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New Jersey State Library

In Chancery of New Jersey

Between
ESTHER TEITELMAN et vir., et al.,
Complainants,
and
PORTER-SMITH Co., INC., et al.,
Defendants. } 10

(Filed September 20, 1927.)

IN CHANCERY OF NEW JERSEY.

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

The complainants, Esther Teitelman and Solomon, her husband, of Cape May, County of Cape May and State of New Jersey, and Israel Titelman and Mary, his wife, of Philadelphia, County of Philadelphia and State of Pennsylvania, respectfully show:

1. On May 20, 1927, complainants were seized of all that certain tract or parcel of land and premises and wharf property, with the buildings and improvements thereon erected, situate in the city and county of Cape May and State of New Jersey, bounded on the north by Schellenger's Landing Creek, on the southeast and east by lands of Stites York and Washington Street, and on the south and southwest by other lands of Dr. Emlen Physick Estate, and on the northwest by Lafayette Street and Cape May County Wharf property, and which is more particularly described as follows, to wit: 30

Beginning at an iron pipe set in the northwest side line of Washington Street and at a corner to property to be here described, and which is also a corner of lands of Stites York, and extending thence and therefrom, this beginning point and along the northwest line of Washington Street, and on a course south forty degrees twenty-three minutes west, one hundred sixty-six feet more or less, to a corner in other lands of Dr. Emlen Physick Estate; thence (2) on a course
 10 north forty-nine degrees twenty-two minutes west and along lines of land of said Physick Estate two hundred and two feet, more or less to the southeast side of Lafayette Street; thence (3) along the southeast side of Lafayette Street, on a course north forty degrees east one hundred and forty-one and five one-hundredths feet to a creek edge of stone coping in front of county wharf property; thence (4) along edge of coping on a course south seventy-four degrees and eighteen minutes east, fifty-two feet, more or less, to creek edge of timber
 20 bulkhead; thence (5) along bulkhead on a course north twenty-five degrees thirty-three minutes east fifty-eight and five one-hundredths feet to a corner in bulkhead; thence (6) along bulkhead (Schellenger's Landing Creek) on a course north eighty-three degrees forty-one minutes east, sixty-four feet, more or less, to a corner in bulkhead and yacht basin; thence (7) on a course north seventy-eight degrees forty-six minutes east, fifteen and fifty-two one-hundredths feet out in yacht basin and to the easterly line of lands conveyed by Stites York to Emilio Parmentier by indenture bearing date the 30th day of April, A. D. 1918, and recorded at Cape May Court House in Deed Book No.
 30 326, page 342, &c.; thence (8) on a course south three degrees thirty-eight minutes west and along said line one hundred forty-two and eight one-hundredths feet to a point; thence (9) on a course south fifty degrees two minutes east, thirty-one and three one-hundredths feet to a point and place of beginning, and within

which bounds is contained 41,750 square feet of land and wharf property be the same more or less.

Being the same premises particularly described in a certain deed made by John A. McCarthy and Mary G., his wife, to the said Esther Teitelman and Israel S. Titelman, dated October 26, 1925, and duly recorded in the office of the clerk of Cape May County in Book 415 of Deeds, page 264, &c.

2. On May 20, 1927, the complainants entered into an agreement in writing with Porter-Smith Co., Inc.,
 10 a New Jersey corporation, and King A. Porter and Harry L. Smith, individually, wherein and whereby the complainants agreed to sell and convey to the said defendants, and the defendants agreed to buy the lands and premises lastly above described, for the price of twenty-two thousand five hundred dollars, one thousand dollars of which was paid as a first payment upon the execution of said agreement, and the said purchasers agreed to pay the balance of twenty-one thousand five
 20 hundred dollars in cash at the office of Samuel F. Eldredge, 223 Decatur Street, Cape May city, New Jersey, on or before August 17, 1927, the said purchasers agreeing to assume and pay a certain mortgage of \$10,000 covering said lands and premises and held by the said John A. McCarthy, the said lands and premises to be sold subject to said mortgage.

3. A true copy of said agreement is hereto annexed and made a part hereof.

4. At the time mentioned in said agreement for the performance thereof, the complainants were ready, willing and able to carry out the terms of said agreement
 30 and convey said lands and premises to the said defendants upon the payment of the balance of the purchase price of twenty-one thousand five hundred dollars, and the said complainants tendered to the said purchasers a proper deed for the said lands and premises duly executed and acknowledged and demanded the payment by the said defendant of the balance of said purchase

price, but the said defendants neglected and refused, and have neglected and refused to consummate said purchase, accept said deed or pay the balance of the purchase price or any part thereof.

5. Since the execution of said agreement, at all times, complainants have been, in every respect, ready, willing and able to make settlement and convey the said lands and premises to the defendants, in accordance with the terms of said contract, and faithfully and fully
10 comply with all the terms thereof to be kept and performed by them, but the defendants have refused to carry out and perform said contract.

6. Complainants are now ready, willing and able and hereby tender themselves ready, willing and able to perform their part of said agreement, and on being paid the remainder of the purchase money as required by said agreement, will convey said lands and premises to the defendants by deed of the character required by the terms thereof, but the defendants have hitherto failed
20 to keep and perform said agreement, saying that they were unable to do so because they do not possess the funds with which to make the payment of the balance of the purchase price.

Complainants are without adequate remedy in the Courts of Law and, therefore, pray:

1. That Porter-Smith Co., Inc., King A. Porter and Harry L. Smith, individually, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

2. That the defendants may be compelled, by the
30 decree of this court, to specifically perform said agreement with the complainants and pay to the complainants the remainder of the purchase money, with interest from the time the same should have been paid, and to accept a deed for the said lands and premises, assuming and paying the prior mortgage of \$10,000.

3. That in case the defendant should, within such time as may be limited by this court for such perfor-

mance of said contract, fail and neglect, upon tender of a deed, as required by the terms thereof, to pay the remainder of the purchase price, that then, and in such event, the sum of twenty-one thousand five hundred dollars, together with interests and costs, may be and become a lien upon said lands and premises in favor of the complainants, and that said lands and premises may be sold under the direction and decree of this court for the satisfaction of said lien so impressed upon said
10 lands and premises, and in case a deficiency shall arise upon said sale, that the defendants may be ordered by this court to pay such deficiency, together with interest and costs, to the complainants.

