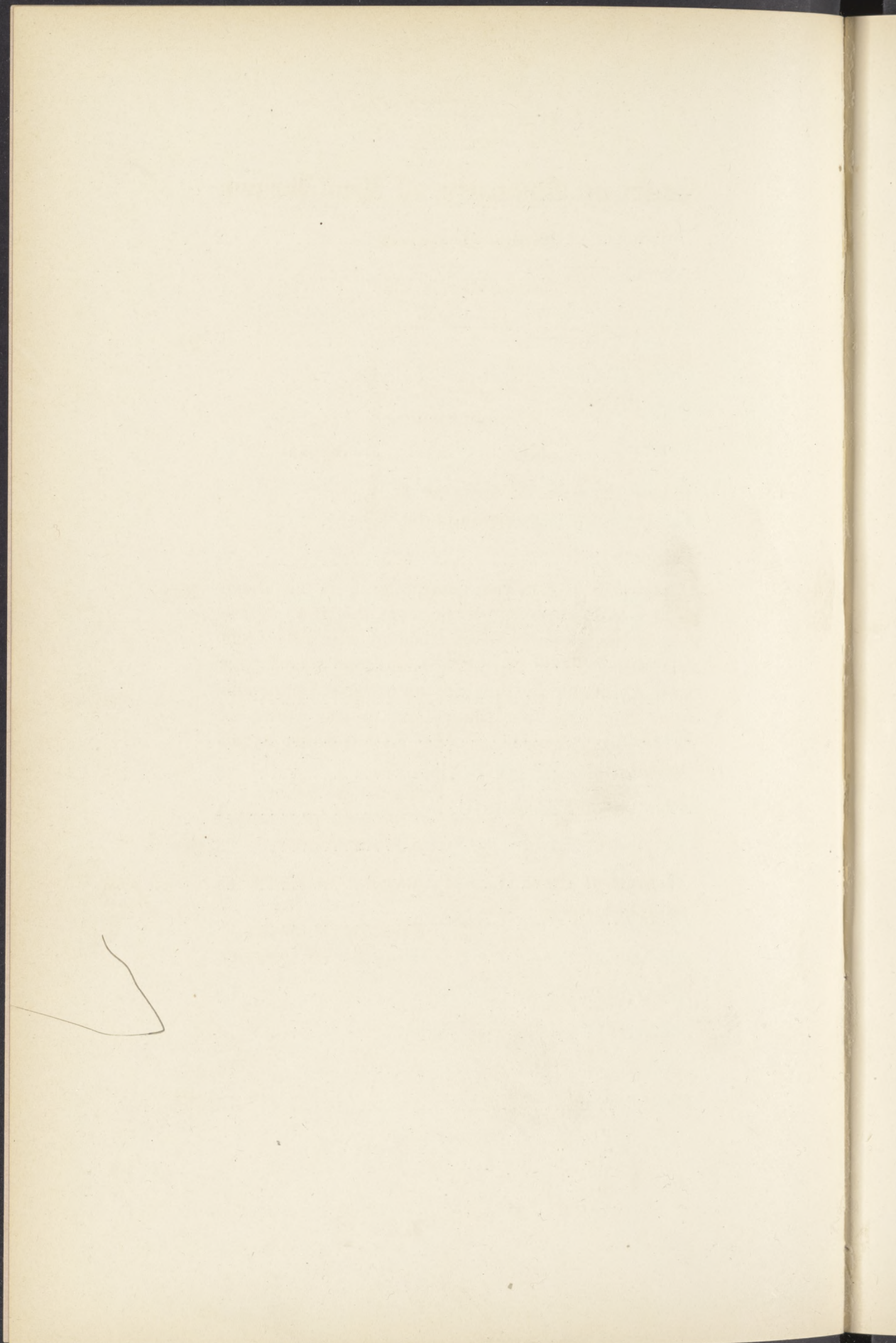


INDEX.

	PAGE
Notice of Appeal	1
Petition of Appeal	2
Amended Bill of Complaint	3
Answer to Amended Bill of Complaint and Counterclaim	17
Order Dismissing Bill of Complaint.....	21
Order to Show Cause	22
Petition	24
Answer and Answering Affidavits to Petition	26
On Amended Bill of Complaint for Injunction	36
Order	50
Answer of George H. Van Voorhis to Amend- ed Bill of Complaint and Counterclaim..	52
Order	56
Summons and Complaint.....	57
Answer	59
Affidavit of Agnes G. Benjamin.....	60
Affidavit of Frederick G. Jamison.....	61
Affidavit of Edward Markley.....	63
Affidavit of Howard F. McIntyre.....	65
Affidavit of Frederic B. Scott.....	66
Affidavit of Francis R. Haussling.....	68
Affidavit of Harry Kalisch.....	69
Affidavit of Frederic B. Scott.....	71
Affidavit of Frank L. Martine.....	73
Final Decree	75



Court of Chancery of New Jersey

Notice of Appeal.

Filed July 27, 1929.

Between

AGNES G. BENJAMIN,
Complainant,

and

GEORGE H. VAN VOORHIS, ET AL,
Defendants.

10

On
Appeal

AGNES G. BENJAMIN, complainant in the above
named bill, hereby appeals from the final decree
filed in the above entitled cause on April 30, 1929,
and dated April 24, 1929, and from every part
thereof, made on the advice of the Honorable
John Bentley, Vice-Chancellor, to the Court of
Errors and Appeals in the Last Resort in all
Causes. 20

FREDERIC B. SCOTT,
Solicitor for and of Counsel
with Complainant. 30

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

FREDERIC B. SCOTT,
Of Counsel.

40

Petition of Appeal.

Filed July 28, 1929.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	Between AGNES G. BENJAMIN, Complainant-Appellant, <i>and</i> GEORGE H. VAN VOORHIS, ET AL, Defendants-Respondents.	}	On Appeal from Court of Chancery
----	---	---	--

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

The petition of Agnes G. Benjamin, the appellant in the above entitled cause, respectfully shows:

30 Petitioner finds herself aggrieved by a final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date April 24, 1929, and filed with the Clerk of that Court on April 30, 1929, in a certain cause in said Court of Chancery, wherein Agnes G. Benjamin was complainant, and George H. Van Voorhis, et als., were defendants, in this respect, to wit: That the said final decree "adjudges and orders that the order of the Court of Chancery of November 8, 1928, dismissing the complainant's bill of complaint be and it is hereby in all things confirmed."

40 And your petitioner appeals from the said order of the Chancellor which decrees as aforesaid,

Amended Bill.

upon the ground that the same is erroneous in that there was no justification, either in law or fact, for the ordering of the dismissal of the complainant's complaint.

Petitioner, therefore, prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that the petitioner may have such other relief in the premises as to this court shall seem proper. 10

FREDERIC B. SCOTT,
Solicitor for and of Counsel
for Appellant.

Amended Bill.

20

Filed June 13, 1927.

IN CHANCERY OF NEW JERSEY.

Between

AGNES G. BENJAMIN,
Plaintiff,

and

GEORGE H. VAN VOORHIS, FRED-
ERICK G. JAMISON, DOROTHY L.
JAMISON, JOHN E. JAMISON,
and ETHEL F. JAMISON,
Defendants.

On Amended
Bill of
Complaint for 30
Injunction.

*To the Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey:*

Your complainant, Agnes G. Benjamin, of New-
ark, Essex County, New Jersey, respectfully 40
shows:

Amended Bill.

10 1. That your complainant is the daughter of Kathryn M. Van Voorhis, who died at Newark, New Jersey, in August, 1926, and that the defendant George H. Van Voorhis was the second husband of the said Kathryn M. Van Voorhis; that the defendant Fredereck G. Jamison is the complainant's brother, and the defendant Dorothy L. Jamison is the wife of the said Fredereck G. Jamison; that John E. Jamison is your defendant's brother, and that Ethel F. Jamison is the wife of the said defendant John E. Jamison.

20 2. That the reason for making the defendants Frederick G. Jamison, Dorothy L. Jamison, John E. Jamison and Ethel F. Jamison defendants in the above entitled matter is because some of the matters and things set forth in your complainant's bill of complaint have arisen so suddenly as to have made it impossible for your complainant to confer with the said named defendants to ascertain their stand in the above litigation, and for the further fact that it is necessary and proper to make them parties to the above entitled cause for a complete determination or settlement of the questions involved therein.

30 3. That prior to the death of the late Kathryn M. Van Voorhis, the said George H. Van Voorhis secured to be executed by the late Kathryn M. Van Voorhis an alleged last will and testament under circumstances which clearly indicated that the said last will and testament was obtained by the said defendant George H. Van Voorhis while the said Kathryn M. Van Voorhis was mentally incapable to make said will, or that undue influence was used by the said defendant George H. Van Voorhis and others in securing said last will to be
40 executed by the said Kathryn M. Van Voorhis.

Amended Bill.

4. Your complainant further shows that while knowing said alleged last will and testament of the late Kathryn M. Van Voorhis to have been illegally and improperly obtained, the said defendant George H. Van Voorhis fraudulently obtained the probate of the same before the Surrogate of the County of Essex, State of New Jersey. 10

5. Your complainant further shows that she is informed by counsel that in and by a fair interpretation of said alleged last will and testament the said defendant George H. Van Voorhis obtained the whole estate, both real and personal, of the late Kathryn M. Van Voorhis.

6. Your complainant further shows that subsequent to the probate of said alleged last will and testament of the late Kathryn M. Van Voorhis your complainant obtained irrefutable evidence that the said George H. Van Voorhis had illegally and unlawfully had the said Kathryn M. Van Voorhis execute said alleged last will and testament to the great and irreparable damage of your complainant. 20

7. Your complainant further shows that she caused to be conveyed to the said defendant George H. Van Voorhis the fact of her having obtained and being in possession of perfidy hereinbefore stated, and that as a result thereof negotiations were entered into between your complainant and the defendants named herein, which resulted in an agreement, a copy of which is hereto annexed, made a part of this complaint, and marked Schedule "A". 30

8. Your complainant further shows that the real property of the estate of the late Kathryn M. 40

Amended Bill.

10 Van Voorhis consisted of a house and lot known as 104 Mt. Pleasant Avenue, in the City of Newark, Essex County, New Jersey, and a house and lot known as Silver Lodge, on Riverdale Avenue, in Monmouth Beach, Monmouth County, New Jersey, and certain other vacant lots located at Monmouth Beach, Monmouth County, New Jersey, and that the property designated as 104 Mt. Pleasant Avenue, Newark, New Jersey, was the home of the late Kathryn M. Van Voorhis, and that the property known as Silver Lodge, in Monmouth Beach, New Jersey, was known as the summer home of the late Kathryn M. Van Voorhis.

20 9. Your complainant further shows that it was not until the 3rd day of June, 1927, that she was able to obtain a copy of the agreement signed by the defendant George H. Van Voorhis on the 9th day of March, 1927, and that it was then obtained by your complainant contrary to the wishes of the said defendant George H. Van Voorhis.

30 10. Your complainant further shows that in and by the said alleged last will and testament of Kathryn M. Van Voorhis, the said defendants George M. Van Voorhis and Frederick G. Jamison were named as Executors.

40 11. Your complainant further shows and charges that the said defendant George H. Van Voorhis ever since the execution of said agreement has refused to take any steps whatsoever to carry out said agreement, but on the contrary your complainant charges that the said defendant George H. Van Voorhis hereinbefore referred to, has said that he did not intend to carry out

Amended Bill.

said agreement, and has by his actions endeavored to deprive your complainant of all her rights and properties obtained under and by virtue of said agreement, and that he intends to proceed under and by virtue of said alleged last will and testament of the said Kathryn M. Van Voorhis in disposing of the real and personal property of the estate of the late Kathryn M. Van Voorhis, and in direct contravention to the agreement hereinbefore referred to, to the irreparable damage of your complainant. 10

12. Your complainant further charges that the said defendant George H. Van Voorhis, although he agreed in said agreement to permit your complainant and her family to remain in the house known as 104 Mt. Pleasant Avenue, Newark, New Jersey, without let or hindrance or molestation until the terms of said agreement had been complied with, has subtly and craftily, and by violence of persons representing him, has endeavored to forcibly eject your complainant from said house known as 104 Mt. Pleasant Avenue, Newark, New Jersey, and has in divers other ways endeavored to have your complainant relinquish and quit said premises, without in any manner or pretense of complying with said agreement. 20 30

13. Your petitioner further shows that contrary to said agreement the said defendant George H. Van Voorhis has caused to be installed in the summer home known as Silver Lodge, of the late Kathryn M. Van Voorhis, persons totally unfit to occupy said premises, without in any manner consulting your complainant or in any way complying with the agreement herein- 40

Amended Bill.

before referred to, and known as Schedule "A", and by his actions has endeavored to forcibly take possession of said Silver Lodge contrary to the provisions of the agreement hereinbefore referred to.

10 14. Your petitioner further shows that on June 10, 1927, contrary to the terms and provisions of the agreement hereinbefore referred to, the said George H. Van Voorhis caused to be sent to your complainant a letter or notice, of which attached hereto and made to form a part is a copy thereof, from one James B. Furber, attorney, all contrary to the agreement hereinbefore referred to and made to form a part of this amended bill of complaint.

20 15. Your petitioner further shows that all of the parties to said agreement hereinbefore referred to and known as Schedule "A" signed the same and none of the said parties to the said agreement refused in any manner or in writing to sign the same.

30 16. Your complainant further shows that it is the intention of the said George H. Van Voorhis to deprive your complainant of all the rights she obtained under the agreement hereinbefore referred to and known as Schedule "A", and to ruthlessly eject or dispossess your complainant, who is a widow, and her family of three small children, ages 12, 8 and 7 respectively, from the premises known as 104 Mt. Pleasant Avenue, Newark, New Jersey, and to otherwise deprive your complainant of any rights in and to the estate of her mother, the late Kathryn M. Van Voorhis of
40 Newark, New Jersey, which she would have obtained but for the alleged last will and testament

Amended Bill.

of the late Kathryn M. Van Voorhis, and has obtained by the agreement hereinbefore referred to and marked Schedule "A" to the irreparable damage of your complainant.

WHEREAS, your complainant is without adequate remedy at law, your complainant seeks the aid of this honorable Court to the end that the said defendants and each of them be enjoined from acting either individually or jointly contrary to the terms of said agreement, and that the said defendants George H. Van Voorhis and Frederick Jamison be enjoined from disposing in any way or manner the real and personal property of the late Kathryn M. Van Voorhis, contrary to the terms and provisions of said agreement hereinbefore referred to and marked Schedule "A", and that your complainant have such other and further relief in the premises as is just and equitable:

AND FURTHER, that your honorable Court cause to issue its subpoena to the above named defendants commanding them at a day certain to answer, but without oath, the allegations of your complainant's bill of complaint.

