquired no rights legal or equitable thereby, certainly not any possession, and such trespass has "at all times" been adverse to Amalia R. Gluck's possession, and she has made it plain it is adverse to her rights.

All other matter was mere surplusage, and merely *obiter,* and beyond the Court's jurisdiction.

This decision was rendered on October 20, 1925. Sometime between the final hearing in this second action, and the decision, October 20, 1925, the Arlington gave a mortgage upon the premises to the Savings Institution, and on December 7, 1925, the Arlington recorded a deed dated October 29, 1925, acknowledged Dec. 2, 1925 from the Rynda. The complainant herein, Amalia R. Gluck, immediately as soon as she could prepare it, filed her complaint on December 15, 1925. She joined her husband therein, not because he had any claim therein, it being her separate property, but because as a married woman under the decision of *Patterson vs. J. D. Loizeaux Lumber Co.,* 92 N. J. E. 569; 114 Atl. 336 (E. & A.), and it is so alleged in the bill (see Par. 2 of Bill, p. 2, Case).

The Court had too, the testimony of the witnesses in the two prior actions, which were in direct conflict with the answer (see Case, pp. 75 to 94, inc., and pp. 106 to 107, inc., which are the material parts relating to this answer).

Taking up the answer (Case, p. 37) of Rynda, and its three other defendants, it must first be pointed out that it is not an answer as called for by the bill (fol. 20, p. 9, Case). "That the defendants * * * and each of them may answer this Bill of Complaint, and each statement therein made." Here is a joint answer filed, where the answer is one that commingles the denials so that it cannot be known where the denials of one begins, and the other ends. This made the answer sham and frivolous.

How could, after the matter had been twice made *res adjudicata,* the defendant deny the complainant was the assignee?

What possible issue could be raised by the second paragraph of the answer, denying that Maurice B. Gluck, joins as her husband.

A careful examination of the answer will disclose no issue raised. In Paragraph 6 of the answer they deny a tender, but admit a deed was made and executed on that day of the alleged tender, Nov. 25, 1922. In Paragraph 7 it denies receipt of $400 on Dec. 18, 1922, but admits it received such sum, but that it was before Nov. 25, 1922, their purpose being to set it ahead so that the admission could not be held to be a ratification of the deed, but later, after the motion was made to strike out the answer they offered to admit it was on the 18th day of December, 1922. This was an untruthful statement in the answer, and one which defendants later admitted (Case, p. 49, fol. 20). That part of the answer amending, was made after the motion to strike out, by order (Case, p. 65). But as provided for in the order (Case, p. 51, fol. 10), was never served or filed and therefore never really went into effect, but for the purpose of showing the willingness to be untruthful in a material aspect it is used here.

There was no defense raised of fraud, unclean hands, in contract, no claim of unconscionable agreement, no claim of abandonment, no claim of rescission, no claim of default, no claim of laches, To a bill for specific performance of an executory contract for lands, the contract being attached to the bill, there was not a single defense or issue raised. They even admitted (Case, Answer, p. 44, fol. 20) "that they did deliver a quitclaim

deed for the premises to the Arlington Realty Co., on the 2nd day of December, 1925; and that said deed was delivered merely to aid the said Arlington Realty Co., a purchaser at the Sheriff's sale, to clear the title of said premises, after the Honorable John H. Backes, one of the Vice Chancellors in this court, in an opinion in the matter between Arlington Realty Co., and Amalia R. Gluck, held that the contention of Amalia R. Gluck, complainant herein, that a deed had been delivered to the Rynda Development Co., by her was false, and that the deed was not delivered." That they had given a conveyance to another without any consideration, or for a nominal consideration.

The bill does not ask for specific relief of a contract, it asks for general relief for any contract (Case, fol. 30, p. 9). It would have been a full specific performance to have defendant perform the executory contract for the sale of land, and that would have been sufficient.

A denial of delivery of the deed raised no issue. The denial of delivery would only raise an issue on the contract if executed, by another contract, that is the agreement to forbear her loan, to agree to pay the purchase price, to accept deed, and on their part a delivery of the deed. If the contract was executed by the new contract, then it was no longer an executory contract for sale of lands, but if the new contract was separate, distinct and not an execution of the contract, or if the new contract failed, then complainant fell back on her old contract still executory. The deed that was made to complainant, a copy of which is attached to the bill of complaint (Case, p. 15, fol.), was admitted made, executed and

duly acknowledged. It supports the new agreement, and if not actually delivered under the new agreement, then the new agreement is THE executory agreement. The canon of conversion and construction, "Equity does what ought to be done," is applied, and the delivery of the deed is converted into Amalia R. Gluck under the new agreement. Where there is a deed as shown here exact in its terms, agreed upon by the parties, with the acknowledgment, the Court is confronted with considering the pleadings with legal conclusions to be drawn therefrom, and the delivery for all purposes actually converted to complainant. There is also an estoppel *in pais,* here also by deed, and by acknowledgment. The deed was under seal, the oath of acknowledgment reaffirmed sealing and actual delivery. The deed as an act, the making, sealing and acknowledging is specifically admitted. The admitted rule of law is that a party is concluded by his deed, he cannot put it into dispute either by pleadings or evidence (*Hudson vs. Inhabitants of Inslow,* 35 N. J. L. 411). The acknowledgment in a deed is stronger than all evidence (*Herbert vs. Schofield,* 9 N. J. Eq. 495). The acknowledgment raises the presumption of delivery, if both parties were present. Even if retained by the grantor (*Denn ex Denn, Farlee vs. Farlee,* 21 N. J. L. at 285; *Walkowitz vs. Walkowitz* [E. & A.], 95 N. J. Eq. 249). There is, too, another reason for "estoppel," the deed is dated November 25, 1922, after it was in hands of New York Bank, this defendant accepted $400 and ratified and confirmed it, this was on the 18th day of December, 1922 (see Case, pp. 380-381), just three days prior to going over and getting the New York Bank to give it to them. "The doctrine seems to be established by authority that the con-

duct and admissions of a party operate against them in the nature of an estoppel. Whenever in good conscience and honest dealings he ought not be permitted to gainsay them. Thus negligence becomes constructive fraud, although strictly speaking, the actual intent to deceive may be wanting and the party may be innocent, if innocence and negligence may be deemed compatible" (*Stevens vs. Dennett,* 51 N. H. 324). When the Rynda took the $400.00 it believed it, had made a delivery of the deed, was going to get the purchase money, and is an act confirmatory of delivery (*Hilderbrand vs. Willing,* 64 N. J. Eq. 249; *Walkowitz vs. Walkowitz* [E. & A.], 95 N. J. Eq. 249).

And too, the Court had the testimony on two prior trials. The defendant says it did not intend to deliver, but admits after execution the New York attorney for the bank had it, upon the alleged escrow agreement (Case, p. 177). An examination of the law following and this alleged escrow agreement (Case, p. 177), will indicate that it was an absolute delivery to Amalia R. Gluck, named in the deed. Frank Hancock Hennessy was attorney for the bank, he had an adverse interest, and it would have been antagonistic to his client's interest to hold such deed, and act for subvendee (bank) and vendee (A. R. Gluck) for whom he was attorney for closing, as he could in a dispute between bank and A. R. Gluck, do just what he is charged by us with doing; giving away the deed. (*Kelly vs. Chinich,* 91 N. J. E. 97). The grantor must part with possession of the deed, and also any control as well as deprive himself of the right to recall it (*Commercial Bank vs. Reckless,* 5 N. J. Eq. 430). This he did not do as subsequent events

prove. He went over and got the deed back. There was no agreement proved between A. R. Gluck and Rynda for such escrow (*Stanton vs. Miller,* 58 N. Y. 192; *Ellsworth vs. Cent. R. R. Co.,* 5 Vroom 95, followed in *Atlantic City vs. New Auditorium,* 63 N. J. Eq. 644). In absence of such agreement for escrow the deed will be presumed to be delivered at time of its date and title of grantee will relate to that date (*Elsworth vs. Cent. R. R. Co.,* 5 Vroom 95, followed in *Atlantic City vs. New Auditorium,* 63 N. J. Eq. 644). But even if complainant were bound by the escrow agreement, and it were a good agreement in escrow, by its terms, she could not have been deprived of it by the agent of both, the depository, neither could rescind, and the other party could not act inconsistent with it as the rights of both parties are immediately vested thereunder (*Fred. vs. Fred.,* 50 Atl. 777). It was not an escrow, but an absolute delivery to grantee. The letter could only bind complainant if it were signed by Hennessy, as the agent of Amalia R. Gluck.

There is no issue raised for an action to declare the rights or injunctive relief.

There is on the action for damages, which is the only one in which the personal defendants are interested as defendants, a general denial of one element of the damage, the conspiracy to withhold her full possession by these acts, and a denial that it is a dummy corporation. This action for damages, is merely supplementary to, the actions for specific performance, declaratory rights, and injunctive relief, and the granting of decrees *pro confesso* upon them would result in practically proving everything under the action for damages, except the amount and whether the corporation

was a "dummy", and who, if any of the individual defendants were to pay such damages, which under the rules would have been left to a Master.

We can understand the desire to defend against payment of damages, but why the defense against specific performance, declaratory rights and injunction if they really have no interest, and did give another a conveyance, and quitclaim to another, so as to attempt to give another the improvements valued at about $20,000.00, why should they have given this other a conveyance, or quit claim for a nominal consideration of $1.00 (see Deed, Exhibit C2, Case, p. 376), when the entire purchase price, $380 in cash and a second mortgage of $1,400.00 would have been paid them by complainant? This is a fair inquiry in equity in these cases and so even upon motion to strike out answer.

The Answer should have been stricken out, and decree *pro confesso* granted for complainant upon specific performance, declaratory rights and injunctive relief.

Had this been done, the other matters would not have been made necessary, such as interrogatories, injunctions, hearing etc., and if it had been proper to so find, the other matters should be found unnecessary and a nullity.

POINT II.

The refusal to strike out the answer of Arlington Realty Co. (including its counterclaim) involved merits in that it, in effect, determined that it was sufficient to overcome the vested rights, the rights in equity and the matters made *res adjudicata* between the parties in prior litigation. The order denying the motion to strike out the answer (and the counterclaim) of the Arlington Realty Co., should be reversed.

As though fully reprinted here we desire to repeat for this point the matter under Point I hereinabove from first Paragraph on page 14 to and including the 2nd Paragraph on page 33, and we urge the Court's consideration thereupon, for this point.

The Arlington was a party to both the prior actions and they had, therefore, full notice of the complainant's rights, and interests in the land and buildings. For some reason (the complainant claims in the bill that the Arlington was but a mere "dummy" representing "Rynda" or the Hauptmans in an attempt by them to defraud them out of the land and improvements) the Arlington has always been favored by the Rynda to a degree inconsistent with the claim by the Rynda that it was only interested in the purchase money. The facts are that the Rynda produced the Arlington to purchase some lien claims, but only after judgment. To obtain these alleged judgments the Rynda consented to them. Then these judgments were sold to Arlington. Of course, the Rynda could only consent to judgments against its own interest, that would not foreclose the rights of

Amalia R. Gluck, who had never been served in any of these suits. But, by it the Rynda and Arlington (really the same interests) could maneuver a device that might give them a Sheriff's deed, something on which they could claim a title, in an action in which Amalia R. Gluck had been named a party, but actually not been served, and in that way claim the title to an unsuspecting purchaser, free from the claim that the Rynda had given directly a deed to the Arlington, and at the same time would indicate a full foreclosure of Amalia R. Gluck's rights. The Arlington appeared first in open by bidding at Sheriff's sale, October 9, 1923, when (as the Court had it before him in the testimony in prior two actions to quiet title mentioned above) the notices (this Case, Exhibit C8, p. 393), were read out at such sale. It then had notice by October 9, 1923 and must have had such notice prior to that time, as appears from the filed complaint in Salmon Action in which the sale was being held, and must be presumed at date of filing which was April 1, 1923 (see Case, p. 400), summons and complaint in Salmon action), and by the mechanic's lien in Salmon action (see Case, p. 400) by the date of filing, April 1st, 1923 (*Veghte vs. Raritan Water Power Co.*, 19 N. J. Eq. 142; affd. 21 N. J. Eq. 643 [E & A]; *Hodge vs. Amerman,* 40 N. J. Eq. 99; *Shinn vs. Budd,* 14 N. J. Eq. 255). And if the purchaser at such sale (judicial) takes with notice as any other purchaser, and the sale being but a sale of Rynda's rights, it takes it subject to notice and the burdens imposed by Rynda previously (*Johns vs. Norris* [E. & A.], 27 N. J. Eq. 485; *Haven vs. Bliss,* 26 N. J. Eq. 362), and is presumed to have notice of everything that its prior grantor had, then the Arlington had notice

of Amalia R. Gluck's rights, by the actual possession (*Johns vs. Norris* [E. & A.], 27 N. J. Eq. 485; *Haven vs. Bliss,* 26 N. J. Eq. 362; *Schwoeble vs. Storrie,* 76 N. J. Eq. 466; *Lacomb vs. Headley* [E. & A.], 91 N. J. Eq. 63) of the buildings upon land (in course of construction) and the mortgage in the direct chain of title Amalia R. Gluck to Frieda Horn (see Case, p. 197, Exhibit C7, p. 384). So that the Arlington had full notice, and actual notice, and was "but a volunteer, a mere speculator" (*Haven vs. Bliss,* 26 N. J. Eq. 363; *Page vs. Martin* [E. & A.], 46 N. J. Eq. 585).

The answer must aver that they are *bona fide* purchasers for value and without notice, and must allege and plead a full payment of the purchase price before any notice (*Houghwout vs. Murphy* [E & A], 22 N. J. E. 531; *McVoy vs. Bauman,* 93 N. J. Eq. 360, affd. 93 N. J. 638). This, the answer fails to do. There is not a word therein that it had no notice, nor that it purchased the same for value. In Paragraph 2 thereof (Case, p. 58, fol. 20), it admits, "The defendant admits that it has received a deed from Rynda Company dated October 29, 1925 (and which the Rynda, by its answer, Case, p. 44, Par. 16, fol. 20, says was made and executed December 2, 1925), and recorded December 7, 1925, in the Essex County Register's Office, but says that said deed was given for a valuable consideration and after this Court had determined that a photostatic copy of a certain deed alleged to have been delivered by Rynda Development Co., to complainant, Amalia R. Gluck, was a fraud" admitting and substantiating the Rynda's claim for a quitclaim deed, merely to help them (Case, p. 44, Par. 16, fol. 20). The answer raised no issue upon

specific performance, declaratory judgment and injunction.