4. That the complainants may have such other and further relief as may be necessary and proper under the circumstances.

5. That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint and abide by such decree as this court may make in the premises.
20

STARR, SUMMERILL & LLOYD,

Solicitors for and of Counsel with Complainants.

—
This Agreement, made the twentieth day of May, A. D. 1927, between Esther Teitelman and Solomon, her husband, of Cape May, N. J., and Israel Teitelman and Mary, his wife of Philadelphia, Pa., of the first part, hereinafter called the "Sellers," and Porter-Smith Co., Inc., a New Jersey corporation, and King A. Porter and Harry L. Smith, individually, of the second
30 part, hereinafter called the "Buyers."

Witnesseth, that the "Sellers" agrees to sell and convey and the "Buyers" agrees to buy all certain lot, tract, or parcel of land and premises situate in the city of Cape May, county of Cape May, and State of New Jersey, more particularly described as follows: as set forth in a certain deed made by John A. McCarthy and

Mary G., his wife, to the said Esther Teitelman and Israel S. Titelman, dated October 26th, 1925, and duly recorded in the office of the clerk of Cape May county in Book No. 415 of Deeds, pages 264, &c.;

Subject, nevertheless, to a certain indenture of mortgage made and executed by the said sellers to the said John A. McCarthy, upon which said mortgage there is a balance of ten thousand dollars due on the principal thereof, which said balance the said buyers agree to
10 assume and pay in accordance with the terms thereof;

And also subject to the rights of the city of Cape May and of the public in and to the right of way or street passing through the said premises for the price or sum of twenty-two thousand five hundred dollars, under and subject to the following terms and conditions:

1. A first payment of one thousand dollars (\$1,000), receipt of which is hereby acknowledged by the "Sellers."

2. The balance of the purchase price shall be paid
20 in the following manner: the balance of twenty-one thousand five hundred dollars in cash (the said mortgage debt of ten thousand dollars being in addition to the purchase price above mentioned).

at the time of final settlement, which shall be made at the office of Samuel F. Eldredge, 223 Decatur Street, Cape May city, N. J., on or before August 17th, 1927, or the deposit made herewith, at the option of the "Sellers" may be applied on account of the purchase price or be forfeited as liquidated damages to the "Sellers," and not as a penalty, provided that the
30 necessary title searches can be obtained from any first-class New Jersey title company by that date. Should there be any delay, not the fault of the "Buyers" in the procuring of such searches, the time for the final settlement shall extend until such searches can be obtained.

3. The title to the premises shall be free and clear of all incumbrances, including municipal liens and

assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, the balance of \$10,000 due on said mortgage, and the said right of way or street, and shall be a marketable title, and the "Sellers" shall tender a special warranty deed conveying such title at the time of the final settlement, or in the event that such title cannot be as above, then this deposit shall be returned to the "Buyers."

4. All adjustments shall be made as of said date
10 of settlement and possession shall be given the "Buyers" subject to existing tenancies, if any, which the Sellers may create, provided same are not to extend beyond October 1st, 1927.

5. The "Buyers" shall pay for searches and all other expenses, except the preparation of the deed and the necessary revenue stamps attached thereto, which shall be paid for by the "Seller."

8. This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and
20 assigns of the parties hereto.

7. Time is the essence of this agreement.

8. This contract includes all fixtures and appurtenances permanently attached to the building or buildings on the land herein described.

The said buyers shall immediately repair wharf without any cost or expense to the sellers.

The parties of the second part shall submit to the sellers the settlement certificate issued by the title company at least ten days prior to August 17th, 1927, so that the said sellers may have notice of any excep-
30 tions that may appear against the title. If title cannot be cleared as herein provided, the deposit shall be returned without any further cost or liability against the sellers.

IN WITNESS WHEREOF, The parties hereto have set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Harry H. Teitelman as to Israel S. Teitelman and wife, Samuel F. Eldredge as to No. 1-2-5 and 6.

ESTHER TEITELMAN, [SEAL]
SOLOMON TEITELMAN, [SEAL]
ISRAEL S. TITELMAN, [SEAL]
MARY TITELMAN, [SEAL]
KING A. PORTER, [SEAL]
HARRY L. SMITH, [SEAL]
PORTER SMITH CO., INC.,

10

By
KING A. PORTER,
President. [SEAL]

ATTEST:
HARRY L. SMITH,
Secretary.

20

SUBPœNA.

(Filed October 4, 1927.)

NEW JERSEY, to wit:
THE STATE OF NEW JERSEY to Porter Smith Co., King
A. Porter and Harry L. Smith. [SEAL]

GREETING:
WHEREAS, a bill of complaint has lately been exhibited against you in our Court of Chancery by ESTHER TEITELMAN, et vir., et al., to be relieved touching the matters herein contained;

30 THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said Court, at Trenton, on or before the expiration of twenty days from and after the sixth day of October, 1927, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the twentieth day of

September, in the year of our Lord one thousand nine hundred and twenty-seven.

STARR, SUMMERILL & LLOYD,
Solicitors.

THOMAS BARBER,
Clerk.

IN CHANCERY OF NEW JERSEY.

10

Between
ESTHER TEITELMAN et vir., et al.,
Complainants,
and
PORTER-SMITH CO., INC., et al.,
Defendants.

On Bill, &c.

ANSWER.

20

(Filed October 22, 1927.)

The defendants, Porter-Smith Co., Inc., a corporation of the State of New Jersey, and King A. Porter and Harry L. Smith, individually, answer the Bill of Complaint filed herein and say that:

- 1. They neither admit nor deny the allegations in paragraph 1 of the Complaint, but pray strict proof.
- 2. They admit the allegations in paragraph 2 of the Complaint.
- 3. They admit the allegations in paragraph 3 of the Complaint.
- 4. They deny the allegations in paragraph 4 of the Complaint.
- 5. They deny the allegations in paragraph 5 of the Complaint.
- 6. They deny the allegations in paragraph 6 of the Complaint.

30

FIRST DEFENSE.