And your petitioner will ever pray.

FREDERIC B. SCOTT,
Solicitor and of Counsel
with Complainant.

SCHEDULE A.

THIS AGREEMENT, made this day of March, 1927, between Agnes G. Benjamin, Newark, New Jersey, Frederick Jamison and Dorothy Jamison, his wife, of Chatham, New Jersey, and John

Amended Bill.

10 Jamison and Ethel Jamison, his wife, of New York City, children of Kathereine Van Voorhis, late of the City of Newark, Essex County, New Jersey, parties of the first part, and George H. Van Voorhis, widower, of Newark, New Jersey, husband of the late Katherine Van Voorhis of Newark, New Jersey, party of the second part.

20 WITNESSETH: Whereas a serious dispute has arisen between the parties of the first part and the party of the second part as to the testamentary capacity of the late Katherine Van Voorhis of Newark, New Jersey, at the time she made what is purported to be her last will and testament, and also whether or not undue influence was exercised upon the late Katherine Van Voorhis in procuring said alleged last will and testament to be executed, and

WHEREAS, considering the aforesaid premises and persons a serious question in dispute has arisen between the parties hereto as to whether a fraud was not committed upon the Surrogate of the County of Essex, New Jersey, having said last will and testament probated, and

30 WHEREAS, it is agreed between the parties hereto that a public controversy of said matter in the courts is unseemly and unwise, and

WHEREAS, all the parties to this agreement are of full age and competent among themselves to amicably settle and adjust said controversy, dispute and disagreement.

NOW THIS AGREEMENT WITNESSETH;

40 1. That for the purposes of public appearance the said alleged last will and testament of the

Amended Bill.

late Katherine Van Voorhis of Newark, New Jersey, which has already been probated, be and the same hereby is allowed to stand without any attack upon it as to its validity as well as the testamentary capacity of the late Katherine Van Voorhis to make said will, and that no proceedings be taken before the Surrogate of Essex County, New Jersey, to have the letters testamentary heretofore issued to George Van Voorhis, widowers, and Frederick Jamison revoked and set aside, provided this agreement is carried out in all particulars, otherwise the rights of the parties to this agreement to remain as if said agreement had never been executed. 10

2. As soon as practicable after the signing of this agreement by all the parties hereto, the estate of the said Katherine Van Voorhis shall be divided into three equal parts and distributed between Frederick Jamison, John Jamison and Agnes G. Benjamin, share and share alike, that is to say: One-third to Frederick Jamison; one-third to John Jamison and one-third to Agnes G. Benjamin; subject however, to any deductions and payments first hereinafter specifically mentioned or provided for. 20

3. To the end that the provision set forth in the preceding or second paragraph be fully accomplished, it is hereby agreed that the said George H. Van Voorhis, widower, and the said Frederick Jamison, executors named in the aforesaid last will and testament of Katherine Van Voorhis be empowered to sell and dispose of said estate, both real and personal, by public or private sale or vendue, subject only to any contrary provisions of this agreement, and they be 30 40

Amended Bill.

empowered to give such title to both said real and personal property as if said alleged last will and testament had not in any way ever been questioned. Provided further that the price for which the real estate belonging to the said estate of Katherine Van Voorhis is to be sold is approved by all the parties to this agreement, prior to making the contract for the said or sales of said properties.

4. That upon the payment of the one-third distributed share of said estate as hereinbefore provided by said executors to the said Frederick Jamison, John Jamison and Agnes G. Benjamin, respectively, for which there will be given to said George Van Voorhis and Frederick Jamison, acting as executors, a due and proper receipt, said parties will, on the request to each other execute to each other their mutual general release, releasing each other for and on account of anything growing out of the settlement of said estate as provided in and by this agreement.

5. To the end that this agreement be carried out the said George H. Van Voorhis and the said Frederick Jamison shall duly obtain from the controller of the State of New Jersey such collateral inheritance tax, waiver or waivers, as are or may be necessary in the matter of said estate.

6. That on the sale of the said estate said executors shall first pay all the lawful debts of the said estate, among them being the sum of One Thousand (\$1000) Dollars, actually expended by the said Agnes G. Benjamin in the care and nursing of the said the late Katherine Van Voorhis and her incidental expenses necessitated by such care and maintenance of the said Katherine

Amended Bill.

Van Voorhis advanced by her for and on behalf of George H. Van Voorhis, party of the second part in his maintenance while living at 104 Mt. Pleasant Avenue, Newark, New Jersey.

7. Until the real estate belonging to said estate is sold, the personal things, furniture and belongings of said estate now in 104 Mt. Pleasant Avenue, Newark, New Jersey, shall remain therein with the exception of those articles specifically mentioned and set forth and referred to on the back of this sheet and initialed by Frederick G. Jamison and which the said George H. Van Voorhis may take from said house at 104 Mt. Pleasant Avenue:

	—————	
Piano		20
Living and Music Room Rugs		
Music Room Lamp		
Music Cabinet Drop Table in living room		
Small Secretary and Stand		
Small Set of Dishes		
Enough Silver for Four (4)		
Davenport and suit		
Chiffoneer		
Clothes-tree		30
Twin-beds and their Mattresses		
Purely personal belongings,		
	—————	

and when said real estate is sold said personal things, furniture and belongings of the estate shall thereafter be sold as speedily as practicable.

8. It is further agreed by and between the parties hereto that in as much as the said Agnes G. Benjamin moved her belongings into the River- 40

Amended Bill.

dale Avenue house, Monmouth Beach, New Jersey, known as Silver Lodge, that she could be near and take care of the late Katherine Van Voorhis, the personal belongings of Agnes G. Benjamin in the Riverdale Avenue house, Monmouth Beach, New Jersey, known as Silver Lodge shall remain in said house until the first day of April, 1927, unless said house is sold before that time. On the happening of either of the events, that is to say: that said property remains in said house until first day of April, 1927, or said house is sold before that time, when the said Agnes G. Benjamin moves said personal property belonging to her in said house, the parties to this agreement shall contribute ratably, share and share alike, to the expense of moving of said personal belongings to such place as the said Agnes G. Benjamin shall designate, said expense not to exceed the sum of \$25.00.

9. Until the title of said 104 Mt. Pleasant Avenue, Newark, New Jersey, has passed as hereinbefore provided for, said Agnes G. Benjamin and her family shall remain in the house at 104 Mt. Pleasant Avenue, Newark, New Jersey, without let or hindrance or molestation by any of the parties to this agreement, but on the passing of said title she shall freely and voluntarily relinquish and quit said premises.

10. This agreement shall be binding upon any of the parties of the first part who shall sign it and upon the party of the second part if and when he shall sign it, until or unless any other party or parties of the first part shall refuse in writing to sign the same, in which event this agreement shall be null and void.

Amended Bill.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day of March, Nineteen Hundred and twenty-seven.

AGNES G. BENJAMIN	(L.S.)	
JOHN E. JAMISON	(L.S.)	
ETHEL F. JAMISON	(L.S.)	10
DOROTHY L. JAMISON	(L.S.)	
FREDERECK G. JAMISON	(L.S.)	
GEORGE H. VAN VOORHIS	(L.S.)	

STATE OF NEW JERSEY, }
County of Essex, } ss.:

BE IT REMEMBERED, That on this 9th day of March, in the year of our Lord One Thousand Nine Hundred and Twenty-seven, before me a Master in Chancery of New Jersey, personally appeared Dorothy L. Jamison, Frederick G. Jamison, George H. Van Voorhis, and Agnes G. Benjamin, who, I am satisfied are the persons mentioned in the within Agreement, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed: and the said Dorothy L. Jamison, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely without any fear, threats or compulsion of her said husband.

STATE OF WASHINGTON, ss.:

BE IT REMEMBERED, that on this day of in the year of our Lord One Thousand and Nine Hundred and Twenty-Seven, before me personally appeared John E. Jamison, who I am satisfied is the person mentioned in the within

Amended Bill.

named agreement, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes expressed therein.

J. H. MARTIN.

10

(SEAL)

J. H. MARTIN,
Notary Public,
State of Washington,
Commission expires,
Sept. 29, 1928.

STATE OF NEW YORK, }
County of Erie } ss.:

20

BE IT REMEMBERED, that on this 4th day of April, in the year of our Lord, One Thousand Nine Hundred and Twenty-seven, before me personally appeared Ethel F. Jamison, who I am satisfied is the person mentioned in the within agreement, 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 expressed therein, and the said

30

Ethel F. Jamison, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act, and deed, freely without any fear, threats or compulsion of her said husband.

CATHERINE NORCROSS,
Notary Public,
Erie County, New York.

40

CATHERINE NORCROSS,
Buffalo, New York,
Notary Public in and
for Erie County.

*Answer to Amended Bill of Complaint and
Counterclaim.*

**Answer of George H. Van Voorhis to Amended
Bill of Complaint and Counterclaim.**

Filed Jan. 5, 1928.

IN CHANCERY OF NEW JERSEY.

10

Between

AGNES G. BENJAMIN,
Complainant,

and

GEORGE H. VAN VOORHIS, FRED-
ERICK G. JAMISON, DOROTHY L.
JAMISON, JOHN E. JAMISON,
and ETHEL F. JAMISON,
Defendants.

20

The Answer of the Defendant, George H. Van Voorhis, to the Amended Bill of Complaint filed by the Complainant says that:

1. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 1 except that the said defendant admits having been the second husband of the said Kathryn M. Van Voorhis, now deceased, who died in August, 1926.

30

2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 2.

3. Paragraph No. 3 is denied.

4. Paragraph No. 4 is denied.

40

*Answer to Amended Bill of Complaint and
Counterclaim.*

5. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 5.

10 6. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 6.

20 7. As to the statements in paragraph No. 7, this defendant admits that complainant stated that she had in her possession certain evidence, which said evidence was never disclosed to this defendant nor in Court on preliminary hearing and defendant denies ever having executed a contract for delivery to complainant as indicated in said paragraph No. 7.

8. Paragraph No. 8 is admitted.

9. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 9, except admitting delivery without defendant's consent.

10. Paragraph No. 10 is admitted.

30 11. As to the statements in paragraph No. 11, this defendant while denying the existence of such an agreement as that referred to admits his intention to carry out to the best of his ability the directions in the will of the said Kathryn M. Van Voorhis, as co-executor thereof.

12. Paragraph No. 12 is denied.

13. Paragraph No. 13 is denied.

40 14. As to the statements in paragraph No. 14, this defendant admits that by his attorney, James B. Furber, a letter was sent to complainant as shown by copy attached to the Bill of Complaint,

*Answer to Amended Bill of Complaint and
Counterclaim.*

and denies that this was contrary to any executed or delivered agreement of this defendant.

15. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 15. 10

16. As to paragraph No. 16, defendant George H. Van Voorhis says that there is not now nor ever has been any intentions upon his part to deprive complainant of any rights she may or might have under the will of the said Kathryn M. Van Voorhis, and that he denies any liability under the so-called contract referred to as schedule "A" which proposed contract was never completed nor delivered. 20

By way of counterclaim against complainant, defendant George H. Van Voorhis respectfully shows:

1. That said complainant, Agnes G. Benjamin, has wrongfully occupied premises at No. 104 Mt. Pleasant Avenue, Newark, N. J., to the possession of which defendant George H. Van Voorhis was wrongfully entitled under the will of the said Kathryn M. Van Voorhis, deceased, since the institution of this action and that the said complainant has retained possession thereof by force, having, during the said period, complained of and caused the arrest of said defendant George H. Van Voorhis who was haled into Police Court upon charges made by the said complainant, said charges being based upon the attempt of the said defendant George H. Van Voorhis to occupy as theretofore the aforesaid premises then occupied by complainant and to which defendant George H. Van Voorhis had a legal right of possession 30 40

*Answer to Amended Bill of Complaint and
Counterclaim.*

the said Police Court action being dismissed immediately upon presentation of the facts to the said Court.

10 2. Defendant George H. Van Voorhis avers that the fair rental value of the said premises is not less than \$125.00 per month.

Defendant George H. Van Voorhis therefore prays that he may have such relief in the premises as may be just and equitable and that the Bill of Complainant be dismissed with reasonable costs and the charges most wrongfully sustained by this Defendant.

20

JAMES B. FURBER,
Solicitor for Defendant,
George H. Van Voorhis.

WM. F. NIES,
Of Counsel.

30

40

Order.

Filed Nov. 8, 1928.

IN CHANCERY OF NEW JERSEY.

Between

AGNES G. BENJAMIN,
Complainant,*and*GEORGE H. VAN VOORHIS, FRED-
ERICK G. JAMISON, DOROTHY L.
JAMISON, JOHN E. JAMISON,
and ETHEL F. JAMISON,
Defendants.

On Bill, &c.

10

This matter coming on to be heard in the pres- 20
ence of Frederic B. Scott, solicitor for complain-
ant, and James B. Furber, solicitor for defend-
ant, George H. Van Voorhis, it is on this 1st day
of November, 1928,

ORDERED, that complainant's Bill be dismissed
for lack of prosecution, and that the account un-
der counterclaim of defendant George H. Van
Voorhis be referred to Thomas R. Armstrong, a
Master in Chancery of the City of Jersey City,
to determine the value of the use of the premises 30
involved in this action, viz., the premises at No.
104 Mt. Pleasant Avenue, in the City of Newark,
County of Essex and State of New Jersey.

IT IS FURTHER ORDERED that the question of coun-
sel fees and costs shall be determined upon and
at the time of the confirmation of the said Mas-
ter's report.

IT IS FURTHER ORDERED, that complainant shall
vacate the premises at No. 104 Mt. Pleasant Ave- 40

Order to Show Cause.

nue, in said City of Newark, on or before the 20th day of November, 1928, and deliver the keys therefor to defendant's counsel, James B. Furber.

10 IT IS FURTHER ORDERED, that a copy of this Order certified by defendant's solicitor, be served upon complainant's counsel within five days from the date hereof.

Respectfully advised
JOHN BENTLEY, V. C.

EDWIN R. WALKER,
Chancellor.

Order to Show Cause.

20

Filed March 13, 1929.

IN CHANCERY OF NEW JERSEY.

Between

AGNES G. BENJAMIN,
Complainant,

and

30 GEORGE H. VAN VOORHIS, FRED-
ERICK G. JAMISON, DOROTHY L.
JAMISON, JOHN E. JAMISON,
and ETHEL F. JAMISON,
Defendants.

On Bill, &c.

