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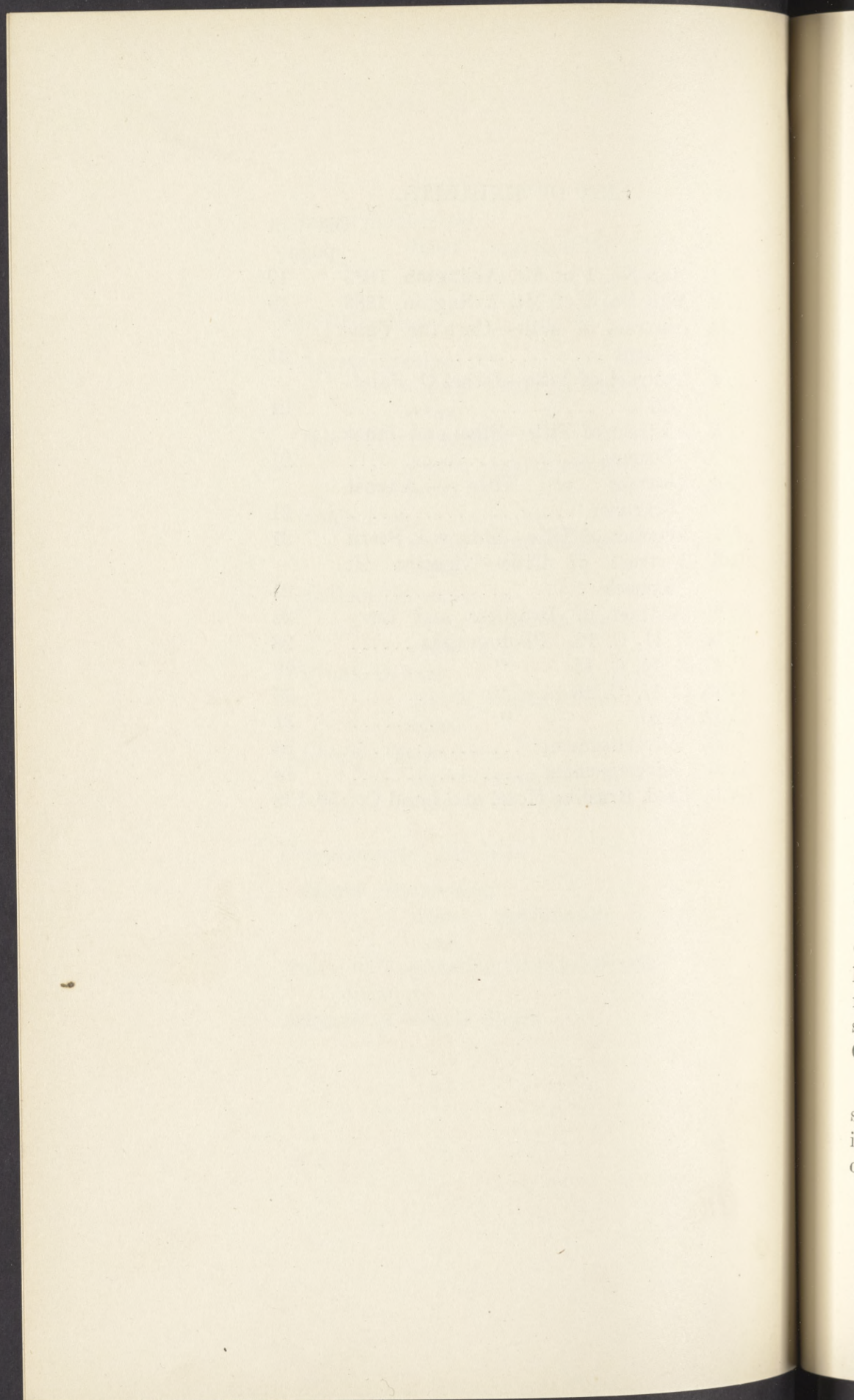
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Bill of Complaint.

BILL OF COMPLAINT.

Filed January 21, 1926.

In Chancery of New Jersey

To Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey: 10

Complainants, Auguste Schreiber of Hoboken,
Hudson County, New Jersey; Silas Thomas and
Janet Frame Thomas of Paterson, Passaic
County, New Jersey; Nicholas H. Steneck and
Amalie Steneck, his wife, of Hoboken, Hudson
County, N. J.; Karoline Vintschger of Hoboken,
Hudson County, N. J.; Sidney J. Stern of New
York City, N. Y., and Israel O. Palefski of New
York City, N. Y., respectfully show as follows: 20

1. The complainants are owners of property
located in the Borough of Mt. Arlington, Morris
County, New Jersey, all of said tracts of land
owned by them forming a portion of property
situate in what was formerly the Township of
Roxbury (now the Borough of Mt. Arlington),
Morris County, New Jersey, and being shown
and designated on a map known as "Map #2,
of Mt. Arlington, on Lake Hopatcong, Morris
County, New Jersey, surveyed by W. C. Culver,
C. E., September, 1886." All of said tracts of
land owned by the complainants were sold with
reference to said map by lot and block numbers,
said map being duly filed in the Morris County
Clerk's Office. 30

2. Said map was prepared and said lots
shown thereon were laid out, numbered and des-
ignated as part of a scheme for the development
of the property therein described. 40

Bill of Complaint.

3. In the deeds to the complainants, or to their predecessors in title, restrictions were incorporated by the grantors therein in substantially the following language, either by express statement or by reference to earlier deeds:

10 “That the said party of the 2nd part, his heirs or assigns shall not at any time hereafter erect, or cause, procure, permit or suffer to be erected upon the premises hereby conveyed, or any part thereof, any building to be used or occupied or for the purpose of being used or occupied for any of the purposes herein and hereby prohibited, nor at any time use or employ, or cause, procure, permit, or suffer to be used or employed for himself, his heirs or grantees, lessees or tenants of said premises, or any part thereof, or by any other person holding possession of said premises
20 or any part thereof under his or their title, any building erected or which may hereafter be erected on said premises or any part thereof, for the use or purpose of, or as a brewery, distillery, slaughter house, smith shop, carpenter shop, forge or furnace, steam engine, for manufacturing purposes, brass foundry, nail or other iron foundry, soap, candle, starch, varnish, vitriol, glue, ink, turpentine or bone factory, or manufactory of gunpowder or other explosive
30 substances, or mineral or animal oils, or any bone boiling establishment or factory for tanning, dressing or preparing skins, hides or leather or a cow or livery or other stable, or cattle yard, or hog pen, or any buildings, erections, pits or excavations, for the purpose of mining or any other noxious or dangerous trade or business, or any hotel or inn, or any establishment, booth or saloon for the sale of malt or other spirituous liquor or any buildings whatsoever other than private dwellings, with their necessary boat-
40 house and outbuildings and any fences, except of growing plants or shrubs.

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And it is further understood and agreed that the foregoing covenant restricting the use of said premises shall attach to and run with the land hereby conveyed and shall be enforceable against said party, his heirs or grantees, or those deriving title under him by the said party of the first part, his successors, assigns or other grantees.

And it shall be lawful, not only by the said party of the 1st part, his successors and assigns, but also for the owner or owners of any lot or lots in the vicinity or adjoining the premises hereby granted, deriving title from or through the said party of the 1st part, to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate the said covenant, restricting the use of said premises, it being understood, however, that said covenant is not to be enforced personally for damages against the said party of the 2nd part, his heirs or assigns unless he or they be the owner or owners of the said premises, or some part thereof, at the time of a violation of the said covenant or of a threatened or attempted violation thereof, but the said covenant may be proceeded on for any injunction of, and for a specific execution thereof, against the said party of the 2nd part, his heirs, or assigns, and for damages against the said party or parties violating the said covenant or their heirs, executors, administrators or assigns."

4. The properties owned by the complainants formed part of the general scheme for the development of said property shown and designated on said map and are entitled to the benefit and protection of the restrictive covenants contained in said deeds.

5. Complainant Sidney J. Stern acquired title to his property on October 9, 1922, by deed re-

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Bill of Complaint.

10 cording in the Morris County Clerk's Office in Book E-28, page 143, &c., said property of Sidney J. Stern is improved by the erection of a dwelling and other buildings thereon and has a market value of approximately \$25,000. The property of said complainant Sidney J. Stern is designated as Lot No. 2, in Block No. 5, and Lot No. 2, in Block No. 6, on said map.

20 6. Complainants Silas Thomas and Janet Frame Thomas, his wife, acquired title to their said property on April 30, 1924, by deed dated April 30, 1924, and recorded in the Morris County Clerk's Office in Book Z-28, page 411, &c. Said property is improved by the erection of a dwelling house and other buildings thereon and has a market value of approximately \$85,000. The property of said complainants Silas Thomas and Janet Frame Thomas is designated as Lot No. 6, and part of Lot No. 5, in Block 5, and Lot No. 6 and part of Lot No. 5, in Block No. 6, and Lots Nos. 7 and 8, in Block No. 10, on said map.

30 7. Complainant Auguste Schreiber acquired an undivided one-half interest in Lot No. 1, in Block 7, on said map, by deed dated June 23, 1924, recorded in the Morris County Clerk's Office, in Book D-29, page 166, &c. Said property is improved by the erection of a dwelling house and other buildings thereon and the market value of said one-half interest in said property is approximately \$6,000. Complainant Auguste Schreiber is also the owner of Lot No. 1, in Block No. 8, as shown on said map, which lot is unimproved and which has a market value of approximately \$2,000. Complainant Auguste Schreiber acquired title to Lot No. 1, in Block 40 8, on October 11, 1923, and deed for which is

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recorded in the Morris County Clerk's Office in Book U-28, page 304, &c.

8. Complainant Nicholas H. Steneck acquired title to part of Lot No. 2, in Block No. 7, on said map, by deed dated April 21, 1923, which deed is recorded in the Morris County Clerk's Office in Book O-28, page 130. Said property is improved by the erection of a dwelling house and other buildings thereon and has an approximate market value of \$15,000. Complainant Nicholas H. Steneck also acquired title to the southerly part of Lot No. 3, in Block No. 7, as shown on said map, together with his wife, the complainant Amalie Steneck, by deed dated May 12, 1923, and which deed is recorded in the Morris County Clerk's Office in Book O-28, page 377. The said property is unimproved and has a market value of about \$4,000.

9. Complainant Karoline Vintschger acquired title to the northerly one-half of Lot No. 3, in said Block No. 7, by deed dated May 12, 1923, and recorded in the Morris County Clerk's Office in Book O-28, page 375, &c. Said property is unimproved and has a market value of about \$3,500. Said complainant Karoline Vintschger also acquired title to Lot No. 4, in Block No. 7, by deed dated February 1, 1917, and recorded in Morris County Clerk's Office in Book A-24 of Deeds, page 307. Said property is improved by the erection of a dwelling house and other buildings thereon and has a market value of approximately \$20,000.

10. Complainant Israel O. Palefski acquired title to Lot No. 3 and part of Lot No. 4, in Block No. 5, and Lot No. 3 and part of Lot No. 4, in Block 6, by deed dated October 20, 1924, and

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recorded in the Morris County Clerk's Office in Book G-29 of Deeds, page 174. Said property is improved by the erection of a dwelling and other buildings thereon and has a market value of approximately \$15,000.

10 11. All of said complainants use their said properties as their summer dwellings and for occupancy during vacation periods. Said properties are strictly and solely used for residential purposes and their value and desirability depend upon the continuance and maintenance of the restrictions contained in said deeds.

20 12. The entire section, in which is located the properties of the various complainants, borders on Lake Hopatcong and is devoted to and used for residential purposes and the residences located on the lots in said vicinity are used for summer homes.

30 13. Said properties and others in the said vicinity were originally restricted in the manner hereinbefore set forth in conformity with a general plan or scheme to develop said property as a residential section and said restrictions imposed upon said lands and running with said properties formed inducing causes for the complainants to purchase their respective properties.

40 14. Since the placing of said original restrictions upon said properties included in said general plan or scheme the character of said section as a purely private residential section has been retained and the particular portion of the restrictions above referred to, prohibiting the use of any building other than as a private dwelling (with the necessary boathouses and outbuildings) has been carefully observed and

Bill of Complaint.

followed by the various purchasers of properties in said section in which are located the properties of the complainants until the commission of the acts hereinafter set forth.

15. On August 13, 1894, by deed recorded in the Morris County Clerk's Office in Book K-14 of Deeds, page 413, Robert Dunlap and Amelia N. Dunlap, his wife, conveyed to one Albert Tilt Lo. No. 6, in Block No. 10, on said map, and in said deed recited that the property so conveyed was transferred subject to the restrictions and covenants with reference to the use of said premises as fully and particularly described in a certain deed from the Lake Hopatcong Land & Improvement Co. to the said Robert Dunlap, dated September 19, 1887, and recorded in the Morris County Clerk's Office in Book D-12, page 446, &c.

16. Said restrictions so contained in said deed were substantially the same as the restrictions set forth in paragraph 3 of this bill of complaint.

17. On October 2, 1894, by deed recorded in the Morris County Clerk's Office in Book L-14, page 397, the said Albert Tilt acquired title to Lot No. 5, in Block No. 10, on said map by deed from George W. Baker, Willard H. Baker and Frank R. Baker, only surviving children and sole heirs at law of Annie R. Baker, deceased. Said deed recited that the premises so conveyed were transferred subject to all the covenants and restrictions with reference to the use of said property as particularly described in a certain deed to the said Annie R. Baker, dated June 13, 1887, from the Lake Hopatcong Land & Improvement Co., which said deed is recorded in the Morris County Clerk's Office in Book L-14,

Bill of Complaint.

page 411, &c. Said restrictions were substantially as set forth in paragraph 3 of this bill of complaint.

18. On June 13, 1886, the Lake Hopatcong Land & Improvement Co., by deed recorded in the Morris County Clerk's Office in Book S-11, page 1, conveyed to Amelia N. Dunlap, wife of Robert Dunlap, Lots 4 and 5, in Block 5, and Lots 4 and 5, in Block 6, as shown on said map, restricting the property in the manner herein set forth. On September 15, 1888, by deed recorded in Book M-12 of Deeds for Morris County at page 302, &c., said Amelia N. Dunlap and Robert Dunlap, her husband, conveyed the southerly portion of Lot 5, in Block 6, and Lot 5, in Block 5, and the northern portion of Lot 4, in Block 6, and Lot 4, in Block 5, to Adelaide V. Tilt, similarly restricting the use of said property.