Defendants by way of first defense say that the title to said property is alleged to be in Esther Teitelman, a married woman, and Solomon, her husband, and in Israel Teitelman and Mary, his wife; that the said Esther Teitelman and Mary Teitelman have not acknowledged the execution of the Agreement of Sale as is required by law.

10 2. That by reason of the failure of the said Esther Teitelman and Mary Teitelman to acknowledge said Agreement of Sale, the said agreement lacks mutuality of remedy and is therefore unenforceable as against these defendants.

SECOND DEFENSE.

Defendants by way of second defense say that the said complainants did not at any time tender to these defendants a Special Warranty Deed conveying good and marketable title free and clear of all encumbrances.

20 KREPS & BELL,
Solicitors of Defendants.

IN CHANCERY OF NEW JERSEY.

Between
ESTHER TEITELMAN et vir., et al.,
Complainants,
and
PORTER-SMITH Co., INC., et al.,
Defendants. } On Bill, &c.

30 NOTICE OF AN APPLICATION TO STRIKE
OUT ANSWER.

(Filed December 10 1927.)

MESSRS. KREPS & BELL,
Attorneys of Defendants:

GENTLEMEN—Take notice that on the twenty-second day of November, 1927, at ten o'clock in the forenoon,

at the Chancery Chambers in the city of Atlantic City, application will be made by the complainants in the above entitled cause to strike out the answer filed by the defendants, and each of the defenses set up therein, on the ground that the said answer and each of said defenses therein set forth are sham and frivolous and that the facts stated in the first defense are insufficient to prevent the complainants from recovering on the cause of action set forth in the complaint and that the facts set forth therein, as well as the facts set forth in 10 the second defense, are false, sham and untrue.

And further take notice that in support of said application will be read the affidavits and exhibits attached hereto and forming part hereof.

Your obedient servants,
STARR, SUMMERILL & LLOYD,
Solicitors of Complainants.

November 10, 1927.

20

IN CHANCERY OF NEW JERSEY.

AFFIDAVIT.

STATE OF NEW JERSEY, }
COUNTY OF CAPE MAY. } ss.

Samuel F. Eldredge, being duly sworn according to law on his oath says:

I am a member of the Bar of the State of New Jersey and represented the complainants in the above entitled 30 cause, who were the sellers of the lands and premises described in the bill.

At their request, I prepared a deed to be delivered by them to the purchasers in accordance with the contract set forth in the complainants' bill. Before I prepared the same, I received instructions from the defendant, King A. Porter, to have the deed drawn in the name of Porter-Smith Co., Inc., as the purchaser

desired to have the property conveyed to the corporation, rather than to the individuals, who signed the contract of sale, and the corporation jointly. Said deed was prepared by me and was returned to me duly executed and acknowledged prior to the 17th day of August, 1927. Attached hereto and forming a part hereof is a true copy of the said deed and the acknowledgments endorsed thereon, and I had said deed in my possession ready for settlement, under the terms of the contract, on August 17, 1927. Said defendant, Porter, made an arrangement with me for the settlement of the said contract to be held in my office in the city of Cape May at two o'clock in the afternoon of August 17, 1927, and I notified the sellers to be present at the said time and place, in order that settlement might occur. Prior to the time, above mentioned, I received a telephone message from a man named Evan Brown, who had called at my office several times relative to the sale of the property, then doing work in the city of Cape May, Cape May county, New Jersey. He told me that his employers would not be ready for settlement at the time indicated, because they had been disappointed in getting the money.

However, at two o'clock in the afternoon of August 17, 1927, the complainants, Esther Teitelman and Solomon, her husband, were at my office at two o'clock in the afternoon on August 17, 1927, ready to make settlement and nobody representing the defendant appeared. Israel Titelman and Frank Titelman arrived at my office about four o'clock. I had the said deed in my possession ready to deliver the same to the purchasers upon the payment of the balance of the purchase money, due under the contract.

Shortly thereafter, on the same day, I took the deed and in company with Mrs. Esther Teitelman and the said Israel Titelman and Frank Titelman, I called upon the defendant, King A. Porter, at the beach in Cape May city, where he was working, and told him that the sellers were ready for settlement and demanded

the payment of the purchase price and offered to deliver to him the said deed, which I then had in my possession. Porter said that the purchasers were unable to take title on account of a bank, from which they had expected to borrow money, turned them down. He said that he would talk with his partner, Smith, and arrange to be at my office at eight o'clock that evening to make settlement.

I was present at my office at eight o'clock that evening and had the deed in my possession for delivery and Esther Teitelman and Solomon Teitelman and Israel Titelman and Frank Titelman were also there. Smith telephoned me that there was no use of his coming over, because they had not been able to raise the money and the other parties, after waiting over an hour, left my office, without effecting settlement. They were ready and able to comply with the terms of the contract and deliver said deed, upon the payment of the balance of the purchase money.

The next day, which was August 18, 1927, said Smith called me on the telephone and said that they had not been able to raise the money and wanted us to wait until Tuesday, following, at twelve o'clock, before which time they expected to borrow the money elsewhere. I was at my office at twelve o'clock on said Tuesday and Smith again telephoned me that they had been turned down and were unable to make settlement but would see me about the matter later.

At none of my conversations with said Smith or Porter, did either of them complain to me that there was anything the matter with the title to the premises described in the contract, attached to the complainant's bill. To my certain knowledge, the complainants were always ready, willing and able to comply with the terms of the contract. The reason that the same was not carried out was because the defendants always stated to me that they were unable to raise the money, at that time, for the property purchased by them.

Sworn and subscribed to before me this seventh day of November, A. D. 1927.

SAMUEL F. ELDRIDGE.