40 It appearing to the Court that by its order of November 8, 1928, the account under the counterclaim of the defendant, George H. Van Voorhis, was referred to Thomas R. Armstrong, a Master in Chancery of this Court to determine the value

Order to Show Cause.

of the use of the premises involved in this action, viz. the premises at No. 104 Mt. Pleasant Avenue in the City of Newark, County of Essex and State of New Jersey; and it further appearing to this Court upon Petition and Affidavit of defendant George H. Van Voorhis that to prevent the expense involved in further hearings and the prolonged delay caused thereby, said defendant desires to discontinue the action on the counter-claim; 10

It is, on this 13th day of March, 1929, ORDERED, that the said complainant, Agnes G. Benjamin show cause before this Court at the Chancery Chambers, No. 1 Exchange Place, in the City of Jersey City, New Jersey, on the 25th day of March, 1929, at ten o'clock in the forenoon, why the said action on the counter-claim should not be discontinued, the counsel fee to defendant determined and the dismissal of the complainant confirmed. 20

AND IT IS FURTHER ORDERED, that a copy of this rule to show cause, which may be certified by the solicitor of the defendant, together with a copy of the petition presented to this Court in said matter, be served upon the Solicitor of the Complainant Agnes G. Benjamin, within 3 days from the making of this order. 30

Respectfully advised,
JOHN BENTLEY, V. C.

EDWIN R. WALKER,
Chancellor.

Petition.

IN CHANCERY OF NEW JERSEY.

10	Between AGNES G. BENJAMIN, Complainant, <i>and</i> GEORGE H. VAN VOORHIS, FRED- ERICK G. JAMISON, DOROTHY L. JAMISON, JOHN E. JAMISON, and ETHEL F. JAMISON, Defendants.	}	On Bill, &c.
----	--	---	--------------

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

Your petitioner, George H. Van Voorhis, respectfully shows:

1. That he is one of the defendants in the above entitled action.
2. That on the 8th day of November, 1928, your honorable Court ordered and directed that the account under the counterclaim of the defendant, George H. Van Voorhis, be referred to
 30 Thomas R. Armstrong, a Master in Chancery of the State of New Jersey, to determine the value of the use of the premises involved in said action, viz., the premises at No. 104 Mt. Pleasant Avenue in the City of Newark, County of Essex and State of New Jersey.
3. Your petitioner verily believes that the purpose of various and numerous petitions, hearings,
 40 etc. since the beginning of this action in June, 1926, has been solely for the purpose of delaying

Petition.

determination of the action, and desiring to prevent the continuation of these proceedings for an interminable time.

Your petitioner prays that this matter be brought to a final close by an appropriate Order dismissing the action on the counter-claim, confirming the dismissal of the Complainant's Bill with costs and the fixing of counsel fee to the Solicitor for the defendant. 10

GEORGE H. VAN VOORHIS,
Petitioner.

STATE OF NEW JERSEY, }
County of Essex } ss.:

GEORGE H. VAN VOORHIS, of full age, being duly sworn on his oath, deposes and says that he is the petitioner in the foregoing petition; that he has read the same, and that the matters and facts therein set forth are true. 20

.....

Sworn and Subscribed to before me
this day of March, 1929.

..... 30

Answer and Answering Affidavits.

Filed March 25, 1929.

IN CHANCERY OF NEW JERSEY.

10 Between

AGNES G. BENJAMIN,
Complainant,*and*GEORGE H. VAN VOORHIS, FRED-
ERICK G. JAMISON, DOROTHY L.
JAMISON, JOHN E. JAMISON,
and ETHEL F. JAMISON,

20

Defendants.

On Bill.

30 The answer of Agnes G. Benjamin, complainant in the above entitled cause, to the petition of the defendant, George H. Van Voorhis, for leave to discontinue his counterclaim against her, filed in the above entitled matter, and to have your Honorable Court fix a counsel fee for said defendant, George H. Van Voorhis and to leave the dismissal of the complaint confirmed respectfully shows:

1. That your complainant, after filing her original complaint in the above entitled action, filed an amended Bill of Complaint on the 13th day of June, 1927, a true copy of which is hereto attached and made to form a part hereof and marked "Exhibit C-1."
- 40 2. That your Honorable Court, by memoranda to the solicitors of the respective parties to said

Answer and Answering Affidavits.

cause, indicated that it conceived the complainant's Bill of Complaint was filed for the purpose of compelling performance of the agreement, a copy of which is attached to the complainant's complaint and amended complaint.

3. That on the filing of said amended complaint by your complainant, your Honorable Court issued a restraining order, a true copy of which is attached hereto, made to form a part hereof and marked "Exhibit C-2," which restraining order remained in full force and effect until the dismissal of your complainant's amended Bill of Complaint, as to which dismissal your complainant will hereafter deal. 10

4. Your complainant further shows that the above defendant, George H. Van Voorhis, duly filed within the time prescribed by law an answer and counterclaim to your complainant's complaint, of which a true copy is hereto attached, made to form a part hereof and designated as "Exhibit C-3." 20

5. Your complainant respectfully shows that rather than await the usual time for an order of reference in the above entitled matter, her solicitor duly noticed the solicitor of the said defendant, George H. Van Voorhis, of his application to appear before the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, for the purpose of earlier obtaining an order of reference in the above entitled cause, which was duly made by the said Chancellor to the Honorable John C. Bentley, Vice Chancellor. 30

6. Your complainant further shows that on application duly made by her solicitor, the said Hon- 40

Answer and Answering Affidavits.

10 orable John C. Bentley, Vice Chancellor, fixed the 26th day of June, 1929, as the time for the hearing of said cause, but that owing to the desire of your complainant for an earlier trial of said matter, your complainant's solicitor again made applica-
tion to the said Honorable John C. Bentley, Vice Chancellor, to advance the trial of said cause, and that the said Honorable John C. Bentley, Vice Chancellor, did advance the trial of said cause to November 1st, 1928.

20 7. That on the 10th day of September, 1928, your complainant, on the advice of her solicitor, retained one Edward Markley of the firm of Collins and Corbin of the City of Jersey City, to try said cause for her as trial solicitor, on November 1st, 1928, and that relying upon the retention of the said Edward Markley, Esq., your complainant expected said cause to be tried at said date.

30 8. That on the 26th day of October, 1928, your complainant's solicitor, in preparing the above cause for trial for November 1st, 1928, learned that it would be impossible for him to produce on the trial of the above entitled cause one of your complainant's most important witnesses in support of her amended Bill of Complaint, by the name of Frank L. Martine, a physician of the State of New Jersey, on account of the fact that the said Frank L. Martine was ill, he having but recently undergone an operation and was at said time in a condition of convalescence—too ill to go to court and too ill to give his testimony by deposition—and that on learning this complainant's solicitor on the same day advised the Honorable John C. Bentley, Vice Chancellor, that it
40 was his belief that it was going to be impossible

Answer and Answering Affidavits.

to try said cause at the time set by the said Honorable Vice Chancellor for the hearing thereof.

9. Your complainant further shows that her solicitor caused said information to be immediately placed before her trial counsel, Edward Markley, and that both her solicitor and the said Edward Markley advised your complainant that she could not safely proceed with the trial of said cause without the testimony of said Dr. Frank L. Martine or his deposition, and that they would have said cause postponed to another day for hearing. 10

10. Your complainant respectfully shows that she relied implicitly on the advice of her solicitor and her said trial counsel, Edward Markley, as to their ability to secure the adjournment of the trial of said cause under the foregoing circumstances. 20

11. Your complainant further shows that on the 31st day of October, 1928, the said Edward Markley and your complainant's solicitor were engaged in the trial of a cause in the Hudson County Circuit Court, and that thereafter the said Edward Markley on the same day again became actually engaged in the trial of another cause which he could not postpone and that the trial of said cause continued during the remainder of the 31st day of October, 1928, over to and during the entire days of November 1st and 2nd, 1928—the day set for the trial for hearing of the above entitled cause before the Honorable John C. Bentley, Vice Chancellor—and that the said Edward Markley was unable to appear in person before the Honorable John C. Bentley, Vice Chancellor, to request an adjournment of said cause, and on account thereof sent one of his associates to request the 30
40

Answer and Answering Affidavits.

adjournment thereof, which request was refused by the Honorable John C. Bentley, Vice Chancellor, but that the hearing on said application was continued until 2:00 P. M. on the said 1st day of November, 1928.

- 10 12. Your complainant further shows that at the afternoon session of said court, to which said application for continuance was carried, your complainant's solicitor was secured by the associate of the said Edward Markley to appear in his place and stead for the purpose of urging the continuance of said cause, but that on the argument by your complainant's solicitor for the continuance of said cause for the reasons hereinbefore set forth, the Honorable John C. Bentley, Vice Chancellor, refused the same; whereupon your complainant's solicitor, unprepared as he was in the premises, for the reasons hereinbefore set forth, reluctantly, in view of the engagements of the said Edward Markley as trial counsel for the complainant, offered to proceed with the trial of your complainant's cause, but that the Honorable John C. Bentley, Vice Chancellor, refused to permit him so to do, and that on the motion of the solicitor of the defendant, George H. Van Voorhis, dismissed your complainant's amended Bill of Complaint against the said George H. Van Voorhis and ordered a reference on the defendant's, George H. Van Voorhis, counterclaim to one Thomas R. Armstrong, Master, all of which appears from the order of said Honorable John C. Bentley, Vice Chancellor, a true copy of which is hereto attached, made to form a part of this answer and marked "Exhibit C-4."
- 20
- 30
- 40 13. That on the 28th day of January, 1929, the solicitor of the said defendant, George H. Van

Answer and Answering Affidavits.

Voorhis, according to notice to your complainant's solicitor, proceeded with the taking of testimony in support of the said George H. Van Voorhis' counterclaim, before the said Thomas R. Armstrong, as per the order of the Honorable John C. Bentley, Vice Chancellor, hereinbefore referred to, but that as some of the said defendant's, George H. Van Voorhis, witnesses did not appear, said hearing was adjourned to the 15th day of February, 1929, at which time the said defendant, George H. Van Voorhis, produced certain other witnesses in support of his counterclaim, as per said order of reference to the said Thomas R. Armstrong, among them being a witness claiming to be the present wife of the said defendant, George H. Van Voorhis, which witness refused to answer pertinent questions put to her by the solicitor of the complainant; whereupon and at the conclusion of the testimony on behalf of the said defendant, George H. Van Voorhis, before said Master, said matter was adjourned until the 15th day of March, 1929.

14. Your complainant, conceiving and being advised that the testimony of said reluctant witness, Dorothy Van Voorhis, was material in said matter referred to by the Honorable John C. Bentley, Vice Chancellor, to the said Thomas R. Armstrong, Master, applied to the Honorable John C. Bentley, Vice Chancellor, on the 28th day of February, 1929, for an order compelling said witness to answer the question she had refused to answer on her cross-examination by your complainant's solicitor before the said Master, Thomas R. Armstrong, and that the said Honorable John C. Bentley, Vice Chancellor, did on the 28th day of February, 1929, make an order call-

Answer and Answering Affidavits.

ing upon the said Dorothy Van Voorhis to show cause before your Honorable Court on the 11th day of March, 1929, why she should not be directed and commanded to answer said question or be punished for contempt of your Honorable Court for such refusal, and that on the said 11th day of March, 1929, your Honorable Court granted your complainant's petition and ordered the said Dorothy Van Voorhis to appear before the said Thomas R. Armstrong, Master, on the 15th day of March, 1929, or such subsequent day as he should adjourn the same, there and then to answer said question which she refused to answer, and all other pertinent and relevant questions in the matter referred to the said Thomas R. Armstrong, all of which appears from the records of your Honorable Court, to which reference is hereto made and to which your complainant begs leave to refer without setting the same forth at length.

15. Your complainant further shows that two days before the hearing of said matter before the said Thomas R. Armstrong, Master, as provided by the order of your Honorable Court, the solicitor of the said defendant, George H. Van Voorhis, to-wit, on the 13th day of March 1929, obtained the present rule to show cause from your Honorable Court why the counterclaim of the said George H. Van Voorhis should not be dismissed and counsel fees to the defendant determined and the dismissal of the complaint confirmed, and that to save the said defendant, George H. Van Voorhis, from further expense and embarrassment in said matter, your complainant's solicitor suggested to the said defendant, George H. Van Voorhis' solicitor that the matter of the appearance of the said Dorothy

Answer and Answering Affidavits.

Van Voorhis before said Master, Thomas R. Armstrong, on March 15, 1929, be continued until a day to be fixed after your Honorable Court had disposed of the said defendant's, George H. Van Voorhis, present application to dismiss or discontinue his counterclaim, to which the said defendant's George H. Van Voorhis, solicitor acquiesced. 10

16. Your complainant has been advised that the said defendant, George H. Van Voorhis, has a legal right to discontinue his counter suit or action against your complainant, even though he has caused to be put in evidence before said Master, on his counterclaim, things and matters concerning your complainant that are untrue and scurrilous, but that in permitting the said counterclaim of the said George H. Van Voorhis to be dismissed or discontinued, your Honorable Court can impose such terms and conditions upon the said defendant as your Honorable Court shall see fit and meet so to do. 20

17. Your complainant further shows that the said defendant, George H. Van Voorhis, instituted and has pending against her in the New Jersey Supreme Court an action for damages growing out of practically the same things and matters involved in your complainant's amended Bill of Complaint and the said defendant's, George H. Van Voorhis, answer and counterclaim, all of which appears from a true copy of the summons and complaint and answer filed in the said cause, of which true copies are hereto attached, made to form a part hereof and marked "Exhibit C-5" and "Exhibit C-6," and that as the said defendant, George H. Van Voorhis, is 30 40

Answer and Answering Affidavits.

10 now in possession of the premises known as No. 104 Mount Pleasant Avenue, Newark, New Jersey, under the order of your Honorable Court at the time it dismissed complainant's amended bill of complaint the only matter left in said action at law is the matter of damages, which ac-
tion for similar damages said defendant, George H. Van Voorhis, sought to recover by his counterclaim filed in the above entitled proceeding, which conuterclaim he now seeks to dismiss.

20 18. Your complainant further shows that her complaint in the above entitled action was filed in good faith and for the purposes therein set forth, as is borne out by the affidavits hereto attached and made to form a part of your complainant's answer.

30 19. Your complainant further shows that she has truthfully and faithfully set forth all of "various and numerous petitions, hearings, etc. since the beginning of this action in June 1926" in this Court, referred to in the defendant's, George H. Van Voorhis, petition, and expressly denies that they or any one of them have been for the purpose solely or otherwise of delaying the determination of the action of your complainant or the said George H. Van Voorhis' counterclaim, or in any way for the purpose or desire on her part to prevent the continuance of said proceedings for an interminable time, as charged by the said defendant, George H. Van Voorhis, in his petition in the above entitled matter.

40 20. Your complainant is advised that your Honorable Court does not punish litigants, either for the mistakes or dereliction of their solicitors of trial counsel, such as was involved in the dis-

Answer and Answering Affidavits.

missal of your complainant's Bill of Complaint filed in the above cause.