As a first defense—it sets up laches—this party, who can only be recognized in equity for the purpose of paying him whatever he innocently suffered and paid out before notice (*Schwartz vs. Munson* [E. & A.], 94 N. J. Eq. 754), answers that the complainant be barred her rights and suffer the $20,000.00 improvements and her grants in the land to go to unjustly enrich the defendants. They do not plead in justification the rule, "Equitable relief to which a party is otherwise entitled cannot be denied for laches in delaying to seek it unless the delay has occasioned loss or hardship to the party who invokes the doctrine of laches or mislead him to his injury" (*Tyrnan vs. Warren,* 53 N. J. Eq. 313; 31 Atl. Rep. 596), where the Vendee has been in possession and had not applied for specific performance for 23 years, it was held to assert laches was an unconscionable defense for a subsequent purchaser who must have had notice (*New Barbadoes Tall Bridge Co. vs. Edward Vreeland,* 4 N. J. Eq. 157). It does not offer to do equity and pay for the unjust enrichment (*Penrose vs. Leeds* [E. & A.], 46 N. J. Eq. 294). It matters not to this defendant that the Court must never be an instrument to an injustice (*Stoutenberg vs. Tompkins,* 9 N. J. Eq. 332) or that the complainant has fully explained the delay in starting this action, having been actually engaged in litigating her rights by actions, started by this defendant, within one month of starting this action (*Young vs. Young,* 45 N. J. Eq. 27; *Ashmore vs. Leeds,* 11 N. J. Eq. 151; *Day vs. Deavitt,* 79 N. J. Eq. 342), or that the purpose of the action is to do exact justice and settle all

rights (*Page vs. Martin* [E. & A.], 46 N. J. E. 585; *Stoutenberg vs. Tompkins,* 9 N. J. E. 332), or that in equity the sale to it by Rynda is regarded as a fraud upon complainant (*Huffman vs. Hummer,* 17 N. J. Eq. 263; *Nibert vs. Baghurst,* 47 N. J. Eq. 201). The notice that it had bars such a defense. The defendant submitted no affidavit to show the laches to support such a defense on the motion to strike out.

As a second defense, it sets up that complainants were estopped by the *res adjudicata* of *Rynda vs. Glück,* etc., by opinion of July 15, 1924, and that delivery of deed was therein made *res adjudicata.* This is answered fully in above, in Point I, pp. 20-33, inclusive, of this brief, etc.

As a third defense, it sets up, that the complainant has acquired the legal title, by deed from sheriff, of January 15, 1924, which deed is a sale of Rynda title and interest (see Execution, Case, p. 185, mechanic's lien, Case, p. 178, Record of Suit and Complaint, p. 178 to 197 inc.), and for reasons why it is a nullity see below answering why the counterclaim should have been stricken out (also Case, pp. 161 to 163 inc., and 207 and 208 inc.). They also assert they received another deed. (Why so many deeds?). It is the one dated October 29, 1925, from Rynda, and since possession had been decreed against them again by opinion of October 20, 1925, in the prior action, they assert an implication from that day "that this defendant has been and now is in peaceable possession of said premises." The notice that they had answers this fully (*Houghwout vs. Murphy* [E. & A.], 22 N. J. Eq. 531; *Page vs. Martin* [E. & A.], 46 N. J. Eq. 585; *McVoy vs. Bauman,* 93 N. J. Eq. 360, affd. 93 N. J. Eq. 638).

Then the answer sets up a counterclaim. The counterclaim sets up that, "The defendant has been in peaceable possession of said premises since that time", and there is a prayer for general relief, it might be said that it is again another action to quiet title. This allegation of peaceable possession was not necessary to a counterclaim to remove a supposed cloud from a title. But on the subject of the removal of the mortgage the facts were made *res adjudicata* (see above, Par. 3, on p. 20 of Point I). And all the facts were made *res adjudicata* (see decisions above in Point I, pp. 20 to 33, inc). The Court in neither of these had any right to pass on delivery of deed, so that their allegation herein, that the photostatic copy was held to be fraudulent, was made *res adjudicata,* is not true. The notice that they had fully answered this (*Houghwout vs. Murphy* [E. & A.], 22 N. J. Eq. 531; *Page vs. Martin* [E. & A.], 46 N. J. Eq. 585; *McVoy vs. Bauman,* 93 N. J. Eq. 360, affd. 93 N. J. Eq. 638; *Schwartz vs. Munson,* 94 N. J. Eq. 754).

If the deed of sheriff of January 15, 1924 was an effective deed, and not a nullity, they would still be in position where their full notice would require them to specifically to perform to complainant. The complainant's rights were never foreclosed by this suit. She is named a party but was not served in this action (see Execution, Case, p. 185, mechanic's lien; Case, p. 178 and papers; Case, pp. 178 to 197 inc.).

But the lien claim was discharged and the judgment and deed, etc., a nullity—(1) The lien claim was filed in the name of Lally & Trehmer, a corporation (Case, p. 178) and the suit to perfect

same was started by Lally & Trehmer, a copartnership (Case, p. 183). (2) The lien claim on its face and bill attached shows it is for materials that cannot be placed in building, being saws, hammers, block and tackle, etc. (Case, pp. 180-182). (3) The last day for the furnishing of the materials was given as of September 30, 1922 (Case, pp. 182 and 179), and the action was started on February 8, 1923, over 10 days over four (4) months (Case, p. 183). (4) The certificate from the District Court made on February 8, 1922, was not filed until February 13, 1922 (Case, p. 183), which is over the time as provided by the act, "Within four (4) days from the starting of such action." (5) The summons does not describe the curtilage (Case, p. 189). (6) The lien claim contains a wilful misstatement in attempt to hold a person not connected, alleging and brought against "Maurice B. Gluck and Francisco Geldago, copartners under the firm name of Ruiz-Urrutia Co." (*Bartley vs. Smith,* 14 Vroom 321). Defendant MAURICE B. GLUCK never was a partner of Ruiz-Urrutia Co. and does not know any Geldago (Case, p. 190). (7) While execution was issued on November 16, 1923, and sale held January 15, 1924, and deed given March 20, 1924, deed only recorded March 11, 1926, Book W73, page 398, another execution on same judgment was issued August 26, 1924, and paid and returned satisfied by the sheriff, September 9, 1925 (Case, p. 187), so that Arlington did not regard the previous sale, and deed as taken at all, and in fact to obtain this second execution and satisfaction C. Herbert Walker, under oath said in a petition that such prior execution and judgment thereon had not been paid, and (8) that on this claim and suit a general judgment against Rynda Development Company was docketed in

Common Pleas Court of Essex County (Case, p. 185), and execution issued out of such Court instead of Circuit Court as provided by the act, and no judgment against real property could be levied on until execution returned unsatisfied against personal property of Rynda Development Co., and (9) That prior to this deed of January 15, 1924, there had been a sale under another mechanic's lien upon the same premises, upon the same construction, that they were the purchasers at such sale (see mechanic's lien and Complaint Salmon lien—Case, pp. 400 to 412, inc.) that the result of a sale under the Mechanic's Lien Act is that all other liens are discharge "(Secs. 24-25). The act contemplates a single judgment and a single execution and every lienor must be content with his share pro rata" (*Hazelhurst vs. Sea Isle City Hotel Co.* [Chancery, Pitney, V. C.], 25 Atl. Rep. 201).

There was no defense raised of abandonment, rescission, default, breach of the contract, fraud in the execution or inception of the contract, and raised no defense to actions for specific performance, declaration and injunctive relief, neither in the answer or counterclaim and the answer and counterclaim should have been stricken out.

That it denied it had any information and belief as to delivery of the deed by its grantor, made little or no difference. If it was delivered (and here we repeat from Par. 2 on pp. 35 to—Par. 2 on p. 38, inc., of the above Point I as though reprinted here) then they got nothing at all, and are bound by their grantors' acts and deeds (*Lee vs. Woolworth,* 3 N. J. Eq. 31; *Smallwood vs. Lewin,* 15 N. J. Eq. 60; *Hay vs. Bramhall,* 19 N. J. Eq. 564; *Shinn vs. Budd,* 14 N.

J. Eq. 234; *Hodge vs. Amerman,* 40 N. J. Eq. 99; *Michael vs. Peake,* 12 N. J. Eq. 70; *Cranwell vs. Clinton Realty Co.,* 67 N. J. Eq. 540; *Raritan Water Power Co. vs. Veghte,* 19 N. J. Eq. 142, affd. 21 N. J. Eq. 643 [E & A]).

The dismissal of this pleading would have made unnecessary the other following steps in the litigation and all of them should be reversed, and decree *pro confesso* for complainant given upon specific performance, declaration of rights and injunctive relief.

POINT III.

The refusal to strike out the answer of Dime Savings Institution involved merits in that it, in effect, determined that the answers were sufficient to overcome the vested rights, the rights in equity and the matters made *res adjudicata* between the parties in prior litigation. The order denying the motion to strike out the answer of the Rynda Development Company, etc., should be reversed.

Sometime during the pendency of the second action to quiet title (see above Point I, pp. 27 to 33, inc.) and between the final hearing May 18, 1925, and the rendering of the decision October 20, 1925, the Arlington made a mortgage upon the premises, land and buildings to Dime Savings Institution, the mortgage being the regular defeasance deed—at the time of the motion to strike out there was only the answer of the defendant besides the other papers and documents mentioned in Point I above. The defendant, Dime Savings Institution, did not submit any

affidavit of it actual parting with money. It is interesting to call the Court's attention as to how far the scheme and maneuvering of the Hauptman's (Father and Son, the attorney) had succeeded in being able to convince some part of the public that they had a good title taken through the medium of the sheriff's deed on an action on mechanic's liens as though the rights of Amalia R. Gluck were duly foreclosed (see Case, p. 255. Testimony of statement of Mr. Williams, the attorney, that they actually paid out to Arlington some part of the Eight Thousand Dollars, and retained enough to satisfy the Gluck to Horn mortgage). Later they took additional security prior to starting of this action (see Case, p. 125, Qs. 39-40) so that they are not, in any way, harmed. But it does show that the scheme had possibilities of success, where careful scrutiny and care might be lacking on the part of a contemplated purchaser or mortgagee. But the Dime Savings Institution had actual notice of the rights of Amalia R. Gluck, their attorney, had such actual notice (*Losey vs. Simpson,* 11 N. J. Eq. 246; *Dickerson vs. Bowers,* 42 N. J. Eq. 295) and they would be presumed and had actual notice of and through their grantor, the Arlington (*Lee vs. Woodwarth,* 3 N. J. Eq. 31; *Smallwood vs. Lewin,* 15 N. J. Eq. 60; *Hay vs. Bramhall,* 19 N. J. Eq. 564; *Shinn vs. Budd,* 14 N. J. Eq. 234; *Hodge vs. Amerman,* 40 N. J. Eq. 99; *Michael vs. Peake,* 12 N. J. Eq. 70; *Cranwell vs. Clinton Realty Co.,* 67 N. J. Eq. 540; *Raritan Water Power Co. vs. Veghte,* 21 N. J. Eq. 463; *see Newark City National Bank vs. Crane,* 60 N. J. Eq. 121). They had the notice the Arlington Co. had.

Repeated here as though fully reprinted as a

part of this point is the matter in this brief in Point I, page 14, Paragraph 1 to and included 1st Paragraph on page 33, and also Paragraph 2 on page 34, to and including Paragraph 2 on page 38, above. They had the notice that the search would show of the Salmon mechanic's lien suit (see Case, p. 400) and they had the notice that the actual possession by construction of the buildings would show (*Johns vs. Norris* [E. & A.], 27 N. J. Eq. 485; *Haven vs. Bliss,* 26 N. J. Eq. 362; *Schwoeble vs. Storrie,* 76 N. J. Eq. 466; *LaCombe vs. Headley* [E. & A.], 91 N. J. Eq. 63; Atlantic *City vs. New Auditorium,* 63 N. J. E. 644). So that they too must be declared a mere volunteer and speculator (*Haven vs. Bliss,* 26 N. J. Eq. 363; *Page vs. Martin,* 46 N. J. Eq. 585).

An examination of the answer (Case, p. 28) discloses that they did not aver and plead to be bona fides purchasers for value and without notice, nor did they plead a full payment of purchase price before any notice (*Haven vs. Bliss,* 26 N. J. Eq. 362; *Houghwout vs. Murphy* [E. & A.], 22 N. J. Eq. 531; *McVoy vs. Bauman,* 93 N. J. Eq. 360, affd. 93 N. J. Eq. 638; *Schwartz vs. Munson,* 94 N. J. Eq. 754). In Paragraph 18 of the answer they admit the recording of the mortgage, then they deny they took same with any notice of complainants' rights, if any exist, and then they deny that complainants' rights are prior to defendants' rights under such mortgage. They are careful not to allege they are a bona fides purchaser without notice and for value.

Then as an affirmative defense it alleges, that the mortgage was made in its regular course of business, under which it invests money in that kind of security, and that the mortgage was only

given as a security for loan, and at the time it was taken there was nothing on record that would give them notice of the complainant's "interest in, right to or equity in premises" (*Houghwout vs. Murphy* [E. & A.], 22 N. J. Eq. 531). In fact here, they admit they took the same merely as a security for a loan, the loan being upon what they have paid out any money (*Losey vs. Simpson,* 11 N. J. Eq. 246).

This is a resistence or defense from a purchaser with full notice, since the contract to complainant (*Page vs. Martin* [E. & A.], 46 N. J. Eq. 585) and it would be unconscionable and inequitable to allow them to assert it, when they are bound to have notice. They are by that notice as much a part of the frauds (*Baldwin vs. Van Vorst* [E. & A.], 10 N. J. Eq. 577; *Huffman vs. Hummer,* 17 N. J. 263); and to establish such fraud all that is necessary is to show that complainant made improvements with the knowledge and acquiescence of the vendor (*Eibert vs. Baghurst,* 47 N. J. Eq. 201).

There was no plea of abandonment, default, rescission or fraud in the contract, there were no defenses raised to the actions for specific performance, declaratory judgment of rights, and for injunctive relief, and a dismissal of the pleading would have made unnecessary the other steps in this litigation and all of them following should be reversed, and decree *pro confesso* for complainant given upon specific performance, declaration of rights and injunctive relief.

POINT IV.

The refusal to strike out the answer of the Franklin Society, *et als.*, involved the merits in that it refused to hold from the admitted facts the legal conclusion that there was a delivery, and the equitable conclusion of estoppel of these defendants to deny a delivery, because of the fraud it would work on complainant and because she could not be put back into her original position, and in that it refused to hold that there were no mechanic's liens affecting the property. The order denying the motion to strike out the answer should be reversed.

The answer (Case, p. 53, fol. 20) of Franklin Society and Frank Hancock Hennessy, it must be pointed out, is not an answer as called for by the bill (fol. 30, p. 9, Case) "that the defendants * * * and each of them may answer this bill of complaint, and each statement therein made." Here is a joint answer filed, it commingles the denials, so that it cannot be known where the denials of one begins and the other ends. This, of itself, made the answer sham and frivolous.

The answer practically admits every fact, but denies that complainant had ever a legal delivery of the deed, never acquired a legal delivery of the title so she could carry out the contract, and that the fact that they held such deed was not a legal delivery to complainant, nor therefore a part performance of the contract. The answer further sets up (Case, p. 54) that the Franklin failed to obtain a mortgage that was prior to the claims of the material men and mechanics. As a special defense they assert laches. They present no issue to be tried, all are matters of law.

The answer (Case, p. 51) stating as it does, "failed to obtain a mortgage that was prior, etc.," admits, the contract (Case, p. 19) being the only one signed by complainant, that such contract (Case, p. 19) is an equitable mortgage, which it is, against the property. It, too, is a contract affecting lands, and should be specifically performed, and according to the equitable doctrine of "Equity does that which ought to be done" the rights here are in equitable conversion, and defendant, Franklin Society, is the owner of a mortgage.