This Indenture, made the tenth day of August, in the year of our Lord one thousand nine hundred and twenty-seven, between Esther Teitelman and Solomon Teitelman, her husband, of the city and county of Cape May, in the State of New Jersey, and Israel S. Titelman and Mary Titelman, his wife, of the city and county of Philadelphia, in the State of Pennsylvania, parties of the first part, and Porter Smith Co., Inc., a corporation of the State of New Jersey, party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of the sum of twenty-two thousand five hundred dollars (\$22,500), lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, its successors and assigns, all that certain land and premises and wharf property, with the buildings and improvements thereon erected, situate in the city and county of Cape May and the State of New Jersey, bounded on the north by Schellenger's Landing Creek, on the southeast and east by lands of Stites York and Washington Street, on the south and southwest by other lands of Dr. Emlen Physick Estate, and on the northwest by Lafayette Street and Cape May county wharf property, and which is more particularly described as follows, to wit:

Beginning at an iron pipe set in the northwest side line of Washington Street and at a corner of property to be here described, and which is also a corner of lands of Stites York, and extending thence and therefrom, this beginning point and along the northwest line of

Washington Street, on a course south forty degrees twenty-three minutes west, one hundred sixty-six feet, more or less, to a corner in other lands of Dr. Emlen Physick Estate; thence (2) on a course north forty-nine degrees twenty-two minutes west and along less, to the southeast side of Lafayette Street; thence (3) along the southeast side of Lafayette Street on a course north forty degrees east one hundred forty-one and five one-hundredths feet to a creek edge of stone coping in front of county wharf property; thence (4) along edge of coping on a course south seventy-four degrees eighteen minutes east, fifty-two feet, more or less, to creek edge of Timber Bulkhead; thence (5) along bulkhead on a course north twenty-five degrees, thirty-three minutes east fifty-eight and five one-hundredths feet to a corner in bulkhead; thence (6) along bulkhead (Schellenger's Landing Creek) on a course north eight-three degrees forty-one minutes east, sixty-four feet, more or less, to a corner in bulkhead and yacht basin; thence (7) on a course north seventy-eight degrees forty-six minutes east, fifteen and fifty-two one-hundredths feet out in yacht basin, and to the easterly line of lands conveyed by Stites York to Emilie Permentier by indenture bearing date the 30th day of April, A. D. 1918, and recorded at Cape May Court House in Deed Book No. 326, page 342 &c.; thence (8) on a course south three degrees thirty-eight minutes west and along said line one hundred forty-two and eight one hundredths feet to a point; thence (9) on a course south fifty degrees two minutes east thirty-one and three one-hundredths feet to the point and place of beginning, and within which bounds is contained 41,750 square feet of land and wharf property, be the same more or less.

Being the same land and premises granted and conveyed by John A. McCarthy, et ux., by deed bearing date October 26, 1925, and duly recorded in the Cape May county clerk's office in Deed Book No. 415, pages

264 &c., to Esther Teitelman and Israel S. Titelman, in fee.

Under and subject, nevertheless, to a certain Indenture of Mortgage made and executed by Esther Teitelman, et vir., and Israel S. Titelman, et ux., to John A. McCarthy, and given to secure \$25,000, on which there is a balance remaining due of ten thousand dollars (\$10,000), which mortgage bears date October 26, 1925, and is duly recorded in the Cape May county clerk's office.

Together with all and singular the improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, and every part thereof, with the appurtenances.

To have and to hold the said premises above described, with all and singular the hereditaments and appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever.

And the said party of the first part, for themselves, their heirs, executors, administrators, do by these presents covenant, grant and agree, to and with the said party of the second part, its successors and assigns, that they, the said party of the first part, and their heirs, all and singular the hereditaments and premises above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns, against them, the said party of the first part, and their heirs, and against all and every person or persons whosoever lawfully claiming or to claim the same, or any part

thereof, by, from, through or under him, her, them or any of them shall and will as aforesaid, warrant and forever defend.

In Witness Whereof, the said party of the first part to these presents hath hereunto set their hands and seals.

Dated the day and year first above written.

Signed, sealed and delivered in the presence of

SOLOMON TEITELMAN [L. S.]

ESTHER TEITELMAN [L. S.]

ISRAEL S. TITELMAN [L. S.]

MARY TITELMAN [L. S.]

SAMUEL ELDREDGE as to { SOLOMON TEITELMAN and ESTHER TEITELMAN
NAT WOLFSOHN as to { ISRAEL S. TITELMAN and MARY TITELMAN

STATE OF NEW JERSEY, }
COUNTY OF CAPE MAY. } ss.

Be it Remembered, That on this tenth day of August, in the year of our Lord one thousand nine hundred and twenty-seven, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Esther Teitelman and Solomon Teitelman, her husband, who I am satisfied are two of the grantors mentioned in the within deed and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed.

All of which is hereby certified.

SAMUEL ELDREDGE,
Master in Chancery of New Jersey.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } ss.

Be it known, that on this tenth day of August, in the year one thousand nine hundred and twenty-seven, before me, Nat Wolfsohn, a Foreign Commissioner of Deeds for New Jersey in Pennsylvania, residing in the city of Philadelphia, in the county of Philadelphia,

INGERSOLL, V.-C.

A bill was filed for the specific performance of a contract made between the parties, wherein the complainant agreed to convey and the defendants to purchase a tract of land described in the bill. The title to the premises was in Esther Teitleman, wife of Solomon Teitleman and Israil S. Teitleman.

The agreement was signed by all the parties, but no acknowledgment was made by Esther Teitleman or by

10 Mary Teitleman, wife of Israil S. Teitleman.

Answer is filed admitting the contract, but denying paragraphs 4, 5 and 6, which were allegations that complainants were and have been ready, willing and able to make conveyance, but that defendants have refused to carry out said contract. For a first defense, the defendants allege that said Esther Teitleman and Mary Teitleman have not acknowledged the execution of the "Agreement of Sale" and that by reason thereof the said agreement lacked mutuality of remedy and is

20 therefore unenforceable as against the defendants.

A second defense, that the complainants did not tender to these defendants a special warranty deed, was withdrawn.

On notice, a motion was heard to strike out the answer filed, and each of the defenses set up therein, on the ground that said answer and said defenses are sham and frivolous and that the facts stated in the first defense are insufficient to prevent complainant from recovering.

30 The affidavits served and read in Court (the answering defendants presenting no affidavits or other proof) show that a deed was prepared, duly executed and acknowledged by all the grantors (the complainants) and in the possession of Samuel F. Eldredge at his office, where the settlement was to be made, prior to August 17th, 1927, the time fixed in the agreement for settlement. One of the defendants made arrangements with said Eldredge for settlement to take place at 2 P. M. on August 17th, 1927, prior to that time he was

notified that the defendant would not be ready at the time indicated. At that hour all of the complainants, except Mary Teitleman and Israel Teitleman, were present at said office for settlement, and there remained from two o'clock until about four o'clock, Israel Teitleman coming in in the meantime. On the same day Eldredge took the deed to King A. Porter, one of the defendants, informed him that the sellers were ready for settlement, demand the purchase price and tendered the deed.