21. Your complainant therefore prays that should your Honorable Court see fit to permit the said George H. Van Voorhis to dismiss or discontinue his counterclaim filed against her, it will be on such terms as, considering the matters and facts involved in the above mentioned proceedings, are agreeable to equity and good conscience. 10

Your complainant will ever pray.

AGNES G. BENJAMIN
By FREDERIC B. SCOTT,
Solicitor. 20

30

40

On Amended Bill of Complaint for Injunction.

Exhibit C-1.

IN CHANCERY OF NEW JERSEY

10 Between
 AGNES G. BENJAMIN,
 Complainant,
 and
 GEORGE H. VAN VOORHIS, FRED-
 ERECK G. JAMISON, DOROTHY L.
 JAMISON, JOHN E. JAMISON,
 and ETHEL F. JAMISON,
 Defendants.

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

Your complainant, Agnes G. Benjamin, of Newark, Essex County, New Jersey, respectfully shows:

30 1. That your complainant is the daughter of Kathryn M. Van Voorhis, who died at Newark, New Jersey, in August, 1926, and that the defendant George H. Van Voorhis was the second husband of the said Kathryn M. Van Voorhis; that the defendant Fredereck G. Jamison is the complainant's brother, and the defendant Dorothy L. Jamison is the wife of the said Fredereck G. Jamison; that John E. Jamison is your defendant's brother, and that Ethel F. Jamison is the wife of the said defendant John E. Jamison.

40 2. That the reason for making the defendants Fredereck G. Jamison, Dorothy L. Jamison, John E. Jamison and Ethel F. Jamison defendants in the above entitled matter is because some of the

Amended Bill of Complaint for Injunction.

matters and things set forth in your complainant's bill of complaint have arisen so suddenly as to have made it impossible for your complainant to confer with the said named defendants to ascertain their stand in the above litigation, and for the further fact that it is necessary and proper to make them parties to the above entitled cause for a complete determination or settlement of the questions involved herein. 10

3. That prior to the death of the late Kathryn M. Van Voorhis, the said George H. Van Voorhis secured to be executed of the late Kathryn M. Van Voorhis an alleged last will and testament under circumstances which clearly indicated that the said last will and testament was obtained by the said defendant George H. Van Voorhis while the said Kathryn M. Van Voorhis was mentally incapable to make said will, or that undue influence was used by the said defendant George H. Van Voorhis and others in securing said last will to be executed by the said Kathryn M. Van Voorhis. 20

4. Your complainant further shows that while knowing said alleged last will and testament of the late Kathryn M. Van Voorhis to have been illegally and improperly obtained, the said defendant George H. Van Voorhis fraudulently obtained the probate of the same before the Surrogate of the County of Essex, State of New Jersey. 30

5. Your complainant further shows that she is informed by counsel that in and by a fair interpretation of said alleged last will and testament the said defendant George H. Van Voorhis obtained the whole estate, both real and personal, of the late Kathryn M. Van Voorhis. 40

Amended Bill of Complaint for Injunction.

6. Your complainant further shows that subsequent to the probate of said alleged last will and testament of the late Kathryn M. Van Voorhis your complainant obtained irrefutable evidence that the said George H. Van Voorhis had
10 illegally and unlawfully had the said Kathryn M. Van Voorhis execute said alleged last will and testament to the great and irreparable damage of your complainant.

7. Your complainant further shows that she caused to be conveyed to the said defendant George H. Van Voorhis the fact of her having obtained and being in possession of his perfitry hereinbefore stated, and that as a result thereof
20 negotiations were entered into between your complainant and the defendants named herein, which resulted in an agreement, a copy of which is hereto annexed, made a part of this complaint, and marked Schedule "A."

8. Your complainant further shows that the real property of the estate of the late Kathryn M. Van Voorhis consisted of a house and lot known as 104 Mt. Pleasant Avenue, in the City of Newark, Essex County, New Jersey, and a
30 house and lot known as Silver Lodge, on Riverdale Avenue, in Monmouth Beach, Monmouth County, New Jersey, and certain other vacant lots located at Monmouth Beach, Monmouth County, New Jersey, and that the property designated as 104 Mt. Pleasant Avenue, Newark, New Jersey, was the home of the late Kathryn M. Van Voorhis, and that the property known as Silver Lodge, in Monmouth Beach, New Jersey, was known as the summer home of the late
40 Kathryn M. Van Voorhis.

Amended Bill of Complaint for Injunction.

9. Your complainant further shows that it was not until the 7th day of June, 1927 that she was able to obtain her copy of the agreement executed in quadruplicate, signed by the defendant George H. Van Voorhis on the 9th day of March, 1927, and that it was then obtained by your complainant contrary to the wishes and desires of the said defendant George H. Van Voorhis. 10

10. Your complainant further shows that in and by the said alleged last will and testament of Kathryn M. Van Voorhis, the said defendants George H. Van Voorhis and Fredereck G. Jamison were named as Executors.

11. Your complainant further shows and charges that the said defendant George H. Van Voorhis ever since the execution of said agreement has refused to take any steps whatsoever to carry out said agreement, but on the contrary your complainant charges that the said defendant George H. Van Voorhis hereinbefore referred to, has said that he did not intend to carry out said agreement, and has by his actions endeavored to deprive your complainant of all her rights and properties obtained under and by virtue of said agreement, and that he intends to proceed under and by virtue of said alleged last will and testament of the said Kathryn M. Van Voorhis in disposing of the real and personal property of the estate of the late Kathryn M. Van Voorhis, and in direct contravention to the agreement hereinbefore referred to, to the irreparable damage of your complainant. 20 30

12. Your complainant further charges that the said defendant George H. Van Voorhis, although he agreed in said agreement to permit your com- 40

Amended Bill of Complaint for Injunction.

10 plainant and her family to remain in the house known as 104 Mt. Pleasant Avenue, Newark, New Jersey, without let or hindrance of molestation until the terms of said agreement had been complied with, has subtly and craftily, and by violence of persons representing him, has endeavored to forcibly eject your complainant from said house known as 104 Mt. Pleasant Avenue, Newark, New Jersey, and has in divers other ways endeavored to have your complainant relinquish and quit said premises, without in any manner or pretense of complying with said agreement.

20 13. Your petitioner further shows that contrary to said agreement the said defendant George H. Van Voorhis has caused to be installed in the summer home known as Silver Lodge, of the late Kathryn M. Van Voorhis, persons totally unfit to occupy said premises, without in any manner consulting your complainant or in any way complying with the agreement hereinbefore referred to, and known as Schedule "A," and by his actions has endeavored to forcibly take possession of said Silver Lodge and your complainant's belongings therein contrary to the provisions of the agreement hereinbefore referred to.

40 14. Your petitioner further shows that on June 10, 1927, contrary to the terms and provisions of the agreement hereinbefore referred to, the said George H. Van Voorhis caused to be sent to your complainant a letter or notice, of which attached hereto and made to form a part is a copy thereof, from one James B. Furber, attorney, all of which is contrary to the agreement hereinbefore referred to and made to form a part of this amended bill of complaint.

Amended Bill of Complaint for Injunction.

15. Your petitioner further shows that all of the parties to said agreement hereinbefore referred to and known as Schedule "A" signed the same and none of the said parties to the said agreement refused in any manner or in writing to sign the same.

10

16. Your complainant further shows that it is the intention of the said George H. Van Voorhis to deprive your complainant of all the rights she obtained under the agreement hereinbefore referred to and known as Schedule "A," and to ruthlessly eject or dispossess your petitioner, who is a widow, and her family of three small children, ages 12, 8 and 7 respectively, from the premises known as 104 Mt. Pleasant Avenue, Newark, New Jersey, and to otherwise deprive your complainant of any rights in and to the estate of her mother, the late Kathryn M. Van Voorhis, of Newark, New Jersey, which she would have obtained but for the alleged last will and testament of the late Kathryn M. Van Voorhis, and has obtained by the agreement hereinbefore referred to and marked Schedule "A," to the irreparable damage of your complainant.

20

WHEREAS, your complainant is without adequate remedy at law, your complainant seeks the aid of this Honorable Court to the end that the said defendants and each of them be enjoined from acting either individually or jointly contrary to the terms of said agreement, and that the said defendants George H. Van Voorhis and Fredereck Jamison be enjoined from disposing in any way or manner the real and personal property of the late Kathryn M. Van Voorhis, contrary to the terms and provisions of said agreement hereinbefore referred to and marked Schedule "A,"

30

40

Amended Bill of Complaint for Injunction.

and that your complainant have such other and further relief in the premises as is just and equitable.

10 AND FURTHER, that your Honorable Court cause to issue its subpoena to the above named defendants commanding them at a day certain to answer, but without oath, the allegations of your complainant's bill of complaint.

And your petitioner will ever pray.

FREDERIC B. SCOTT,
Solicitor and of Counsel
with Complainant.

SCHEDULE A.

20 THIS AGREEMENT, made this day of March, 1927, between Agnes G. Benjamin, Newark, New Jersey, Frederick Jamison and Dorothy Jamison, his wife, of Chatham, New Jersey, and John Jamison and Ethel Jamison, his wife, of New York City, children of Katherine Van Voorhis, late of the City of Newark, Essex County, New Jersey, parties of the first part, and George H. Van Voorhis, widower, of Newark, New Jersey, husband of the late Katherine Van Voorhis of
30 Newark, New Jersey, party of the second part.

40 WITNESSETH: Whereas a serious dispute has arisen between the parties of the first part and the party of the second part as to the testamentary capacity of the late Katherine Van Voorhis of Newark, New Jersey, at the time she made what is purported to be her last will and testament, and also whether or not undue influence was exercised upon the late Katherine Van Voorhis in procuring said alleged last will and testament to be executed, and

Amended Bill of Complaint for Injunction.

WHEREAS, considering the aforesaid premises and reasons a serious question in dispute has arisen between the parties hereto as to whether a fraud was not committed upon the Surrogate of the County of Essex, New Jersey, having said last will and testament probated, and

10

WHEREAS, it is agreed between the parties hereto that a public controversy of said matter in the courts is unseemly and unwise, and

WHEREAS, all the parties to this agreement are of full age and competent among themselves to amicably settle and adjust said controversy, dispute and disagreement.

NOW THIS AGREEMENT WITNESSETH:

1. That for the purposes of public appearance the said alleged last will and testament of the late Katherine Van Voorhis of Newark, New Jersey, which has already been probated, be and the same hereby is allowed to stand without any attack upon it as to its validity as well as the testamentary capacity of the late Katherine Van Voorhis to make said will, and that no proceedings be taken before the Surrogate of Essex County, New Jersey, to have the letters testamentary heretofore issued to George Van Voorhis, widowers, and Frederick Jamison revoked and set aside, provided this agreement is carried out in all particulars, otherwise the rights of the parties to this agreement to remain as if said agreement had never been executed.

20

30

2. As soon as practicable after the signing of this agreement by all the parties hereto, the estate of the said Katherine Van Voorhis shall be divided into three equal parts and distributed be-

40

Amended Bill of Complaint for Injunction.

10 tween Frederick Jamison, John Jamison and Agnes G. Benjamin, share and share alike, that is to say: One-third to Frederick Jamison; one-third to John Jamison and one-third to Agnes G. Benjamin; subject, however, to any deductions and payments first hereinafter specifically mentioned or provided for.

20 3. To the end that the provisions set forth in the preceding or second paragraph be fully accomplished, it is hereby agreed that the said George H. Van Voorhis, widower, and the said Frederick Jamison, executors named in the aforesaid last will and testament of Katherine Van Voorhis, be empowered to sell and dispose of said estate, both real and personal, by public or private sale or vendue, subject only to any contrary provisions of this agreement, and they be empowered to give such title to both real and personal property as if said alleged last will and testament had in no way ever been questioned. Provided further that the price for which the real estate belonging to the said estate of Katherine Van Voorhis is to be sold is approved by all the parties to this agreement, prior to making the contract for the sale or sales of said properties.

30 4. That upon the payment of the one-third distributed share of said estate as hereinbefore provided by said executors to the said Frederick Jamison, John Jamison and Agnes G. Benjamin, respectively, for which there will be given to said George Van Voorhis and Frederick Jamison, acting as executors, a due and proper receipt, said parties will, on the request to each other execute to each other their mutual general release, releasing each other for and on account of anything

40

Amended Bill of Complaint for Injunction.

growing out of the settlement of said estate as provided in and by this agreement.

5. To the end that this agreement be carried out the said George H. Van Voorhis and the said Frederick Jamison shall duly obtain from the controller of the State of New Jersey such collateral inheritance tax, waiver or waivers, as are or may be necessary in the matter of said estate. 10

6. That on the sale of the said estate said executors shall first pay all the lawful debts of the said estate, among them being the sum of One thousand (\$1,000) Dollars, actually expended by the said Agnes G. Benjamin in the care and nursing of the said the late Katherine Van Voorhis and her incidental expenses necessitated by such care and maintenance of the said Katherine Van Voorhis advanced by her for and on behalf of George H. Van Voorhis, party of the second part, in his maintenance while living at 104 Mt. Pleasant Avenue, Newark, New Jersey. 20

7. Until the real estate belonging to said estate is sold, the personal things, furniture and belongings of said estate now in 104 Mt. Pleasant Avenue, Newark, New Jersey, shall remain therein with the exception of those articles specifically mentioned and set forth and referred to on the back of this sheet and initialed by Frederick G. Jamison, and which the said George H. Van Voorhis may take from said house at 104 Mt. Pleasant Avenue, 30

Piano
 Living and Music Room rugs
 Music Room Lamp
 Music Cabinet Drop table in living room
 Small secretary and stand 40

Amended Bill of Complaint for Injunction.

- Small set of dishes
 Enough Silver for four (4)
 Davenport and suit
 Chiffoneer
 Clothes-tree
 10 Twin-beds and their mattresses
 Purely personal belongings.

and when said real estate is sold said personal things, furniture and belongings of the estate shall thereafter be sold as speedily as practicable.

8. It is further agreed by and between the parties hereto that in as much as the said Agnes G. Benjamin moved her belongings into the Riverdale Avenue house, Monmouth Beach, New Jersey, known as Silver Lodge, that she could be near
 20 and take care of the late Katherine Van Voorhis, the personal belongings of Agnes G. Benjamin in the Riverdale Avenue house, Monmouth Beach, New Jersey, known as Silver Lodge, shall remain in said house until the first day of April, 1927, unless said house is sold before that time. On the happening of either of the events, that is to say: that said property remains in said house until first day of April, 1927, or said house is sold
 30 before that time, when the said Agnes G. Benjamin moves said personal property belonging to her in said house, the parties to this agreement shall contribute ratably, share and share alike, to the expense of moving of said personal belongings to such place as the said Agnes G. Benjamin shall designate, said expense not to exceed the sum of \$250.