19. By deed dated June 21, 1922, recorded in the Morris County Clerk's Office in Book W-27, page 127, Adelaide V. Patten (formerly Adelaide V. Tilt) and William S. Patten, her husband, and Adelaide V. Patten as executrix of the estate of Albert Tilt, deceased, conveyed to the corporation known as the Marmon Holding Co., said part of Lot No. 4 and Lot No. 5, in Block 5, and said part of Lot 4 and Lot 5, in Block 6; also Lots Nos. 5 and 6, in Block 10, as shown on said map, similarly restricting said property.

20. By deed dated October 16, 1922, recorded in the Morris County Clerk's Office in Book C-28, page 36, the said Marmon Holding Co. conveyed to the defendants, Nathan Drosness and Louis Levy, Lots Nos. 5 and 6, in Block 10, and part of Lots Nos. 4 and 5, in Block 5, and part of

Bill of Complaint.

Lot No. 4 and Lot No. 5, in Block No. 6. Said property so conveyed to the defendants, Nathan Drosness and Louis Levy, is more particularly and fully described in said deed from the Marmon Holding Co. as follows:

FIRST TRACT: Designated and described on a certain map entitled "Map No. 2, of Mt. Arlington on Lake Hopatcong, Morris County, N. J., 1886," surveyed by W. C. Culver, C. E., 146 Broadway, N. Y., filed by the Lake Hopatcong Land and Improvement Co. on September 4, 1886, in the office of the Clerk of the County of Morris, State of New Jersey, as Lots #4 and #5, in Block #6, and Lots #4 and #5, in Block #5, as shown on said map, the said portions of said tract hereby conveyed being more particularly described as follows:

BEGINNING at a point on the westerly side line of Windermere avenue, distant one hundred thirty-five feet Southerly along said line from a point formed by the intersection of the southerly side of Arlington Avenue when prolonged easterly so as to intersect the westerly side of Arlington Avenue when prolonged northerly as shown on said map, said beginning point being also distant forty-five feet from the point at which the boundary line of Lots 5 and 6, in Block 6, intersects said westerly side line of Windermere Avenue, thence running southwesterly along said westerly side line of Windermere Avenue as shown on said map one hundred thirty-five feet to the line of land of Louisa Aldenbrand distant twenty feet from the boundary line of Lots 3 and 4, in Block 6, as shown on said map; thence westerly and parallel to Arlington Avenue as shown on said map to the shore line of the lake as shown on said map; thence northerly along said shore line of the lake as shown on said map to a point on said shore line in Lot 5, in Block 5, as shown on said map at which

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Bill of Complaint.

10 a line drawn through the beginning point above given and parallel to Arlington Avenue intersects the said shore line of Lot No. 5, in Block 5, as shown on said map, being a corner in the land of Julia A. Frothingham; thence along said line drawn through the beginning point herein and parallel to Arlington Avenue easterly to the point or place of Beginning. The said premises above described and conveyed being fifty-five feet of the southern portion of Lot 5, in Block 6, and Lot 5, in Block 5, as shown on said map and eighty feet to the northern portion of Lot No. 4, in Block 6, and Lot 4, in Block 5, as shown on said map.

SECOND TRACT: Described as Lot No. 6, in Block 10, on said map, described as follows:

20 BEGINNING at a point on the easterly side of Windermere Avenue distant one hundred thirty-five feet Southwardly from the corner formed by the intersection of the easterly side of Windermere Avenue and the southerly side of Arlington Avenue; thence running (1) southwardly along Windermere Avenue seventy-five feet; thence (2) eastwardly parallel with the southerly side of Arlington Avenue two hundred three feet to the center line of Block 10; thence (3) northwardly aparallel with Windermere Avenue and along said center line seventy-five feet; thence (4) westwardly parallel with Arlington Avenue two hundred three feet to the point of BEGINNING.

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THIRD TRACT: Lot #5, in Block 10, on said map. Beginning at a point in the southeasterly side of Windermere Avenue distant two hundred ten feet southwardly from the corner formed by the southerly side of Arlington Avenue and the southeasterly side of Windermere Avenue and thence running (1) Eastwardly and parallel with the southerly side of Arlington Avenue, two hundred three feet to the center line of

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Bill of Complaint.

Block 10; (2) Southwardly parallel with Windermere Avenue seventy-five feet; (3) Westwardly again parallel with the southerly side of Arlington Avenue two hundred three feet to the said Southeasterly side of Windermere Avenue; (4) Northwardly along said Southeasterly side of Windermere Avenue seventy-five feet to the point or place of BEGINNING. 10

21. During the summer season of the year 1925, the defendants, Nathan Drosness and Louis Levy, in violation of the covenants and restrictions contained in all of said deeds for properties in said vicinity and in violation of the covenants and restrictions contained in the deeds of their predecessors in title, which restrictions were binding upon and ran with the land, operated a house located on said properties known as part of Lot No. 4 and Lot No. 5, in Block 6, and part of Lot No. 4 and Lot No. 5, in Block 5, as a hotel or inn property and, as the season progressed, widened the activities of such user so that by the time of the height of the summer season said properties owned by said Drosness and Levy in said section were being operated and used exclusively for hotel purposes, the buildings located in Block 10 being likewise used for rooming purposes. The defendants also erected partitions in the boat house and used such building for rooming purposes. 20 30

22. Complainants are informed and believe that rooms were assigned to patrons by the management of said house; that meals were served by such management and that a general hotel business was conducted therein, although the purpose thereof was attempted to be concealed by the use of the name of "Passaic Country Club," the name adopted by the said defendants, 40

Bill of Complaint.

Drosness and Levy, in the operation of said place.

23. Said hotel was conducted in a noisy and offensive manner and formed a nuisance in said neighborhood. The cesspools on said property were inadequate for the use to which the property was subjected and also constituted a nuisance to the neighborhood.

24. Complainants charge that the aforesaid use to which said property has and is being subjected is in direct violation of that portion of the restrictions, above referred to, which prohibited the use and occupation of any of the property for any other purpose than as a private dwelling with the necessary outbuildings and boathouse connected therewith and particularly prohibited its use as a hotel or inn.

25. Complainants further charge on information and belief that the defendants, Drosness and Levy, contemplate the continuance of use of said property for such hotel purposes during summer season of 1926, and are planning the enlargement thereof, and charge that such use to which it has been and is proposed to be put will constitute a nuisance and a detriment to the properties of the complainants, substantially affects the value of their said properties, is in violation of the restrictive covenants contained in all of said deeds and if permitted to be continued will constitute a permanent and continuing nuisance, will cause irreparable damage to the complainants and will deprive the section of which the complainants' properties are a part of its purely residential character which was sought to be observed by the restrictive covenants aforesaid.

Bill of Complaint.

26. Defendant Rose Drosness is the wife of defendant Nathan Drosness.

Complainants are without adequate remedy in the courts at law and therefore pray:

1. That Nathan Drosness and Rose Drosness, his wife, and Louis Levy may answer this bill of complaint without oath and each statement therein made. 10

2. That the defendants Nathan Drosness and Louis Levy, their agents, servants and employees, may be enjoined and restrained from using, permitting or suffering to be used said properties owned or any building or buildings thereon for the purpose of an inn or hotel, or for any business purposes whatsoever, and that they be particularly enjoined and restrained from using or permitting or suffering to be used any building or buildings on said property for any purpose other than as a private dwelling (except the necessary boathouse and outbuildings connected therewith). 20

3. 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. 30

And the complainants will ever pray, &c.

KING & VOGT,
Solicitors for and of Counsel with Complainants.

Amendment to Bill of Complaint.

AMENDMENT TO BILL OF COMPLAINT.

Filed.

IN CHANCERY OF NEW JERSEY.

10 *Between*

AUGUSTE SCHREIBER, SILAS
THOMAS and JANET FRAME
THOMAS, NICHOLAS H. STE-
NECK and AMALIE STENECK,
KAROLINE VINTSCHGER, SID-
NEY J. STERN and ISRAEL O.
PALEFSKI,

Complainants,

and

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NATHAN DROSNESS, ROSE
THOMAS and JANET FRAME
Defendants.

*On Bill, &c.
Amendment
to Bill of
Complaint.*

Following is the amendment to bill of complaint to order entered herein:

30 “25a. On information and belief, complainants allege that on April 24th, 1923, the defendants Drosness and Levy caused to be formed a certain corporation known as the Passaic Country Club which corporation, as tenant or otherwise, together with said individual defendants, used and proposes to continue to use the property described in the bill of complaint for the purpose of an Inn or Hotel.”

Paragraph 1 of the prayer to read as follows:

40 “1. That Nathan Drosness and Rose Drosness, his wife, Louis Levy and Passaic Country Club may answer this bill of complaint without oath and each statement therein made.”

Amendment to Bill of Complaint.

Paragraph 2 of the prayer to read as follows:

“2. That the defendants, Nathan Drossness, Louis Levy and Passaic Country Club, their agents, servants, and employees may be enjoined and restrained from using, permitting or suffering to be used said properties owned or any building or buildings thereon for the purpose of an Inn or Hotel, or for any business purposes whatsoever, and that they be particularly enjoined and restrained from using or permitting or suffering to be used any building or buildings on said property for any purpose other than as a private dwelling (except the necessary boathouse and outbuildings connected therewith).” 10

(Signed) KING & VOGT,
Solicitors of Complainants.

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Answer.

ANSWER.

Filed.

The defendants, answering the bill of complaint, say that:

10 1. The defendants have no knowledge or information sufficient to form a belief as to the statements in paragraphs, 1, 2 and 3.

2. Paragraph 4 is denied.

3. The defendants have no knowledge, or information sufficient to form a belief as to the statements in paragraphs 5, 7, 8, 9 and 10.

4. Paragraphs 11, 12, 13, 14, 15, 16, 17, 18 and 19 are denied.

20 5. Paragraph 20 is admitted.

6. Paragraphs 21, 22, 23, 24, 25, 25a, are denied.

7. Paragraph 26 is admitted.

Defendants further answering say:

30 8. The Marmon Holding Company during the summer of 1922 used and occupied said premises in question as a summer boarding house for summer vacations, in a quiet and dignified manner, without suit, let or hindrance. During the summer of 1923 following, the defendants conducted a summer boarding house for summer vacations, without, suit, let or hindrance, and have continued to do so ever since. During that time the defendants have expended large sums of money, to wit, many thousand of dollars, in renovating, altering and improving said premises, without
40 person whatsoever. The complainants, Silas

Answer.

Thomas and Janet Frame Thomas, Nicholas H. Steneck and Amalie Steneck, Sidney J. Stern, Israel C. Palefski and Auguste Schreiber, all purchased the properties claimed to be owned by them subsequent to the purchase and use of said premises by the Marmon Holding Company and subsequent to the purchase and use of said premises by the defendants. The property of Karoline Vintschger is far removed from the defendants premises. 10

Defendants further answering say:

9. The character of all the property at Lake Hopatcong, including the premises belonging both to the complainants and defendants and the general neighborhood have changed in character since the first formulation of the covenants and restrictions and the defendants aver that it would be inequitable to enforce them today in reference to summer boarding houses for summer vacations. The complainants have heretofore neglected to enforce their rights, if any, and are guilty of laches. 20

Defendants further answering say:

10. The defendants conducted the premises in question under the name and style of the Passaic Country Club by virtue of which their friends and acquaintances are afforded a summer vacation in a summer boarding house at club rates, and the defendants allege that there is nothing in this proceeding in violation of the covenants and restrictions in question. Defendants further allege that said Passaic Country Club is conducted in a quiet, dignified, unobtrusive manner, and by virtue of its location has increased the value of the property of the complainants to an extent that is beneficial to the neighborhood. 30 40

Reply.

All of which matters and things these defendants are ready and willing to aver, maintain and prove, if this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

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ALBERT H. HOLLAND,
Solicitor of Defendants.

REPLY.

Filed.

Complainants, replying to answer of defendants, say:

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1. They deny paragraph 8.
2. They deny paragraph 9.
3. They deny paragraph 10.

KING & VOGT,
Solicitors for Complainants.

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George E. Jenkins, direct.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>AUGUSTE SCHREIBER, <i>et als.</i>, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>NATHAN DROSNES, <i>et als.</i>, <i>Defendants.</i></p>	}	<p><i>On Bill, &c.</i></p> <p style="text-align: right;">10</p>
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Transcript of shorthand notes of testimony taken on final hearing in above-stated cause, April 22, 1926, at Chancery Chambers, Jersey City, before his Honor, James F. Fielder, Vice-Chancellor.

Appearances: 20

Messrs. King & Vogt, (Mr. Price) for complainants.

Albert H. Holland, Esq., and Irving L. Werksman, Esq., for defendants.

Mr. Price: I offer in evidence map marked "Map No. 1 of Mt. Arlington, Lake Hopatcong, Morris County, 1885."

(Marked Exhibit C. 1.)

Mr. Price: I offer in evidence map of 30
 Mt. Arlington, No. 2, 1886.

(Marked Exhibit C. 2.)

GEORGE E. JENKINS, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Price.

Q What is your business? A I am a civil 40
 engineer and mining engineer and surveyor.

George E. Jenkins, direct.

Q In connection with your engineering work have you had experience in examination of titles? A Yes, sir; I found that was quite necessary.

Q Has your experience in that line been extensive or otherwise?

10 Mr. Holland: I admit Mr. Jenkins' qualifications to search records.

Q Have you, at my request, made examination of each of the titles of the complainants in this suit? A Yes, sir; I have.

Q Have you traced back each of the titles to their source in the Lake Hopatcong Building & Improvement Company? A I have.

20 Q Have you done the same with the property now held by Nathan Drosness? A Yes, sir.

Q Have you made a transcript of each of these titles and also a transcript of the titles of the Drosness and Levy property? A Yes, sir.

Q Have you also, at my request, procured from the County Clerk's office in each case a certified copy of the parent deed and also a certified copy of the deed to the present owner of the property? A I believe I have.

Q You have those before you? A Yes, sir.