10

Porter said the purchasers were unable to take title because they had been unable to raise the money, but that he would talk with his partner, Smith, and arrange to be at his (Eldredge's) office at eight o'clock that evening to make settlement. The same complainants were at Eldredge's office that evening, and Smith notified Eldredge by telephone that it would be useless for him to come as he had not raised the money.

On August 18th, Smith called Eldredge and stated that they had not yet been able to raise the money and asked the parties to wait until the following Tuesday—

20

on that day Smith again telephoned that they were unable to make settlement. That complainants were always ready, willing and able to comply with the terms of the contract; that the deed has always been ready for delivery, and has been presented in court.

The defendants insist that the first defense is a valid one and should not be stricken.

The late Vice-Chancellor Griffin in *Verney v. Dodd*, 125 Atl. 389, said:

30 "Assuming that at the time the contract was signed it lacked mutuality, in that the defendant could not enforce the contract against Mrs. Verney, yet, when the complainants, husband and wife, executed a full covenant warranty deed * * * which satisfied the terms of the contract, and were thus prepared to completely perform the same, which performance was refused by the defendant, and when Mrs. Verney came in as a party complainant in the cause, asking for specific perform-

ance, mutuality of contract was then created from which Mrs. Verney could not withdraw, and she was bound thereby."

In the case of *South Jersey Furniture Corp. v. Dorsey*, 95 N. J. Eq. 530, affirmed by the Court of Errors and Appeals, *per curiam*, 99 N. J. Eq. 433, I held that a deed executed by the wife and presented at an attempted settlement was evidence of her willingness to sign.

10 In that case I also held that, "even if the case stood upon this so-called unilateral contract, it ceased to be unilateral the very moment the vendee (in the case *sub judice*, the vendors) filed his bill for the specific performance of the contract; and quoted Chief Justice Beasley in *Richards v. Green*, 23 N. J. Eq. 536: "But it will be observed that when such contracts come to be enforced in equity they cease to be unilateral, for upon filing the bill the party who was before unbound puts himself under all the obligations of the contract. By
20 his own act he makes the contract mutual and the other party is enabled to enforce it."

The motion to strike will be granted. The defendants may have fifteen days from date of service of order upon them or their solicitor to file other pleadings if advised so to do.

Determined: December 6th, 1927.

IN CHANCERY OF NEW JERSEY.

Between
ESTHER TEITELMAN et vir., et al.,
Complainants,
and
PORTER-SMITH Co., INC., et al.,
Defendants.

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FINAL DECREE.

(Filed January 11, 1928.)

This matter coming on to be heard *ex parte*, and it appearing that the answers filed by the defendants have been stricken out and a decree *pro confesso* entered against the defendants on January 4, 1928; and it further appearing that pursuant to an order of proofs, dated January 4, 1928, the complainants have proceeded
20 to take depositions and other evidence to substantiate and prove the allegations of their bill;

And it further appearing to the satisfaction of the Court that on the 20th day of May, 1927, the complainants were seized of all that certain tract or parcel of land and premises and wharf property, with the buildings and improvements thereon, erected, situate in the City and County of Cape May and State of New Jersey, bounded on the north by Schellenger's Landing Creek, on the southeast and east by lands of Stites York and Washington Street, and on the south and southwest
30 by other lands of Dr. Emlen Physick Estate, and on the northwest by Lafayette Street and Cape May County wharf property, and which is more particularly described as follows; to wit:

Beginning at an iron pipe set in the northwest side line of Washington Street and at a corner to property to be here described, and which is also a corner of lands of Stites York, and extending thence and there-

from, this beginning point and along the northwest line of Washington Street, and on a course south forty degrees twenty-three minutes west, one hundred sixty-six feet more or less, to a corner in other lands of Dr. Emlen Physick Estate; thence (2) on a course north forty-nine degrees twenty-two minutes west and along lines of land of said Physick Estate two hundred and two feet, more or less, to the southeast side of Lafayette Street; thence (3) along the southeast side of Lafayette Street, on a course north forty degrees east one hundred and forty-one and five one-hundredths feet to a creek edge of stone coping in front of County Wharf property; thence (4) along edge of coping on a course south seventy-four degrees and eighteen minutes east, fifty-two feet, more or less, to creek edge of timber bulkhead; thence (5) along bulkhead on a course north twenty-five degrees thirty-three minutes east fifty-eight and five one-hundredths feet to a corner in bulkhead; thence (6) along bulkhead (Schellinger's Landing Creek) on a course north eighty-three degrees forty-one minutes east, sixty-four feet, more or less, to a corner in bulkhead and yacht basin; thence (7) on a course north seventy-eight degrees forty-six minutes east, fifteen and fifty-two one-hundredths feet out in yacht basin and to the easterly line of lands conveyed by Stites York to Emilio Parmentier by indenture bearing date the 30th day of April, A. D. 1918, and recorded at Cape May Court House in Deed Book No. 326, page 342, etc.; thence (8) on a course south three degrees thirty-eight minutes west and along said line one hundred forty-two and eight one-hundredths feet to a point; thence (9) on a course south fifty degrees two minutes east, thirty-one and three one-hundredths feet to a point and place of beginning, and within which bounds is contained 41,750 square feet of land and wharf property be the same more or less.

Being the same premises particularly described in a certain deed made by John A. McCarthy and Mary G., his wife, to the said Esther Teitelman and Israel S.

Titelman, dated October 26, 1925, and duly recorded in the office of the Clerk of Cape May County, in Book 415 of Deeds, page 264, etc.

And it further appearing that the complainants and the defendants entered into an agreement in writing on said 20th day of May, 1927, wherein and whereby the complainants agreed to convey the lands and premises, above described, to the defendants, for the purchase price of \$22,500, to be paid as follows: A first payment of \$1,000, which was made at the time of the execution of said agreement, and the balance of the purchase price of twenty-one thousand five hundred dollars (\$21,500) in cash, subject to a mortgage debt of ten thousand dollars, being in addition to the purchase price, above mentioned, at the time of final settlement, to be made at the office of Samuel F. Eldridge, 223 Decatur Street, Cape May City, New Jersey, on or before August 17, 1927.