9. Until the title of said 104 Mt. Pleasant Avenue, Newark, New Jersey, has passed as herein-
 40 before provided for, said Agnes G. Benjamin

Amended Bill of Complaint for Injunction.

and her family shall remain in the house at 104 Mt. Pleasant Avenue, Newark, New Jersey, without let or hindrance or molestation by any of the parties to this agreement, but on the passing of said title she shall freely and voluntarily relinquish and quit said premises.

10

10. This agreement shall be binding upon any of the parties of the first part who shall sign it and upon the party of the second part if and when he shall sign it, until or unless any other party or parties of the first part shall refuse in writing to sign the same, in which event this agreement shall be null and void.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day of 20
March, Nineteen Hundred and twenty-seven.

AGNES B. BENJAMIN (L.S.)
JOHN E. JAMISON (L.S.)
ETHEL F. JAMISON (L.S.)
DOROTHY L. JAMISON (L.S.)
FREDERICK G. JAMISON (L.S.)
GEORGE H. VAN VOORHIS (L.S.)

STATE OF NEW JERSEY, }
County of Essex, } ss.: 30

BE IT REMEMBERED, That on this 9th day of March, in the year of our Lord One Thousand Nine Hundred and Twenty-seven, before me, a Master in Chancery of New Jersey, personally appeared Dorothy L. Jamison, Frederick G. Jamison, George H. Van Voorhis, and Agnes G. Benjamin, who, I am satisfied are the persons mentioned in the within Agreement, and to whom I first made known the contents thereof, and 40

Amended Bill of Complaint for Injunction.

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 expressed therein, and the said Ethel F. Jamison, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act, and deed, freely without any fear, threats or compulsion of her said husband. 10

CATHERINE NORCROSS,
Notary Public,
Erie County, New York.

CATHERINE NORCROSS,
Buffalo, New York,
Notary Public in and
for Erie County. 20

30

40

Order.

Exhibit C-2.

IN CHANCERY OF NEW JERSEY.

10	Between AGNES G. BENJAMIN, Complainant, <i>and</i> GEORGE H. VAN VOORHIS, FRED- ERICK G. JAMISON, DOROTHY L. JAMISON, JOHN E. JAMISON, and ETHEL F. JAMISON, Defendants.	}	On Amended Bill of Com- plaint for Injunction.
----	--	---	---

20

This matter being opened to the Court by Frederic B. Scott, solicitor for and of counsel with complainant, and the Court having read the amended bill of complaint in the above entitled cause and the affidavits thereto annexed.

30

It is, on this 30th day of June, 1927, ORDERED that the defendants George H. Van Voorhis, Frederick G. Jamison, Dorothy L. Jamison, John E. Jamison and Ethel F. Jamison, show cause before the Chancellor at the Chancery Chambers, in the City of Jersey City, State of New Jersey, on the 18th day of July, 1927, at the hour of 10 o'clock in the forenoon, daylight saving time, or as soon thereafter as counsel can be heard, why the said defendants George H. Van Voorhis, Frederick G. Jamison, Dorothy L. Jamison, John E. Jamison and Ethel F. Jamison should not be restrained and enjoined according to the prayer of the complainant's amended bill of complaint.

40

AND IT IS FURTHER ORDERED, that the defendants George H. Van Voorhis, Frederick G. Jamison,

*Order on Amended Bill of Complaint for
Injunction.*

Dorothy L. Jamison, John E. Jamison and Ethel F. Jamison, and their agents, servants or employees, in the meantime and until the further order of the Court in the premises, desist and refrain from in any way or manner hindering or molesting the said complainant and her family in her possession and occupancy of the house known as 104 Mt. Pleasant Avenue, Essex County, New Jersey, and from renting or attempting to rent said house known as 104 Mt. Pleasant Avenue, Newark, New Jersey, and renting or putting into possession or allowing to remain therein any person or persons in the house on Riverdale Avenue, Monmouth Beach, New Jersey, known as Silver Lodge, or using or permitting to be used the personal belongings of the complainant in said house known as Silver Lodge, and from in any way or manner, either individually, jointly, or by their servants, agents or employees, enacting or doing anything contrary to the terms of the agreement known and referred to as Schedule "A," made to form a part of the complainant's amended bill of complaint.

AND IT IS FURTHER ORDERED that a true copy, certified by the solicitor of the complainant, of this Order, said amended bill and affidavits having been already served, be served on said defendants within 10 days from the date hereof.

Respectfully advised,
JOHN BENTLEY, V. C.

E. R. WALKER,
C.

**Answer of George H. Van Voorhis to Amended
Bill of Complaint and Counterclaim.**

Exhibit C-3.

IN CHANCERY OF NEW JERSEY

10 Between
 AGNES G. BENJAMIN,
 Complainant,
 and
 GEORGE H. VAN VOORHIS, FRED-
 ERICK G. JAMISON, DOROTHY L.
 JAMISON, JOHN E. JAMISON,
 and ETHEL F. JAMISON,
 20 Defendants.

The Answer of the Defendant, George H. Van Voorhis, to the Amended Bill of Complaint filed by the Complainant says that:

- 30 1. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 1 except that the said defendant admits having been the second husband of the said Kathryn M. Van Voorhis, now deceased, who died in August, 1926.
2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 2.
3. Paragraph No. 3 is denied.
4. Paragraph No. 4 is denied.
- 40 5. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 5.

*Answer of George H. Van Voorhis to Amended
Bill of Complaint and Counterclaim.*

6. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 6.

7. As to the statements in paragraph No. 7, this defendant admits that complainant stated that she had in her possession certain evidence, which said evidence was never disclosed to this defendant nor in Court on preliminary hearing and defendant denies ever having executed a contract for delivery to complainant as indicated in said paragraph No. 7. 10

8. Paragraph No. 8 is admitted.

9. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 9, except admitting delivery without defendant's consent. 20

10. Paragraph No. 10 is admitted.

11. As to the statements in paragraph No. 11, this defendant while denying the existence of such an agreement as that referred to admits his intention to carry out to the best of his ability the directions in the Bill of the said Kathryn M. Van Voorhis, as co-executor thereof. 30

12. Paragraph No. 12 is denied.

13. Paragraph No. 13 is denied.

14. As to the statements in paragraph No. 14, this defendant admits that by his attorney, James B. Furber, a letter was sent to complainant as shown by copy attached to the Bill of Complaint, and denies that this was contrary to any executed or delivered agreement of this Defendant. 40

*Answer of George H. Van Voorhis to Amended
Bill of Complaint and Counterclaim.*

15. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph No. 15.

10 16. As to paragraph No. 16, defendant, George H. Van Voorhis, says that there is not now nor ever has been any intentions upon his part to deprive complainant of any rights she may or might have under the Will of the said Kathryn M. Van Voorhis, and that he denies any liability under the so-called contract referred to as Schedule "A" which proposed contract was never completed nor delivered.

20 By way of Counter-Claim against Complainant, Defendant, George H. Van Voorhis, respectfully shows:

30 1. That said complainant, Agnes G. Benjamin, has wrongfully occupied premises at 104 Mt. Pleasant Avenue, Newark, N. J., to the possession of which defendant, George H. Van Voorhis, was rightfully entitled under the Will of the said Kathryn M. Van Voorhis, deceased, since the institution of this action and that the said complainant has retained possession thereof by force, having, during the said period, complained of and caused the arrest of said defendant, George H. Van Voorhis, who was haled into Police Court upon charges made by the said Complainant, said charges being based upon the attempt of the said defendant George H. Van Voorhis to occupy as theretofore the aforesaid premises then occupied by complainant and to which defendant George H. Van Voorhis had a legal right of possession, the said Police Court action being dismissed immediately upon presentation of the
40 facts to the said Court.

*Answer of George H. Van Voorhis to Amended
Bill of Complaint and Counterclaim.*

2. Defendant, George H. Van Voorhis, avers that the fair rental value of the said premises is not less than \$125.00 per month.

Defendant, George H. Van Voorhis, therefore prays that he may have such relief in the premises as may be just and equitable and that the Bill of Complaint be dismissed with reasonable costs and charges most wrongfully sustained by this Defendant. 10

JAMES B. FURBER,
Solicitor for Defendant,
George H. Van Voorhis.

WM. F. NIES
Of Counsel. 20

A True Copy
Thomas Barber
Clerk.

30

40

Order.

Exhibit C-4.

IN CHANCERY OF NEW JERSEY.

10	Between AGNES G. BENJAMIN, Complainant, <i>and</i> GEORGE H. VAN VOORHIS, FRED- ERICK G. JAMISON, DOROTHY L. JAMISON, JOHN E. JAMISON, and ETHEL F. JAMISON, Defendants.	}	On Bill, &c.
20			

This matter coming on to be heard in the presence of Frederic B. Scott, solicitor for complainant, and James B. Furber, solicitor for defendant George H. Van Voorhis, It is on this 1st day of November, 1928, ORDERED, that complainant's Bill be dismissed for lack of prosecution, and that the account under counterclaim of defendant, George H. Van Voorhis, be referred to Thomas R. Armstrong, a Master in Chancery of the City of Jersey City, to determine the value of the use of the premises involved in this action, viz., the premises at No. 104 Mt. Pleasant Avenue, in the City of Newark, County of Essex and State of New Jersey.

IT IS FURTHER ORDERED that the question of counsel fees and costs shall be determined upon and at the time of the confirmation of the said Master's report.

40

Summons and Complaint.

IT IS FURTHER ORDERED, that complainant shall vacate the premises at No. 104 Mt. Pleasant Avenue, in said City of Newark, on or before the 20th day of November, 1928, and deliver the keys therefor to defendant's counsel, James B. Furber.

IT IS FURTHER ORDERED, that a copy of this Order, certified by defendant's solicitor, be served upon complainant's counsel within five days from the date hereof. 10

Respectfully advised,
JOHN BENTLEY, V. C.

Summons and Complaint.

Exhibit C-5. 20

THE STATE OF NEW JERSEY,

TO

AGNES G. BENJAMIN:

YOU ARE SUMMONED to answer the annexed complaint of George H. Van Voorhis, in an action at law in the Supreme Court wherein said George H. Van Voorhis demands of you the possession of a tract of land with the appurtenances situate in the City of Newark, in the County of Essex, and State of New Jersey, and particularly described in said complaint. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this Writ and of the annexed complaint, judgment will be entered against you and you will be turned out of possession of said land. 30 40

Summons and Complaint.

Witness, WILLIAM S. GUMMERE, Chief Justice
of the Supreme Court, at Trenton, this 13th day
of September, Nineteen Hundred and Twenty-
eight.

(sgd) FRED L. BLOODGOOD,
Clerk.

10 (sgd) JAMES B. FURBER,
Attorney.

Exhibit C-6.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

20 GEORGE H. VAN VOORHIS,
Plaintiff,

vs.

AGNES G. BENJAMIN,
Defendant.

Action at Law
Complaint.

30 Plaintiff, residing in the City of Newark,
County of Essex and State of New Jersey, de-
mands of Agnes G. Benjamin, the defendant here-
in, the possession of the premises known as No.
104 Mt. Pleasant Avenue, City of Newark, New
Jersey. And the plaintiff says that his right to
the possession of the same accrued on the Twenty-
eighth day of August, 1926, and that the defend-
ant wrongfully deprives him of the possession
thereof, to his damage of Two Thousand, Three
Hundred and Seventy-five (\$2,375.00) Dollars.

40 JAMES B. FURBER,
Attorney for Plaintiff.

Answer.

Exhibit C-7.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

<p style="text-align: center;">GEORGE H. VAN VOORHIS, Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">AGNES G. BENJAMIN, Defendant.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">Action at Law</p>
---	---	--

Defendant says that:

20

She denies the truth of the matters contained in the complaint filed in the above cause.

AND FOR A SPECIAL AND SEPARATE DISTINCT SECOND DEFENSE this defendant says that said plaintiff ought not to have or maintain his action against her for that the alleged document or operative legal title upon which the plaintiff claims immediate possession of the premises described and set forth in his complaint, were obtained by the plaintiff at a time when the person so executing said alleged operative legal title was of unsound mind and memory.

30

AND FOR A THIRD AND SEPARATE DISTINCT DEFENSE this defendant says that said plaintiff ought not to have or maintain his action against her for the reason that the alleged document operative as legal title upon which the plaintiff claims possession as set forth in and by his complaint filed in the above entitled cause, was obtained by him from

40

Affidavit of Agnes G. Benjamin.

the maker of said alleged operative legal title through duress and fraud.

WHEREFORE this defendant prays that the above entitled action be dismissed as against her with her taxed costs in the premises.

10

FREDERIC B. SCOTT,
Attorney for Defendant.

STATE OF NEW JERSEY, }
County of Essex, } ss.:

AGNES G. BENJAMIN, of full age, being duly sworn on her oath, says:

20 1. I am the complainant mentioned and referred to in the above entitled proceeding and the original proceeding of which the above proceeding is a part.

30 2. I further state that the allegations in my Bill of Complaint and amended Bill of Complaint filed in the above entitled proceeding, are true so far as they have reference to any acts of mine or any acts of the said defendant George H. Van Voorhis, wherein it appears or is charged by me that I have personal knowledge, and as to the balance and remainder of the said allegations in said Bill of Complaint and amended Bill of Complaint, filed in said cause, I verily believe the same to be true.

40 3. I further state that my Bill of Complaint, my amended Bill of Complaint and all the various petitions for hearings in the above entitled original action and its branches since the beginning of said action in June, 1927, have been brought and instituted by me and at my direction solely and on account of the necessary protection of my

Affidavit of Frederick G. Jamison.

rights and interests in said matter as I have been advised they were.

4. I further state that I have read the testimony of one Dorothy Van Voorhis, who purports to be the wife of the defendant, George H. Van Voorhis, as given before Thomas R. Armstrong, a Master, to whom the Court of Chancery referred the said George H. Van Voorhis' counterclaim against me, wherein and whereby she alleges and testifies that I neglected to properly care for the premises and furnishings at No. 104 Mount Pleasant Avenue, Newark, New Jersey, while I was occupying the same, and wherein and whereby the said Dorothy Van Voorhis testifies that I deliberately injured said property, and I further state that the said testimony of the said Dorothy Van Voorhis is in said particulars malicious, false and untrue in each and every particular.

AGNES G. BENJAMIN.

Subscribed and Sworn to before me
this 20th day of March 1929.

W. J. LARRABEE
Master in Chancery
of New Jersey

STATE OF NEW JERSEY, }
County of Essex, } SS.:

FREDERICK G. JAMISON, of full age, being duly sworn on his oath, says:

1. I am one of the defendants in the above entitled action and am also the brother of the com-

Affidavit of Frederick G. Jamison.

plainant, Agnes G. Benjamin, referred to in the above entitled cause.