30 Q Together with what I have here? A Yes, sir; with what you have on the table.

Mr. Holland: We have no objection to the certified copies of the County Clerk's office, so far as his own work is concerned, just so long as we know what it is.

Mr. Price: I am offering in each case a transcript of the chain of title, in each title, from our complainants back to the Lake Hopatcong Land & Improvement Company.

40 I offer, first, the title of Caroline Vintschger, which covers the northerly part

George E. Jenkins, direct.

of lot No. 3 in block No. 7, and lot No. 4 in block No. 7, including certified copy of the deed referred to.

(Marked Exhibit C. 3.)

Mr. Price: I next offer in evidence abstract of title of Israel O. Palefski, to lot No. 3, block 6, with certified copy of deed referred to. 10

(Marked Exhibit C. 4.)

Mr. Price: I next offer in evidence title to property of Silas and Janette Thomas, which covers lot No. 6 in block 5, lot No. 6 in block 6, part of lots 4 and 5 in block 5, and part of lots 4 and 5 in block 6 and lots 7 and 8 in block 10, together with certified copies referred to.

(Marked Exhibit C. 5.) 20

Mr. Price: I next offer in evidence title of Auguste Schreiber, who has ownership in lot No. 1, block 8 and lot No. 1, block 7, together with certified copy referred to.

(Marked Exhibit C. 6.)

Mr. Price: I next offer in evidence title of Sidney J. Stern, to lot No. 2, block 6 and lot No. 2 in block 5, with certified copy referred to. 30

(Marked Exhibit C. 7.)

Mr. Price: I next offer in evidence title of Nicholas H. Steneck and Amalie Steneck, who have title to the southerly half of lot No. 3, block 7 and part of lot No. 2 in block 7, together with certified copy.

(Marked Exhibit C. 8.)

Mr. Price: I next offer in evidence certified copies of the deeds in the chain of 40

George E. Jenkins, cross.

title of the defendants Drosness and Levy, together with reference to the parent deed from the Lake Hopatcong Land & Improvement Company for the property now owned by these defendants.

(Marked Exhibit C. 9.)

10

Q You have noted, in the course of your examination of the titles, the restrictions which are involved in this suit which are outlined in the bill of complaint in this suit, which you have seen? A I have.

20

Q What have you to say as to whether or not the original restrictions incorporated in the parent deed in these various titles to which you have referred and of which we have offered copies or the abstract of your work, as to whether these restrictions incorporated in those parent deeds are identical or not with the restrictions set forth in the bill of complaint? A They are identical.

Q As you traced down these titles, you have noted, have you not, on your abstract the presence or absence of reference to the restrictions set forth in the original parent deeds? A Yes, sir.

30

Cross examination by Mr. Holland.

Q Mr. Jenkins, did you take statements of all the property that the Lake Hopatcong Land & Improvement Company purchased? A No, sir; not all of them.

Q Do you know how much it did purchase and from whom? A Yes; I know the chain of title.

40

Q Did it purchase from Louisa Altenbrand and her husband? A Yes, sir.

George E. Jenkins, cross.

Q Do you know whether or not that was a large tract of 60.12 acres? A There was more than one tract. There was on such tract; yes, sir.

Q Now, the tract of 60.12 acres, is that the large tract which includes all of this land in controversy? A Yes, sir.

Q Have you any minutes or notes which would identify this (showing witness) as a copy of that deed, or can you recognize it? A I am familiar with this deed. I have had occasion to refer to it and to map it. 10

Q In making your examination, Mr. Jenkins, in how many instances on the record did the Lake Hopatcong Land & Improvement Company utilize these sets of restrictions? A In every deed that I examined I found that restriction was incorporated in the deed.

Q How many deeds did you examine? A All that had to do with reference to the parties who are represented in this suit and their titles. 20

Q Six or seven? A Yes, sir.

Q How many other deeds, in addition to those six or seven, did the Lake Hopatcong Land & Improvement Company make? A Oh, they made many.

Q As a matter of fact, they made perhaps fifty more or less? A Oh, yes; fully that. 30

Q And eventually did they sell out all the remainder of their holdings to some other land company? A That I don't know.

Q You did not search for that? A No; no.

Q Did you go over this property not only as a searcher but also as a surveyor? A I have been engaged—

By the Court.

Q Answer the question—yes or no. A Yes. 40

George E. Jenkins, cross.

By Mr. Holland.

Q Are you prepared to say whether or not these restrictions are incorporated in the deed to the premises across the street? A Across the street from where?

10 Q Across the street from these defendants' premises? A In every case, excepting a modification is made in the restrictions of, I think it is, block No. 9, upon which the original hotel is located. There is a modification in the restriction in that deed.

By the Court.

20 Q I do not get your answer. Do you mean to say that in all the property across the street, except in block 9, the same restriction is incorporated? A Yes, sir; all of the deeds that I am familiar with.

Q There is a modification of the restriction so far as it affects block 9? A Yes.

By Mr. Holland.

30 Q To what extent did that restriction become modified, do you know? A Yes; it omits the portion of the clause which prohibits the use of that property for an inn or hotel.

Q Do you know how far towards Schaefer's the restricted territory extended in 1888 and 1889? A It is outlined on the map here as Mt. Arlington Park—Exhibit No. 2.

Q On this map will you please designate the property of defendants? A The property of the defendants is the property that has been known as the Albert Tilt property.

George E. Jenkins, cross.

By the Court.

Q Let us have the lot and block number. A It is a part of lot No. 5 and all of lot No. 4 in block 5; part of lot 5 and all of lot No. 4 in block 6, and lot No. 6 in block 10 across the street.

By Mr. Holland.

10

Q That all belongs to the defendants? A Yes, sir.

Q Where is the complainant Thomas' property in reference to that? A On the north of it.

By the Court.

Q Give me the lot and block number. A It is lot 5 and lot 6, but not the whole of lot 5—all of lot No. 6 in both blocks 5 and 6 and also lots 7 and 8 in block 10.

20

By Mr. Holland.

Q Where is the complainant Steneck's property? A Lot No. 2 in block No. 5 and lot No. 2 in block No. 6. That is almost the extreme south end of the park.

Q How far removed from the property of the defendants—I suppose, Mr. Jenkins, that indicates the house? A That indicates the house; yes, sir.

30

The Court: Pointing to lot 3 in block 6.

Q How far from the defendant's house, lot 3, block 6, is Schaefer's? A Schaefer's hotel?

Q Yes. A Schaefer's hotel is, I would say, about a quarter of a mile, near the junction of Altenbrand avenue with Mt. Arlington Boulevard.

40

George E. Jenkins, cross.

Q Is it indicated on this map which I show you? A It is not quite properly indicated.

Q That is what I am trying to find out. A (Indicating.) It should be on these two lots. Mr. Schaefer owns that property, but it is not properly located.

10

By Mr. Price.

Q Can you measure across on this map, Exhibit C. 2, about where it is? A I can mark it with a pencil.

Q You have marked it with an "X"? A Yes, sir.

By Mr. Holland.

20 Q Now, can you tell us the location of the bungalows on the land known as the Anderson lot—the twelve bungalows? A I do not know the property as the Anderson property, but I can point out on this map where those bungalows are. They are on the Schaefer property and are immediately south of the south line of the park. They are not within the park limits.

Q Will you indicate, please, where that is? A Yes, sir; I have indicated it with a circle.

30 Q Will you turn to your abstract, please, and give us the date that Sidney Stern acquired his title?

The Court: What is the idea if the deeds are in evidence?

Mr. Holland: Perhaps that covers it.

By Mr. Price.

40 Q This park area is designated on this map in red lines? A Yes.

George G. Schreiber, direct.

Q That is the so-called restricted area to which you refer? A Yes, sir.

GEORGE G. SCHREIBER, sworn as a witness on the part of the complainant, testifies as follows: 10

Direct examination by Mr. Price.

Q What is your profession? A Attorney and counsellor-at-law, New York state.

Q Your wife, Auguste Schreiber, whose title has been referred to, owns property at Lake Hopatcong? A Yes.

Q In the location described in the abstract produced by Mr. Jenkins? A Yes, sir. 20

Q Did you, at my request, cause photographs to be made of the various houses and properties which are involved in this suit? A I did.

Q Both of the complainants and of the defendants? A Yes, sir.

Q I show you a photograph and ask you what that photograph represents? A This photograph was taken from the porch of Mrs. Schreiber's house and the building on the left, at the top of the hill, is the building which is now owned by the defendants. To the right of the building owned by the defendants you can see the building now owned by Dr. Palefski. 30

Q Any other buildings visible on the picture?
A There is a cottage belonging to Mr. Stern.

Mr. Price: I offer this photograph in evidence. 40

George G. Schreiber, direct.

Mr. Holland: I am making no technical objection to the photographs. We have some, too.

(Marked Exhibit C. 10.)

10 Q I show you another photograph and ask you what that represents? A This photograph shows the defendants' cottage with a sign "The Passaic Country Club" on it and next to it, on the left, is a picture of Dr. Palefski's house.

Mr. Price: I offer this photograph in evidence.

(Marked Exhibit C. 11.)

20 The Witness: The first exhibit, Exhibit C. 10, shows the back of this house; this exhibit, Exhibit C. 11, shows the front of this house.

Q I show you another photograph and ask you what that indicates? A This was taken from the front of Mr. Thomas' house. This (indicating) is Dr. Thomas' house, and to the left of it—

30 Q (Interrupting.) Mr. Thomas, is it not? A Mr. and Mrs. Thomas' house, and to the left of it you see a corner of the defendants' house.

Mr. Price: I offer this picture in evidence.

(Marked Exhibit C. 12.)

40 Q I show you another photograph and ask you what that represents? A This picture was also taken from Mrs. Schreiber's house and the same place that Exhibit C. 10 was taken and shows that the main building is Mrs. Thomas'

George G. Schreiber, direct.

house and the building to the left is part of the defendants' house.

Mr. Price: I offer the photograph in evidence.

(Marked Exhibit C. 13.)

Q I show you another photograph and ask you what that represents? A This picture was taken from the same place on Mrs. Schreiber's porch and represents the outlook to the south, the first lawn being Mr. Thomas' the second lawn being the defendants', the third lawn being Dr. Palefski's. Then comes Stern's lawn and beyond that come the bungalows referred to as the Anderson bungalows, and to the right of the picture is the boat house or part of the boat house, of the defendants.

10

20

Mr. Price: I offer this photograph in evidence.

(Marked Exhibit C. 14.)

Q I show you another photograph and ask you what that represents? A This picture represents the three houses—Mr. Thomas', the defendants' and Dr. Palefski's—taken from Mrs. Schreiber's porch.

30

Q Reading from left to right on the picture?

A Reading from left to right.

Mr. Price: I offer the photograph in evidence.

(Marked Exhibit C. 15.)

Q I show you another photograph and ask you what that represents? A This picture was taken from—

40

George G. Schreiber, direct.

Q What does it represent? A It shows on the left Mrs. Schreiber's house, at the lower next to it, her boat house, and on the right a part of Nicholas H. Steneck's house.

Q He is one of the complainants? A He is one of the complainants.

10

Mr. Price: I offer this photograph in evidence.

(Marked Exhibit C. 16.)

Q I show you another photograph and ask you what it represents? A The house on the left is Nicholas H. Steneck's house, and on the right is Caroline Vintschger's, and in between the Vintschger's boat house.

20

Mr. Price: I offer this photograph in evidence.

(Marked Exhibit C. 17.)

Q I show you this photograph and ask you what that represents? A This photograph was also taken from Mrs. Schreiber's porch, the same place, and shows on the left the defendants' boat house and on the right Mr. Thomas' boat house.

30

Mr. Price: I offer this photograph.

(Marked Exhibit C. 18.)

Q Does that photograph, Exhibit C. 18, also You can see the scenic railway of the Bertram Island is, that was referred to by Mr. Holland in his opening? A It is in the middle distance. You can see the scenic railway of the Bertram Island Amusement Park, I believe they call it.

Q Is that on the same side or across the lake
40 from where the cottages and homes of the com-

George G. Schreiber, direct.

plainants are? A It is on the other side of the cove.

Q About how far away? A I should say at least a mile.

Q Can you make with a pencil a little mark where that is located on this picture? A (Witness does as requested.)

10

Q You have indicated on that picture by a pencil mark the area covered by the Bertram Amusement Park? A Yes.

Q I show you another photograph and ask you what that indicates? A This is what was formerly the gardener's cottage on the defendants' property.

Q What have you to say as to whether or not that is across the street? A It is directly opposite across the street from the defendants' house.

20

Q And what is the name of that street which intervenes between the house owned by the defendants and the cottage you refer to? A Windermere avenue.

Mr. Price: I offer this photograph in evidence.

(Photograph is marked Exhibit C. 19.)

Q I show you another photograph and ask you what that indicates? A This photograph shows on the right a cottage belonging to the Walsh family; in the center the Windermere; and to the left a cottage belonging to the Alamac Hotel, as far as I know now. The picture was taken from the top of the hill just to the east of the Alamac Hotel and on its property.

30

Mr. Price: I offer the photograph in evidence.

(Marked Exhibit C. 20.)

40

George G. Schreiber, direct.

Q Is Mrs. Schreiber related to the Vintschger family? A Yes, sir; she is a daughter of Mr. and Mrs. Vintschger—a daughter of Mrs. Caroline Vintschger.

Q And Mrs. Caroline Vintschger is one of the complainants in this case? A She is.

10 Q Are both of the properties which Mrs. Schreiber has title to, improved property? A No; only the property on the lake. The property above it which extends to Windermere avenue is unimproved.

Q How is the property which is on the lake improved? A It is improved by a very substantially built cottage of the old type, very well built, foundations. It has a main floor, three large rooms with a bathroom and toilet, and on
20 the second floor four large rooms with bathroom and toilet, and in the basement it has a kitchen, dining-room and toilet.

Q Is there a boathouse on the property? A There is a boathouse on the property.

Q Are you familiar with the extent of the investment which Mrs. Schreiber has in that property? A Yes.

Q How much? A About \$10,000 I should say, but I want to call attention that the half
30 interest which she owns in that cottage was given to her by her father—a gift by her father—and the lot on Windermere avenue was my gift to her.

Q When you speak of the \$10,000, how do you arrive at that figure? A As representing the value of the combined properties at the present time; not a cash investment.