We repeat here for this point as though actually reprinted here, Paragraph 1, Point I, pp. 14-15.

The Court had before it all the facts. It had the contract of sale with its specific grant of the entire use, and that such was a deed of bargain and sale (see Point I from Par. 3 on p. 15 to including Par. 3, p. 18 and repeated here for this point as though actually reprinted).

It had the fact that the deed (Case, p. 15, fol.) was made executed, and duly acknowledged and was in the hands of Franklin Society. They claim not intended to deliver, but an escrow (Case, p. 168). An examination of the law following and this alleged escrow agreement, will indicate that it was an absolute delivery to Amalia R. Gluck, named in the deed. Frank Hancock Hennessy was attorney for the bank, he had an adverse interest, and it would have been antagonistic to his client's interest to hold such deed, and act for subvendee (bank), and vendee (A. R. Gluck) for whom he was attorney for closing, as he could, in a dispute between bank and A. R. Gluck, do just what he is charged by defendant, Rynda, with doing, giving away the deed (*Kelly vs. Chinich*, 91

N. J. E. 97). The grantor must part with possession of the deed, and also any control as well as deprive himself of the right to recall it (*Commerical Bank vs. Reckless,* 5 N. J. Eq. 430). This he did not do as subsequent events prove. He went over and got the deed back. There was no agreement proved between A. R. Gluck and Rynda for such escrow (*Stanton vs. Miller,* 58 N. Y. 192; *Elsworth vs. Cent. R. R. Co.,* 5 Vroom 95, followed in *Atlantic City vs. New Auditorium,* 63 N. J. Eq. 644). In absence of such agreement for escrow the deed will be presumed to be delivered at time of its date and title of grantee will relate to that date (*Elsworth vs. Cent. R. R. Co.,* 5 Vroom 95, followed in *Atlantic City vs. New Auditorium,* 63 N. J. Eq. 644). But even if complainant were bound by the escrow agreement, and it were a good agreement in escrow, by its terms, she could not have been deprived of it by the agent of both, the depository, neither could rescind, and the other party could not act inconsistent with it as the rights of both parties are immediately vested thereunder (*Fred. vs. Fred.,* 50 Atl. 777). It was not an escrow, but an absolute delivery to grantee. The letter could only bind complainant if it were signed by Hennessy, as the agent of Amalia R. Gluck.

From these the Court should have concluded a delivery, and the refusal to so do, in refusing to strike out the answer involved these merits.

The Court should have also, from the facts, concluded in equity that the defendant, Franklin, was estopped to deny a delivery of the deed, as a part performance of the contract, on the ground that it would operate as a fraud upon her, and that defendant, Franklin, could not put her back

into her original position before such delivery (*Stevens vs. Dennett,* 51 N. H. 324). The principle behind all cases where an estoppel is concluded by the Court is that a part performance, under such circumstances, that the party cannot be put back into the original position would result in harm and be a fraud upon the party. Here the Franklin had a deed, gave it away without right and without the consent of the complainant, and by thus doing it, claimed now that the complainant never performed.

> "The depository cannot return the instrument to the grantor until he allows the grantee a reasonable time in which to perform the conditions, and if he does so, the grantee may perform the conditions and recover the instrument from the grantor or from any person to whom he may have transferred it (*Hooper vs. Ramsbottom,* 6 Taunt 12; 1 E. C. L. 485; 128 reprint 936) (Corpus Juris 884). A bill in equity will lie to compel the delivery of a deed held as an escrow where the grantee has done all in his power to fulfill the condition and has been prevented from so doing by the sole act of the grantor (*Scott vs. Stone,* 72 Kan. 545; 84 Pac. Rep. 117; *Fred. vs. Fred.,* 50 Atl. Rep. 776). If the depository refuses to deliver, the remedy is against depository to obtain possession of the instrument" (Cor. Juris, p. 893).

They admit that they could not put her back to her position before giving the deed away, and the fact before the Court was too, that Rynda had no interest in such deed, and that Mr. Hennessy promised to bring back the deed, and actually tried to get it back (for confirmation of this, see testimony, Case, p. 327-328).

Testimony of Frank Hancock Hennessy, in *Rynda vs. Gluck,* March 26, 1924, official stenographer's minutes, page 52:

> "Q. Has your recollection been refreshed, Mr. Hennessy, after hearing some of this testimony? A. Yes, sir; to some extent.
>
> "Q. Did anything happen on December 26th? A. I can recall now that prior to the 21st, that is the date on which Mr. Hauptman came in to get the deed, another appointment had been made for the closing date of the loan; that is Mr. Gluck had represented that he would be able to clear up all his difficulties, and I think we did designate the 26th to give him another chance to get the title straightened out. Then Mr. Hauptman came in on the 21st and I surrendered the deed to him, as I have already testified. I had assumed that Mr. Hauptman had communicated to Mr. Gluck the fact that he had recovered the deed and that it was all off. Mr. Hauptman had given me the impression that he was not going through with Gluck, as I say, or that I had assumed that he had notified Mr. Gluck that it was all off and that Mr. Gluck would not come in on the 26th, according to the appointment, so it is true I was surprised when early in the morning Mr. Gluck and Mrs. Gluck appeared at the office.
>
> "Q. You say the time was fixed? A. Yes, sir; as I recall it now.
>
> "Q. December 26th was fixed? A. Yes, sir; just when and how we came to fix on that date I do not recall now.
>
> "Q. And were you then still open to make this loan. A. My recollection is that I said to Mr. Gluck, 'Now, see here, there are too many complications about this whole title.'

"Q. You said that on the 26th? A. On the 26th. 'You got to get rid of all these liens. There are more coming up the street besides this one that is already on record.' Somebody or other in the title had told me there were three or four other liens going to be filed. I said, 'You have got to get rid of those liens. Do that and get Mr. Hauptman *to give you back your deed* and we will consider closing the loan, but you got to get this title in proper shape before I will put it down for another closing.'

"Q. Who fixed the 26th? A. I think I did, with Mr. Gluck after the failure of the title to close on the 4th.

"Q. Who fixed the 26th, you did? A. I think I did, with Mr. Gluck.

"Q. Mr. Hauptman? A. No.

"Q. Concerned in any way? A. *No, Mr. Hauptman had just left the deed with me.*

"Q. I say did Mr. Hauptman, or the Rynda Development Company or anybody representing the Rynda Development Company concur in that? A. No, sir.

"Q. It was simply a matter of your own? A. *Just a matter between Gluck and me because the Rynda Development Company left the papers with me and they did not need to know of the closing date.*

"Q. How was it, Mr. Hennessy, that the letter from Mr. Hauptman returning you or sending the release of the mortgage is dated December 6th, if you were ready to close on the 4th. A. Is it dated the 6th.

"The Court: Yes, he sent you the releases—apparently he sent you the releases under date of December 6th. Now, was there an appointment between that and 4th was the first date set for closing and the 26th?

"The Witness: I do not recall that. The

then there was an indefinite—it was postponed indefinitely to afford Mr. Gluck an opportunity to clear up this lien situation. Meanwhile Mr. Hauptman sent me in this release.

"Q. After that is when he came to you and said the deal was off and you turned back his deed? A. Yes, sir.

"Q. That was before the 26th of December, which had been arranged for Mr. Gluck to come to your office? A. Yes, sir."

Neither the Franklin nor Rynda can be harmed, if it is declared delivered, while complainant will suffer by a nondelivery. She paid a consideration to Franklin for the loan, and she is estopped to deny the delivery of the deed from the Rynda. Further to obtain the releases (see Case, Exhibits p. 413) complainant had to spend a fair sum in part payment, and this was a part performance under the contract. She was not obliged to do this to these releasors, as they were not her contractual debts, and they (Franklin) could not place her back in her original position with regard to such.

The allegation that the Franklin failed to obtain a mortgage prior to mechanic's liens, pleads only a legal issue, which is not found if it be shown that there could, under the circumstances, be no effective mechanic's lien under the act, against the premises. The Court had before it this situation. A contract, with no such provision in it that would bind the owner, Rynda, under the act (*Associates vs. Davidson,* 29 N. J. L. 415; *Natl. Bank vs. Sprague,* 20 N. J. Eq. 25, 21 N. J. Eq. 530; *McIntosh vs. Thurston,* 25 N. J. Eq. 238; *Currier vs. Cummings, et als,* 40 N. J. Eq.

145; *Clark vs. Butler,* 5 Stew. 664). No service upon Amalia R. Gluck or Chemtec Co., Inc., was made and only judgment was had against the Rynda (by Rynda's consent) which was not effective against complainant. The liens were, therefore, no liens at all so far as the Act, and were *coram non judice.* Here the facts as claimed in all these alleged liens were that Rynda was the owner of the land, and Amalia R. Gluck, the owner of the bnilding—there can be no doubt about that, that the buildings belong to her, and Rynda has no interest in them—there cannot be an effective lien under such circumstances, the lien must attach to the land and building, and where the building belongs to one, and the land another, there is no lien against the land. It is no lien at all. It is a mere filed attempt to lien—a mere legal gesture (*Babbit vs. Condon,* 27 N. J. L. 154; *Coddington vs. Bebee,* 31 N. J. L. 477; *Leaver vs. Kraemer,* 59 Atl. Rep. [E. & A.] 71; 71 N. J. L. 568).

The defendant sets up laches. The defendant admitted in prior trials that it had caused the return of the deed. It was before the Court that it promised to obtain a return of the deed and that the loan would then go through. The complainants had a right to rely upon their promise and that she expected them to carry it out. They will not suffer any hardship (*Tyrnan vs. Warren,* 53 N. J. Eq. 313; *Day vs. Deavitt,* 79 N. J. Eq. 342). There was no abandonment (*New Barbadoes Toll Bridge Co. vs. Edward Vreeland,* 4 N. J. Eq. 157). The Court will not become an instrument of injustice (*Stoutenberg vs. Tompkins,* 9 N. J. Eq. 332). There has been no intentional default, and because of the fraud that partial performance will

work on complainant, it would be unconscionable to allow a defense of default (*Baldwin vs. Van Vorst* [E. & A.], 10 N. J. Eq. 577; *Nibert vs. Baghurst,* 47 N. J. Eq. 201). If any delay, it was explained, and then it took place under such circumstances as would render it unjust and inequitable to deny to complainants a specific performance of it on this account (*Ashmore vs. Evans,* 11 N. J. Eq. 151).

There may be some contention that there can be no equitable relief, either for specific performance or declaratory rights for a contract to loan upon a mortgage, and that the only remedy is for an action at law. There has been much written upon the subject. It is clear that it is a legal and binding contract as a contract in respect to any other subject (*Corle vs. Monkhouse,* 50 N. J. E. 537). The Court will decree specific performance of a contract to give a mortgage on lands, where the contract, although by parol, has been executed on claimant's part (*Dean vs. Anderson,* 34 N. J. Eq. 496). Also allowed because defendant has parted with her money (*Clark vs. Van Cleefe,* 75 N. J. Eq. 152; 71 Atl. Rep. 260). The case of *Conklin vs. Peoples Bldg. Association,* 41 N. J. Eq. 20 was decided not to allow specific performance principally upon the ground that mortgagor had not a good title, and equity would not compel the mortgagee to accept as security the defective title. When there is a question not merely of loaning money, but the security is the giving of a mortgage on land, there the general rule that equity will not specifically perform does not apply. The general rule is also brushed aside and the exception has been universally held in that circumstances and conditions may bring the case

within the exception, and it is a ground of jurisdiction to decree specific performance "that there is no basis on which a jury can estimate the damages" (36 *Cyc.*, 563; *St. Regis Paper Co. vs. Santa Clara Lumber Co.*, 173 N. Y. 149; 65 N. E. Rep. 967; *Palmer vs. Graham*, 1 Pars. Eq. Cases, Pa. 476; *Oakland vs. Heckley, C. C.* 92 Federal 38; *Stuart vs. Pennis*, 91 Va. 688; 22 S. E. Rep. 509). The reporter's notes to *Dean vs. Anderson*, 34 N. J. Eq. 496, and also *Law vs. Smith*, 68 N. J. Eq. 81, would indicate that the peculiar circumstances here, must take this case within the exception to the general rule. The contract is for a construction mortgage, and to be paid back in installments. The complainant partially performed. It will prevent a multiplicity of suits to compel performance. The damages cannot be estimated by a jury. There are equitable rights and defenses that only a Court of equity would have jurisdiction to determine, and a trial at law would not be a complete determination between the parties.

The order should be reversed.

POINT V.

The interrogatories addressed to defndants, Dime Savings Institution, Arlington Realty Co., Rynda Development Co., Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre, were properly addressed to defendants; the interrogatories involved the merits; the order striking out such interrogatories should be reversed.

There was one order entered upon the three motions to strike out (Case, p. 150). It was founded

upon the conclusions of a special master (Case, p. 134 to p. 146, incl.). The Court was without jurisdiction to send the interrogatories to a special master, as a Vice Chancellor has no authority to delegate a matter that is referred to him as such, any more than the special master could further delegate the matter to another appointee. There being a lack of jurisdiction, it is *coram non judice,* need not be raised in the petition on appeal, and the Court of Errors and Appeals should correct the same of its own motion (*Penrose vs. Absecon Land Co.* [E. & A.], 94 N. J. Eq. 436).

The striking out of the interrogatories involves merits in that it is a decision or ruling that the facts, to which the interrogatories relate, are not upon "any matter material to the issue." Such a ruling makes it conclusive and estoppes the party serving the interrogatories from raising them again, even in trial (for fear of threatened contempt [conclusion, Case, p. 366], these questions could not be asked at trial. The Court will note the stenographer's minutes are barren on this subject, but will also note that there is nothing in the stenographer's minutes that would be contumacious. They relate to each other. It is believed the conclusion [Case, p. 346] was revised but the reference to interrogatories [Case, p. 354] and contempt [Case, p. 366] were left unconnected).

Here, again, it is asserted that the rules and statutes respecting interrogatories are to be "assimilated to common law practice (*Penrose vs. Absecon Land Co.* [E. & A.], 94 N. J. Eq. 436). The new Practice Act and the Act of Chancery were to provide an easy and immediate means of getting at all facts material to an issue to save the

time of the Courts and litigants. The modern tendency is to give almost without limit the right to interrogate the parties and their necessary agents and employees, and do away with the mass of technicalities raised in these subjects prior. That they must be material to proponent's case, is fair enough, but may, of course obviously, relate to that which proponent has the onus even though that onus he created by a defendant's answer or separate defense, or it may be part of proponent's case when it can reasonably be anticipated that defendant will raise issues that must be rebutted by proponent (*Watkins vs. Cope,* 86 Atl. 545; *Wolters vs. Fidelity Trust Co.,* 46 Atl. 627, 65 N. J. L. 130; *Dodd vs. Public Serv. Corp.,* 29 N. J. L. J. 22). Thus, it is said, the burden is on complainant to prove his case where defendant sets up he is a bona fides purchaser for value and without notice (*Hodge, etc., vs. Amerman,* 40 N. J. E. 99) and where the answer (answer of Dime Savings Bank herein) sets up that a mortgage was taken "in the regular course of business" that may be an allegation of bona fides, without notice and for value, or it may not, and what is material there would be anything of notice. So unless it is so clear that the interrogatories proposed have no materiality to proponent's case, and what he may have to meet, they should never be stricken out (*Dodd vs. Pub. Serv. Corp.,* 29 N. J. L. J. 22) a corporation must answer by its officers, agents and employees, who have such knowledge (*Dodd vs. Pub. Serv. Corp.,* 29 N. J. L. J. 22). The declarations and admissions of a former owner are competent evidence against a party who has derived such title through such former owner (*Veghte vs. Raritan Power Co.,* 19 N.