10 2. I have read and have knowledge of the agreement, a copy of which is attached to the complainant's Bill of Complaint filed in the above entitled cause, and am familiar with the execution of the said original agreement.

3. I further state that I saw the said complainant, Agnes G. Benjamin, sign the said agreement and that I saw the said defendant, George H. Van Voorhis, sign said original agreement and that I attended to and had the other parties to said agreement sign the same.

20 4. I further state that of my own knowledge I know that the said George H. Van Voorhis freely and voluntarily signed and executed said agreement after a full and complete discussion thereof, and asservate that said agreement was not left with me with any understanding by or with the said defendant, George H. Van Voorhis, that it should not be delivered to the complainant or anyone else until counsel for the complainant and the defendant, George H. Van Voorhis, or anyone representing him, could make and attend to
30 preparing a different agreement which would be more acceptable to everyone involved, but that the said defendant, George H. Van Voorhis, freely and voluntarily entered into said agreement without any condition or stipulation concerning the same or its delivery, and that said defendant, George H. Van Voorhis, was perfectly satisfied with said agreement which formed the basis of the suit upon which the complainant,

40

Affidavit of Edward Markley.

Agnes G. Benjamin, instituted the above entitled action against the said George H. Van Voorhis and others.

FREDERICK G. JAMISON.

Subscribed and Sworn to before me
this 22nd day of March 1929. 10

F. J. GREENBERG,
Master in Chancery
of New Jersey.

STATE OF NEW JERSEY, }
County of Hudson, } ss.:

EDWARD MARKLEY, of full age, being duly sworn on his oath, says:

1. I am a solicitor of the Court of Chancery of New Jersey, and an attorney and counsellor at law of said State, and have been practicing law for the period of fifteen years. 20

2. On or about the 10th day of September, 1928, I was retained by Agnes G. Benjamin for the purpose of trying and conducting her cause against one George H. Van Voorhis and others in the Court of Chancery of New Jersey, mentioned and referred to in the foregoing Answer of the said Agnes G. Benjamin. 30

3. On the 30th day of October, 1928, I became engaged in the trial of a cause in the Hudson County Circuit, which cause lasted during part of October 31, 1928, and that at the conclusion of said cause I was immediately obliged to proceed with the trial of another cause before said Court on the same day, to wit, the 31st day of October, 1928, in which cause I was engaged during the balance of said October 31st, 1928, and all of the 1st and 2nd days of November, 1928. 40

4. As a result of my engagements as set forth in the preceding paragraph, I requested one

Affidavit of Edward Markley.

Howard F. McIntyre, associated with the firm of Collins and Corbin, of which I am a member, to appear before the Honorable John C. Bentley, Vice Chancellor of the Court of Chancery of New Jersey, to secure an adjournment of said cause on account of my actual engagements in the Hud-
 10 son County Circuit Court, and on account of the inability of the complainant, Agnes G. Benjamin, to produce one Frank L. Martine, a physician, who in my opinion was an important and material witness for the said complainant.

5. I am informed by my said associate, Howard F. McIntyre, that the said Honorable John C. Bentley, Vice Chancellor, refused to adjourn said cause and continued the hearing on the applica-
 20 tion for said adjournment until 2 o'clock on the afternoon of November 1st, 1928, at which time Frederic B. Scott, solicitor for the complainant, appeared in support of said application in my place and stead.

6. I further state that it was impossible for me to control the moving of the cause in the Hud-
 30 son County Circuit Court in which I became engaged on the afternoon of October 31st, 1928, and which continued during the entire days of November 1st and 2nd, 1928, and that it was physically impossible for me under these circumstances to appear before the Honorable John C. Bentley, Vice Chancellor, to personally urge and request the adjournment of the cause of the complainant, Agnes G. Benjamin, on account of and for the reasons hereinbefore set forth.

EDWARD A. MARKLEY.

Subscribed and Sworn to before me
 40 this 22nd day of March 1929.

JOHN H. YOUNG,
 Notary Public
 of New Jersey.

Affidavit of Howard F. McIntyre.

STATE OF NEW JERSEY, }
 County of Hudson, } ss.:

HOWARD F. MCINTYRE, of full age, being duly sworn on his oath, says:

1. I am an associate of Edward Markley in the firm of Collins and Corbin. 10

2. On November 1st, 1928, on account of the engagements in the Hudson County Circuit Court of the said Edward Markley, he requested me to endeavor to secure a continuance of the hearing set down for that day in the proceeding or cause in which Agnes G. Benjamin was complainant and George H. Van Voorhis and others were defendants.

3. I further state that I appeared before the said Honorable John C. Bentley, Vice Chancellor, and made such request after having presented to him affidavits in the premises of Frederic B. Scott and Francis R. Haussling, of which the attached are true copies, and that said request was refused by the said Honorable John C. Bentley, Vice Chancellor, but that said hearing on said application was postponed until the afternoon session of said Court, at which time I was able to secure the attendance of Frederic B. Scott, solicitor of the said Agnes G. Benjamin, who from that time on said day continued the application to postpone or continue the said cause. 20 30

HOWARD F. MCINTYRE.

Subscribed and Sworn to before me
 this 22nd day of March 1929.

FRANK A. BOEHLER
 Master in Chancery of N. J.

40

Affidavit of Frederic B. Scott.

IN CHANCERY OF NEW JERSEY.

10	Between AGNES G. BENJAMIN, Complainant, <i>and</i> GEORGE H. VAN VOORHIS, ET ALS., Defendants.	}	Affidavit.
----	---	---	------------

STATE OF NEW JERSEY, }
 County of Hudson, } ss.:

20 FREDERIC B. SCOTT of full age, being duly sworn,
 on his oath deposes and says:

1. I am the solicitor of the above complainant, Agnes G. Benjamin, and am thoroughly familiar with the facts giving rise to the complainant's cause of action as set forth in her Bill of Complaint filed in the above cause.

30 2. I further state as solicitor of the complainant, that it is both necessary and essential that the above complainant establish to the satisfaction of the Court that one Katherine M. Van Voorhis, mother of the complainant and late wife of the above George H. Van Voorhis, was incompetent to make a certain Last Will and Testament on account of her mental condition at the time of the alleged execution of said last Will and Testament.

40 3. I further state that one Frank L. Martine, a physician, practicing in the State of New Jersey, and residing at 182 Roseville Avenue, in the City of Newark, was the attending physician of the said Katherine M. Van Voorhis for a long

Affidavit of Frederic B. Scott.

period of time prior to and up until her death, and that the said Frank L. Martine was in almost continuous attendance upon the said Katherine M. Van Voorhis during said time, and was the only one to prescribe for her during her entire illness, which was of a very acute and painful character. 10

4. I further state that the said Frank L. Martine has, after conference with me, advised me that in his opinion the said Katherine M. Van Voorhis was mentally incompetent to make said alleged Last Will and Testament which is involved in the above entitled proceeding, all of which facts are corroborative of what will be the complainant's testimony in the above entitled proceeding. 20

5. I further state that in my opinion the above complainant cannot safely go on with the trial of the above entitled proceeding without the testimony of the above Frank L. Martine.

6. I further state that the complainant has engaged Mr. Edward Markley of the firm of Collins & Corbin to try the above cause and that today, November 1, 1928, he is actually engaged in the trial of a cause in the Hudson County Circuit Court, having started the trial of said cause on the afternoon of October 31, 1928. 30

FREDERIC B. SCOTT.

Subscribed and sworn to before me
this first day of November 1928.

JAMES J. LANGAN
Notary Public of N. J.

Affidavit of Francis R. Haussling.

IN CHANCERY OF NEW JERSEY

10	Between AGNES G. BENJAMIN, Complainant, <i>and</i> GEORGE H. VAN VOORHIS, ET ALS., Defendants.	}	Affidavit.
----	---	---	------------

STATE OF NEW JERSEY, }
 County of Essex, }ss.:

20 FRANCIS R. HAUSSLING, of full age, being duly sworn, on his oath deposes and says:

1. I reside at 661 High Street, in the City of Newark, Essex County, New Jersey, and am a duly licensed physician, having practiced my profession for the last 24 years.

30 2. I know one Frank L. Martine, who resides at 182 Roseville Avenue, in the City of Newark, Essex County, New Jersey, and have known him for the last 20 years, and have been closely associated with him professionally for the last 20 years.

3. On the 18th day of September 1928, the said Frank L. Martine was operated upon by me for Fecal fistula, said operation being the 2nd operation upon the said Frank L. Martine.

40 4. I further state that I have had charge of the said Frank L. Martine since said operation, and although the said Frank L. Martine is recovering from the effects of said operation, in my

Affidavit of Harry Kalisch.

opinion it will be unwise and unsafe for the said Frank L. Martine to go to court in the above case for the purpose of testifying as a witness in the above or any other proceeding on November 1st, 1928, or at any other time for at least.

FRANCIS R. HAUSSLING, M.D. 10

Subscribed and sworn to before me
this 31st day of October, 1928.

WALTER J. LARRABEE,
Master in Chancery
of New Jersey.

IN CHANCERY OF NEW JERSEY. 20

Between AGNES G. BENJAMIN, Complainant, and GEORGE H. VAN VOORHIS, FRED- ERICK G. JAMISON, DOROTHY L. JAMISON, JOHN E. JAMISON, and ETHEL F. JAMISON, Defendants.	} On Amended } Bill of Com- } plaint for } Injunction. } Affidavit.	30
---	---	----

STATE OF NEW JERSEY, }
 County of Essex, } ss.:

HARRY KALISCH, of full age, being duly sworn upon his oath deposes and says:

I am an attorney and counsellor at law of the State of New Jersey, and a member of the firm 40

Affidavit of Harry Kalisch.

of Kalisch & Kalisch, located at Newark, N. J.

In the early part of March, 1927, I was engaged by Agnes G. Benjamin of 104 Mt. Pleasant Ave., Newark, to advise and represent her concerning her rights in and to certain property of the estate of her mother, Catherine M. Van Voorhis, late of Newark, N. J.

Subsequent to my engagement as aforesaid, a draft of an agreement, settling the differences between Agnes G. Benjamin and George H. Van Voorhis, et als., was submitted to me, and on or about March 8, 1927, George H. Van Voorhis and Frederick G. Jamison came to my office and spent considerable time discussing said agreement. The draft of this agreement was subsequently changed and a new agreement drafted, and the said George H. Van Voorhis and Frederick G. Jamison returned to my office the next day, to wit, March 9, 1927, said Frederick G. Jamison being accompanied by his wife, Dorothy L. Jamison. The new agreement was then discussed again by said George H. Van Voorhis and Frederick G. Jamison in my office, and the said parties, to wit, the said George H. Van Voorhis, Frederick G. Jamison and Dorothy L. Jamison, being satisfied with said agreement, signed the same and I took their acknowledgment.

Inasmuch as the agreement was executed in quadruplicate, the said Frederick G. Jamison took the agreement with him to have the other parties thereto sign the same.

At the time said agreement was acknowledged, I was preparing to go to Europe and in the hurry of said preparation, I left for Europe before said Frederick G. Jamison returned said agreement to me to have me write my acknowledgment therein, said agreement however was acknowledged before

Affidavit of Frederic B. Scott.

me as to the said George H. Van Voorhis, Frederick G. Jamison and Dorothy L. Jamison.

I distinctly remember when said agreement was signed and acknowledged by me, the said George H. Van Voorhis expressed his satisfaction that the said matter was cleaned up, apparently, from his manner, to his entire satisfaction. 10

Sworn and subscribed to before me
this 2nd day of April, 1929.

Harry Rubesch

(W.S.)

Sullivan A. Dalton
Notary Public in N.Y.

STATE OF NEW YORK, }
County of New York, } ss.:

FREDERIC B. SCOTT, of full age, being duly sworn on his oath, says:

1. I am the Solicitor of the complainant, Agnes G. Benjamin. 20

2. I further state that in the preparation of the above cause on behalf of the complainant for trial I had conferred with one Frank L. Martine, M.D., who advised me that in his opinion the late Catherine M. Van Voorhis was mentally incompetent to make her alleged last will and testament involved in the original above entitled proceedings. 30

3. I further state that on October 26, 1928, in the preparation of the complainant's case for trial before the Honorable John C. Bentley, Vice Chancellor, on November 1st, 1928, I first learned that the said Frank L. Martine, M.D., was unavailable as a witness for the complainant in the above entitled action and that I immediately advised the Honorable John C. Bentley, Vice Chancellor, of the possibility of said case not being able to be moved for trial. 40

Affidavit of Frederic B. Scott.

4. I further state that when I first learned that the said Frank L. Martine, M.D., was not available as a witness in the above entitled cause, either to appear personally or for the purpose of taking his deposition, I informed my trial
10 associate, Edward Markley, of that fact and that he advised me that he would attend to the continuance of said cause to a more opportune time for the trial of said cause.

5. I further state that on November 1st, 1928, about 12 o'clock Noon of that day, I was advised by an associate of the said Edward Markley that the Honorable John C. Bentley, Vice Cancellor, had refused to continue said cause but had continued the argument on said application until 2
20 o'clock in the afternoon of that day, and that the said Edward Markley's associate requested me to appear in person to continue said application.

6. I further state that I did appear before the said Honorable John C. Bentley, Vice Chancellor, at 2 o'clock in the afternoon of November 1st, 1928, and continued to urge for the continuance of the said cause, but that the said continuance was refused by the Honorable John C. Bentley,
30 Vice Chancellor, and that on the refusal of the said Honorable John C. Bentley, Vice Chancellor, to continue said cause, unprepared as I was, and under the circumstances that special trial counsel, Edward Markley, had been engaged to try said case by the complainant, I offered to move the trial of said cause at 2.50 P. M. on said day, but that the Honorable John C. Bentley, Vice Chancellor, refused to permit the same, and on motion of the solicitor of George H. Van Voorhis,
40 dismissed the complainant's amended Bill of Complaint and ordered a reference in said matter on

Affidavit of Frank L. Martine.

the said George H. Van Voorhis' counterclaim, all of which appear more fully in the order of the Court of Chancery hereto attached to the complainant's answer in the pending matter.

7. I further state that the dismissal of the complainant's Bill of Complaint, as shown by the said order of the Court of Chancery, was not due to any fault or neglect of the complainant, Agnes G. Benjamin, but solely for the reasons set forth in her foregoing answer and the affidavits of the said Edward Markley and myself attached hereto to the complainant's answer. 10

FREDERIC B. SCOTT.

Subscribed and Sworn to before me
this 23rd day of March 1929. 20

JOSEPH FRELL

A foreign Commissioner of Deeds
For N. J. in N. Y.