Q That is the value of her interest in the combined properties; is that correct? A Yes; that
40 is the way I should say.

George G. Schreiber, direct.

By the Court.

Q You mean somebody else has an interest?

A Yes, sir.

Mr. Price: The title shows that she has a half interest.

Q Then the whole property is worth \$20,000? 10

A I should say about that amount.

By Mr. Price.

Q For what purpose has the property which Mrs. Schreiber owns been used since your acquaintance with it? A Since 1914 it has been used purely as a private dwelling, my wife and I living there every summer from and including 1916.

Q Were you acquainted with Mrs. Schreiber at the time she was living in the Vintschger homestead prior to your marriage? A I was. 20

Q Did you know the Vintschger property at that time also? A I did.

Q You have referred to the other property. Can you give us some idea what sort of a house that is on the other property, referring to the property involved in this suit belonging to Caroline Vintschger? A Hers is a very nice cottage, rather old-fashioned, it having been built I believe by the Dunlap family. On the ground floor there are three rooms and a large hall; on the second floor there are four rooms, bathroom and toilet. 30

Q Are you acquainted with the extent of the investment in that property? A Not so well. Only from hearsay.

Q I do not want you to testify from hearsay. Have you any knowledge by reason of the com- 40

George G. Schreiber, direct.

parative values in that section, of the value of that property?

Mr. Holland: I submit the witness is not qualified.

10 Q Have you had any experience in knowing values in that vicinity? A I would not want to qualify as an expert.

Q Are you familiar with the Steneck property? A Mr. Steneck is coming here and he will be familiar with that.

Q I will pass that. You say that you lived since 1916 on this property, using it as a summer home? A Yes.

20 Q Commencing with your present acquaintance of this particular property by reason of your occupation of it since 1916, what have you to say as to the use of the properties in that surrounding vicinity, particularly the properties of the complainants and the defendants referred to in this bill of complaint? A I can go back to 1914, because in 1914 and 1915 I also spent the summer in Lake Hopatcong. Since that time all of the houses owned by the complainants and the other houses in our immediate vicinity there have been occupied exclusively as private dwellings.
30 The defendants' house was occupied from time to time by their predecessors in title up to 1922. Since 1922 do you wish me to say what I think about—

Q (Interrupting) You have not said anything about the defendants' property up to 1922, what it was used for. A The defendants' house up to 1922 was used by the occupants as a private dwelling exclusively.

40 Q That property came from the Tilt family?
A It came from the Tilt family.

George G. Schreiber, direct.

Q When you say it was used by the occupants, do you refer to the Tilt family? A I am referring to the Tilt family, Mrs. Tilt subsequently becoming Mrs. Patton; she married again.

Q That was a very large substantial residence? A It was.

Q You have said, in connection with that property, that there was a gardener's cottage across the street? A Yes. 10

Q For what purpose was that used at the time the Tilt family occupied the place? A That was used for their gardener.

Q You have spoken of the boathouse. For what purpose was that used? A Exclusively as a boathouse and a billiard-room.

Q This house of the defendants is substantial in size? A It is a substantial house. That and the Thomas house are the two biggest houses there. 20

Q During the time the defendants' predecessor in title, the Marmon Holding Company, owned the property, it was used purely as a family residence? A It was.

Q When did your attention become attracted to the property owned by the defendants upon which there is visible the sign "Passaic Country Club" shown in the picture—when did your attention first become attracted to that, which led to the beginning of this suit? A We first considered bringing suit in the year 1925. 30

Q What was it that obtained in 1925, which was the time you did start suit, which led to the institution of the suit? A The defendants' house was so filled with people who were strangers to our community that we felt sure in 1925 that the defendants were either running a boarding house or a hotel there; and these people— 40

George G. Schreiber, direct.

there were so many of them and they made such an enormous noise and acted in so unpleasant a manner that we decided in 1925 that we could stand it no longer.

Q You thereupon brought this suit? A Thereupon we brought this suit.

10 Q About how many people did you observe would be there week-ends at the Passaic Country Club property during the summer of 1925? A Between 100 and 150.

Q You refer to their actions as being offensive to you and so forth. What have you to say in 1925 which caused you to feel that way about it? A The house itself was full to overflowing with people. These people covered the lawns, which you can see, from their house down to the boat house and went in swimming down there.
20 The boat house itself was used to house the men, the overflow from the hotel, I don't know how many, but I should imagine that as many as twenty people sometimes lived and spent the night in that boat house. The noise there was incessant. The people also occupied what was the gardener's cottage in front of the house, also I understand that was—

Q Don't tell us what you understand. Tell us what you personally know. A They occupied
30 that house and slept in that house, too. The noise at night made by these people until one and two o'clock in the morning, particularly on Fridays and Saturdays, was so great that we had to keep the windows on the southern side of the house closed and in the rooms in which our children slept, and my wife had to sleep on the other side of the house in another room; she had to move from the south side of the house to the north side of the house to get away from this
40 noise.

George G. Schreiber, direct.

Q This was all the summer season of 1925?

A In the summer season of 1925.

Q Had you any personal observation of the activities of the people at this Passaic Club at night? A At night their usual practice was to have a band or an orchestra play. Then they would dance.

10

Q I am confining myself to 1925. A 1925.

Q Go ahead. A Then they would dance and dance and would continue that, especially on Friday and Saturday nights, until twelve, one and two o'clock sometimes. Very often they would have bathing parties and the people would go down to the boat house and bathe there at night. On several occasions we were awakened between eleven and one o'clock by the noise which these people would make in swimming at night.

20

Q Did they have the lawn from the Passaic Country Club property sloping down to the lake lighted or not? A Sometimes they did; sometimes not.

Q Were there facilities made there by these defendants for lighting? A There was some. They had some—a string of lights going down—but at the time of these bathing parties those lights were usually out, as a matter of fact.

Q During the course of the week, exclusive of week-ends, in the year 1925, what was the extent of the patronage of this Passaic Country Club? A Why, I should imagine, in my opinion—

30

Mr. Holland: I object.

Q What was it, according to your observation? That is what you are asked? A According to my observation between forty and sixty people.

40

George G. Schreiber, cross.

By the Court.

Q That is, at a time, each day? A Yes, sir.

By Mr. Price.

Q Did you make any observation of the place where they parked their cars, that is, the people
 10 who attended this Passaic Country Club? A I saw their cars parked not only in front of their own property, but in front of Mr. Thomas', on Mr. Thomas' driveway, and I have even seen them on Dr. Palefski's driveway, and across the way from Dr. Palefski's on some property whose owner I don't know.

Q To what extent were you personally inconvenienced, you and your family, by the activities at the Passaic Country Club? A We were
 20 inconvenienced especially by their noise and the vulgarity caused by many of their guests in the various matters of swimming, the excitement, the noise that they made—the noise that they made, I think that is the main thing. I want to say that our property, as can be seen from this picture, is very near the club. Only the Thomas property intervenes. It is up on a hill above us, and we get the benefit of all that noise. From our porch,
 30 our windows, we can overlook the boat house, Thomas' as well as that of the defendants, and we are therefore very much inconvenienced, probably more than anyone but Thomas and Dr. Palefski.

Cross examination by Mr. Holland.

Q Did you say that the bathing suits were vulgar? A I said their actions were vulgar.

Q That their actions were vulgar. What was your complaint against the bathing suits? A
 40 Well, when I say—

George G. Schreiber, cross.

Q (Interrupting) I am asking you what was your complaint against the bathing suits? A My complaint was that women in abbreviated bathing suits and men in abbreviated bathing suits were lying on the ground together, rolling over each other, dancing and things of that sort, right in view of our porch.

10

Q Were they alone or in crowds? A Sometimes there were others with them, but sometimes they were in crowds.

Q You say you saw this at night? A No; these things I saw in the daytime.

Q Did you see anything different there than what you saw at the bathing beach of the Alamac? A Only in degree.

Q But in character, there was no difference, was there? A In other words, I saw dancing at the Alamac, too, but I am free to confess I have never seen men and women rolling over each other on the lawn at the Alamac.

20

Q You think it was not sufficient for you to make any complaint against these people for disorderly conduct or open lewdness? A Personally I did not, but such a complaint was made.

Q So that you, as a lawyer, didn't see anything personally— A (Interrupting) I say I did not make a complaint personally.

30

Q Did you say that the boat house was used as a billiard room by General Patton? A By the Tilt family, yes.

Q Did they also have occasion to use it as a ball-room? A They had no balls in my time; I don't know.

Q About how far, in a straight line, do you think is your house from the Drosness house, the defendants' house? A I should say between 200 and 230 feet.

40

George G. Schreiber, cross.

Q Well, have you any idea as to the width of the Thomas lot?

Mr. Price: The map is drawn to scale and the house is located on the same map.

Mr. Holland: I am testing the witness.

10 A I think about 200 feet.

Q About how far are you from the Alamac Hotel? A Oh, about 500 feet.

Q So that you think you are further away from the Alamac than you are from the Drossness house? A I think so.

Q This noise that you spoke of, how do you know from which direction it came or who was making it? A It came from the house which is northeast of our house.

20 Q Well, was the noise any greater than the noise from Bertram Island? A Very much greater.

Q Was it different in character? A It certainly was different in character.

Q What did the noise consist of? A The Bertram Island noise came like a whisper to us, we are so far away from it, but this was a loud noise which came over continually, jazz playing, shouting and singing. One time a woman sang so loudly we could not go to sleep for hours.

30 Q You could not go to sleep for an hour? A For hours.

Q Did she sing for two hours? A She sang for at least two hours—for two and a half hours.

Q Was there not any jazz playing so-called, at the Alamac Hotel? A They did, but I didn't hear that.

40 Q Why didn't you hear that? A In the first place, where they have their jazz music is usually

George G. Schreiber, cross.

on the other side of the house. In the second place, our winds are usually from the south and the southwest and we did not hear the noise.

Q Did not the Alamac Hotel orchestra very often play on the beach at night? A I didn't hear it.

Q That you didn't hear? A I did not.

10

Q Didn't they play on the porch very often at night? A I again, did not hear that.

Q You heard none of these noises at the Alamac; you heard them all at the Drosness house? A Absolutely.

Q These cars that you spoke of, in front of different places, how do you know whose cars they were? A On some occasions—on one occasion I know I was talking to Mr. Thomas on the street there, and I asked him particularly: "Are any of these cars yours?" and he said no.

20

Q So all you know is what Mr. Thomas told you? A No. I do know that some of the people—well, I will grant you that. I could not swear that these cars belonged to any particular person, but they were all around the Drosness place.

Q Well, there are lots of visiting cars there every Saturday and Sunday, are there not? A Yes.

Q But any car that you might have seen along the road there could be very easily by you said to belong to Drosness or his guests? A Oh; there were certain cars which I would have said belonged to the guests of the Alamac.

30

Q So that there were cars belonging to the guests of the Alamac that were parked there on that very same road? A Not at that place I indicated and not those that I referred to.

Q What do you mean—not those you referred to? A I referred to the cars that were on Mr.

40

George G. Schreiber, cross.

Thomas' driveway opposite the defendants' place and on Dr. Palefski's driveway.

Q How many cars did you see on Mr. Thomas' drive? A One time I saw as many as six there.

10 Q Where was Mr. Thomas? A I don't know.

Q That day you did not speak to him? A No, not that day.

Q These might have been cars belonging to Mr. Thomas' guests for all you know? A I doubt it very much.

Q You don't know? A I could not swear absolutely; no.

20 Q Yet you are willing to testify that they were part of the nuisance created by these people? A I am perfectly convinced that they were. That is all I can swear to.

Q Did they constitute an inconvenience to you? A An inconvenience, no.

Q Do you live in this house all the year round or just merely for summer vacations? A Summer vacations.

Q Where is your permanent residence? A Hoboken.

30 Q That is your voting residence? A Most of the time; yes.

Q Now, the people against whom you find objection, did you ever come in contact with them? A I never did.

Q Did you ever visit them? A No.

Q Did you ever have anything to do with them? A No.

Q Did they ever visit you? A No.

40 Q Did they ever trespass upon your land? A Not they, but their guests did.

George G. Schreiber, cross.

Q When was that? A During the summer of 1925. There were people who would come across from the lawn of the defendants, across Thomas' lawn, and go across our lawn and go across the Steneck lawn and the Vintschger lawn.

Q And go where? A I don't know.

Q Don't you know they were going to the bathing beach of the Hotel Alamac? A I don't know, but I presume they were. 10

Q Don't you know that all the people who lived in the bungalows would be going in the same direction and passing over the same lawns? A No.

Q You don't know that? A I don't know that. They might but I don't know that.

Q If they might, but you don't know it, how is it that you say these people from the Drosness place would do it? A Because I would see them coming from there while I was sitting there. 20

Q Do you mean that you were sitting there and saw them walk over your lawn? A I sometimes have and sometimes I have stopped them.

Q Did you stop them very often? A Very often.

Q When you stopped them, did they stop, or did they in violation of your command, continue? A If I stopped them, they stopped. 30

Q So that at all times you had the power to stop them whenever you wanted to do it? A When I saw them I did.

Q You had no fence? A No.

Q You did not think of putting any there? A No, not particularly a fence.

Q As a matter of fact, the property is restricted against fences, is it not? A I am now informed it is. 40

George G. Schreiber, cross.

Q Well, the friends of Mr. Drosness who came to board at his place were all Jewish people, were they not? A I could not swear to that. Many of them were.

10 Q Was it because of the fact that they were Jewish people that you did not like their mannerisms or the noise they were making or the conversation they carried on? A One of my partners was a Jew.

Q I did not ask you that.

The Court: Strike out the last answer.

A No; that is not the reason.

Q You first went there in 1916 to live? A I was there in the summer of 1914.

20 Q In 1922 you knew that the Marmon Holding Company had taken title from General Patton for the Tilt property? A I did not.

Q Well, you knew that Mrs. Patton and her husband, General Patton, had left there? A Yes.

Q You knew that other people had taken possession of the property? A Right.

30 Q The only thing that you did not know was that their name was the Marmon Holding Company? A That is right.

Q There were many families living over there in 1922? A Not many.

Q What do you call "not many"? A Well, there might have been three or four families that would come there. Possibly it changed a little, but very little.

Q Might there have been six or seven? A Possibly; I don't know.