J. Eq. 142). Anything that will put a purchaser on notice, or to make inquiry is notice (*Veghte vs. Raritan Power Co.,* 19 N. J. E. 142) a grantee is chargeable with knowledge of the title of his grantor as it exists in Register's office (*Wallace vs. Silsby,* 42 N. J. L. 1; see also 85 N. J. E. 527; 90 N. J. Eq. 376; 96 Atl. 922 and 106 Atl. 553). Possession of any kind, but need not occupy land, is notice (*Hodge vs. Amerman,* 40 N. J. Eq. 99; *Haven vs. Bliss,* 26 N. J. Eq. 362; *Atl. City vs New Auditorium,* 63 N. J. Eq. 644; *La Combe vs. Headly,* 91 N. J. Eq. 63). The record of a mortgage is notice (*Lassillio vs. Ackerman,* 38 N. J. L. J. 274; *Plum vs. Boon,* 13 N. J. L. 63; *Miller vs. Wack,* 1 N. J. Eq. 204; *Howell vs. Scheneck,* 24 N. J. L. 89). If a person have knowledge, it is notice, in whatever way it was acquired (*Plum vs. Boon,* 13 N. J. L. 63). So a searcher, even though he be an attorney (*Dickerson vs. Bowers,* 42 N. J. Eq. 295; *Losey vs. Simpson,* 11 N. J. Eq. 246) where he is an employee of a corporation may be the means through which defendant obtained knowledge. Testimony may be obtained as to contents of deeds, papers, etc., but not their production (*Watkins vs. Cope,* 86 Atl. 545; *Wolters vs. Fidelity,* 65 N. J. L. 130).

A defendant is always compelled to disclose his frauds and fraudulent practices, when such evidence is material to the plaintiff's case, even though the fraud is so great as to expose the defendant to a prosecution for conspiracy, unless perhaps the indictment is actually pending (*Leitch vs. Abbott,* L. R., 31 Ch. Div. 274; *Postelwaite vs. Rickman,* L. R. 35 Ch. Div. 717; *Williams vs. Imbrada Land & Copper Co.* [1895], 2 Ch. 751).

From paragraph 3 on page 15 to and including paragraph 2 on page 38 of Point I above, from paragraph 2 on page 40 to and including paragraph 3 on page 47 of Point II above, and from paragraph 1 on page 48 to and including paragraph 3 on page 51 of Point III above, are made a part of this point, as though actually reprinted here.

Rule 84 of the standing rules of the Court of Chancery provide:

> "84. When a cause is at issue between two or more parties, either of them MAY SERVE ON THE ADVERSE PARTIES, OR ANY OF THEM, WRITTEN INTERROGATORIES UPON ANY MATTER MATERIAL TO THE ISSUE, with a note at the foot thereof stating which of the interrogatories each of the parties is required to answer.
>
> "Written answer under oath to each interrogatory shall be served within ten days after service of the interrogatories. The answers shall be strictly responsive.
>
> "If the INTERROGATORIES ARE ADDRESSED TO A CORPORATION, THE ANSWERS shall be made under the oath of such of the OFFICERS, AGENTS OR EMPLOYEES OF THE CORPORATION AS HAVE PERSONAL KNOWLEDGE OF THE FACTS, or custody of the books, records or papers, a discovery of which is sought.
>
> "The answers shall be evidence in the cause if offered by the party proposing the interrogatories, but not otherwise.
>
> "The Court may amend, add to or strike out interrogatories; or permit the answers to be corrected."

The interrogatories and notice were addressed to defendant, Dime Savings Institution (see Case,

p. 122). They were addressed to a corporation. The corporation was specifically required to answer such, "and/or" if the corporation desired, the persons who were employees of such corporation and who were known to be in possession of the facts, might answer them and would be acceptable to complainants. *It is but a refinement of technicality to assert that because such employees were named in such interrogatories the complainant was not entitled to the answers and to strike out such interrogatories, and to pay defendants and Master nearly Five Hundred Dollars in costs.*

The rules distinctly provide that such interrogatories may be "material to the issue." There is nothing in the rules that limit such interrogatories. The present practice is to allow the widest latitude with interrogatories, so that the hearing and trial may be shortened. *The purpose of serving such was to save the time of the Court, and to penalize complainant for attempting to save the time of the Court is but to inflict a punishment upon the party, and place a premium* (in allowance of costs and counsel fees) *upon his evading adversary.* To strike out such on June 14, 1926, allowing leave to reframe such within three days (which is an admission that they were material) from service of such order (Case, p. 151), when the hearing was to be held on June 23, 1926, preemptorily so ordered by the Court, and the defendant would under the rules have until ten days after service of such interrogatories (June 27, 1926), when they would have been useless and after hearing, is an absolute denial of the right under the rules.

A motion had been made to strike out the answers of these defendants and it had been denied. The dilemma the complainant was in, was, what was at issue under such a pleading. The answer pleaded a denial of knowledge, when under the settled law whatever previous notice the defendant's prior grantors had was notice fully to the defendant (decisions above). They pleaded laches, and pleaded that they had taken such grant and estate in the regular course of their business (whatever that means). They did not claim to be bona fide purchasers without notice for value. After these interrogatories one alleged no notice of a contract of purchase and laches because complainant had not recorded the contract of sale for the property. That did not require recording (*Storch vs. Tepperman,* Vol. IV, advance sheets, p. 147). They had notice of it because of their grantors' notice. The burden was on complainant to show notice while the burden was on defendant to show bona fide purchaser for value without notice Being by law chargeable with full notice of the prior grantors as a presumption, actual notice was at issue if the answer was good (and it had been held good by a denial to strike out, see points above), at least the complainant would have a right to establish actual notice as part of her case. Actual notice is a mental process, it can only be determined from an examination of a party. It is different from constructive or presumed notice. The interrogatories were material to prove actual notice. The denial of the interrogatories involved the merits in that material issue, and by them the complainant could have proved an actual no-

tice involving the merits of that possession and other facts that had been made *res adjudicata* between the complainants and defendants' prior grantors.

An attorney at law is chargeable with greater notice than a layman. When he acts for another, that person whom he acts for is chargeable with the same notice (*Dickerson vs. Bowers,* 42 N. J. Eq. 295; *Losey vs. Simpson,* 11 N. J. E. 246). An examination or search made by an attorney of records, deeds, mechanic's lien claims and papers in actions, are a matter of technical knowledge to understand what the papers mean. It involves a mental process. Had the defendants been allowed to answer they would have established that the defendant by its attorney, a man learned in law, had made a learned and scientific search by a man experienced in such work, against the property, had found records, had found that the complainant by a mortgage to Frieda Horn had claimed a delivery of a deed which was lost, had found that complainant under the deed from Sheriff of their grantor and in the lien claim and complainant upon which the deed was founded was alleged to be the assignor of a contract of sale, and the owner and in possession of such buildings and premises, had found in other liens facts to show the complainant was owner, builder and possessor of the premises, had found that complainant made a contract to finish said building, had found that their prior grantors knew fully and actually the rights, title and interest of complainant in the premises, had found that he had examined the opinion in the, and the facts made *res*

adjudicata as against such prior grantors, had found that inquiries in building department and around the premises established that complainant owned and built the buildings upon such premises and was in open and notorious possession, had found that he it was, who advised getting a deed from Rynda Development Company to Arlington Realty Company in or about October 29, 1925, after the opinion rendered by the Court and the facts made *res adjudicata* therein a few days prior so that a claim to title could be made by them, had found that on October 29, 1926, and before such deed from Rynda Development Co. to Arlington had been acknowledged (Dec. 2, 1925) and recorded (Dec. 7, 1925), notice to cancel and remove such grant was made by complainant on defendant, and that other grants from Arlington Realty Co. to defendant were made to substitute this grant as security, and had found that their answer was evasive, frivolous and sham as made by their attorney, when he had full and actual knowledge of the facts, and had so worded his answer as to allege "in the regular course of its business."

The defendant could then by its officer (anyone having knowledge) fully answer showing a completed actual notice.

Because the complainant attempted to establish this beyond any doubt (which was her right) *and to avoid taking the Court's time, she is punished by a denial of her right and made to pay nearly five hundred ($500.00) dollars in costs.*

The interrogatories were material to points at issue. The answer of defendant puts in

issue against complainant that they had no notice, etc. Questions 44 to 50 relate to this question.

It is certain that Samuel D. Williams, as the attorney, a quasi-officer of the bank, searcher and employee, under the Banking Law of the State of New Jersey, will know all about it, and he is such employee or agent who made the search, and upon the burden of notice the questions, Nos. 1 to 43 inclusive, are material. Nos. 44, 47 relate to damages for continuing such mortgage on premises and alienating complainants' title. Nos. 45, 46 relate to the subject of compensation if they are bona fide purchasers who are entitled to be reimbursed for moneys actually paid out before notice (*Schwartz vs. Munson,* 94 N. J. Eq. 754). Nos. 48, 49 and 50 relate to the subject of whether they are bona fide purchasers for value.

The defendant Arlington Realty Co. is a corporation. The notice and interrogatories will be found in Case, page 108.

Besides the matter of actual notice (actual notice of the facts made *res adjudicata*), the complainant was charging this defendant in a general conspiracy to deprive complainant of her deed, and to multiply actions against her and cause her the loss of her property and rights therein. The bill of complaint alleges for damages as an extraordinary relief (*Pomeroy Special Performance,* Sec. 436 [3rd ed.]; *King vs. Ruckman,* 4 N. J. Eq. 298-556; *Page vs. Martin,* 46 N. J. E. 585; *Kuntze vs. Tonnele,* 80 N. J. Eq. 373), exemplary damages for wanton and reckless disregard of rights (*Hames vs. Schulz,* 50 N. J. L. 481; *Dreimuller*

vs. Rogon, 93 N. J. L. 1; *Ackerman vs. Halsey,* 37 N. J. Eq. 356; *Hoover Steel Ball Co. vs. Shaefer B. B. C.,* 90 N. J. Eq. 515), and for declaratory rights and injunctive relief.

The interrogatories are material to these issues. If answered they would show that the Arlington Realty Company was but a means of the Rynda Development Company to buy (*sic*) in the house or claims against the premises to multiply actions against complainant. They involve the merits in that, particularly, where the facts were made *res adjudicata* between the parties, they are ignored here.

Again it should be repeated that these matters if answered would have saved the Court's time. The complainants' desire to do this and bring the actual facts of notice and *res adjudicata,* was made the basis to deny her this right and to punish her by imposing on her nearly five hundred ($500.00) dollars as costs and counsel fee.

The interrogatories were material to the points at issue:

To prove fraud on conspiracy to delay, defraud and keep deed, keep complainant out of possession, connections, etc., Questions Nos. 1 to 6, inclusive, 25 to 32, inclusive. As to notice, 7 to 37, inclusive, 63 to 65, inclusive, and 68 to 74, inclusive. As to fraud, 38 to 43, inclusive, and 59 to 61, inclusive. Defendant, Arlington Realty Co., claims purchase by two deeds, one Jan. 15, 1924, on lien claim of Lally & Trehmor, and second, deed from Rynda Development Co., October 29, 1925; and to meet the question of notice, Questions 7-37, inclusive, Nos. 42-45, inclusive, 62 to 65, inclusive, and 68 to 74, inclusive; and notice to Dime

Savings Institution, Nos. 53 to 61, inclusive, and Nos. 66-69, inclusive. As to damages to be proved by complainant, Nos. 43 to 52, inclusive, and 74.

The notice to Rynda Development Company, Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre for such interrogatories may be found in Case, page 68.

The interrogatories were material to the points at issue. A resume of them are:

The complaint and answer raise the issue that a conspiracy to defraud the complainant by, and to use Rynda Development Co. as a "dummy" or shield to commit the fraud, of Abraham Hauptman, Jacob Hauptman and J. Lewis Fiacre.

The first fourteen questions proposed to Jacob Hauptman relate to this issue, to show Jacob Hauptman was a "dummy" director, etc. (*Quaide vs. Ratkowsky,* 183 App. Div. [N. Y.] 428; *Stockton vs. Central R. R. Co.*, 50 N. J. Eq. 52). Same with regard to Abraham Hauptman, Nos. 58 to 69 inclusive, and same with regard to J. Lewis Fiacre, Nos. 102 to 113 inclusive, and No. 163.

The next questions relate to proving the possession of complainants and delivery of deed and subsequent proceedings, Nos. 15 to 29 inclusive, 32 to 45 inclusive, and No. 47 of Jacob Hauptman, and to same effect of Abraham Hauptman, questions from Nos. 70 to 88 inclusive, No. 91 and Nos. 96 to 97 inclusive, and as to J. Lewis Fiacre, Nos. 114 to 148, Nos. 152 to 156 inclusive, and No. 161.

The defendants raise the issue that complain-

ants abandoned the construction of building, Questions 30 and 31 of Jacob Hauptman and of Abraham Hauptman, Nos. 89 and 90.

The defendants raise the issue that in pursuance to abandonment of construction they gave permission to Arlington Realty Co. to take possession, Question 46 to Jacob Hauptman.

As to notice and that defendants Arlington Realty Co. and Dime Savings Institution are not bona fide purchasers without notice, Questions Nos. 52 to 57 inclusive of Jacob Hauptman, Nos. 98 to 101 inclusive of Abraham Hauptman, and Nos. 157 to 160 inclusive of J. Lewis Fiacre.

The defendants also deny that complainants paid $400 on contract for land on December 18, 1922, and raise the issue that it was before November 25, 1922, Questions Nos. 92 to 95 inclusive of Abraham Hauptman, and Nos. 148 to 151 inclusive of J. Lewis Fiacre. (After the interrogatories were stricken out these defendants attempted to amend the answer and admitted this fact, Case, page 48.)

To prove fraud in obtaining consent judgments against the alleged interest of Rynda Development Co. in such lands, Question 163 of J. Lewis Fiacre.

The Special Master found many were to be answered (see Case, p. 147). The order should be reversed.

POINT VI.

Besides involving merits, the decree striking out the interrogatories was within forty days of the appeal; the decree striking out the interrogatories with all its provisions should be reversed as having been unnecessary had the answers been stricken out, as they should have been.

The decree was filed June 14, 1926 (Case, p. 150). The notice of appeal (Case, p. 243) was filed July 1, 1926. If the answers had been stricken out, as they should have been, it would have made unnecessary the serving of such interrogatories and the subsequent proceedings. This should, therefore, be held a mere legal gesture, an unnecessary one, made necessary by the Court, without jurisdiction. This lack of jurisdiction should be taken notice of by this Court upon its own motion and decree reversed therefor, even if the petition fails to allege this ground (*Penrose vs. Absecon Land Co.*, 94 N. J. Eq. 436 [E. & A.]).