Commission Expires Jan. 3rd, 1931.

STATE OF NEW JERSEY, }
County of Essex, } ss.:

FRANK L. MARTINE, of full age, being duly
sworn, on his oath, says: 30

1. I reside at 182 Roseville Avenue, Newark, New Jersey, and am a duly licensed physician, having practiced my profession for over nineteen years.

2. That in the month of January, 1926, with Dr. F. H. Haussling, also a practicing physician, I was engaged to take charge of the case of Catherine M. Van Voorhis, late of 104 Mt. Pleasant 40

Affidavit of Frank L. Martine.

10 Avenue, Newark, N. J., at which time the said patient was suffering from a complication of diseases, of which the most serious was Myelogenous Luekemia, a disease of the spleen. She was also suffering from what is known as secondary anaemia. The cause of my engagement, however, was because the patient was suffering from septice-
mia, which in common parlance is known as blood poisoning.

20 3. My continuous attendance upon the patient gave me full opportunity to learn of her condition. Her suffering gradually became so intense that from about the middle of April, 1926, until the time of her death, it was necessary to keep her under the influence of opiates, so much so that in my opinion during the month of May, 1926, which would include the 12th day of May, 1926, when she is alleged to have made her Last Will and Testament, the said Catherine M. Van Voorhis could not have been and was not in full and normal possession of her mental faculties.

30 4. I further state that on September 25, 1928, I underwent a serious operation at the hands of my associate, Dr. Francis R. Haussling, and that from that time and until sometime after November 1st, 1928, I was in no condition to give testimony either in court or by deposition as a witness for Agnes G. Benjamin, the complainant in the above entitled proceeding.

F. L. MARTINE.

Subscribed and sworn to before me
this 30th day of March, 1929.

40 CHARLES F. MEADE
Notary Public of N. J.

Final Decree.

IN CHANCERY OF NEW JERSEY

Filed April 30, 1929.

Between

AGNES G. BENJAMIN,
Complainant,*and*GEORGE H. VAN VOORHIS, ET ALS.,
Defendants.

On Bill, &c.

10

This matter having come on to be heard in the presence of Frederic B. Scott, solicitor for the complainant, and James B. Furber, solicitor for the defendant George H. Van Voorhis, on the application of the defendant George H. Van Voorhis for permission to discontinue the action of the said defendant George H. Van Voorhis on his counterclaim filed in the above suit, and to confirm the dismissal of the complainant's complaint, and to confirm the order dismissing the complainant's complaint made on the 8th day of November, 1928, and for counsel fee to be awarded to the solicitor of the defendant George H. Van Voorhis, and said matter having been duly considered by this Court, in the presence of the solicitors named,

20

30

It is on this 24th day of April, 1929,

ORDERED, ADJUDGED AND DECREED that the order of this Court of November 8th, 1928, dismissing the complainant's bill of complaint, be and it hereby is in all things confirmed; and it is further

40

Final Decree.

10 ORDERED that the said defendant George H. Van Voorhis be allowed and permitted to discontinue his action on his counterclaim filed in the above suit, which counterclaim was referred to Thomas R. Armstrong, a Master in Chancery of this Court, upon the following terms and conditions, to-wit: that the said defendant George H. Van Voorhis shall within ten days after the making and entry of this decree, discontinue the action brought by him against the complainant Agnes G. Benjamin, in the Essex Circuit of the New Jersey Supreme Court, for Two thousand three hundred and seventy-five dollars (\$2,375), the summons in which matter was tested on the 13th day of September, 1928; and it is further

20 ORDERED that no counsel fee be allowed to the solicitor of the defendant George H. Van Voorhis, and that the complainant Agnes G. Benjamin, and the defendant George H. Van Voorhis assume their own separate costs in said matter, costs as against each other being hereby disallowed by this court.

E. R. WALKER,
C.

30 Respectfully advised,
JOHN BENTLEY,
V. C.

Approved as to form.

FREDERIC B. SCOTT,
Solicitor for Complainant.

40

New Jersey Court of Errors and Appeals.

Between

AGNES G. BENJAMIN
Complainant-Appellant

and

GEORGE H. VAN VOORHIS, *et als.*,
Defendants-Respondents

10

Statement as to Reasons for Additions to State of Case.

Simultaneously with the receipt of the following 20
letter from the Vice-Chancellor, who sat in the
case below:

COURT OF CHANCERY OF NEW JERSEY

JOHN BENTLEY
Vice Chancellor

JERSEY CITY, N. J. Oct. 11, 1929.

FREDERIC B. SCOTT, Esq.,
90 West St., New York.

30

DEAR SIR:

There has just been presented to me a document
purporting to be a state of the case on appeal in
Benjamin *vs.* Van Voorheis. There are a number of
features that I am unable to explain, but there
are two especially that arrest my attention: First,
you have failed to include therein the pronounce- 40

Statement as to Reasons for Additions to State of
Case.

ment of my reasons for refusing a continuance;
and, secondly, a statement on page 72, line 35,
that you offered to move the final hearing in that
cause at 2:50 P. M. on November 1st last. There
was never any offer made on behalf of the com-
plainant to move the hearing. Not only would it
10 be impossible for me to have adopted such an atti-
tude as you say I did, but my recollection of that
most unusual session is entirely clear, and I know
you stood upon the refusal to move the cause on
account of the absence of Dr. Martine. Further-
more, an examination of the official stenographic
notes discloses no intimation of any desire upon
your part to proceed upon that day so far as you
could go.

20 While I have no objection to any number of re-
versals I do not wish to be placed in the light
that your affidavit would place me before our Court
of last resort. It is my desire either that you ex-
plain satisfactorily to me your reasons for these
discrepancies or else that you have the contents of
this letter brought to the attention of the mem-
bers of the Court of Errors and Appeals.

* * * * *

Yours very truly,

30

JOHN BENTLEY

JB:ARB

the solicitor of the complainant received word
from the solicitor of the principal defendant Van
Voorhis, that his client had instructed him not
to appear on the appeal in the above action.

After service of the State of Case, no objections
were made to the same by the solicitor of the prin-
40 cipal defendant Van Voorhis.

Statement as to Reasons for Additions to State of
Case.

The principal defendant Van Voorhis having failed to file any answer to the complainant's petition of appeal filed in this cause, the complainant, pursuant to Rule 23 of this Court, entered a rule with the Clerk of the Court for the hearing of said appeal, having prior to said time given notice of argument to the solicitor of the principal 10 defendant.

However, in view of the Vice-Chancellor's letter of the 11th inst. rather than seek to take advantage of no legal objections having being made to State of Case, the complainants solicitor replied to said Vice Chancellor as follows:

OCTOBER 14, 1929.

Benjamin vs. Van Voorhis, et al.

20

Honorable JOHN BENTLEY
Vice-Chancellor
Chancery Chambers
1 Exchange Place
Jersey City, N. J.

DEAR SIR:

I am glad that I received your letter of the 11th inst. prior to my filing State of Case in the above 30 matter with the Sergeant-at-Arms of the Court of Errors and Appeals, because I beg to assure you that the same will not be filed until I have conferred with you as to such additions to the State of Case as you seem to feel should be added, even if it is necessary for me to have the case marked off for the term.

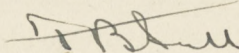
Tomorrow I will have said case marked to the very bottom of the Court of Errors and Appeals 40

Statement as to Reasons for Additions to State of
Case.

list, and will follow that marking by putting the case off for the term if it should become necessary.

Respectfully yours,

FBS/S



OCTOBER 16, 1929.

Benjamin vs. Van Voorhis, et al.

10 Honorable JOHN BENTLEY, Vice Chancellor
Chancery Chambers
1 Exchange Place
Jersey City, N. J.

DEAR SIR:

Pursuant to my letter of the 14th inst., upon the opening of the Court of Errors and Appeals, I had the above case marked "To the Bottom", which will cause it to be reached about the 21st inst.

20 While at Trenton I also examined the original files in this case, having already given the State of Case an even more extensive study since the receipt of your letter than in preparing my brief.

Although I feel that I should not be put to any additional expense in this case, nevertheless, I shall be pleased to have printed in a separate book, properly designated such other papers filed in the above cause that you may designate, or such deliverances
30 that Your Honor made in the course of this litigation of which there is any stenographic record, and either your letter of the 11th inst., deleting, however, therefrom the last paragraph thereof relative to the information furnished you by Mr. Furber regarding his client's financial resources, because I do not feel that any statement made by him not sworn to or subject to cross-examination should be
40 injected into this cause and placed before the Appellate Court in this matter.

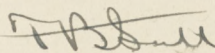
Statement as to Reasons for Additions to State of
Case.

I will also be pleased to print any certificate de hors the record as you should care to have inserted in said book, reserving, however, if necessary, the also placing before the court in the same book such necessary data as due regard for my responsibility first as an officer of the court, and secondly in protection of my client's interest, may be deemed 10 necessary.

I await your expressed desires in the premises.

Most respectfully,

FBS/S



to which the Vice-Chancellor replied as shown by the following letter:

20

COURT OF CHANCERY OF NEW JERSEY

JOHN BENTLEY
Vice Chancellor

JERSEY CITY, N. J. Oct. 17, 1929.

FREDERIC B. SCOTT, Esq.,
90 West St., New York City.

DEAR SIR:

30

The only matters I wish to have before the Court of Errors and Appeals, in Benjamin *v.* Van Voorhis, are so much of my letters of the 14th as you indicate you are willing to print and the enclosed transcript of the official notes of my reasons for refusing a continuance. You, of course, are aware that the upper court feels that it is entitled in every appeal to the trial court's reasons for its decision upon the matter appealed. Partly for that reason and partly 40

Statement as to Reasons for Additions to State of
Case.

because I want them to know why I acted as I did,
I wish this to be before them.

Yours very truly,

JOHN BENTLEY

The transcript of the official notes referred to in
the Vice-Chancellor's letter of October 17, 1929,
being as follows:

10 IN CHANCERY OF NEW JERSEY.

Between

AGNES G. BENJAMIN,
Complainant

and

GEORGE H. VAN VOORHIS, *et al.*,
Defendants

On Bill &c.
Transcript

20

Transcript of the colloquy taking place in
the above stated cause, between counsel and
the court, at the Chancery Chambers in Jer-
sey City, on Thursday, November 1, 1928, be-
fore His Honor

JOHN BENTLEY, Vice-Chancellor.

30 Appearances:

HOWARD F. MCINTYRE, appearing for Edward
F. Markley and

FREDERIC B. SCOTT, Esq.,
For the Complainant,

JAMES B. FURBER, Esq.,
For the Defendants.

The Court: There are presented to me two affi-
40 davits, one by Mr. Scott who is the solicitor of

Statement as to Reasons for Additions to State of
Case.

record for the complainant, indicating that a physician, Dr. Martine, is a necessary witness for the complainant, and the other an affidavit by a surgeon, Dr. Haussling, saying that on the 18th of September he operated on Dr. Martine for a fecal fistula, and that in his opinion it would be unwise and unsafe for Dr. Martine to come to this court to testify, for another month. The case is one of great emergency,—so much so that upon the solicitation of both counsel it was advanced to be heard finally on this date. A further reason is set forth in the affidavit, I should have said, for a continuance, namely, that counsel who has been engaged by Mr. Scott to conduct the complainant's case is actually engaged in another court. Of course, as I have already indicated, absence of counsel is not a good ground for a continuance, and Mr. Scott does not say in his affidavit that it would be impracticable for him to be here today. So far as the absence of Dr. Martine is concerned, in view of the exigencies of this case, he has been confined to a hospital since the 18th of September, and there has been ample time to have either taken his testimony *de bene esse* or to have arranged to take it after this hearing and before any decision should have been rendered. Under all the circumstances of the case, and considering the confusion in which the property which is the subject matter of the suit now is because of this litigation, I don't think that any postponement ought to be allowed. The defendant seeks no relief.

Mr. Furber: We are asking for the use of the property at the nominal rental of \$25. a month which it could be rented for and that would have been an income and prevented foreclosure.

Statement as to Reasons for Additions to State of
Case.

The Court: If you seek affirmative relief it must be upon some proofs.

Mr. Furber: Well, of course, they all admit possession and the rental value during that period.

The Court: Are you prepared to do that now?

Mr. Furber: You mean now, the first thing?

10 The Court: Yes. Why don't you prove that before a master?

Mr. Furber: That would be a better way.

The Court: All right; I will refer that phase of it to a master.

Mr. Furber: And the counterclaim for use?

The Court: Give notice that the defendants are to be represented.

Mr. Furber: I assume that I can go on after today?

20 The Court: Yes. If the bill is not moved I will dismiss it. I won't hold it further than today. So you had better let Mr. Scott and Mr. Markley know.

State of Case and Briefs were served upon the solicitor of the principal defendant Van Voorhis as prescribed by the court rules and before the
30 letter of October 11, 1929, from the Vice Chancellor was received.

FREDERIC B. SCOTT,
Solicitor and of counsel with Complainant.

New Jersey Court of Errors and Appeals.

Between

AGNES B. BENJAMIN,
Complainant-Appellant,

and

GEORGE H. VAN VOORHIS, *et al.*,
Defendants-Respondents.

On Appeal from
Chancery.

BRIEF OF APPELLANT.

Statement.

This is an appeal from the Court of Chancery from a final decree advised by the Honorable Vice-Chancellor John Bentley and filed on the 30th day of April, 1929, the facts and circumstances giving rise to this appeal being as follows:

On May 12, 1927, the complainant filed a bill for specific performance for the purpose of enforcing an agreement entered into between herself and the defendants, regarding the disposition of the estate of the principal defendant Van Voorhis's widow, the complainant and the other defendants being step-children of the principal defendant.

On June 13, 1927, an amended bill of complaint was filed. Subpœna having been issued and served, the principal defendant on January 5, 1928, filed an answer and counter-claim to said bill of complaint; and on March 6, 1928, an order

of reference was made to the Honorable John Bentley, Vice-Chancellor, in said matter. After issue had been joined, the complainant duly made an application to the Vice-Chancellor to set a day for the hearing of said cause, and the same was fixed for June 26, 1929. Later on, the complainant made another application to the Vice-Chancellor to advance the date of the trial of said cause and succeeded in having him fix the date of the trial of said cause for November 1, 1928. On September 10, 1928, the complainant engaged Edward Markley of the firm of Collins and Corbin to try said cause for her on November 1, 1928, because the solicitor of record felt it ethically improper to try said cause personally as it was necessary for him to be a witness in said cause on behalf of his client. On October 26, 1928, complainant's solicitor, in preparing said cause for trial for November 1, 1928, learned that it would be impossible to produce on the trial of the above cause one of the complainant's most important witnesses in support of her amended bill of complaint, said witness being a physician by the name of Martine, said witness having then but recently undergone an operation and was at the time in such a condition of convalescence that he was too ill to go to court and too ill to give his testimony by deposition. On learning the foregoing fact, complainant's solicitor on the same day advised the Vice-Chancellor of his belief that it was impossible to try said cause at the time set for hearing. Complainant's

solicitor thereupon caused the same information to be immediately placed before the complainant's trial counsel, Mr. Markley, and both Complainant's solicitor and the said Edward Markley advised the complainant that they could not safely proceed with the trial of said cause without the testimony of the said physician, or his deposition, and that they would endeavor to have said cause postponed.