40 Q And consequently, it might have been a little more? A I don't know. It appeared to me five or six families.

George G. Schreiber, cross.

Q When were you first aware that the Marmon Holding Company no longer held the title to the property but had conveyed it to Mr. Drosness and Mr. Levy? A When Mr. Levy informed me after we started this suit.

Q When were you first aware that Mr. Drosness and Mr. Levy were in possession of the property? A The first time that I suspected it—I never knew it—was in 1924. 10

Q Well, in the summer of 1923, had you not met Mr. Drosness? A I do not believe I have ever met him. I do not even know which is Mr. Drosness in this room now, although I have got my suspicions. I do not remember ever having met Mr. Drosness.

Q In 1923 did you think that the Marmon Holding Company was still there, when five or six families visited there? A I thought the same people that were there in 1922 were there in 1923. 20

Q Have you any idea how many families were there in 1923? A I have not, but I should say a few more than in 1922.

Q If I should tell you twenty, would that be contrary to your recollection? A I would be surprised; I would think that would be too much. 30

Q In 1924 how many families would you say were there during the summer vacation? A In 1924 there was a change, as far as I can recall, in the character of the people who came there.

Q How did you determine that in 1924? A Well, in 1924, first of all, there were more people than in 1923.

Q How many more people? A Well, I should say that at times during 1924 there were as many as twenty or thirty people there. 40

George G. Schreiber, cross.

Q Have you ever been inside the premises?

A No.

Q Did you ever count the people as they went in? A No; I am just giving my impressions.

Q Did you ever count the people as they went out? A No.

10 Q Of the people that you saw outside, did you know how many were boarding at this place and how many were just visiting the people living there? A I never knew that; no.

Q So that without anything except merely seeing a number of people, you have hazard these guesses as to how many people were living there?

A I have given my recollection, my experience.

20 Q Your experience consisting of what? A Of seeing people going in and out of the house, and on the porch, and going in and out of the boat house, and going in and out of the so-called gardener's cottage.

Q These people whom you saw going in and out of the house and in and out of the cottage and in and out of the boat house, do you know whether they were living there as boarders or just merely visiting people who lived there? A I don't know.

30 Q What time in 1924 do you think that you came to notice this change in the character of the place? A Only on occasions. I think July 4th was a big day.

Q At that time did you know either Mr. Levy or Mr. Drosness? A I do not know them to this day.

Q At that time did you know anybody connected with the Marmon Holding Company? A Not to my knowledge.

40 Q How much of your time during the summer did you spend there? A I spent practically

George G. Schreiber, cross.

every Saturday and every Sunday there and every day of my vacation.

Q And that consists of approximately two weeks or so? A I took about three weeks' vacation.

Q I am trying to find out about how much time you actually spent there? A Every Saturday and Sunday, with the exception of probably two or three times, and three weeks' vacation and every night during that time until the following morning. 10

Q So that you did commute and did live there during the entire summer? A Yes.

Q Where did you get off the train? A Landing.

Q And did you go to your house my motor car? A Yes. 20

Q In going from the depot at Landing to your house did you pass the place of the defendants or not? A Usually, yes.

Q When was it called to your attention, if ever, that these people who were running this place were renovating and altering and repairing the place? A When I got there in June, 1924, I heard that they had altered the interior of their house during the winter. 30

Q You did not come to the lake until June, 1924, that year? A Well, excepting to drive up Saturdays and Sundays once in awhile.

Q When did the Saturday and Sunday pilgrimages start in 1924, if you know? A What do you mean by pilgrimages?

Q Did you go out week-ends before you started to spend the summer there? A Well, once in awhile. 40

George G. Schreiber, cross.

Q When did that start—Decoration Day? A No; I don't think so; once in awhile; I didn't go there often.

10 Q When you learned in June, 1924, that these people had spent considerable money in renovating and altering their place, did you take any steps to meet them?

Mr. Price: I object. The witness did not say that he had learned that they had spent considerable money in renovating the place.

Q When you learned that they had made interior improvements, did you take any steps to become acquainted with them or meet them and talk the matter over with them? A No.

20 Q What did the interior improvements consist of? A I don't know.

Q How did you learn that they had been made? A Why, I won't say that I learned that they had been made. I was told that they had been made.

Q Who told you? A I don't know—rumor—talking to people; I could not remember.

Q Was it Mr. Thomas? A No.

30 Q Did you know Mr. Thomas? A I knew him.

Q Did you meet Mr. Stern? A No.

Q Did you meet Dr. Palefski? A No.

Q You don't know them? A I met them this fall. I have known Mr. Thomas since he has been up there.

Q Now, upon whose suggestion or instigation, if that word is proper, was this suit instituted? A Upon mine, due to talks with my wife.

40 Q Did you confer at all with Mr. Thomas about it? A I did subsequently.

George E. Jenkins, further cross.

Q Did you approach him about it first or did he approach you? A I approached him.

Q I suppose you acted as attorney for the group of people who got together until a New Jersey attorney was regularly retained? A I did not.

10

Re-direct examination by Mr. Price.

Q Can you locate on this map where the bathing beach of the Hotel Alamac is located? A In front of Lots 11, 12 and 13, in Block 7.

Q What is your residence address in Hoboken? A 921 Castle Point Terrace.

Mr. Holland: I neglected to ask Mr. Jenkins one question on cross examination and I would like to have him recalled so that I can ask it now.

20

The Court: You may.

GEORGE E. JENKINS, a witness heretofore sworn on the part of the complainants, recalled.

Further cross examination by Mr. Holland.

30

Q Didn't your examination of the records disclose that in 1886 the Lake Hopatcong Land & Improvement Company conveyed to the hotel company all of the lots in Block 9 on this map in evidence, subject to all the restrictions except the hotel or inn restrictions? A Yes, sir.

Q And did not your examination further show that on September 13, 1888, by deed recorded in Book N-12 of Morris County Deeds,

40

Auguste Schreiber, direct.

page 43, this same Lake Hopatcong Land & Improvement Company conveyed to the Breslin Hotel & Land Company all the remaining land which they owned, free and clear of all restrictions except an expressed stipulation that no covenant of any kind shall be employed for the use of any general words of conveyance herein? A
 10 No; I did not come across that.

Q Did you look for it? A I don't think I did.

Q You have no record in your work of a deed recorded in N-21, page 43? A I have not.

Mr. Holland: I ask that this deed be marked for identification.

Mr. Price: I have no objection.
 (Marked D. 1 for identification.)

20

AUGUSTE SCHREIBER, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Price.

Q You are the wife of Mr. George Schreiber?
 30 A Yes.

Q How many children have you? A Two.

Q Their ages? A Eleven and six.

Q Are you related to Mr. Vintschger? A Yes; I am his daughter.

Q Which Mr. Vintschger is it? A Mr. Gustave Vintschger.

Q Prior to your marriage to Mr. George Schreiber in 1914, where did you make your home? A At my father's home at Lake Hopatcong.
 40

Auguste Schreiber, direct.

Q How far is that located from the home that you now occupy as a summer residence? A About 100 feet.

Q It is the Vintschger home which Mr. Schreiber referred to in identifying it on one of the photographs; is that correct? A Yes.

Q Are you acquainted with the extent of the investment that Mr. Vintschger has in that home? A I do not know really. 10

Q Approximately. A I think about \$35,000.

Q Were you living on the property with Mr. Vintschger, your father, during the time that the Tilts owned the large house and then Colonel Patton had it afterward when Mrs. Tilt married him? A Yes.

Q What kind of a place did they maintain? A Just a private residence. 20

Q What sort of a residence did they maintain; that is, whether they had a number of servants? A Yes; they always had a good many servants.

Q There was a gardener's cottage? A Opposite, yes; they had a gardner there.

Q And the boathouse, for what purpose did they use that? A Just to keep boats in. That is all I know of.

Q You were married in 1914? A Yes. 30

Q How long prior to that time did you make your home with your father in Lake Hopatcong? A Since 1894.

Q So your acquaintantance with all of this territory has been constant since that time? A Yes.

Q I wish you would describe to the Court generally the character of that neighborhood up to the time of the commission of the acts which form the basis of this suit which you have 40

Auguste Schreiber, direct.

brought, the character of the neighborhood covering the period of your observation from 1894?

A Why, there was just private residences there. That part of the lake had never changed. We knew all the people. They were coming each year, the same people, until—

10 Q (Interrupting.) Until what? A Until the Tilts or Pattons sold their place.

Q It appears from the records that the present people, Drosness and Levy, actually acquired the title to this property in 1923. I do not suppose you knew at that particular time of the actual transfer of title, did you? A I knew nothing.

20 Q In what year was it that the acts which are set forth in the complaint as the basis of this suit—acts upon the part of the Passaic Country Club occupants or their guests—became so offensive that you brought this suit? A In 1925.

Q What happened in 1925 which led you to bring this suit? A Well, the noise was maddening. We could not sleep; we had to keep our windows closed. That was more than once. It never stopped. It was really impossible to live there with all that noise going on.

30 Q I wish you would particularize. What did the noise consist of? A This loud talking and shrieking and calling from boathouse to cottage and the jazz music.

Q Were you familiar, by observation, during 1925, with the number of guests that you had seen there, the number of people that you had seen enjoying and using that property? A I could not say. There were a good many swarming all around.

40 Q What would you say was the minimum number over the week end, for instance? A I imagine they had about a hundred there.

Auguste Schreiber, direct.

Q Have you any personal knowledge as to whether they used the boathouse for any other purpose than a boathouse? A Oh, yes; they used it to house their guests.

Q How do you know that? A Why, you could see them going down there at train time; the excess guests; you could see bedding going down and coming out. 10

Q Down to the boathouse? A Down to the boathouse, yes.

Q Have you any personal knowledge of any use to which the so-called gardener's cottage was put, the cottage which was used by the gardener in the Tilt time? A No; I never saw that.

Q That is because it is over the brow of the hill, is it? A Yes; and we never passed there very often. 20

Q Had you any personal observation of midnight parties that were held? A There were parties, yes.

Q To what hour did they keep up? A It was usually about half-past twelve o'clock.

Q Where were they? A Right down alongside their boathouse.

Q On the Passaic Country Club property? A Yes. 30

Q Why did they prove unpleasant to you and your family? A Well, the shouting. We could not sleep without keeping our windows closed even that time of night.

Q What about the dancing there? Did they maintain dancing there during the summer? A Yes.

Q How late did that keep up at night? A It seems to me about half-past twelve or one o'clock. 40

Auguste Schreiber, direct.

Q Did that interfere with you all in any way?

A It certainly did.

Q In what way? A I could not sleep. We had to keep our windows closed in summer.

10 Q Did you notice any change in the character or type of people there and their actions between 1924 and 1925? A Why, yes; many more people, much louder, but 1924 was not so objectionable; they had a phonograph.

Q It became most objectionable at what time? A What do you mean?

Q In what season did it become so objectionable that you brought this suit? A Why, when we came out there in June.

Q What year? A 1925.

20 Q You say you had to close the windows of your rooms. Where had you and your husband and your children slept when you were compelled to close the windows? A In rooms that faced that side, which is the cool side.

Q Prior to the use to which this property was put by the Passaic Country Club in 1924 and in 1925, you say the type of this property and the character and use of this property had been consistent since the beginning? A Yes.

30 Q What about in the neighborhood of this property? This is in the so-called Park section, it is? The North Park section? A Yes.

Q What about the other properties in the Park section—to what use were they put by the persons who have owned them during the time since you have been acquainted with the property, 1894? A They had all been used the same as before—private houses.

Auguste Schreiber, cross.

Cross examination by Mr.Holland.

Q Well, have there not been a number of bungalows erected there now that were not there in 1894? A Yes, but I don't know whether that is in the restricted area or not.

Q There are a great many more people there now than what were there before? A Yes, in general, only not in our section. 10

Q The public is using Lake Hopatcong as a public resort and playground to a much greater extent than twelve years ago? A In some parts; yes.

Q They are also using this part as well since the Alamac Hotel has come there, are they not? A The Alamac has always been there. It has not changed. There have not been any more people there. 20

Q It was formerly the Breslin? A Yes.

Q When did the Alamac Corporation acquire it? A I really don't know. Eight or nine years ago.

Q That has put quite some life in the section, has it not? A Yes, but not any more than formerly.

Q Within a few hundred, five or six hundred feet, there has been a series of stores erected in the last year or two, a picture of which I show you; isn't that so? 30

Mr. Price: May I object on the ground that from the map it would indicate that these stores were outside of the red line area and therefore outside of the restricted territory?

The Court: Objection overruled. 40

Auguste Schreiber, cross.

A Yes; it is quite far away; it is about ten minutes' walk to the stores.

By the Court.

Q Mr. Holland's question was whether they were not within five or six hundred feet. How
10 far away are they? A I could not tell you in feet.

Q You can walk a mile in twenty minutes, can you not? A They are half a mile away.

By Mr. Holland.

Q You say half a mile away? A Yes.

Q As a matter of fact, they are at the inter-
section of the first cross street going in the direc-
tion from the Alamac Hotel to Schaefer's? A
20 Yes.

Q The first cross street? A Yes.

The Court: It would help me very much more if you would tell me on the map.

Q Will you be good enough to look at this map, Exhibit C. 2, and see if you recognize it? Do you recognize this Lot No. 3 Do you recog-
nize this—the Alamac Hotel—and that your
30 place is down here somewhere, and that this is the Drosness property?

The Court: You are referring to this map, Exhibit C. 2. The map I have here is a little confusing.

Mr. Holland: Here (indicating on map) is Altenbrand avenue.

Q You have given us an idea of what you
40 said was the value of Mr. Vintschger's property?

Auguste Schreiber, cross.

When did you fix that value, as of when? A
When?

By the Court.

Q You said it was an investment of \$25,000.
As of what date do you place that value—today
or 1923? A I could not tell you. 10

By Mr. Holland.

Q Do you know whether the actual value of
the land is greater today than it was twenty
years ago—the land and premises? A I think
it is; yes, a little.

Q From your house can you see the bathing
beach of the Alamac Hotel? A No.

Q That is just around the jut? A A good
deal around, yes. 20

Q Where is your bathing beach? A Right
below our house, at the boathouse.

Q Is that quite similar in character and con-
dition to the bathing beach of the other lots to
the south of you, for instance, the Drosness lot?