And it further appearing to the satisfaction of the Court that the defendants, while they paid one thousand dollars on account of said purchase price, did not otherwise perform said agreement for sale on the 17th day of August, 1927, nor at any time thereafter, but they have refused and failed to perform the same then or at any other time, although the complainants have been ready, willing and able to comply with the terms of said agreement on their part; and the Court, being of the opinion, that the complainants are entitled to the specific performance of said agreement, as prayed for by them in their bill of complaint:

It Is, Therefore, on this 10th day of January, A. D. 1928, on motion of Starr, Summerill & Lloyd, solicitors of the complainants, by Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed and the said Chancellor, by virtue of the power and authority of this court, does hereby Order, Adjudge and Decree that the said agreement, mentioned in said bill of complaint, be in all things specifically performed by the said defendants, on the second day

of February, A. D. 1928, at the hour of ten o'clock in the forenoon, at the office of Honorable C. V. D. Joline, a Master in Chancery, in the Temple Building, in the City of Camden, County of Camden and State of New Jersey, under the supervision of said Master, and that the defendants, at that time and place pay to the complainants the sum of twenty-one thousand five hundred dollars in cash, together with interest thereon from the 17th day of August, 1927, upon the delivery, at the same time and place, by the said complainants to the said defendants of a special warranty deed, duly executed and acknowledged by the complainants, conveying to the said defendants the said lands and premises herein described, free and clear of all encumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements and usual restrictions running with the land, and the balance of ten thousand dollars due on an existing mortgage, held by one John A. McCarthy, together with interest thereon from the date of said settlement, and subject to all adjustments, to be made as of the 17th day of August, 1927; possession of the said lands and premises to be given to the said defendants, subject to existing tenancies, if any, which the said complainants have created, provided same are not to extend beyond October 1, 1927; said deed, delivered by the complainants to the defendants to contain a provision, by which the defendants assume and pay the balance due on the said mortgage of ten thousand dollars.

And It Is Further Ordered, Adjudged and Decreed that if at the time and place hereinbefore mentioned the said defendants shall fail and neglect to pay the said sum of twenty-one thousand five hundred dollars, with interest from the 17th day of August, 1927, subject to adjustments as of the said 17th day of August, 1927, upon the tender of said deed, as herein provided, the said sum of twenty-one thousand five hundred dollars, with interest from the 17th day of August, 1927, subject

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to said adjustments, shall be and become and are hereby impressed as a lien upon said lands and premises, herein described, in favor of said complainants; to the end that the said lands and premises may be sold, pursuant to law, to raise such sum, together with costs to be taxed; and in case a deficiency shall arise from such sale, the said defendants may be ordered by this Court to pay the same.

And It Is Further Ordered, Adjudged and Decreed that the said defendants pay to the said complainants the costs of this suit to be taxed, including a counsel fee of one hundred dollars, which is hereby allowed the complainants.

And It Is Further Ordered that a true, but uncertified copy of this decree and of the taxed bill of costs, be served upon the solicitors of the defendants within ten days from the date hereof.

E. R. WALKER,
C.

Respectfully advised.

BAYARD STOCKTON,
A. M.

IN CHANCERY OF NEW JERSEY.

Between
ESTHER TEITELMAN et vir., et al.,
Complainants,
and
PORTER-SMITH Co., INC., et al.,
Defendants.

On Bill, Etc.

AMENDED NOTICE OF APPEAL.

(Filed February 7, 1928.)

The defendants, Porter Smith Co., Inc., King A. Porter and Harry L. Smith, appeal from an Order

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striking out the Answer of the Defendant made in the above-entitled cause on December 9th, 1927, and the Decree made in the above-entitled cause on the tenth day of January, 1928, from the whole and every part thereof to the Court of Errors and Appeals, in the last resort in all causes.

Dated: January 14, 1928.

KREPS & BELL,
Solicitors for and of Counsel with Defendants.

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I conceive there is a good cause for appeal in above-entitled cause.

F. Stanley Krebs,
~~STARR, SUMMERILL & LLOYD,~~
Of Counsel with Defendants.

Service acknowledged January 17, 1928, by Starr, Summerill & Lloyd.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

ESTHER TETTMAN et vir.,
Appellees,
vs.
PORTER SMITH Co., INC., et al.,
Appellants. } On Appeal From
the Court of
Chancery

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ANSWER TO PETITION OF APPEAL.

(Filed March 5, 1928.)

The answer of Esther Teitleman et vir., the above named appellees, to the petition of appeal of Porter Smith Co., et al., the above named appellants.

These appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree

was, on the 10th day of January, 1928, made and entered in the Court of Chancery of New Jersey in the above-entitled cause, for the purposes of said petition mentioned, and as therein set forth; but as to the substance and form of said decree these appellees beg leave to refer thereto when the same shall be produced.

These appellees are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

STARR, SUMMERILL & LLOYD,
Solicitors for and of Counsel with Appellees.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

ESTHER TEITLEMAN, <i>et vir.</i> ,	}	On Appeal from the Court of Chancery.
<i>et al.</i> ,		
Complainants-Appellees,	}	
<i>vs.</i>		
PORTER-SMITH CO., INC., <i>et al.</i> ,		
Defendants-Appellants.		

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PETITION OF APPELLANTS.

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

The Petition of Porter Smith Co., Inc., King A. Porter, and Harry L. Smith, the Appellants in the above entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a Final Decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing the date January 10, 1928, in a certain cause in said Court of Chancery, wherein Esther Teitleman, *et vir.*, *et al.*, were complainants, and the said Porter Smith Co., Inc., King A. Porter and Harry L. Smith were defendants, in this respect, to wit: That the said Decree adjudges that an Agreement of Sale between the Complainants and the defendants, bearing date May 20, 1927, wherein and whereby the Complainants agreed to convey certain premises in Cape May city for the price of twenty-two thousand five hundred dollars (\$22,500.00), subject to a mortgage of ten thousand dollars (\$10,000.00), being in addition to the price above mentioned, be in all things specifically performed by the said defendants on the second day of February, 1928.