Complaint implicitly relied upon the advice of her solicitor and trial counsel as to their ability to secure the adjournment of said cause under the foregoing circumstances. It so happened that on the day before the cause was set for trial, to-wit November 1, 1928, the complainant's trial counsel became engaged in a jury trial in the Hudson County Circuit Court, the moving of which he had no control, with the result that said case carried over in continuous trial to the 1st day of November, 1928, and only ended on the 2nd day of November, 1928.

Inasmuch as complainant's trial counsel was unable to appear in person before the Vice-Chancellor to request the adjournment, he arranged for one of his associates to make the application for adjournment, presenting affidavits as to the condition of the said witness, Dr. Martine, and his own actual engagements in court. The Vice-Chancellor, however, refused to adjourn the hearing, but continued it until 2 p. m. of the afternoon of said day, by which time the solicitor of record of the complainant was gotten to continue the application for said adjournment. At about 3

o'clock in the afternoon of November 1, 1928, the Vice-Chancellor (having another matter before him), took up the matter of said adjournment, the same then being pressed by the complainant's solicitor of record personally. After considerable argument, running up until near the time of the adjournment, the Vice-Chancellor having refused to continue said hearing, the solicitor of record of the complainant advised the Court that as reluctant as he was under the circumstances he would proceed with said cause, but the Vice-Chancellor refused so to do, with the result that he ordered the complainant's bill dismissed for lack of prosecution, and that an accounting under the defendant's counter-claim be referred to a Master of the Court of Chancery for the determination of the value of the use of the premises involved in said action; and at the same time directed that the injunctive features of the restraining order theretofore granted be vacated.

Hearings were had before the Master on the principal defendant's counter-claim until one of the defendant's witnesses refused to answer certain pertinent questions relative to the issues involved in said accounting. Whereupon the complainant applied to the Vice-Chancellor for an order that said recalcitrant witness be directed to answer the questions put to her, with the result that on the return of the Order to Show Cause why said witness should not answer said questions or be attached for contempt of court, the Vice-Chancellor directed said witness to answer said questions or be attached for contempt of court.

This last order of the Chancellor was made on the 28th day of February, 1929.

Within a few days after the granting of said last order, the principal defendant obtained a Rule to Show Cause, returnable before the Vice-Chancellor, why he should not be permitted to discontinue the prosecution of his counterclaim and the accounting thereon, and that the order of the Vice-Chancellor of November 1, 1928, dismissing the complainant's bill for lack of prosecution should not in all things be confirmed, and the principal defendant granted a counsel fee and costs in said matter. In opposition to said Order to Show Cause and the petition thereto attached, the complainant filed an answer and affidavits in support thereof against the confirmation of the order dismissing his bill of complaint and against the entry of a final decree therein. The Vice-Chancellor, however, on consideration of said matter, advised a final decree in said matter, permitting the discontinuance by the principal defendant of his counter-claim, and confirming his order of dismissal of the complainant's complaint, allowing neither party costs or counsel fee in said matter. From the final decree so entered, the complainant has appealed to this Court on the ground that the final decree of the Court of Chancery affirming the order of the Vice-Chancellor, dismissing the complainant's bill of complaint and confirming it in all things, is erroneous in that there was no justification, either in law or fact, for an order of the dismissal of complainant's complaint.

The instant case presents a situation that when a decree has been made unjustly against a right or interest that has not been heard or protected, when the same has been done without laches or fault of the complaining party, it should be set aside for the purpose of giving the appellant an opportunity to establish her right or interest and have it protected, where such defense is meritorious, and she has not been heard in relation thereto either through mistake, accident, surprise, or negligence of her solicitors.

ARGUMENT.

The reversal of the decree of the Court of Chancery is asked for on two grounds; first, surprise; second, merits.

Under the cases, there would appear to be no question as to the first point. The leading case in the state, which has been differentiated only in later opinions as being inapplicable to the later cases only for the reason that the facts in later cases did not bring them within the rule of said case, is *Day v. Allaire* (31 N. J. E. 303). In that case it appears that a solicitor of the Court of Chancery was duly retained to defend the appellant's action. The testimony was taken on both sides, that the solicitor abandoned the case without the knowledge or consent of the appellant, omitted and refused to take the testimony of several material witnesses, and did not present the evidence taken or argue the cause before the Chancellor, and that by such neglect the com-

plainant's case alone was heard. The appellants' testimony was not read, and they were not represented before the Chancellor, and that with these disadvantages the decree, against which they prayed relief in their petition, was made against them. This Court held that the appellant had showed surprise, and that the solicitor's misconduct was a breach of duty which the defendants were not bound to anticipate or guard against (at p. 314).

In the instant case, it appears that the appellant's most material witness, a Dr. Martine, was unavailable as a witness on the day set for hearing (p. 73, l. 30; p. 74, l. 1, etc.; p. 68, l. 20, etc.); that he was in no condition to give even a deposition (p. 74, l. 26, etc.), and had not been in a condition to give a deposition for some time before the date set for the hearing. It further appears that nearly two months before the day set for the hearing the complainant had retained a solicitor to try her cause (p. 63, l. 24, etc.); that on the day before the day set for the hearing, said solicitor became engaged in the trial of another cause, the moving of which against his there client he could not control or postpone; that he was actually engaged on the day set in the trial of said cause, on the day set for the hearing, and continued to be all that and the next day; that he had his engagements in the other court properly laid before the learned Vice-Chancellor (p. 63, l. 30, etc.).

It appears further that the complainant had a right to and did rely absolutely on her solicitor's advice and word to secure an adjournment of her

said cause, and that *she personally was in no way at fault or derelict*. It further appears that the merits of the appellant's cause were not permitted to be presented to the court, or a discussion of them had, before the final decree appealed from was pronounced.

The inevitable conclusion to be drawn from the foregoing facts is that the learned Vice-Chancellor abused his discretion in refusing to give the complainant a day in court.

Even prior to the pronouncement by this Court in *Day v. Allaire (supra)*, the Court of Chancery had long recognized that parties, situated as the appellant in the present case is, were entitled to present the merits of their causes before the Court of Chancery. Thus in *Brinkerhoff v. Franklin* (21 N. J. E. 334) it was held that a decree would be opened when the decree had been made unjustly against a right or interest that had not been heard or protected, when this had been done without laches or fault of the party who applied. In *Embury v. Bergamini* (24 N. J. E. 227), the Court of Chancery held that a decree would be opened for the purpose of giving a party an opportunity to make a defense where such defense was meritorious and he had not been heard in relation thereto either through mistake, accident or surprise. The rule of *Day v. Allaire (supra)*, to prevent injustice, continues to be re-affirmed by the Court of Chancery as late as *Harrington Co. v. Bogert* (144 Atl. 330, at 331.)

The present case is not one where the solicitors of the defendant had erred in judgment merely in

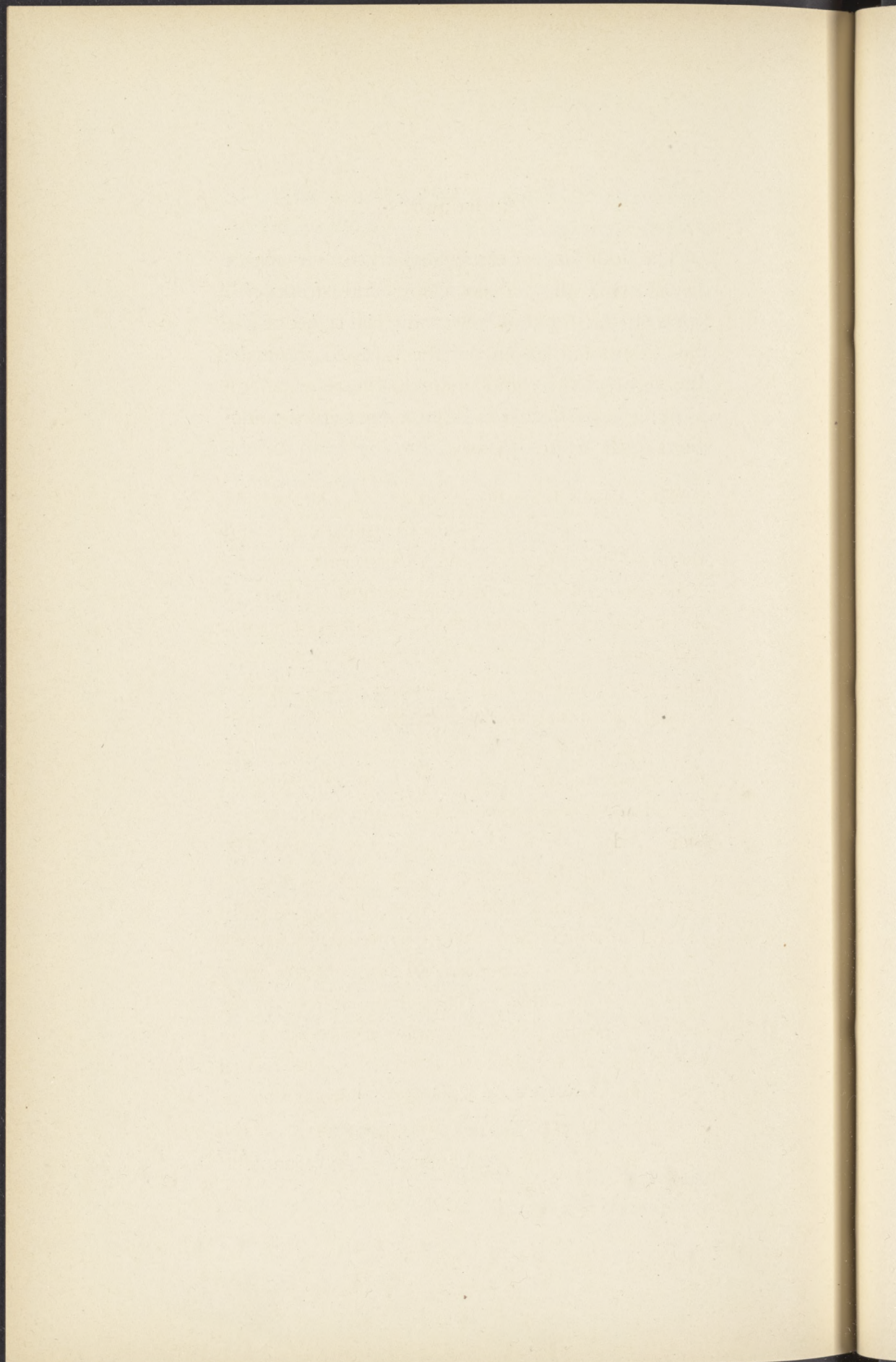
conducting the cause. Neither can a finger be pointed at laches or fault of the appellant on account of the facts and circumstances over which she had not control. On the ground of surprise alone, the final decree confirming the order of the Vice-Chancellor on November 1, 1928, should be reversed.

But it is further insisted that the second point-**merits** shown is by the following propositions of fact, established before the learned Vice-Chancellor prior to his advising the final decree confirming the order of the Court of Chancery dismissing the appellant's case for lack of prosecution: (1) That the agreement sought to be enforced was voluntarily entered into and executed by all the parties thereto (p. 70, l. 11, etc.; p. 62, l. 3, etc.; (2) that there was a valid consideration for said agreement (p. 10, l. 38, etc.; p. 11, l. 1, etc., and (3) that said agreement was enforceable. (*Bowers Dredging Co. v. Hess*, 70 N. J. E. 327-30, and *Hennessy v. Brown*, 137 U. S. 78.

For the foregoing reasons, the final decree of the Court of Chancery confirming its order of November 1, 1928, dismissing the complainant's bill of complaint, should be set aside, with a direction that the complainant be given her day in court to have her rights under said agreement established.

Respectfully submitted,

FREDERIC B. SCOTT,
Attorney of Complainant.



Addendum.

The additions to the State of Case—(separate book) while they do not change the situation or contentions urged in the main brief, necessitate this additional résumé of the facts to show that the right of the complainant to the relief sought is in no way affected by what appears in the additions to the State of Case.

The Vice-Chancellor's letter of October 11, 1929 (Add. pp. 2-3),—not a Certificate, although the appellant offered to add a Certificate from the Vice-Chancellor if so desired by him (Add. p. 5, ll. 1 *et seq.*) to the effect that "*there was never any offer made on behalf of the plaintiff to move the hearing*" (Add. p. 2, ll. 5 *et seq.*) is affirmatively established to be otherwise by the record p. 72, ll. 14 *et seq.*, the Vice-Chancellor's reasons for refusing a continuance (Add. p. 6, ll. 38 *et seq.*; p. 7, ll. 1 *et seq.*) being announced at the morning session (Add. p. 8, ll. 21 *et seq.*)—(R. p. 65, ll. 20 *et seq.*) and the moving of the case having occurred at the afternoon session (R. p. 72, ll. 13 *et seq.*) of which there was no stenographic record or the Vice-Chancellor would undoubtedly have requested the same to have been added to the record as he did the stenographic record shown in the Addition at pages 6, 7 and 8. The record also shows the Vice-Chancellor's recollection to have been in error as to the engagement of the trial counsel by the complainant's solicitor (Add.

p. 70, ll. 13 *et seq.*) as the affidavits before him at the time expressly showed that Mr. Markley had been engaged to try said cause by the complainant on September 10, 1928, not quite two months before the hearing (R. p. 63, ll. 24 *et seq.*).

Further, the point involved in this case goes beyond the time when the order of dismissal of the complainant's complaint was made on November 1, 1928, because the error of the Vice-Chancellor pressed is the confirming of said order of dismissal when the matter was before him on March 25, 1929 (R. p. 23, ll. 15 *et seq.* and pp. 26 *et seq.*), at which time he had before him the complainant's answer to a petition to confirm said order of dismissal of November 1, 1928, and the voluminous affidavits attached thereto (R. pp. 60-1-3-5-6-8-9, 71, 73), none of the facts in the affidavits being denied.

His adverse ruling in the face of such uncontradicted proof establishing both surprise and merits (see Main Brief) being the judicial action here sought to be reviewed and reversed.

Respectfully submitted,

FREDERIC B. SCOTT,
Solicitor of and of Counsel
with Complainant.