A Well, they are not beaches, any of them; it is
high water and rocky.

Q And the bathing beach at the Alamac Ho-
tel? A I didn't even know that they had a
beach there. It is just a bathing place, not a
beach. 30

Q When did you first notice that you ob-
jected to the presence of these people? A This
past summer, 1925.

Q That was the first time that you noticed
that you objected to them? A Yes, that we felt
we could not go on living there with those condi-
tions.

Q When did you come to that conclusion?
Did I understand you to say sometime in June, 40

Auguste Schreiber, cross.

1925? A No; I did not say that. I say when we were coming up in June, 1925, that we noticed that it was being run on a much larger scale, and it was offensive in every way right from the beginning.

10 Q There wasn't anybody there in June, was there? A I could not tell you the exact date. We always go out there the end of June or beginning of July.

Q When did you decide it was so offensive that you should take some steps to stop it? A Sometime later in the summer.

Q Can you give us the date? A No, sir, I could not.

20 Q In what manner was there a difference discernible between what occurred in the summer of 1924 and in the summer of 1925? A Well, there were less people in 1924 and they had no jazz band—perhaps on Saturday or Sunday—I won't say that.

Q If these people desisted in the use of a jazz band and ceased from their loud talk, would you then say they were objectionable to you? A If they—

Q (Interrupting.) The mere fact that they board at this house is not what you object to?

30 A The fact that that house was being used as anything except a private dwelling house.

Q You say that bothers you? A Well, we don't like that.

Q How does that affect you? A I do not think it improves our property any.

Q If it does not improve your property, what does it do to your property? A I don't know.

Q Do you think it depreciates your property? A I think so.

40 Q To what extent? A Well, I do not believe we could sell it very well.

Auguste Schreiber, cross.

Q Have you offered to sell it? A No; not yet.

Q Do you know whether or not Mr. Drosness would be glad to buy it?

Mr. Price: I object to that as immaterial.

10

The Court: Objection sustained.

Q In 1924 they were using the house for boarders, were they not? A Well, there were always a good many people there. Whether they were boarding there or not, I do not know.

Q You do not know now whether they were boarding there or not, do you? A Well, I do not really know.

Q In what degree was there a difference between the year 1924 and the year 1923? A Well, in 1923, I did not see much change there at all—quite a few different people; in fact I thought it had been rented by a private family.

20

Q Change from what? A From what it had been when the Tilts lived there. They just rented it to a private family, I think, in 1922 and 1923.

Q You did say that you knew the Tilts had sold it, however. A I don't know. Did I say that? I know that Mrs. Patton, I think, rented it out, but what date I really don't know. I didn't know she sold it.

30

Q In 1922, when the Pattons had sold their property to the Marmon Holding Company, did you know that the Marmon Holding Company were occupying the premises? A No; I never heard of the Marmon Holding Company until I went to Mr. Price.

40

Auguste Schreiber, cross.

Q Didn't you see the sign "Marmon Holding Company"? A No.

Q When did you first notice the sign "Passaic Country Club"? A I think in 1924.

Q Did you notice it in 1923? A I did not.

10 Q In 1922 did you notice that there were a good many more people living in the house than when the Pattons owned it? A No; I don't think so; only I saw different people there; that is all.

Q Would there be an explanation as to why your husband noticed it and you did not? I mean is there some reason for that? A More observing that I am.

Q 1923, that is the first time you did notice that there were more people? A No; not so much in 1923. In 1924.

20 Q In 1923, have you any idea how many people were living there? A No.

Q In 1924 have you any idea how many people were living or supposed to be living there? A It didn't have so many during the week.

Q How many? A Maybe twenty-five during the week; more over the week end.

30 Q In 1924, was there any additional feature then? A Well, perhaps on Saturdays and Sundays they were quite loud, but during the week it was not quite so bad.

Q This street that has been mentioned, Altenbrand avenue, there is a public dock at the foot of that street, is there not? A At the foot of what street?

Q At the foot of Altenbrand avenue? A Is that the Mt. Arlington dock? That belongs to the Mt. Arlington hotel.

40 Q Just below the Anderson bungalows? A I know of no public dock there.

Silas Thomas, direct.

Q It is on the property at the foot of Altenbrand avenue? A The Mt. Arlington dock is at the foot of that avenue, I think.

Q Picnic parties are taken off at that dock, are there not? A I don't know.

Q You don't know that? A No.

Q You do not know whether there are large picnic grounds there? A I never go there. I have never been down to that dock. 10

Q Have you never been down to the picnic grounds? A No; I have not.

Q There were no picnic grounds—you say your recollection goes back to 1894 or something like that? A Yes.

Q There were no public picnic grounds there, were there, prior to 1900, at the foot of Altenbrand avenue? A No; I don't know, no more than that there are now. 20

Q You say you do not know of the picnic grounds at which picnic parties— A (Interrupting.) No; I always thought it was the Mt. Arlington property.

Q You have never been to the picnic grounds? A I have never been down there.

30

SILAS THOMAS, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Price.

Q Where do you live? A My residence?

Q Yes. A Mt. Arlington.

Q Is that your voting residence? A My voting residence. 40

Silas Thomas, direct.

Q You also have a home some place else?

A 474 Fifteenth avenue, Paterson, New Jersey.

Q Your property at Mt. Arlington is the property immediately adjacent to the Passaic Country Club property? A It is.

Q That is the property of the defendant? A Yes.

10 Q In which direction are they? A I think it is north; I don't know the directions very well.

Q What is your business? A Shirt and collar manufacturer.

Q Connected with what company? A Manhattan Shirt Company, as vice-president; incorporated in the State of New Jersey.

Q You have been a resident of Mt. Arlington over what period of time? A From 1924.

20 Q Prior to that time you made your home where? A Ridgewood, New Jersey.

Q From whom did you purchase your property? A Mrs. Elsie Wood.

Q At what time in 1924 did you first go to Mt. Arlington, to your property, after you bought it? A To stay overnight?

Q Yes. A Some time during May.

Q 1924? A 1924.

30 Q When did you go there for the purpose of living there with your family? A For the entire summer?

Q Yes. A Right after Decoration Day.

Q 1924? A 1924.

Q And you stayed there during that summer with your family until what time? A September 13th, I think was the date; I am not quite certain about that date.

40 Q When did you first return to the property after you left there? A We went up week-ends all during the fall most of the year of 1924.

Silas Thomas, direct.

Q Have you a caretaker at the premises? A We have a caretaker there at all times.

Q In the summer of 1925 did you return to Mt. Arlington? A We came up early and stayed week-ends and came up in the summer about the 10th or 15th of June.

Q And stayed until when? A Until Sep- 10
tember 10th or 15th.

Q 1925? A 1925.

Q How much family have you? A Four children, two sons and two daughters.

Q What are their ages? A Twenty-six twenty-four, twenty-one, eighteen.

Q What are the daughters' ages? A The daughters are eighteen and twenty-four.

Q All live home with you? A All live home with me.

Q What investment have you in this prop- 20
erty at Mt. Arlington? A The appraisal investment?

Q Yes. A \$85,000.

Q What does this property consist of? A It consists of a house, boat house, tennis court, house, a garage, stable and a house for a chauffeur.

Q In fixing the value you, of course, con- 30
sider the value of the different tracts? A Yes.

Q And you have included in the \$85,000, the property where the house is? A Yes, and the piece across the street where the tennis court is.

Q What did you observe in 1925 which led you to become one of the complainants in this suit? A The reason I complained?

Q What did you observe during the year 1925 which caused you to bring this suit? A The actions of the guests of the people next door and the manner in which they acted around the 40

Silas Thomas, direct.

place, parked their cars in my drive, also in front of my premises, also took the privilege of using my boat house and dock and—

Q The year 1925, did you find automobiles parked in your driveway? A They started the middle of June and early part of July. At that
10 time I interviewed Mr. Drosness. Mr. Drosness in turn turned me over to the manager of his house, whom I have forgotten the name of—a young man.

Q Mr. Hollander? A Mr Hollander; and he said he would have the parking of cars, this nuisance, stopped.

Q Where did they park? A Both in the driveway and in front of the house.

Q How frequently did that occur? A It
20 occurred all summer long. You would have to sit there on the porch and every time the car came up you would have to go out and notify them.

Q Was that a nuisance? A It was a terrible nuisance in too many ways. Some of these people, when I asked them to remove their cars, would tell me to go some place, that they had a right to park where they wanted.

Q Had that occurred to you when you made
30 this complaint, this protest; had those remarks been made to you? A To me direct. I told Mr. Drosness about it.

By the Court

Q You mean when you objected to them parking in your driveway? A Yes, sir.

By Mr. Price.

Q You say, despite your remonstrance they
40 continued to park in your driveway and in front

Silas Thomas, direct.

of your property in 1925? A Much more than in 1923.

Q Much more than in 1923? A Oh, yes.

Q You spoke of their using your boat house in 1925? A Yes.

Q Tell us the frequency of those occurrences and what they did? A It was necessary for me to put up a small piece of rail off a stone wall which was I judge about six or seven feet high to prevent them coming around the corner and using my boat house and dock for swimming purposes. 10

Q Your property immediately adjoins theirs?

A My property immediately adjoins their property.

Q What would they do? A They would come around there and climb up on the dock. 20

Q What have you personally seen them doing? A I have seen them swimming off the dock there.

Q Did they occur frequently or infrequently during 1925? A Quite a little during 1925, particularly week-ends, holidays, Sundays and Saturdays.

Q Did you go down and protest to them and put them off? A Oh, yes; sometimes. I always had to use force to get them off. 30

Q What would they do? A I would go down to stop the thing and they would tell me—

Q What was the character of their remarks?

A To mind my own business; they had a right to swim there, although I had signs all over "Private Dock," "Private Boat House."

Q Did they pay any recognition to these signs at all? A They did not pay any attention whatever. 40

Silas Thomas, direct.

10 Q On the occasion when you went down and protested, either by force or by verbal argument which caused them to leave, would the occurrences take place again? A I would go back to the house. Before I would get back, they would be over again. It has been necessary for me to call on the mayor of the borough and call his attention to it.

Q How frequent was the user of the boat-house by these persons who were not connected with you or your family during 1925? A Almost every week-end and holiday more or less.

Q Was that offensive to you? A Very much so, not only to me but to my daughters.

20 Q Did they use any of your other buildings? A I have had them walk into my house and sit in my reception hall.

Q The front of your house faces on the same street with the Passaic Country Club? A Right next door.

30 Q Tell us what happened on occasions. A Mrs. Thomas and Miss Thomas were upstairs dressing. When they came down on three or four different occasions, there were parties sitting in the reception hall. They asked them what they were doing? They said: "Isn't this the Passaic Country Club?" We told them it was a private residence.

Q Has this occurred more than once? A About three times in 1925—three or four times.

Q Was the fact that these people came into your house offensive to your family? A Yes.

40 Q During 1925, according to your observation, about how many people would be over at the Passaic Country Club making use of it, not only during the week but during week-ends? A I

Silas Thomas, direct.

would say between 125 and 150, as near as I can estimate it roughly.

Q Besides the detailed trespassing on your property which you have outlined to the Court, what occurred during 1925, which formed a further motive for the institution of this suit by you? A One of the various things that occurred was in the early part of 1925, when a guest of this club, whatever the call it, next door to my premises, was down at the lower end of their property— 10

Q Their property? A Their property, not my property—in bathing suits, a young man and a girl—I know the man's name but I do not know the girl's name—he was a doctor. They had two blankets, one on the ground and one over them, and they were in bathing suits together, in broad daylight, and my daughters called their mother's attention to it; they were upstairs dressing and their mother asked me if I would not kindly go down. I spoke to the young man. He didn't pay much attention to me and I called up the police, and they sent somebody over. While I was talking a brother of this young man came up and interfered, telling me he was a member of the New York police force I told him that didn't have anything to do with my complaint in New Jersey, that it didn't mean anything to me. He told me it was not my property and I ought to mind my own business. I told him it was my own business. 20 30

Q Was this occurrence of offense to you and your family? A It was.

Q What else occurred during 1925 which formed a motive for your institution of this suit regarding the user of this property? A They 40

Silas Thomas, direct.

had a cesspool which was overflowing from time to time, about which complaints were made.

Q How long had that cesspool been there? A As far as I know, it was the same cesspool that had been used for the private residence; it had not been changed.

10 Q What was the offense caused by that? A The smell and odor from the overflow was something terrible. We could not sleep on that side of the house.

Q Had you been accustomed to sleep on that side of the house? A I had two reasons for moving my daughters—three reasons: One was the cesspool, the other was the awful racket from the midnight parties and the dancing and also the language used in the evening.

20 Q You had to change the location of the rooms of your daughters in 1925 by reason of the matters that you have mentioned? A Yes.

Q You speak of the dancing. When did they have dancing up there? A About every night.

Q During 1925? A During 1925. That is what we are talking about.

Q To what hours would they keep up the dancing? A Midnight. But after the dances was the worst part of it I should say.

30 Q I am coming to that. They kept the dances up until midnight? A Midnight.

Q And Saturdays and Sundays, did they dance on Sunday? A Yes.

Q With a dance orchestra? A Yes.

Q During the week? A Not much on week days.

Q Week ends did it continue to midnight? A Oh, yes.

40 Q How long would they keep up dances week ends? A Midnight and well into the morning, two o'clock.

Silas Thomas, direct.

Q What did you have to do because of that for the comfort of your family? A It was necessary to fit up sleeping rooms on the other side of the house We had lots of room and we could do it.

Q How near was the side of your house to the place called Passaic Country Club? A Fifty or sixty feet. 10

By the Court.

Q That is your house is distant fifty or sixty feet from the house of the defendants? A I should say about that.

By Mr. Price.

Q You spoke of the actions, the noise and so forth on the part of occupants and users of the Passaic Country Club at night? A Yes. 20

Q Both during the week and week-ends? A Yes.

Q Describe that to the Court? A The actions of the guests at midnight—the lights from the boathouse in most cases were out, particularly after midnight—what it was they drank, I don't know. I would say it was rowdyism.

Q Characterize it more particularly? A The language was not very pleasant to listen to. 30

Q What was it? A Vulgarity.

Q Were those sounds audible to you and your family? A They were.

Q How long would that vulgarity keep up after the dancing ceased? A For two or three hours.