POINT VII.

The intervening bill of complaint for mandatory injunction by the Arlington Realty Company should have been striken out because the Court lacked jurisdiction to try title. The Court admitted it lacked jurisdiction to try title on a bill for mandatory injunction, but claimed it had such jurisdiction to put the parties *in statu quo*. "*Status quo*" is but another name for an injunction. The *status quo* maintained by the Court ignored the facts made *res adjudicata* between the parties. The part of the final decree relating to this issue should be reversed.

The motion was made to strike out this intervening bill for mandatory injunction (Case, p. 159). While it was an intervening bill as claimed, it really was a new and separate bill for mandatory injunction (Case, pp. 152 to 219 inclusive). It was not a part of the proper practice of the Court. The Vice Chancellor indicated verbally that it would be denied with leave to amend. When the amended bill (Case, pp. 198-199) was filed there were no affidavits attached and bill was not under oath. The Court again ruled (June 1, 1926) verbally that this was a new bill for injunction and that there would have to be affidavits, which were served and filed June 1, 1926, although the petition was served May 25, 1926, and at a hearing on June 1, 1926, the matter was adjourned to June 8, 1926, so that the petition and affidavits bear the filing date of June 8, 1926. This decision and acceptance of the new bill for injunction was in effect the dismissal of the first bill.

The Court held the matter in abeyance until the final hearing (Conclusions, Case, p. 367). It held (Case, fol. 367) that it had jurisdiction to place the parties back *in statu quo,* which ignored the rights of complainants' possession, the grant, and other matters made *res adjudicata* (above, Point I). *It also held it was unconscionable for complainants to assert lack of jurisdiction* (see *West Long Branch vs. Hoch* [E. & A.], 122 Atl. Rep. 886).

We repeat here from Paragraph 2 on page 77 of the following Point VIII as though fully reprinted here, as a part of this point. There it had the same points and cases as would be had here, and it is done thus to save the time of the Court.

POINT VIII.

The mandatory injunction or application to put *in statu quo,* should have been denied upon the bill and amended bill of complaint therefore, the answers, and affidavits therein, as the issues therein as to possession and other facts were *res adjudicata* between the parties. The Court had no power to take away the possession, rights, property and interests of the complainant in the buildings and premises, and to turn them over to a trespasser. These issues involved the merits. The final decree should be reversed.

We have here two bills for injunction, the affidavits, answers, answering affidavits and exhibits. As it may become necessary for this

Court to read through the state of the case from page 152 to page 219 inclusive, it is deemed advisable not to present any argument that these papers show.

What the Court did by the final decree was not only to take away from the complainant her adjudicated rights and possession but to actually make her move out of the premises in fear of contempt, but to turn over the house and land to the trespasser, the Arlington Realty Co., and enter a decree that complainant "had no right, title or interest in the premises."

We repeat here as though actually reprinted here for this point, from Paragraph 3, on page 15 of Point I, to Paragraph 4, inclusive, on page 32, from Paragraph 3, on page 34 of Point I, to Paragraph 1, inclusive, on page 37; from Paragraph 2, on page 40 of Point II, to Paragraph 1, inclusive, on page 42; from Paragraph 3, on page 44 of Point II, to Paragraph 1, inclusive, on page 47.

THE DEFENDANT ARLINGTON REALTY CO. SETS UP ITS TITLE TO OWNERSHIP IN FEE SIMPLE IN THIS APPLICATION AND BILL FOR MANDATORY INJUNCTION AGAINST COMPLAINANTS, WHO DISPUTE SUCH CLAIMED TITLE, SAY THAT ARLINGTON REALTY CO. HAS NO TITLE WHATSOEVER AND ALLEGE TITLE IN ONE OF THE COMPLAINANTS. FOR THE PURPOSES OF SUCH APPLICATION AND BILL FOR MANDATORY INJUNCTION THE COURT WILL EXAMINE INTO THE TITLE OF DEFENDANT ARLINGTON REALTY CO. TO DETERMINE WHETHER IT IS FOUNDED ON

CLEAR AND EXPLICIT RIGHTS ACCORDING TO LAW. IF THE DEFENDANT ARLINGTON REALTY CO. HAS NOT SUCH CLEAR AND EXPLICIT RIGHTS ACCORDING TO LAW AS SETTLED IN THE STATE, THE DEFENDANT ARLINGTON REALTY CO. CANNOT SUCCEED AND COMPLAINANTS ARE ENTITLED TO DECREE DENYING SUCH RIGHTS AND RELIEF AND DISMISSING APPLICATION AND BILL FOR MANDATORY INJUNCTION AGAINST COMPLAINANTS.

It has been clearly settled that for the Court to grant relief, and also in fact necessary to determine whether defendant ARLINGTON REALTY CO. has an adequate remedy at law, that the Court must first determine the exact nature and extent of the title claimed by Arlington Realty Co. (*Mayor vs. Gardiner,* 33 N. J. E. 622 [E. & A.]; *De Lux vs. Bradbury,* 25 N. J. E. 70; *White vs. Tide Water Oil Co.,* 50 N. J. E. 1; *Lamphear vs. Subers,* 84 N. J. E. 391; *McCall vs. Yard,* 11 N. J. E. 58; *Black vs. Del. Can Co.,* 22 N. J. E. 130; *Morris C. & B. Co. vs. Central R. Co.,* 16 N. J. E. 419; *Outcalt vs. Disborough,* 3 N. J. E. 214; *Dodge vs. Penna.,* 43 N. J. E. 351). It has been variously stated. It must be the rights of the party seeking the aid and not those of defendant (*Mayor vs. Gardiner,* 33 N. J. E. 622 [E. & A.]). Incidental to the award for relief the complainants' legal rights must and will be determined and declared by the Court (*White vs. Tide Water Oil Co.,* 50 N. J. E. 1 and cases cited; *Lamphear vs. Subers,* 84 N. J. E. 391) at least as is said in *Cornelius vs. Post,* 9 N. J. E. 196, at page 201:

> "will consider the title of complainant (for injunction) to declaring one of them of such a character as to render it unwise for this Court to exert its extraordinary powers in prohibiting the exercise of acts of ownership in it."

The defendant Arlington Realty Co. must show that "on the undisputed facts of his case, and according to the established law of the state, he possesses the rights he claims" (*Dodge vs. Penna.,* 43 N. J. E. 351; *Outcalt vs. Disborough,* 3 N. J. E. 214; *Thompson vs. Engle,* 4 N. J. E. 271) and his rights at law will be determined mainly on equitable grounds. "It is proper, therefore, to consider the real character of the rights of the parties, aside from this legal difficulty and this course is the more appropriate, as it may fully dispose of the questions in controversy and prevent further litigation" (*Hilles vs. Parrish,* 14 N. J. E. 380). If the defendant Arlington Realty Company's title was taken with notice of another person's rights, or he could have had notice or should have taken notice like a reasonable and prudent person when put on notice, or an easement or tenant, it is subject to such and will be so declared (*De Lux vs. Bradbury,* 25 N. J. E. 70; *McCall vs. Yard,* 11 N. J. E. 58) and defendant Arlington Realty Co. must have a clear title to found relief (*Morris C. & B. Co. vs. Central R. Co.,* 16 N. J. E. 419; *Black vs. Del. C. Co.,* 22 N. J. E. 130) and must have been settled (*Black vs. Del. Can. Co.,* 22 N. J. E. 130; *Thompson vs. Engle,* 4 N. J. E. 271; *McCall vs. Yard,* 11 N. J. E. 58; *Morris & E. R. Co. vs. Prudden,* 20 N. J. E. 532; *Hack. Imp. Co. vs. N. J.*

Mid. Comm., 22 N. J. Eq. 95; *Higbee vs. Camden R. Co.*, 20 N. J. E. 435). Some of these cases hold that it must be settled in a court of law (*Morris & E. R. Co. vs. Prudden*, 20 N. J. E. 532; affd. by Court of Errors and Appeals), and where it is declared to be a doubtful title the Courts have insisted upon settlement in a court of law (*Higbee vs. Camden R. Co.*, 20 N. J. Eq. 435, citing *Morris & E. vs. Prudden, supra; Thompson vs. Engle*, 4 N. J. E. 271; *Outcalt vs. Disborough*, 3 N. J. E. 214). With this clear and settled title the defendant Arlington Realty Co. must show extreme necessity, serious, immediate and irreparable injury (*Morris & E. vs. Prudden*, 20 N. J. E. 532; *Hack Imp. Co. vs. N. J. Mid. Comm.*, 22 N. J. E. 95; *Higbee vs. Camden R. Co.*, 20 N. J. E. 435; *Morris C. & B. Co. vs. Central R. Co.*, 16 N. J. Eq. 419). And defendant Arlington Realty Co. must not have an adequate remedy at law (*Morris & E. vs. Prudden*, 20 N. J. E. 532; *Hack. Imp. Co. vs. N. J. Mid. Comm.*, 22 N. J. E. 95; *Higbee vs. Camden R. Co.*, 20 N. J. E. 435; *Morris C. & B. Co. vs. Central R. Co.*, 16 N. J. E. 419). But to determine whether defendant Arlington Realty Co. has an adequate remedy at law it is necessary to determine the title of Arlington Realty Co., whether it will stand at law, and where decreed to be doubtful no relief in equity will be granted on preliminary injunction (*Outcalt vs. Disborough*, 3 N. J. E. 214; *Dodge vs. Penna.*, 43 N. J. E. 351; *Hegarty vs. Lee*, 45 N. J. E. 255 [E. & A.]). On final (*Morris & E. vs. Prudden*, 20 N. J. E. 532; *Shreve vs. Black*, 4 N. J. Eq. 177; *Morris C.*

& B. Co. vs. Central R. Co., 16 N. J. E. 419) and "where it does not appear that irreparable mischief is liable to ensue from leaving a party to go on exercising a right he claims the courts never stop him before it has an opportunity of examining the question of rights" (*Thompson vs. Patterson,* 9 N. J. E. 624), where vendee is in possession under contract of sale, the rights of vendee are absolute and another purchaser takes with full notice (*Nibert vs. Baghurst,* 47 N. J. E. 201). Latest case, *West Long Branch vs. Hoch,* 122 Atl. 886 [E. & A.], held Court of Chancery lack jurisdiction, and nothing, not even consent of counsel can give jurisdiction until settled at law.

The defendant Arlington Realty Co. sets up two deeds. The first one is a deed from Sheriff of Essex County on a sale upon a special execution founded upon a mechanic's lien and special judgment against Rynda Development Company's right, title and interest in and to the premises, which sale and deed was of January 15, 1924. The defendant Arlington Realty Co., to support such deed must show regularity and compliance with the Mechanic's Lien Act, that it was a good and valid lien, judgment and sale. That such lien was discharged, a nullity and void appears from the papers. (In Point II above are the incidents of such defect, Paragraph 3rd, on page 45, to 1st paragraph, inclusive, on page 47.

The lien is further defective in that it says: "SECOND: *The name of the owners of the land and the estate therein on which said lien is claimed are Rynda Development Co., a corporation, and Amalia R. Gluck,*" and it does not

give the nature and extent of the estate. The state of demand is at variance with the lien. The execution upon sale (such sale was made after the return day) was outlawed.

> "An execution cannot be levied after the return is out. The utmost length of time the law allows for executing a writ is the day whereon it is returnable (*Lidd's Pr.*, 385; 1 *Arch. Pr.*, 79; 1 *Salk*, 71, 322; *Matthews vs. Warne*, 11 N. J. L. 295 at 309).
>
> "It is a well settled rule that all writs must be executed on or before their return day. * * * The writ is in full force from its *teste* until the close of the day on which it is returnable; after that time * * * it loses its vitality and ceases to operate. * * * A writ not served is dead after the return day passes, and the cause is out of court (*Bunn vs. Thomas*, 2 Johns. 190; *Miller vs. Gregory*, 4 Cowp. 504; *State vs. Kennedy*, 3 Herr 22; *State, Van Cleve, Pros. vs. Commissioners of New Brunswick*, 37 N. J. L. 394 at 395)."

The entire record discloses that the action as against the *rem* in a mechanic's lien action was a NULLITY and of NO EFFECT and that Sheriff had nothing to sell in such property. The complainant therefore by such deed obtained nothing. Neither by such deed did it obtain ownership, title, possession, nor the right of possession.

Then there is no showing of permission in writing by Rynda Development Co. to bind them for the lien, if it had any interest in such land, and no judgment by consent, or default, etc., could give them the right to sell for a mechanic's lien (*Asst. vs. Davidson*, 22 N. J.

L. 154; *Natl. Bank vs. Sprague,* 20 N. J. Eq. 25; 21 N. J. E. 2530; *McIntosh vs. Thurston,* 25 N. J. E. 248; *Currier vs. Cummings, et al.,* 40 N. J. Eq. 145;*Clark vs. Butler,* 5 Stew. 664).

Not only should there be a reversal but defendant having come into the court, the complainant is entitled to have declared on this application her rights and title, whatever it be.

THE DEFENDANT ARLINGTON REALTY CO. DOES NOT ALLEGE OR CLAIM POSSESSION. OBVIOUSLY POSSESSION MAY NOT INHERE IN THE PAPER TITLE, AND WHERE IT APPEARS IN COMPLAINT AND IS *RES ADJUDICATA* THE BILL FOR MANDATORY INJUNCTION IS DEFECTIVE. SINCE DEFENDANT ARLINGTON REALTY CO. CANNOT SUCCEED COMPLAINANTS ARE ENTITLED TO DISMISSAL OF APPLICATION AND BILL FOR MANDATORY INJUNCTION.

It is not enough to allege ownership, it must allege and prove possession (*Cornelius vs. Post,* 9 N. J. E. 196; *Van Winkle vs. Curtis,* 3 N. J. E. 422; *Dodge vs. Penna,* 43 N. J. E. 351, affd. in 45 N. J. E. 366; *Thompson vs. Engle,* 4 N. J. E. 271). The mandatory injunction applied for is for trespass against possession; they must show the right of possession (*Outcalt vs. Disborough,* 3 N. J. Eq. 214). It must allege ownership and to be in possession (*Van Winkle vs. Curtis,* 3 N. J. Eq. 422). Even where a party has been erroneously given possession of land under a writ of restitution where his title has not been established at law, the Court will not enjoin

for his protection (*Thompson vs. Engle,* 4 N. J. E. 271). "My embarrassment is not so much about the title as the possession. When that is claimed by defendant, as well as the title, and that, too, in connection with title, what right has the Court to interfere" (*Shreve vs. Black,* 4 N. J. Eq. 177).

IN ONLY THE MOST EXTREME, URGENT AND SERIOUS INJURY OF IRREPARABLE DAMAGE, AND AFTER FINAL HEARING, WILL A MANDATORY INJUNCTION BE GRANTED (*Thompson vs. Patterson,* 9 N. J. E. 624).