2. And Petitioners appeal from the Decree of the Chancellor, which decree as aforesaid upon the ground that the same is erroneous, in that the defendants should

not have been ordered to have specifically performed said agreement.

3. Petitioners further find themselves aggrieved by an Order of the Court of Chancery made on the ninth day of December, 1927, striking out the Answer filed by the Petitioners, and each and every defense set up therein.

4. Petitioners therefore pray that the said Decree and Order of the said Chancellor may be reversed and set
10 aside, and for nothing holden, and that Petitioners may have such other relief in the premises as this Court shall deem proper.

KREPS & BELL,
Solicitors for Appellants.

F. STANLEY KREPS,
Of Counsel with Appellants.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY Court of Errors and Appeals.

<p>ESTHER TEITLEMAN, <i>et vir.</i>, <i>et al.</i>, Complainants-Appellees, <i>vs.</i> PORTER-SMITH CO., INC., <i>et al.</i>, Defendants-Appellants.</p>	}	<p>On Appeal from Court of Chancery.</p>
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BRIEF OF APPELLANTS

STATEMENT OF FACTS.

A contract for sale of property was entered into between the Complainants and the Defendants. The Agreement was signed by all parties, but no acknowledgment was made by Esther Teitleman, who was a joint owner and held the fee, nor was there any acknowledgment by Mary Teitleman, who conveyed her dower interest as wife of Israel S. Teitleman.

A bill was filed for Specific Performance, and an Answer was filed admitting the contract, but denying Paragraphs 4, 5 and 6 which were allegations that Complainants were, and have been ready, willing and able to make a good conveyance. The defendants filed a First Defense alleging that Esther Teitleman and Mary Teitleman had not acknowledged the execution of the "Agreement of Sale" and that by reason thereof

the said Agreement lacked mutuality of remedy, and is therefore unenforceable as against the defendants.

Complainants made a Motion to Strike the Answer filed, and the Vice-Chancellor granted said motion, and a final decree was entered against the defendants January 11, 1928. The defendants appealed from the final decree entered on the ground that the Answer should not have been stricken as it set up a good defense.

The motion to strike the answer should have been denied because the contract lacked mutuality and therefore was unenforceable.

The New Jersey Statute regulating conveyances by married women, Laws of 1918, Chapter 37, page 119, amending the Laws of 1912 and 1898, is as follows: "No estate or interest of a feme covert in any lands, tenements or hereditaments, lying and being in this State, shall hereafter pass by her deed or conveyance without a previous acknowledgment made by her before one of the officers mentioned in the twenty-second, twenty-third and twenty-fourth sections of this Act, as the case may be, that she signed, sealed and delivered the same as her voluntary act and deed, such officer being satisfied that she is the person named in such deed or conveyance, and having first made known to her the contents thereof, and a certificate thereof written on, or under, or annexed to the said deed or conveyance, and signed by the officer before whom it was made; and further, every deed or conveyance heretofore or hereafter so executed and acknowledged, by a feme covert, and certified as aforesaid, shall release and bar her right of dower, and every deed or instrument of the nature or description set forth in the twenty-first section of this act, heretofore or hereafter executed by her, and so acknowledged and certified as aforesaid, shall be good and effectual to convey or affect the lands, tenements or hereditaments, or other property or her interest therein, thereby intended to be conveyed or affected."

The contract in the present case was not acknowledged by either of the married women parties to the contract, and therefore if the parties complainant had refused to settle, it would have been impossible for the defendants to have enforced the contract as against the married women. Especially is this true in this case on account of the fact that Esther Teitleman was one of the holders in fee and was not merely releasing her dower rights.

Mutuality of a contract consists in the obligation on each party to the contract to do or to permit something to be done in consideration of the act or promise of the other. Mutuality of obligation is an essential element of every enforceable agreement. There is no doubt but what in the contract in question the defendants could not have enforced the contract against the married women in a suit for specific performance, and it made the contract clearly without mutuality, because it was optional with the complainants Esther Teitleman and Mary Teitleman as to whether they would be bound by its terms. In 13 *Corpus Juris*, page 331, Section 179, it states, "Mutuality is absent when one only of the contracting parties is bound to perform, and the rights of the parties exist at the option of one only."

In the case of *Richards v. Green*, 23 *N. J. Equity*, 536, it was held that a married woman could not obtain a decree for specific performance of a contract which is not binding upon her.

In the case of *Flight v. Bolland*, 4 *Russ.* 298, there was a suit for specific performance on a contract signed by an infant, and upon hearing the bill for specific performance, was dismissed on the ground that he was not originally bound by the contract, nor by the filing of the Bill by his next friend.

There is a certain line of cases that seem to hold that contracts signed by married women and not acknowledged are to be construed as unilateral contracts, and that upon the filing of the Bill the parties formerly

not bound by the contract, are bound, and that therefore the contract has mutuality.

The defendants contend that the only proper time for the determining of the fact as to whether the contract is mutual or not, is at the time the contract is made, because it is certainly not mutual if one party is bound to perform regardless of all other conditions, and the other party, as in this case the Complainants, are only bound if they choose to be. As above stated, from the citation of *Corpus Juris*, a contract is not mutual where it is optional with one of the parties as to whether they will perform.

Respectfully submitted,
KREPS & BELL,
Solicitors of Defendants-Appellants.

F. STANLEY KREPS,
Of Counsel with Defendants-Appellants.

NEW JERSEY COURT OF ERRORS & APPEALS

ESTHER TEITELMAN, ET VIR.,	}	ON APPEAL.
ET ALS.,		BRIEF ON BEHALF
Complainants-Appellees,		OF COMPLAINANTS-
VS.		APPELLEES.
PORTER-SMITH CO., INC., ET ALS.,		
Defendants-Appellants.		

STATEMENT OF THE FACTS.