By the Court.

Q You mean until five o'clock in the morning? A Until four o'clock in the morning. 40

Silas Thomas, direct.

By Mr. Price.

Q Have you personally observed these bathing parties that were held in the evening? A I have seen them; yes.

10 Q How late would they bathe? A One or two o'clock in the morning.

Q There were people up there in 1924, were there not? A Yes; there were.

20 Q Can you detail to the Court any difference, first, in the type of people, and second, in the question of noise and other features which you have mentioned, as it was in 1925 as distinguished from 1924? A In 1924 there seemed to be more families there, that is, families would come up and stay during the whole week and the men folks seemed to go back and forward. There were a good many people there in 1924 that were there four or five weeks. I didn't see anything of that kind of people in 1925.

Q What was the difference in type of people in 1925? A In 1925 there were more young men and women, the type that wants a good time and don't care where it is gotten or how they have it.

30 Q What was the difference in numbers in 1925, which you observed? A I would say fifty per cent. more in 1925.

40 Q What was the condition of the things of which you have complained, the music and the dancing and the late parties in 1925 as compared with 1924? A In 1924 they would have music occasionally—I think three or four times during the entire season—but in 1925 it was all through the season, every night and sometimes during the afternoons.

Silas Thomas, direct.

Q These items of vulgarity and these other matters of which you complained, all occurred in 1925 and not in 1924; is that correct? A Yes.

Q You have also charged in this complaint, in addition to these objectionable features—you have also objected to this place because of the violation of the restrictions; is that correct also? 10

A The restrictions; yes, sir; they are violating them.

Q Have you any personal knowledge of the user of the boathouse and the gardener's cottage for something other than normal purposes?

A I have.

Q What is your personal knowledge on that?

A In both the boat house and in the gardener's cottage they have put cots. In the boat house I think they have only male guests, but in the gardener's cottage they have both female and male. 20

Q Have you seen guests coming and going from these places with their baggage? A I have. I have seen baggage carried over by the bell boy, I think they call him.

Q They had a bell boy? A Yes; they had a bell hop; I suppose that is what you call him.

Q Would they use this cottage and boat house both during the week and week-ends of 1925? 30

A The cottage across the street was, but I think the boat house was mostly week-ends.

Q Can you give me the approximate number for which accommodations were afforded in both of these places? A I don't remember. I have seen something like twenty or thirty down there, but whether they all slept in there or not I don't know.

Q You have not gone to the windows and inspected the layout of the interior? A No. 40

Silas Thomas, direct.

Q You said that you called up and complained to the mayor at the time you discovered these people in an improper position down near the dock. You also made a complaint to the manager of the house about parking in your driveway? A Yes.

10 Q Did you make any other complaint in 1925?
A About the noise.

Q To whom then did you make the complaint?
A I don't know.

Q Tell us what complaint you made? A Many, many times I would call up and they would refer me to somebody else. By the time I would get through being referred I would hang up.

20 Q Did you make any other complaint to any other official? A I did.

Q To whom? A To the mayor.

Q Clarence Lee? A Clarence Lee.

Q And that was in 1925? A In 1925; yes, sir.

Q What were those complaints? A Parking around my house, the noise, and this complaint of the young man and woman at the lower end of the property, and so forth.

30 Q Did they have a gong? A They had a tin pan. I do not know that you would call it a gong. That was very, very annoying.

Q What have you to say as its audibility and loudness? A They would go out with a large pan of some kind and with a stick, and they battered the pan with the stick in calling their guests to lunch.

40 Q Only to lunch? A Three meals. They just had some fun with it. I asked them to stop it two or three times, but they just laughed at me.

Silas Thomas, cross.

Q Was there any refuse or papers thrown over your property? A There was at different times.

Q Over what part of your property? A The front lawn. That I also complained to Mr. Drosness personally myself about.

Q In 1925? A In 1925.

10

Q Any user made in 1925 of your tennis court? A There was, by people with their shoes on, which I complained of.

Q From what place did they come? A Passaic Country Club.

Q They came from Passaic Country Club? A Yes. They stopped that after the court was ruined.

Q The court was ruined by their actions? A By their shoes.

20

Cross examination by Mr. Holland.

Q How do you arrive at the appraisal figure of \$85,000? A By an appraisal.

Q Who was the appraiser? A His name is Benson, of Paterson, N. J.

Q When was the appraisal made? A 1925.

Q When did you purchase the property? A 1924.

30

Q How much did you pay for it? A I have forgotten.

By Mr. Price.

Q As near as you can remember. A I think it was thirty some odd thousand dollars.

By Mr. Holland.

Q You paid some thirty-odd thousand dollars for that entire property, including all of these tracts, didn't you? A Yes.

40

Silas Thomas, cross.

Q Today that property appraises, as to the one tract upon which your building is, at \$85,000?

A Yes.

Q There has been no depreciation in the value of the land? A No, but there have been some improvements made by me—about \$20,000.

10 Q Now, you have had a total expenditure of about \$50,000, for all the land? A It might be approximately.

Q If the premises upon which your buildings are located are appraised at \$85,000, what is the other land worth, do you know? A Which other land do you refer to?

Q What other land have you? A It all depends. I do not know whether you mean across the street?

20 Q All the other land except what has been appraised at \$85,000? A I don't know. I cannot answer. Probably the assessor can tell you that.

Q How much is the property assessed at? A I don't know just what.

Q You don't know what you pay taxes on? A No; I do not; not at the present time.

Q From whom did you purchase the property? A From Mrs. Elsie Wood.

30 Q When did you first make a contract to purchase it? A In the spring of 1924, April.

Q You saw the property before you entered into the contract? A I hope I did.

Q How often did you see the property? A What do you mean?

Q Before you entered into the contract, at the time you were making negotiations? A Two or three times.

40 Q You saw the Passaic Country Club property? A I saw a plot. I did not know it was the Passaic Country Club property.

Silas Thomas, cross.

Q A sign was there, was there not? A I do not believe so.

Q You mean you don't believe there was a sign or there was no sign? A There was no sign there like there is today I will say.

Q When did they put that sign there? A They put that sign up in 1925. 10

Q Do you know when? A I think it was either May or June, 1925.

Q What time of the year did you sign your contract? A I think it was April.

Q Were you represented by an attorney? A I was.

Q Do you know whether or not the attorney made a search of the title before you signed the contract or after you signed the contract? A Before and after. 20

Q Who was the attorney who made the search before? A His name is Lytell. He had two other attorneys with him. I do not know who the other two gentlemen were. Somebody from Morristown—I don't know just who they were.

Q This was before you made the contract? A Yes; and after.

Q When did you move into the property? A When did I take possession?

Q Yes. A The latter part of April, 1924. 30 That is when I took title. I took possession the same time I took title.

Q During the summer of 1924, some of these cars, you say, were parked in front of your property? A Some of which cars?

Q Some of the cars you have been complaining about. A I had very little trouble in 1924 with the parking of cars—very little.

Q Did you have any other trouble in 1924? A No. 40

Silas Thomas, cross.

Q How many people were at the Passaic Country Club in 1924? A Well, I don't know just how many, but it looked to me like a dozen families or so. It seemed more of a family house in 1924.

10 Q How many, according to your estimate, constitute a family? A It depends.

Q I am trying to get your idea of the number. A I should judge it would average four—probably five.

Q A dozen families of four would be about forty-eight people. A All right, we will say there was. What do you want to know about it?

Q Were they using the boat house in 1924? A They were not.

20 Q For no purpose? A You mean our boat house?

Q No, no; not your boat house? A Their boat house?

Q Yes. A I do not think they used it in 1924. I am not certain, but if they did they didn't use it as much as they did in 1925.

Q Did they use the gardener's cottage in 1924? A I think they had servants there, as I understand, but I am not certain of it.

30 Q Do you know whether they had servants there in 1925? A I don't know, but I do know they had guests there in 1925.

Q Do you know whether or not that was not the servants moving there? I am asking you whether you know? A I would say they were not the servants.

Q Your house is right across the street from the Alamac Hotel, is it not? A It is not.

40 Q Where is the Alamac Hotel with reference to your house? A It is on the left of my

Silas Thomas, cross.

house on the opposite side of the cross street. Across the street from my house is my own property. I have 135 by 200 and some odd feet across the street from my house.

Q Now, can you indicate on this map where your house is? A (Indicating) This is my property—lot 6 in block 6 and lot 6 in block 5 10
is the property on which my house is located.

Q (Showing witness) There is a representation of the hotel. Do you recognize that as a representation of the hotel? Where is the hotel kitchen? A The kitchen—

By the Court.

Q Do you know whether it is in front or rear? A I don't know just where it is. I don't know where the kitchen is. I have never been in there. 20

By Mr. Holland.

Q Is it not in the back of the hotel and close to your house? A I don't know. I don't know where the kitchen is.

Q Some of the odors that you spoke of, have they not been the odors of cooking from the hotel kitchen? A I have not spoken of odors. You are mistaken. 30

By the Court.

Q I think you made some mention of offensive odors from the Passaic Country Club property? A I spoke of offensive odors from the cesspool.

Silas Thomas, cross.

By Mr. Holland.

Q Some of these odors that you described as odors from the cesspool, were they not odors from the hotel kitchen? A They were not.

Q And the garbage which they discarded? A They were not. We could see the bubbling from the cesspool, overflowing down the hill.

10 Q That was because somebody drove over a drainpipe and burst it, and as soon as that was learned by Mr. Drosness it was fixed, was it not? A It was not until after we made four or five complaints.

Q It was fixed after you made the complaints, was it not? A After we made four or five complaints. I don't know whether it is fixed or not.

Q You don't know whether it is fixed? A I don't know whether it is really fixed or not.

20 Q Are you still troubled with the odors? A I have not been up there in several months.

By the Court.

Q When did you first notice that condition? A It was in the fall of 1925.

Q September? A I could not say what month. It was late in August or September.

30 Q How soon did it stop? A Two or three weeks afterwards.

By Mr. Holland.

Q The music that you complained of, what was the trouble with that? A The trouble with the music?

Q Yes. A The hours they played, and every night and jazz music, we couldn't sleep.

40 Q What do you call jazz music? A A few drums, a fiddle and two or three other instruments banging away.

Silas Thomas, cross.

Q What you mean is the popular music of the day? A You might call it popular.

Q Was it any different kind of music than any other kind the band would play? A Well, it was just mere noise, I believe.

Q Did that change the music? A It naturally would change the tone. 10

Q How? A By not being able to blend their instruments.

Q How is that? A By not being able to blend their instruments.

Q Is that your complaint? A It is not. It is music all hours of the night.

Q So that if they ceased their music, that would not be any cause of complaint to you? A I did not say that.

Q I am asking you that. A There are other complaints. Using this home for a hotel or boarding house is also one of our complaints. 20

Q I did not quite get the episode that you spoke of—a young man and a young woman in a blanket, did you say? A In their bathing suits, on the lawn of the Passaic Country Club, the male lying on top of the female.

Q Whereabouts was that? A Down at the lower end of the property. 30

Q What time of day? A It was either in the morning or in the afternoon. I am not certain. Probably the officials could give to you the exact time.

Q Did you see them? A I did. I put my hand on the man.

Q You took occasion to remonstrate with him? A I merely asked him to kindly act in a decent manner.

Q You would have asked him the same thing even if he were not a guest of the club? A I 40

Silas Thomas, cross.

would have asked the same thing if he was anybody else.

10 Q Simply because this young person took upon himself to act in a manner which was not quite proper in accordance with your notion, did that create any greater nuisance to you than if he lived somewhere else? A If that thing happened somewhere else it would be just as great a nuisance.

Q Are you aware of the dock at the foot of Altenbrand avenue? A No.

Q Have you ever been down there? A Never.

20 Q Were you ever troubled with people walking over your lawn to go to the bathing place of the Hotel Alamac? A I don't know where they were going to, but I have been troubled with the guests crossing my lawn, not only crossing my lawn, but using my dock and spring-board, from the Passaic Country Club.

Q Do you know whether they came from the Passaic Country Club or whether they came from the bungalows? A They came from the Passaic Club.

Q How do you know that? A I happened to know the guests; I happened to know they were staying there.

30 Q How did you know? A Because I could tell. I mention one name—Dr. Greenberg.

Q You met Dr. Greenberg? A I have.

Q You and he had occasion to pass the time of day? A I never did.

Q You mean after you were introduced to him you spoke to him? A I was never introduced to him.

Q How did you come to know Dr. Greenberg? A Seeing him with that lady on the lawn.

40 Q Was he Dr. Greenberg? A He was Dr. Greenberg.

Silas Thomas, cross.

Q You recognized him again, you say? A I did.

Q Trespassing on your property? A Yes.

Q How many times? A I don't know.

Q How have you been able to answer, if you don't know? A I didn't mark it down, but I know he has trespassed. 10

Q What is that? A I don't know just how many times, but I know he has. I have seen him and not only him but others.

Q You had objection to these people because of their loud talk during 1925, is that right? A Their noise, in 1925.

Q Did you have any objection to them at all in 1924? A No, outside of the parking, which I had taken up two or three times, and which was corrected. 20

Q Outside of what? A Outside of the parking of their cars, which was corrected.

Q Did you ever permit six or seven cars to be parked in your driveway and stay there? A No; I have tried to move them out.

Q Have there ever been six or seven cars parked in your driveway? A There have.

Q When was that? A 1925.

Q On how many occasions? A What is that? 30

Q On how many occasions? A That was only once.

Q What do you mean, parked in your driveway, do you mean drove up in the driveway or across the front of the driveway? A Right in the driveway and right across the front of the house.

Q That happened one time and you complained about it? A Yes. 40

Silas Thomas, cross.

Q After that did it occur again? A Not so much in the driveway, but in front of the house it still occurred from time to time.

Q Do you consider that I would have a right to drive my car from Morristown and to park on the road in front of your house? A If you
10 didn't leave it there all night and all day, yes.

Q Were these cars left there all night and all day? A They were.

Q How many? A Oh, a great many times.

Q How many? A I don't know how many. I never counted them.

Q Were they from the guests at the Alamac or guests at the Passaic Country Club? A In front of my property, you are referring to? Passaic Country Club.

Q Were there any from the guests at the
20 Alamac at all? A They never bothered me.