A mandatory injunction is rarely granted before final hearing and will only be ordered to prevent extreme or serious damage (*Bailey vs. Schnitzius,* 45 N. J. E. 178). Rule emphasized in Court of Errors and Appeals, no preliminary injunction where injury not irreparable and complainants' rights in doubt (*Hagarty vs. Lee,* 45 N. J. E. 178). Even on final hearing mandatory injunction will not be granted where legal rights of complainant are disputed and unsettled and where the acts complained of are adequately remediable in courts of law (*Budd vs. Camden H. R. Co.,* 61 N. J. E. 543; affirmed 63 N. J. E. 804). A preliminary injunction is never granted unless the acts threatened to be done will inflict irreparable injury on complainant. The rights of complainant must be settled upon settled law. It is the general rule that where there is an answer disproving complainants a preliminary injunction is not proper (*Citizens Coach Co. vs. Camden H. R. Co.,* 29 N. J. E. 299, E. & A.; *Cole vs. City of Newark,* 95 N. J. E. 73; affd., 95 N. J. E. 775).

To call it a *"status quo"* is but another name for injunction. It is not a proper case for the application of *"status quo."* The decree should be reversed so as to deny the relief below by a dismissal with costs and counsel fee. There should also be a decree declaring the rights and equities of the complainant herein, Amalia R. Gluck, on this bill for mandatory injunction (see decisions above and *Cornelius vs. Post,* 9 N. J. Eq. 196 [at page 201]; *Mayor vs. Gardner,* 33 N. J. Eq. 622 [E. & A.]; *DeLux vs. Bradbury,* 25 N. J. Eq. 70; *White vs. Tide Water Oil Co.,* 50 N. J. Eq. 1; *Lamphear vs. Subers,* 84 N. J. Eq. 391; *McCall vs. Yard,* 11 N. J. Eq. 58; *Black vs. Del. Can. Co.,* 22 N. J. Eq. 130; *Morris C. & B. Co. vs. Central R. Co.,* 16 N. J. Eq. 419; *Outcalt vs. Disborough,* 3 N. J. Eq. 214; *Dodge vs. Penna. R.,* 43 N. J. Eq. 351).

POINT IX.

The Arlington Realty Company took nothing by the deed from Sheriff of January 15, 1924, upon the lien claim and action of Lally & Trehmor, as the lien was discharged and the judgment a nullity.

(See points and cases above.)

POINT X.

The Arlington Realty Company took nothing by deed from Rynda Development Company by deed of October 29, 1925.

(See cases and points above.)

POINT XI.

If there was anything remaining that could be alienated by the Rynda Development Company on October 29, 1925, then all that the Arlington Realty Company could obtain by such deed was a mere naked legal title to the land in trust for complainant.

(See cases and points above.)

POINT XII.

There never has been a case of specific performance of deed or land in a contract of sale in the State of New Jersey where performance was denied, where the complainant was let in possession under the contract and built a building. Our Courts have made in such a state of facts the rights of the complainant absolute, and neither unclean hands, laches, or dafault in the contract would bar remedy because of the fraud it would work upon the party.

(See cases and points above.)

An examination of all the reports of all the cases in the state fails to show a case where complainants in possession and making improvements will be denied relief, where the contract was a legal one, and for consideration. Even in parol contracts, if explicit, this has been the rule. The only cases are those where the contract was illegal, was not proven (*Nibert vs. Baghurst,* 47 N. J. Eq. 201) or where there was no consideration (*Wittington vs. Lighthipe,* 46 N. J. Eq. 429).

POINT XIII.

The question of delivery was not before the Court previously in any action and nondelivery was not made *res adjudicata.*

The Court specifically concluded that it had been made *res adjudicata* (Conclusions, Case, p. 354, and Testimony, Case, p. 260).

(See cases and points above.)

Point I, Paragraph 2 on page 20, to and inclusive of Paragraph 1 of page 33 are here repeated as though actually reprinted here.

POINT XIV.

The making, executing and delivering of the deed, in escrow or conditional was a delivery of the deed to complainant.

(See cases and points above.)

Repeated here as a part of this point as though fully reprinted is Paragraph 3 on page 35 of Point I to and inclusive of 1st paragraph of page 37.

POINT XV.

The complainant was not in default under the contract.

Time is not of the essence of this contract. There was nothing for which the Rynda could not have been compensated, with interest on

its money. The contract had been extended for closing a number of times, during which the building and improvements amounting to about $20,000 were being put on the property, the lot. the purchase price of which was but $2,340. There were delays caused by the Rynda, whose officers maneuvered to cause the complainant's successor so much trouble in the hope it would be put in bankruptcy, so that they might have a building and garage of great value upon their cheap land, and then by continuous litigation, maneuver to settle with some. The Rynda had, as its officers thought, got the complainant's successor into a position where it could play as it would with them. The truth in such a situation is very difficult of proof. We have the motive to covet the $20,000 improvements. The builders, Ruiz-Urrutia Co., was having trouble with some of its subcontractors; Abraham Hauptman, the president of the Rynda, was building a building next door. He managed to take the workmen of Ruiz-Urrutia Co. away to complete his building and delay the one here. The same man Abraham Hauptman had prevented two loans on the premises in some manner. He had also interested himself, by an agreement to see them paid, in a claim of Elizabeth Sash & Door Co., which had a contract to furnish frames and lumber. He, it was, who induced this Elizabeth Sash & Door Co. to make a claim against Ruiz-Urrutia Co. far in excess of their actual bill and before the same was due on an entire contract upon which but about one-quarter had been furnished, and they threatened proceedings to harass and annoy the Ruiz-Urrutia Co.

and did file a lien before due on an entire contract. At this point it may interest the Court that later the Arlington Co., acting for Rynda Co. and Abraham Hauptman, did buy up the claim of the Elizabeth Sash & Door Co., after it was dismissed as against Amalia R. Gluck and after which the Rynda Co. gave a consent to judgment thereon, and paid therefore about $1,200, although the amount claimed was over $2,000, and this was done because the Elizabeth, Sash & Door Co. threatened to go into chancery to sue Rynda Co. and Abraham Hauptman upon his and their promise. Why should they or anyone have paid money for a claim that was uncollectable against them (*Asst. vs. Davidson,* 22 N. J. L. 154; *Natl. Bank vs. Sprague,* 20 N. J. Eq. 25; 21 N. J. Eq. 25-30; *McIntosh vs. Thurston,* 25 N. J. Eq. 248; *Currier vs. Cummings,* 40 N. J. Eq. 145; *Clark vs. Butler,* 5 Stew. 664).

The complainants' successor had gotten them to consent to give a deed to complainant, who had advanced moneys for a first mortgage to Chemtec Co., Inc., and when because of the trouble and additional cost, had agreed to take over the contract, and complete the buildings which were then 85% to 90% complete with practically all the material on the ground to complete, except some flooring, sash and trim, and paint material that might possibly cost $2,000.00, and who had agreed to take a first mortgage from the Franklin. The Rynda, however, on one pretext or another kept putting it off. The Chemtec Co. then made a tender of cash under the contract and a second mortgage as provided in the contract of $1,400.00 which

second mortgage was subject to a first mortgage to complainant in sum of $11,500.00, which $11,500.00 was considerably less than 80% of the "cost of land and buildings" as agreed in the contract (see Case, p. 12, fol. 30). This cost contemplated the completed buildings, which was at least $20,000.00 (as then cost). They preferred that their security should be second to $9,000.00 in a mortgage that was constantly being reduced by monthly payments on the principal, and therefore agreed that they would deliver a deed, and on that very day, November 25, 1922, executed and sealed the deed, and delivered it to Maurice B. Gluck for the complainant (Case, p. 259, fol. 20).

Now, the vendee, to perfect its rights which were then vested both legal and equitable did not need to make tender, neither did it need to make tender to perfect its rights to a possible relief of specific performance (*Worch vs. Woodruff*, 61 N. J. Eq. 78). The tender made by vendee was shown to show the details of the transaction, and just how it came about that a deed was made and delivered to complainant, the assignee of Chemtec Co. The Rynda knew that the Franklin would not pay out any money without getting a release of the mortgage held upon the premises for $35,000.00 covering as well other lots by Abraham Hauptman (so they had nothing to fear for their purchase money in delivering the deed), and it will be noted that they did not actually release such mortgage and deposit such releases of mortgage with the Franklin until later than the 6th day of December, 1922. The Franklin had made the agreement to close their loan and pay the moneys on December 24, 1922, which later

appeared to be a Sunday, the 25th Christmas, and it was put over to December 26, 1922, when complainant and her husband appeared there ready, willing and able to close at that day with releases of all liens possible with the exception of Elizabeth Sash and Door Co., $2,090.00, who had filed a lien, Lally & Trehmor, claimant, $113.55, Wilfred Allen, for about $400.00, O'Harah, a plasterer for about $700.00 and Salmon for $842.32, all of which were in dispute as to amount and if due, making a total of about $4,000.00. Which sum was to be retained by Franklin until complainant cleared the possibility of liens.

Now, on December 18, 1922 (see Case, Exhibit C3, p. 380), and while the papers were in possession of Franklin, the Chemtec Co. had paid a further sum of $400.00 on the contract so that the sum of $380.00 in cash would be paid Rynda at closing. The Franklin's fee of 2 1/2% on $9,000.00, or $225.00 would have to be paid, as well as $35.00 as construction inspection fee, a survey had been furnished, so the only other expense would be recording fees of $20.00 about and stamps, $7.00, making a total of $667.00.

The Franklin was to make a payment of $6,000.00 on account of $9,000. The retention of $4,000.00 and payment of $667.00 would have totaled $4,667, and the balance $1,333.00 would have been paid to complainant. The balance of the loan, $3,000.00 would have been ample to complete the buildings.

But on December 21, 1922, and it is admitted without consent or notice to Gluck (Case, p. 315-317 and 327), but three days after the $400 was paid on the contract, the Rynda had gone

over and obtained the deed and its other papers. So that when complainant and her husband appeared there at the time agreed upon for closing the Franklin claimed it could not complete, but would do so, and promised to get back the deed and papers. The Franklin tried to get back the papers (Case, testimony, pp. 324 and 344). It appears also that while the complainant and her successor was paying the $400.00 additional on the contract that the Rynda was then maneuvering to get back the deed and releases of mortgage (Case, testimony, p. 311), with one hand it was taking the consideration, and with the other it was trying to prevent the deal from going through. It is no excuse that Jacob Hauptman said he didn't know at the time that complainant was paying $400.00 additional on the contract.

The Rynda claims (Case, answer, Par. 8, p. 41) that Franklin had informed it, that the loan would not go through, etc., while the Franklin says Hauptman gave him various reasons for not closing, one was that the Gluck's had violated the restriction (Case, testimony, p. 327). That they (Franklin) were willing to wait until December 26, to close (Case, testimony, 346). Hauptman testified also, that he had told Hennessy, that they were willing to still go on with the deal (Case, testimony, p. 311), and that it was mutually decided between he and Hennessy that Gluck would not go on with the deal (Case, testimony, p. 319).

The complainant even went to the Rynda to protest and demand that they return the papers. Instead the Rynda wrote the letter, Exhibit C6 (Case, p. 383) refusing to turn back the pa-

pers, and insisted upon a condition that we pay these claims which were in dispute. (It may interest the Court to know that upon all these 5 claims in dispute the Rynda gave consent judgments and they were purchased by Abraham Hauptman for small percentage and assigned to Arlington.) Also that in none of them was process served upon complainant, and none were legal liens against the property or a just debt again complainant or her assignor.

The complainant had a right to the performance of the contract as it had been agreed to, and that the Rynda should return such papers to the Franklin, and had a right to rely upon the Franklin to obtain them back and complete the contracts as agreed.

Both the Rynda and Franklin had agreed together that "Glucks wouldn't and couldn't go on." They had purposely put themselves in a position where they were repudiating the contract. The complainants did not need to go on until they came to their senses and performed. The complainant was ready, willing and able to go on and complete, and was there on December 26, 1922, ready to complete, and has always been ready, willing and able to complete (*O'Neil vs. Supreme Council* [E. & A.], 70 N. J. L. 410; *Holt vs. United Security Life Ins. Co.* [E. & A.], 74 N. J. L. 795 [E. & A.], 76 N. J. L. 585).

POINT XVI.

The complainants were not guilty of unclean hands. Actual fraud in its legal significance is a requirement of unclean hands. For a party to do that which by right and law he has a right to do and should do, for a failure of which some innocent party might be exposed to fraud, cannot be unclean hands.

The Court was most severe upon complainant's husband, Maurice B. Gluuck, an attorney. It had no legal basis to conclude as it did. It branded him *a thief,* or still worse, *a cunning thief who could anticipate that the parties he was dealing with,* Hauptman and Hennessy, *would get together twenty-five days later and agree together to deprive his client of her papers.* If he be such a cunning and capable thief, he ought be branded by this Court, so that we will have a court of last resort put the stamp of approval upon that conclusion. If he be not such, then this Court ought to correct that conclusion that will go down into history with the reports of the Court of Chancery in New Jersey. We have a precedent too, for this. It is a fact that such intemperate language in one of our Courts against an honorable member of its bar, drove the attorney into oblivion "without brief," drove away the respect of people who had before every confidence in him, and eventually he died of a broken heart. Rumor has it, too, that it drove his wife into an insane asylum. It is unfortunate, too, that the Court only corrected this stigma after his death. But it did (see Case of *Den. Hance vs. McKnight,* 11

N. J. L. 385). In making that correction and precedent the Court makes the interpretation of "legal fraud"—to be—"in a legal sense, forbidden and destroyed by law, but not necessarily involving moral turpitude." The Court here in its conclusions went much further. He said: "Having in effect *stolen* the deed they then attempt to *steal* the property" (Case, conclusion, p. 365, 5th line from bottom).