The facts in this case are substantially as set forth in the brief of the appellants. The appellees herein as appears from the state of the case (c. p. 18, l. 30) were granted an order by Vice Chancellor Ingersoll on the 9th day of December, 1927, whereby the answer of the appellants, the defendants below, was struck out. Those defenses in the answer, which raised questions of fact, were struck out since the complainants, after due notice, presented affidavits setting forth the facts in the case to which no counter-affidavits were filed by the defendants-appellants. No additional pleadings were filed by the defendants after this order. Thus, the only question involved in this appeal concerns the striking of the defendants, first defense. (c. p. 10, l. 1).

At the time the agreement for the sale of the premises was signed by all the parties herein, no acknowledgments were properly taken as to Esther Teitelman and Mary Titelman, two of the complainants having interests in the land.

The parties will hereafter be designated by their original appellation of "complainants" and "defendants."

I.

The motion to strike out the answer was properly granted because, at the time and place designated for the performance of the agreement herein, to wit: August 17, 1927, at the office of Samuel F. Eldredge, Cape May City, N. J., (c. p. 12, l. 9), all the complainants herein had signed, sealed and properly acknowledged the deed for the premises in accordance with the terms of the contract, which deed was tendered to the defendants.

At the time the contract was originally entered into, there was clearly mutuality of obligation existing between all the complainants and the defendants. All the parties had executed and signed the agreement. Those of the complainants, who were *femmes couvert*, had the power to contract as though they were unmarried, and for breach of their unacknowledged contract in writing to sell this land, were personally liable in damages. *Wolff vs. Meyer*, 75 N. J. L., 181, *aff.* 76 N. J. L., 574; *Clendano vs. Blazejewski*, 98 N. J. E., 45 at 47. At that time, however, due to the improper acknowledgment of the agreement of sale, the interests of Esther Teitelman

and Mary Titelman in the land were not bound so there was a lack of mutuality. Such lack was, nevertheless, a lack of mutuality of remedy only, not of obligation. Before August 17, 1927, the lack of mutuality of remedy had been cured, as before that date Esther Teitelman and Mary Titelman had executed and acknowledged properly a deed for the premises, in accordance with the contract (c. p. 12, l. 8 to 31), which deed was tendered to the defendants (c. p. 13, l. 10). At that time, mutuality of both obligation and remedy existed between the parties to this contract since by the execution of the deed any defect in the title by reason of the rights of Mary Titelman and Esther Teitelman had been removed.

The defense thus, of the defendants is highly artificial and technical. The above reference to the testimony shows that no question was raised by the purchasers as to the mutuality of the contract and no effort was made by them to set up any invalidity of the contract. In fact, the above reference shows clearly that the purchasers failed to carry through their bargain for the reason that they were unable to raise the money at that time. It is submitted that to allow the purchasers now to set up a formal defect in the contract, which defect had been completely cured before the time of performance, would be inequitable, unjust and contrary to the authorities in this State.

In the case of *Gerba vs. Mitruski*, 84 N. J. Eq., 141, Chief Justice Gummere, speaking for the Court of Errors and Appeals, went even farther than the position taken by the complainants herein, holding that a vendor is entitled to a decree for specific performance, if he can,

at the time of the decree, give a clear title, even if the title was encumbered at the time set for the performance, and at the time of filing the bill. In the case at bar, the encumbrance of the interest of Mary Titelman and Esther Teitelman had been absolutely removed at the time of suit for the performance of the contract, before the date of filing of the bill herein.

See also *Cavanna vs. Brooks*, 97 N. J. Eq., 329 at 332.

II.

The motion to strike out the answer was properly granted because, by the act of filing the bill, all the complainants bound their interests in the land. The contract became mutual as to all the parties thereto and could then be enforced in equity by both complainants and defendants.

Complainants recognize that mutuality of remedy is essential for the specific performance of a contract. Both on principal and authority, this doctrine has been upheld in New Jersey since the case of *Richards vs. Green*, 23 N. J. Eq., 536, cited in the brief of defendants. However, in this case, on page 537, Chief Justice Beasley states the law as follows:

"It is true that there are exceptions to the rule that a court of equity will not perform unilateral contracts, as, for instance, in those cases where an agreement which the statute of frauds requires to be in writing, has been signed by one of the parties only, or when the contract, by its terms, gives to one party a right to the performance which it does not confer upon the other, an

"example of which is exhibited in the instance of a lease for years which gives an option to the lessee to purchase during the term. But it will be observed that when such contracts come to be enforced in equity, they cease to be unilateral, for upon filing the bill, the party who was before unbound puts himself under all the obligations of the contract. By his own act he makes the contract mutual, and the other party is enabled to enforce it."

This limitation on the doctrine of mutuality has been upheld by innumerable cases in this State. In every case the rule of mutuality has been held subject to the modification that if the mutuality be supplied subsequently by the filing of a bill, the contract will be enforced.

Woodruff vs. Woodruff, 44 N. J. Eq., 349 at 355.

Carskaden vs. Kennedy, 40 N. J. Eq., 259 at 277, Court of Errors.

Day vs. Devitt, 79 N. J. Eq., 342 at 354.

Rapps vs. Tulenko, 140 Atl., 244 (1928 not yet off. reported).

Verney vs. Dodd, 96 N. J. Eq., 129.

Rittenhouse vs. Swieciki, 94 N. J. Eq., 36.

The last two cases cited herein involve not only the principle contended for by the complainants, but are on all fours with the actual facts of the case herein. In both of these cases, a contract for the sale of land originally lacked mutuality in that the defendant purchaser could not enforce it against the vendor's wife and mutuality was held to have been created when the vendor and his wife subsequently executed a full warranty deed, and the vendor's wife came in as a party complainant in the bill for specific performance. Obviously it was not intended by the parties herein that the acknowledgment of the contract by two of the complainants should be a con-

dition precedent to its obligation. The obligation was intended to exist from the start and, in fact, from the date of performance to the present time it has continued to exist.

The case of *Flight vs. Bolland*, 4 Russ., 238, cited on page 3 of the brief of the defendants is not in point as, obviously, the filing of the bill by the next friend did not, even at that time, bind the infant. In the case at bar, the filing of the bill did bind all the parties.

Wherefore, the complainants respectfully submit that the decree of the Court of Chancery for specific performance in this matter be affirmed.

STARR, SUMMERILL & LLOYD,
Solicitors for and of counsel with
Complainants-Appellees.