It is difficult to know upon what this was concluded. The points in the conclusion upon which it must have been so concluded, appear to be:

> "The reasons for my finding as a fact against Mr. Gluck on this point (Gluck's tender of Nov. 25, 1922), will appear later" (Case, p. 349). "By subterfuge, the complainant, Maurice B. Gluck, obtained possession of this deed from a representative of the defendant, Rynda Development Company, to whom it was intrusted for delivery to Mr. Hennessy, had a photostatic copy thereof made and then returned the deed to this representative or induced this representative to have a copy made himself; but the view I take of the matter it does not make any difference, in the legal effect which of these statements are true. *Sometime thereafter* the complainants executed to one Frieda Horn, a sister of Mr. Gluck, a mortgage on the premises for $850, and attached this photostatic copy of the deed to the mortgage and recorded the mortgage with the copy of the deed attached in the office of the Essex County Register of Deeds. And prior to this, Mr. Gluck had attempted to have the photostatic copy recorded as a deed, but this was refused by the Register of Deeds and Gluck

left the Register's office vowing that he would get the copy of the deed on record in spite of such refusal" (Case, p. 350). "After issue was joined in this suit the complainant served interrogatories on three of the defendants, so voluminous in character as to immediately raise the question as to their propriety" (Case, p. 354). "Because of representations of Mr. Gluck to this tenant (tenant of Arlington under contract of sale Exhibit C, Case, p. 417), the vendee under that agreement of sale, she defaulted in her payments thereunder. She suffered herself to become in default because Mr. Gluck claimed that he was the real owner of the property" (Case, pp. 354-355). "He also represented that Mrs. Gluck was the rightful owner and was entitled to possession; and later, as a result of that conversation, and on advice of complainants' solicitor, they obtained the keys to the building and themselves moved into it, and are now in possession" (Case, p. 355). "You at least, advised and connived with Mr. Gluck, to obtain these keys from Mr. Smith" (Case, p. 357). "In the case at bar, it will be noted that the complainants have obtained possession of the premises involved in this suit by fraudulently procuring what amounts to attornment by the tenant; namely, delivering up of the keys. The unconscionable character of the transaction need not be pleaded by the defendant" (Case, p. 364). "They were guilty of fraud and unconscionable conduct in connection with this particular transaction when they induced Mr. Hauptman, the representative of defendant, Rynda Development Company, to have a photostatic copy of the deed, which was in his possession, made.

and then obtained the photostatic copy and attached it to a mortgage and then had both recorded. The deed was obtained by trickery and stealth, by false pretenses, which is nothing more or less than a form of stealing'' (Case, p. 365). ''Mr. Hauptman had no idea of their intention in obtaining the deed or he would not have permitted a photostatic copy of it to have been made. He acted in good faith, but they did not. The subsequent execution of the mortgage and the recording of it, and the photostatic copy of the deed together indicates an attempt by complainants to arbitrarily appropriate to themselves rights to which they could not be entitled except upon complainants' complete performance of the terms of the contract'' (Case, p. 365). ''Their hands are now not only not clean, they are dripping with filth and slime, and I denounce their conduct as bordering on rascality and as repellant to every sense of righteousness and fair dealing'' (Case, p. 366). ''As to Mr. Gluck himself, I do not consider him worthy of belief. While he is an attorney of the New York bar, he boasts of the fact that he has on numerous occasions been suspended by the New York courts, and has been at least once jailed for contempt. His conduct here on the stand today would justify his commitment, and if I had been less charitably inclined, he would have been committed this morning'' (Case, p. 366).

The mortgage, containing the photostatic copy of deed with reasons for recording are given at Case, page 384, being Exhibit C7.

The Court mistakingly ignored the facts in making it appear that what Gluck did was to

obtain by subterfuge (there was no subterfuge at all, and if Hauptman's version is to be believed he was not mislead, there was no misrepresentation, or no fraud, and he never said that there was) and then immediately (and the inference is without attempting to go through with the contract and pay the price) thereafter tried to put the picture on record, failing in which he resorted to a scheme of a mortgage and put it on record (the inference being also that he defrauded the Register of the County of Essex in getting it on). The testimony is that on Nov. 27, 1922, he had photostatic copies made. (Who will believe Jacob Hauptman that he allowed it to be made by Gluck, if Gluck did not own and have possession of the deed?) That it was recorded by mortgage January 4, 1923, 25 days later. That during that time, the date had been set for closing Dec. 26, 1922, on 18th day of December, 1922, that $400.00 had been further paid on the contract of sale, that three days later, Dec. 21, 1922, the Rynda had gotten the Franklin to hand over the complainants' deed, that they refused to return it, that thereupon Gluck told them that he would put it on record so that any subsequent purchaser would have full notice, that Jacob Hauptman went to the Register and tried to stop it being taken for record, that the Register refused to take the photostatic copy as the deed itself, and that owing money to Frieda Horn and to secure her, a mortgage was made to her and the photostatic copy attached as a part with full explanation therein and so recorded, and which was done after the Rynda refused to carry out its agreement.

The mortgage was a bona fide one, there was no testimony that it was without consideration or in defraud of any person or creditor. It was given for consideration. The paper represents the true state of facts. It would not nor could not defraud anyone. It does, effectively, give notice, to say the least, that a contract of sale was to some extent executed, and any subsequent purchaser would have thereby a notice to put himself on guard and not pay any money to his loss. It was a preventative of fraud, which is the sole purpose of the recording acts. It was something that was not only proper, but which complainant owed as a duty to the public to do, to prevent anyone being taken in. The Court on previous action between the parties made the mortgage, etc., *res adjudicata.* It subsequently never changed its mind, and its "*obiter*" is very clearly confined to the original deed and the photostatic copy of *that deed.* It is made clearer, when its "*obiter*" says:

> "If the complainants (and he meant both in that situation) will present a properly (one for an action to return a deed claimed improperly to have left its hands without consideration and under inequitable and unconscionable circumstances) drawn bill charging that the defendant Gluck (Amalia R., notice also, not Frieda Horn) claims title to the property under the deed, the photostatic copy of which is one record, and that it is a cloud on the title (the mere naked legal title), and prays that the original (deed) and photostatic copy be *declared null and void,* relief *may* be granted." (This brief, above, page 23.)

The Court held herein in this action (Case, p. 354) that the Court in prior decisions had made *res adjudicata*, that the mortgage was a fraud, that the deed was a fraud, that the deed was never delivered and that the recording was a fraud. This is not so. An examination of these decisions will show that the Court was careful not to so decide, and careful to indicate his "*obiter*" that the Rynda and Arlington might have good grounds for relief, which might be successful, but that he did not have it before him and he didn't know the full extent to which Amalia R. Gluck could and would defend. The mortgage itself did not claim title under the deed. The Court knew also that Amalia R. Gluck could claim title under the contract, and had an equitable title, which had been made *res adjudicata,* but said in effect, that it may be the naked legal title was not delivered (that is the new contract, see reasoning in Par. 3, on page 35, to and inc. Par. 2, on page 37) which the Rynda as trustee in equity held, and which Arlington if a bona fide purchaser for value may be held to hold as trustee to secure a return of its money paid out for purchasing same without notice, and which naked title might be held null and void, and the photostatic copy, so that the trustees might retain to protect them. We repeat here again as part of this point, from Paragraph 3, on page 15, of Point I, to and including Paragraph 1, on page 33.

The testimony of Mrs. Smith and Mr. Gluck is that he first saw Mrs. Smith after the decision came down in second action (October 20, 1925). He showed her the decision. He had a right to do that, if for nothing else than to pro-

tect her, an unsuspecting purchaser and one to whom he had to under the circumstances give actual notice. An examination of the contract (Arlington to Smith, Exhibit C, Case, p. 417) will show on page 418 of case, that on September 1, 1925, the purchaser was to pay $2,500.00 on the contract, and the truth is that she did not pay after August, 1925, anything at all. From this purchaser's testimony and her own lawyer's testimony it will be seen that she was put in there by Arlington for no other purpose than to induce the Dime Savings Institution to lend their money on this supposed security, so that a claim to actual legal possession could be made, and the apparent ease with which keys were given to complainant makes it look as though it was done, so that a claim could be made in injunction instead of by ejectment. The complainant had the right to her possession, it was made *res adjudicata*. She did nothing fraudulent in telling the lady that it was her building and property, and showing her the decisions. That was the proper thing to do. She voluntarily through her attorney gave up the keys. It was not an attornment either. To attorn we must recognize her possession as a just and legal one. We did not. We merely took the keys, and were glad to get them without a breach of the peace and to break in, which we could do and had a right to do. Upon this phase of this point the affidavits on injunction are full and show the exact facts, which we desire to urge here without repeating them.

To have fraud there must be the four elements of fraud. The fraud that will constitute unclean hands must be misrepresentation of a

material matter, that leads one astray to his damage, and must have knowledge with actual fraudulent intent, and it must have been relied on, and there must be actual damages (*Vulcan Destinning Co. vs. American Can Co.,* 72 N. J. Eq. 387 [E. & A.], reversing 70 N. J. Eq. 584; *Scott vs. Schriner,* 27 N. J. Eq. 185).

To assert that the complainant "*stole*" her house and garage, which was hers, and which had been built by her assignor, and to which the Rynda has no right, title or interest in, and which Rynda could not alienate, and to which the Arlington did not acquire title to and could not acquire except through complainant, passeth all bounds. To hold upon that conclusion unclean hands, the Court had to ignore the fact that complainant was the owner absolute of the house and garage.

POINT XVII.

The complainants were not guilty of laches. To raise laches there must be actual damage to a party.

It appears that the principal test of laches is whether the delay was to speculate on whether the advance in price would justify a later acceptance, when previously the question of what it was worth was doubtful as to the price agreed to be paid (*New Barbadoes Toll Bridge Co. vs. Edward Vreeland,* 4 N. J. Eq. 157). Here was a case where there was not any delay at all, although a period of time has elapsed of about three years, because the complainant has been

actively litigating questions regarding the premises, and the last action was only decided on October 20, 1925, and this action, which took some time to prepare, was filed December 15, 1925, a matter of 45 days. A litigant ought not to have to keep more than one action at a time going, she had enough to do that, and any one of the actions, had they come to a head properly, might have been determinative of all rights. They kept her busy defending these actions in which she was asserting vigorously her rights. This does not show an abandonment of her rights, or any delay. And if there appears to be an interval of three years, it is fully explained (*Ashmore vs. Evans,* 11 N. J. Eq. 151). Neither has there been laches by a default (*Baldwin vs. Van Vorst* [E. & A.], 10 N. J. Eq. 577). To hold her guilty of laches would unjustly enrich the defendants, give a volunteer and speculator the improvements, and work a fraud upon her (*Nibert vs. Baghurst,* 47 N. J. Eq. 201). The Court must never become the instrument of injustice (*Stoutenberg vs. Thomkins,* 9 N. Y. Eq. 332), and he who invokes the claim of laches must prove some hardship and loss in damage. None of the defendants have in any way been harmed (*Tyrnan vs. Warren,* 53 N. J. Eq. 313; *Day vs. Deavitt,* 79 N. J. Eq. 342). Laches, too, as a bar or "deaf ear" will be permitted to stand only on a condition that just compensation be made (*Penrose vs. Leeds* [E. & A.], 46 N. J. Eq. 294).

POINT XVIII.

The ownership of the buildings upon the premises was never in dispute. They belong to complainant, her rights therein were never foreclosed. The Rynda could not alienate them, they had no title to such buildings. The only dispute here is naked title to the land. By what right had the Court to decide complainant had no right, title or interest in the premises?

The buildings, house and garage, were built by complainant, her assignor, with permission under grant of a legal conveyance under seal and duly acknowledge (see Contract, Case, p. 10). She has never, effectively, been served with any process, in any action that her rights to ownership therein or possession were foreclosed. They cannot be alienated by Rynda, as Rynda has no title to them it could not give any title to them to Arlington. Yet the Court here decides and decrees, that complainant "had no right, title or interest in the premises." By what right had the Court to take away our property and declare it to be in defendants?

POINT XIX.

The contract of sale gave a full grant, at least an easement for such buildings, and an irrevocable license for such buildings and impliedly the right to use such buildings and exit and ingress. By what right had the Court to decide complainant had no right, title or interest in the premises?

(See cases, argument and points above.)

POINT XX.

There is no refusal to pay the purchase price, which defendants, Rynda Development Company or Arlington Realty Company, are entitled to according to the terms of the contract and they have a vendors' lien therefor. But there has been damages which they have caused the complainant far in excess and the value of such purchase price is deductible from such damages. These damages arise in equity solely by reason of the peculiar conditions, and cannot be adequately compensated at law. The Court should by some method fix the amount of damages and who are to pay them, and allow complainant in extraordinary jurisdiction as well exemplary damages.

This is a case where the proof is that defendant, Rynda, and it is claimed Abraham Hauptman, Jacob Hauptman, and J. Lewis Fiacre, acting to use Rynda a dummy corporation to perpetuate a fraud (*Quaid vs. Ratkowsky,* 183 App. Div. [N. Y.] 428; *Stockton vs. Central R. R. Co.,* 50 N. J. Eq. 52) had so maneuvered to withhold the possession and use of the premises by the purchase through, and in the name of, the Arlington Co., of various claims against persons who had performed work upon the buildings, and gave consent judgments in a scheme to defraud the complainant, and then, when it found it had not accomplished the desired result, gave a deed to Arlington. Gave an illegal permission to take over the buildings, and through Arlington, withheld from her the use of the property so she could finish it and

obtain her profits. That in doing this they conspired with Arlington Co. and that Arlington Co. is responsible as well jointly and severally for all of such damages caused her for their part, or part of such damages. That also in doing this, they, Rynda, and individuals composing this dummy corporation, conspired with Frank Hancock Hennessy and Franklin Society to involve the title and possession of the deed, and a loan on mortgage thereon, so as to cause the trouble, expense and damage to complainant. That Frank Hancock Hennessy and Franklin Society are jointly and severally together with Rynda, *et als.,* responsible for all or part of these damages. She has been made to suffer the loss of the use of the property, trouble and annoyance, and three years' litigation involving all manners of expense.

The case is one in which it will be difficult for a jury to determine the damages, and involves equitable considerations. It is, too, a grievous tort, one in which equity has jurisdiction (*Kuntze vs. Tonnele,* 80 N. J. Eq. 373; *Ackerman vs. Halsey,* 37 N. J. Eq. 356; *King vs. Ruckman,* 4 N. J. Eq. 298-556). And so wanton and disregardful of the rights of the complainant and reckless, that in its extraordinary jurisdiction (*Pomeroy Spec. Performance* [3rd ed.], Sec. 436; *King vs. Ruckman,* 4 N. J. Eq. 298-556; *Page vs. Martin,* 46 N. J. Eq. 585; *Kuntze vs. Tonnele,* 80 N. J. Eq. 373; *Ackerman vs. Halsey,* 37 N. J. Eq. 356; *Hoover Steel Ball Co. vs. Schaefer B. B. Co.,* 90 N. J. Eq. 515) ought to grant as well exemplary damages, the same as Courts of law, as a matter of law (*Hames vs. Schultz,* 50 N. J. L. 481; *Driemuller*

vs. Rogon, 93 N. J. L. 1). Her hardships imposed by them have been severe, and at much expense. Here is a case where the vendor tried in every way to defraud the complainant, and tried by subterfuge to get back the property sold with the improvements put there by complainant. It is a case that the Court of Errors and Appeals should not hesitate to say $10,000.00 should be awarded complainant against defendants as exemplary damages, and it will act as a salutory example to other designing vendors who try to evade their contract.

The Court on this point as to damages and who shall pay them could send it to lower court for additional testimony, after declaring the rights, rights to damages, amount and right to exemplary damages, and their decision as to who shall pay (*Penrose vs. Absecon Land Co.* [E. & A.], 94 N. J. Eq. 346).

POINT XXI.

The complainant was entitled to specific performance against the Franklin Society for Homes Building and Savings.

(See cases, argument and points above, particularly Point IV, page 52 above.)

POINT XXII.

The rights and equities of all the parties should have been declared by the Court, and deed held in trust to be re-executed. The rights should also be declared under Act of 1924.

(See cases and points above. *Page vs. Martin* [E. & A.], 46 N. J. Eq. 585; *Hogwout vs. Murphy* [E. & A.], 22 N. J. Eq. 531.) The deed was refused after being executed, and taken back before recorded. Held a trust and if deed destroyed must be re-executed (*Albert vs. Burbank,* 25 N. J. Eq. 404).

A uniform act for declaratory judgments has been added, in which "may" may be read "must," and should be read must as a right to complainant (Laws of 1924). This is in contradistinction to the Chancery Act under which "may" may never be "must," and gives the right to complainant upon making out a case therefor, to settle all questions. It is a clear intention of the Legislature to give a new remedy and in effect abrogates the Chancery Act for a declaratory judgment, and the rulings on discretion in bills of discovery and declaratory under the old Chancery practice.

POINT XXIII.

That the Rynda Development Co. never rescinded or attempted to rescind to contract.

The Rynda never made a tender of the deed, which was necessary (*Cranwell vs. Clinton*

Realty Co., 67 N. J. Eq. 540), and that for rescission it should have tendered and returned the money received (*Doughten vs. Camden B. L. Assn.*, 41 N. J. Eq. 556), and as well should have tendered back the value of the improvements, to do equity. That the Rynda failed to live up to their agreement and perform in the manner agreed upon and obtained back their deed from which time they repudiated and prevented the agreement being performed according to the terms specifically agreed upon, and prevented the loan out of which they had agreed to accept the balance of the purchase price. The testimony of the officers of Rynda are that they never tendered the part of the purchase price received, and still have it (Case, Hauptman, p. 317, bottom of page; Fiacre, pp. 332-333).

POINT XXIV.

An injunction should have been granted to complainant against defendants from any and all actions that might affect her title.

Here the various defendants were continuing to act to harm her. Threatening other actions, and to multiply these actions and cause her further and irreparable injury to her rights and possession.

(They admitted that they had other claims they were going to press. Case, p. 254.) (*African Meth. Ep. Church vs. Conover*, 27 N. J. Eq. 157.)

POINT XXV.

The complainant had a right to mortgage the premises. The mortgage to Frieda Horn was for value and bona fide between complainant and Frieda Horn. There was no testimony to show that it was without consideration or a fraud upon anyone. By what right had the Court to decide it was fraudulent and must be cancelled of record and null and void. The decree deprives Frieda Horn of her property without due process of law, according to the settled law of the State and in violation of the State Constitution, Article I, Section I, and Article V of the Constitution of the United States.

This had already been made *res adjudicata* (pp. 20-21 above), repeating here as though actually reprinted for this point, from 1st paragraph on page 98 down to and including the continuing paragraph on page 100 of this brief of Point XVI.

There was no testimony to show an illegality in the mortgage or that it was made to defraud, or given without consideration. Even a creditor whose lien was vested earlier could not void a mortgage for a past due debt (*Atlantic Refining Co. vs. Stokes,* 77 N. J. Eq. 119). There must be actual fraud shown, a fraud on creditor (*Washington Natl. Bank vs. Beatty,* 77 N. J. Eq. 252).

From what testimony did the Court conclude the mortgage was void, or a fraud, and must be delivered up for cancellation?

POINT XXVI.

The final decree on costs is erroneous because it imposes costs where the defendants are shown to be guilty of and caused the acts made necessary to complain of.

Schields vs. Arndt, 4 N. J. Eq. 235.

POINT XXVII.

The complainant, Maurice B. Gluck, does not claim any interest in premises, he is made a complainant and joins only thereon as the husband of complainant made necessary by law of the state so as to join in any deeds or mortgages although complainant's separate property. By what right had the Court to decide anything else and assess against him costs and counsel fees?

(Paragraph 2 of Bill of Complaint, Case, p. 2.) He only joined because the decisions in this state require him to come in and consent to sign the necessary papers, for no other purpose. It's her separate property, he has no interest, but an inchoate right (*Patterson vs. J. D. Laizeaux Lumber Co.,* 92 N. J. Eq. 569).

POINT XXVIII.

The decree deprives petitioner, Maurice B. Gluck, of his property without due process of law in assessing costs and counsel fees against him, according to the settled law of the land, the Constitution of the State, Article I, Section 1, and Article V of the Constitution of the United States.

Repeating here Point XXVII and Point XXVI as though actually reprinted here.

POINT XXIX.

The decree deprives petitioner, Amalia R. Gluck, of her unalienable right to acquiring, possessing and protecting property according to the uniform and settled law of the land, the Constitution of the State, Article I, Section 1 and Article V of the Constitution of the United States.

(See cases, argument and points above.)

Respectfully submitted,

AMALIA R. GLUCK,
MAURICE B. GLUCK,
FRIEDA HORN,
Petitioners, *pro se.*

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

AMALIA R. GLUCK and her husband, MAURICE B. GLUCK, as such,
Complainants-Appellants,

vs.

RYNDA DEVELOPMENT CO. (a New Jersey Corporation), ABRAHAM HAUPTMAN, JACOB HAUPTMAN, J. LEWIS FIACRE, FRANKLIN SOCIETY FOR HOME BUILDING AND SAVINGS (a New York Corporation), FRANK HANCOCK HENNESSY, ARLINGTON REALTY CO. (a New Jersey Corporation), and DIME SAVINGS BANK (a New Jersey Corporation),
Defendants-Respondents.

On Appeal from Chancery.

BRIEF OF THE RESPONDENT, THE DIME SAVINGS INSTITUTION, a New Jersey Corporation.

Facts.

This respondent was made a party defendant to the bill filed by Amalia R. Gluck and her husband, Maurice B. Gluck, by reason of its having placed upon the records of the Register of Essex County a mortgage to secure the repayment of $8,000.00, covering the premises which are the subject matter of the controversy between the complainants and the other defendants; the mortgage being given as collateral security for a loan of $8,000.00 made by this

defendant to Arlington Realty Co., one of the other defendants. The mortgage to this defendant was recorded in the Essex County Register's office on the 10th of September, 1925, in Book C-55 of Mortgages for Essex County, on pages 343, &c.

Complainants' suit was instituted on the 15th of December, 1925, and was for the purpose, among other things, of enforcing specific performance of a contract made between Rynda Development Co., another one of the defendants, and Chemtec Co., Inc. (assignor of Amelia R. Gluck), dated May 1, 1922, for the purchase of the premises covered by the mortgage to this defendant.

The title of this defendant's mortgagor, as of the date of the mortgage to this defendant, was derived, as appears by the chain of title in the records of deeds in the Essex County Register's office, from a sale by the Sheriff of Essex County under an execution upon a mechanic's lien judgment in favor of George S. Salmon Co., against Rynda Development Co., which was then the owner of the record title, having obtained it by a deed from Abraham Hauptman and wife, recorded May 23, 1922, in Book K-66 of Deeds for Essex County, on pages 454, &c.

The deed of the Sheriff to Arlington Realty Co. was dated December 4, 1923, and recorded in the Essex County Register's office in Book I-71 of Deeds for Essex County, on pages 60, &c.

It is not even contended that there appears upon the deed records of the Register of Essex County between the deed Hauptman to Rynda Development Co. (K-66-454), and the deed—Sheriff to Arlington Realty Co. (I-71-60), divest-

ing Rynda Development Co. of its title, any other deed affecting this title.

The contract of the complainant, though dated and presumably delivered May 1, 1922, was never recorded in the Register's office or elsewhere in the County of Essex, and her suit for a specific performance of that contract was not instituted until 3 years and 7½ months after the contract was executed and delivered to the complainants, as they allege.

A little more than a month after the execution, delivery and recording of the mortgage to this defendant, the title deed of this defendant's mortgagor, Arlington Realty Co., was declared by Vice-Chancellor Backes a nullity because of a fatal defect in the proceedings leading up to the sheriff's sale, this determination being in a suit by Arlington Realty Co. to remove from the record the cloud created by the mortgage Gluck to Horn, to be hereafter referred to. The determination was made on October 29, 1925, or thereabouts, and is referred to by Vice-Chancellor Berry on numerous occasions, as will appear by the State of Case.

Following this determination, Rynda Development Co. made a conveyance to Arlington Realty Co. of its right, title and interest, which was recorded in the Essex County Register's office on December 7, 1925, and subsequently Arlington Realty Co. further perfected its title by a sale under another lien claim suit, receiving a second deed from the sheriff of Essex County, which it recorded on the 11th of March, 1926.

Of the proceeds of the loan of this defendant to Arlington Realty Co. $6,997 was either turned over to the mortgagor or expended in its behalf for taxes and the expenses incident to the obtain-

ing and consummation of the loan, and the balance, $1,003, was retained by the bank pending the disposition of the then existing suit for the removal of the Gluck-Horn mortgage from the record (State of Case, bottom of p. 254, all of p. 255).

This defendant was not a party to the suit in which Vice-Chancellor Backes made his determination as to the invalidity of the first Arlington Realty Co. deed, nor to the prior suit which the State of Case shows was instituted in the Court of Chancery for the purpose of clearing the record of the Gluck-Horn mortgage, nor is there anything in the evidence or in the various exhibits marked in evidence supporting the oft-repeated allegations and statements of the complainant that this defendant had actual knowledge either of the claims of the complainant to title in the premises covered by this defendant's mortgage or of the various controversies and suits prior to the present one between the complainant and the other defendants.

ARGUMENT.

This defendant is not charged with the various alleged frauds and conspiracies charged to the other defendants, and the complainant's sole contention as to this defendant, as the writer reads the bill of complaint and the brief of the complainants, is that this defendant had notice, either actual or constructive, of the rights of Amalia R. Gluck in the premises by virtue of the contract to purchase above mentioned, and, therefore (although this is not made clear by the prayer of their bill), either takes no lien by virtue of its mortgage or that its lien is a lien subsequent to the rights of Amalia R. Gluck by virtue of her contract for moneys alleged to have been ex-

pended by her in the construction of the house, or a lien subject and subsequent to the lien of the mortgage Gluck to Horn.

Three kinds of notice are asserted by the complainant in support of her notice theory; actual notice—notice by operation of law, through the notice alleged to be possessed by this defendant's mortgagor, Arlington Realty Co., and constructive notice, by notice of such facts as appeared upon the records of the Essex County Register and Essex County clerk prior to the recording of this defendant's mortgage.

It is submitted that the proposition that the complainant must prove the possession by this defendant of notice of the claims of Amalia R. Gluck requires no citation of authorities for its support.

The record is barren of a single word of testimony to the effect that this defendant had actual notice of the claims of Amalia R. Gluck.

The record is also barren of testimony showing that this defendant was ever apprised of the knowledge that its mortgagor, Arlington Realty Co., had of the claim of title of Amalia R. Gluck.

This leaves the question of constructive notice and involves three inquiries—what did the records show—did what the record disclosed put this defendant upon inquiry, what would have been disclosed by such inquiry assuming it should have been made and was not?

It is submitted as elementary that if this defendant is to be charged with constructive notice at all, it is only to be charged with the knowledge of such facts as the inquiry, if made, would have developed.

Between the date of the recording of the deed to Rynda Development Co. in May, 1922, and the recording of the deed by the sheriff to Arlington Realty Co. divesting (upon the record at least) Rynda Development Co. of its title December 4, 1923, there was recorded in the records of *mortgages* in the Essex County Register's office a mortgage made by Amalia R. Gluck to Freda Horn covering the property described in this defendant's mortgage, and attached to that mortgage was a photostat copy of a deed made by Rynda Development Co. to Amalia R. Gluck, dated November 25, 1922. The mortgage was recorded in Book I-47 of Mortgages on pages 520, &c. The copy of the deed was, of course, never recorded in the records of deeds because it was a copy.

The maker of the mortgage, Amalia R. Gluck, was a stranger to the title, so far as the records of the Register disclosed, the last preceding owner to the record of this mortgage being Rynda Development Co. by the deed from Hauptman.

It is submitted that if this be the record of such an instrument as would put this defendant upon its inquiry, that the inquiry, if made, would and did disclose that there was then pending in the Court of Chancery a suit to clear the record of this mortgage, and that this is the natural result of the inquiry, is evidenced by the retention by this defendant of a sum sufficient to satisfy the mortgage in the event that it was determined to be a valid lien.

The inquiry would also have disclosed that in this very suit in which it was determined that this defendant's mortgagor's title was defective, it was also determined that the deed, photostatic

copy of which was attached to the mortgage, Gluck to Horn, was obtained by fraud and was never delivered to the grantee, thus leaving Amalia R. Gluck in the position of a mere holder of an unrecorded contract of purchase, which she had held more than three and one-half years.

Thus, it will be seen that the inquiry alleged by the complainants to have been the duty of this defendant would and did lead to an ascertainment of the infirmity of the complainant's claim to title and the consequent invalidity of the Freda Horn mortgage.

It is submitted that such inquiry as might have been prompted by the fact that Amalia R. Gluck was mentioned as "owner" in some of the many lien claim suits, record of which appeared in the Essex County clerk's office, would have lead inevitably to the same ascertainment of facts as that following the notice, so called, of the record of the Horn mortgage; and in passing it might be said that in the record of the various lien claim suits Amalia R. Gluck was described as "builder" quite as often as she was described as "owner."

As to the inquiry at the premises, which it is contended by the complainants was not made by this defendant, and that had it been made it would have disclosed her claim of title, it is submitted that here again the evidence produced does not support the contention of the complainant, for the evidence (State of Case, p. 334, l. 19) disclosed that at the time of the execution, delivery and recording of this defendant's mortgage, September 10, 1925, the premises were in possession of a vendee of Arlington Realty Co. under a contract to purchase, and there is nothing in the evidence to show that an inquiry of this vendee at that time would have disclosed the claim of

title of Amalia R. Gluck, for this vendee testifies that her first intimation of a claim of title adverse to her vendor was in the latter part of October, 1925, when *Maurice B. Gluck* appeared and claimed to be the owner.

It is respectfully submitted that there is thus disposed of by the evidence in the case the entire contention of the complainant based upon the theory of notice as against this defendant.

In the amended answer of this defendant (State of Case, pp. 32-33) this defendant set up as against Amalia R. Gluck the defense of laches, because of her failure to record her contract, in accordance with the provisions of the act respecting conveyances, either before the record of this defendant's mortgage or at any other time, though it is conceded that this contract was in her possession continuously from May 1, 1922, down to the date of the filing of the present suit.

While the learned Vice-Chancellor determined the rights of the complainant upon the equitable doctrine of "clean hands," it is respectfully submitted that the record itself as clearly supports this defendant's contention that Amalia R. Gluck is without equity as against this defendant by reason of her unexplained failure to record her contract to purchase (an omission the more unexplainable in view of the conduct she charges to the vendor in that contract in the month of December, 1922), and that Freda Horn (assuming her mortgage to have been given for a valuable consideration) is in no better position with respect to this defendant than is her mortgagor.

All of the authorities referred to in the appellants' brief under point 3 have been carefully examined and have been found to refer, insofar as they cover constructive notice, to instruments

properly upon the public records, in the proper place upon those records and properly indexed, so that they would be found in the ordinary course of an examination of the title, and in none of those authorities have we the situation as in this case of the recording in the mortgage records of a copy of a deed judicially determined never to have been delivered to the named grantee.

The statement as a fact on page 49 of the brief of the complainant of the context of one of the interrogatories propounded to this defendant never answered and later stricken out by an order of the Court of Chancery in the case is typical of the manner in which the case has been conducted by the complainant, Maurice B. Gluck.

It is respectfully submitted that for the reasons above advanced the complainant's appeal should be dismissed and that the decree of the learned Vice-Chancellor be affirmed.

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