Q This Dr. Greenberg, just how old is he? A I don't know.

Q Well, approximately. A Oh, he was in his thirties, I should judge.

Q About what time of the year was it that this thing occurred that you found fault with? A I think it was in May.

Q May of what year? A 1925.

Q Was it not in October, 1925? A No.

Q Are you sure it was in May? A May, as near as I can remember.

Q The Passaic Country Club was not opened in May, was it, at all? A But he had access to the club and the boat house and the towels and stuff.

Q Was the Passaic Country Club open as a boarding house? A I don't know.

Q He was just simply a lone guest there? A
40 With young ladies.

Nathan Drosness, direct.

Q With a young lady? A Young ladies.

Q This was not a common occurrence with the people that generally congregated there? A He was one that always congregated there—1924 and 1925. He has been there, I know that.

Q At the time of this happening how many boarders were there in the house? A I don't know of any. 10

Q At the time of this occurrence was Mr. Drosness there in charge of the house? A I don't think he was.

Q At the time of this occurrence was the Passaic Country Club open for boarders? A I don't know.

NATHAN DROSNESS, one of the defendants, 20
sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Price.

Q You are one of the defendants in this case, are you not? A Yes, sir.

Q The husband of Rose Drosness? A Yes.

Q And the manager of this so-called Passaic Country Club? A Yes. 30

Q You advertised in the American Leader, did you not, May 29, 1925? A Yes.

Q In an ad. which read: "The Passaic Country Club. Delightfully located on Lake Hopatcong. Good Fishing, Boating, Bathing. Delicious Hungarian Food. Reasonable Rates. Open May 25th. Accommodations for week-enders. Telephone, Hopatcong 120. N. Drosness, Manager"? A Yes, sir. 40

Sidney J. Stern, direct.

Q You advertised that way, did you not? A Yes, sir.

Mr. Price: I offer this advertisement in evidence.

(Marked Exhibit C. 21.)

10 Q You put a similar advertisement in the American ~~Leader~~^{Hebrew}, under date of June 5, 1925, did you not? A Yes.

Mr. Price: I offer this advertisement in evidence.

(Marked Exhibit C. 22.)

20 Q The American ~~Leader~~^{Hebrew} is a Jewish publication published in New York City? A Yes, sir.

Cross examination by Mr. Holland.

Q Do you know whether or not anybody answered that advertisement?

Mr. Price: I object to that as immaterial.

30 The Court: Objection sustained.

SIDNEY J. STERN, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Price.

40 Q Where do you live? A New York City.
Q Where? A 749 West End avenue.

Sidney J. Stern, direct.

Q You have a summer home at Lake Hopatcong? A I have, sir.

Q How many houses removed from the Passaic Country Club property? A One intervening.

Q That is Dr. Palefski's? A Yes.

Q How large a home is yours? A Eight 10 rooms.

Q And of frame or stone construction? A Frame, with a stone foundation.

Q What is your money investment there? A I have a second house there. There are two houses.

Q I am directing your attention to the first one, the one on the road? A That is the one I live in.

Q You have a family? A I have. 20

Q How many? A Wife and two children.

Q What are their ages? A A girl of seven and a boy of five.

Q Your wife is living? A Yes.

Q You also have another house down near the lake; is that right? A About 100 feet to the west of my house.

Q What kind of a building is that? A Same construction, five rooms.

Q What is your money investment in these two properties? A I should say the appraisal is \$25,000. 30

Q When did you buy your property? A I bought the land in the fall of 1922, if I am not mistaken.

Q Did you build the houses yourself? A No; I did not build them myself; I had a contractor build them.

Q You caused them to be built? A Yes; I caused them to be built. 40

Sidney J. Stern, cross.

Cross examination by Mr. Holland.

Q What did you pay for the land? A I think I paid \$5,000, if I am not mistaken.

Q How much did the two houses cost you to construct? A I don't remember that. I did know, but I cannot answer it particularly now.
10 There are too many bills involved.

Q Approximately how much money did you invest? A I should say for the two buildings, \$13,000 or \$14,000, perhaps.

Q When was the appraisal of \$25,000 made? A Why, it was not made to my knowledge except as the cost, the total cost. I have a well in there which cost me about \$3,000, approximately. I have other expenses that have cost me considerable. I should say there is an actual expenditure, without attempting to be specific, without having any figures before me, I should say the expenditure involves some \$25,000, including my furnishings, and so forth.
20

Q When did you have these two houses constructed? A If my memory serves me rightly it was in February or March, 1924.

Q And one of them you use as your own private residence? A Yes, sir.

Q What do you do with the other? A I rent the other. I bought the other for some friends who did not take it, to go there, and I rented it to other people.
30

Q The other you do not use as a private dwelling? A Not I, but the people who rent it use it as a private dwelling, very decidedly. That is restricted in my lease, as a matter of fact.

Q How much land have you there? What is the size of that lot? A 532 feet by 100 feet or thereabouts.
40

Nicholas H. Steneck, direct.

Q How often during the summer did you live there? A Why, I commuted in 1924. I commuted rather consistently. In 1925 I spent every week-end and as much as two or three times a week.

Q Is there a fence constructed on your property? A There is a trellis, yes, sir; a trellis 532 feet long. 10

Q What is a trellis? A A trellis is distinguished from a fence, in that a trellis consists of vines and rose bushes which are planted and grow up along a wire. It was made necessary as a result of people trespassing over my ground from the Passaic Club.

Q It is a fence constructed of what kind of material? A The wire is held together by poles.

Q Wooden poles? A Wooden poles. 20

Q What kind of wire—pig wire? A I don't know.

Q Square wire? A I imagine so. I have not seen it since I was up there. I don't think it was "mesh" wire. It was so that the plants and vines and rose bushes could climb up it.

NICHOLAS H. STENECK, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows: 30

Direct examination by Mr. Price.

Q Where do you reside? A At Castle Point, Hoboken.

Q Have you a summer home at Lake Hopatcong? A I have.

Q What is your business? A Banking. 40

Nicholas H. Steneck, cross.

Q Where? A Steneck Trust Company, Hoboken.

Q What is your position there? A Treasurer.

10 Q Where is your summer home located at Mount Arlington, with reference to the property of Mrs. Schreiber, which has been described here? A I should judge about eighty feet.

Q What sort of a house have you? A I have a brick house with a frame upper floor.

Q How many rooms? A Ten rooms.

Q What is your investment there? A Twenty thousand dollars.

Q You use your home as a private residence? A Private residence.

20 Q How long have you maintained that house as a private residence? A I bought the house in 1915, I believe.

Q You have held it since that time? A I have held it since that time.

Q You have used that property as a residence since that time? A Yes; a private residence.

Cross examination by Mr. Holland.

30 Q What is the property worth today? A I have no idea.

Q Is it worth more or less than \$20,000? A I am not interested, because I am not interested in selling at all; I have never thought of it.

Q I am interested in getting an answer to my question. Is it worth more or less than \$20,000? A I don't know.

Nicholas H. Steneck, cross.

By Mr. Price.

Q You lived in this house prior to your purchase of it? A I lived in it prior to my purchase of it; yes.

Q You did not buy it in 1915, did you? A I lived in it since 1915; I purchased it in 1921.

10

By Mr. Holland.

Q Did you know any of the men who compose the Marmon Holding Company? A No.

Q Did you know that it had taken possession of the property? A No.

Q Did you know that the Marmon Holding Company sold the property in 1923 and that Mr. Drosness took hold of it? A No.

Q When did you first learn that Mr. Drosness was in possession of the property? A I never knew it.

20

Q You never knew it? A No.

Q When did you first learn that there were people boarding at the place? A Well, I imagine in the year 1924. There were people coming there mostly over week ends and I was under the impression that two or three families chipped in together and bought this place, but in 1925, why, there were and more.

30

Q Now, you are eighty feet away from the Schreiber house? A Eighty feet.

Q How many feet away are you from Mr. Drosness? A Two hundred feet.

Q No more? A Well, I would say, as the crow flies, I imagine about 200 feet.

Q How is it as the crow doesn't fly—on the road? A It depends on the way you went.

Q Which is the most natural way to walk?

A If you walk up the hill alongside the Thomas

40

Israel O. Palefski, direct.

house I imagine it would run up to 250 feet, although I am not positive.

Q Is your house further from the Drossness house than the Schreiber, or nearer? A Further.

Q Your house is almost opposite the Alamac Hotel? A No.

Q Why not? A It is quite a distance from the Alamac Hotel.

Q In what direction? A You mean the Alamac Hotel?

Q Yes. A East of our house.

Q Are you the next lot to the Schreiber lot? A Next lot, yes.

Q Who is beyond you? A Vintschger.

Q Who is beyond that? A Hemple.

20 Q Who is beyond Hemple? A There is a new house just built that I don't think anyone has lived in as yet. I could not tell you the name.

(At this point recess is taken until two o'clock in the afternoon.)

30 ISRAEL O. PALEFSKI, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Price.

Q You are a physician? A Yes.

Q Doctor of medicine? A Yes.

Q Where do you practice your profession?

40 A 162 West Eighty-sixth street, New York City.

Israel O. Palefski, direct.

Q You have a summer home at Lake Hopatcong? A Yes.

Q You acquired the title when and from whom? A From Mr. Altenbrand, on the 30th of October, 1924.

Q When did you come up there, in the following year, 1925? A I was there the last two days of June, when I took sick and had to go back to New York. 10

Q Prior to June you were not there in 1925, were you? A I was there only to supervise alterations, yes.

Q In your place? A In my place.

Q Off and on? A Off and on during the entire spring.

Q When did you say you went up there? A It was the last week in June. 20

Q The last week in June you were there for two days and then you were taken ill? A Then I was taken ill and had to go back to New York.

Q How long did you remain away from Lake Hopatcong during 1925? A I was in New York for about three weeks.

Q Sick? A Sick in bed, and as soon as I was able I went back to Lake Hopatcong.

Q When did you go back to Lake Hopatcong for the summer? A When I got back to Lake Hopatcong I was still in bed. 30

Q When did you go back? A In the middle of July.

Q Did you spend the summer there? A I must have spent four to five weeks continuously on account of my illness.

Q You stayed up there until the fall? A I stayed until the latter part of September.

Q Have you a family? A Yes; a wife and my father-in-law and my mother-in-law. 40

Israel O. Palefski, direct.

Q Any children? A No children.

Q Were your father-in-law and mother-in-law there in the summer of 1925? A They were there. They came early; they came in the latter part of May.

10 Q What did you observe which was objectionable in 1925 to you in addition to the claim that the restrictions were being violated there; what did you observe there objectionable to you as an owner of property at Lake Hopatcong, Mount Arlington, during the summer of 1925, the source of which was the Passaic Country Club property? A The chief objections to me were the late-hour music and the late jokes after the music.

20 Q The late what? A The late shouting following the music. Sometimes they would shout and tell jokes until about two or three o'clock in the morning, particularly Saturdays and Saturday evenings.

Q How far is your house actually situated from the Passaic Country Club? A About seventy-five feet.

30 Q What other matters were sources of objections to you in 1925? A I could hardly fall asleep before three or four o'clock in the morning and did not sleep long enough until I was awakened by the early coaling of the stove. The man who shovelled coal on the stove in the kitchen passed my bedroom; that was five-thirty in the morning, as I fell asleep, and six o'clock then I would get the loud horns from the machines coming for the various commuters to the various trains. I can figure some evenings, particularly Friday, Saturday and Sunday evenings, I could
40 hardly sleep three or four hours uninterruptedly.

Israel O. Palefski, direct.

Q Did they have dance music throughout the week as well as week-ends during 1925? A Every evening, not all day, but every evening, particularly Friday, Saturday and Sunday all day long.

Q And then, also, during the course of the week on occasions, is that right? A Every night. 10

Q That is what I am asking. A Every night.

Q Did people dance? A Yes.

Q Have you any personal knowledge of the occupation of the boat house for any other purpose than a boat house? A Well, I saw the people coming down and coming back with their valises.

Q Going into the boat house? A Going into the boat house, and when they went away they took their valises along with them. 20

Q Have you any personal knowledge of the occupation of what was formerly the gardener's cottage when the Tilts owned the property? A I used to see the men go there every day to sweep the place and I could see the people coming from the cottage to the house to have their meals there.

Q During the year 1925, which was the one year you were there to observe, can you give us some idea, from your personal observation, of the number of people that were there over week-ends? A I should say about anywhere from 100 to 150. 30

Q And how about during the course of the week? A About forty or fifty children during the week I particularly noticed.

Q What is the extent of your investment in the Mount Arlington property? A I paid \$12,000 and for alterations, \$3,000 in addition. 40

Israel O. Palefski, direct.

Q Are there any other matters which were a source of personal annoyance to you, from your observation of this property, beyond the fact that they were violating the restrictions? A In the first place, every few minutes somebody would go in the toilet and turn the light on, that was particularly offensive because it kept up
10 until after I retired.

Q Where was the toilet? A On the second floor, facing my living room, my bedroom. I couldn't help overlooking it.

Q Anything else? A Then there was a tent right in front of my house where the employees would lie down and sleep and sometimes undress before my eyes openly, without any hesitation.

Q Where was this tent located? A It was
20 on the border line between the Passaic Country Club grounds and the beginning of my boundary line.

Q This you noticed when they were preparing to go to bathe? A Going to sleep during the daytime when the help were free. During the daytime they would go to the tent and undress and lie down on their bunk, and it was the most ugly sight I could imagine.

Q Anything about the cesspool? A That
30 was about the middle of August when my wife called me up—

Q Not what your wife told you. Did you observe the cesspool? A I did.

Q How long did you see that condition? A For about two weeks.

Q Was it severe or not? A It was very severe.

Israel O. Palefski, cross.

Cross examination by Mr. Holland.

Q You and Mr. Drosness were having some trouble? A Never.

Q Wasn't there some controversy between you and Mr. Drosness over some spring water or well water? A Never.

Q Never? A Never.

10

Q Did you meet Mr. Drosness? A Once.

Q When was that? A That was about three days after I signed my deed; he met me on a Sunday afternoon.

Q Where were you? A On my ground.

Q You became introduced to him then? A He introduced himself to me.

Q What did he say?

Mr. Price: I object to that as immaterial and not cross examination. 20

The Court: Objection overruled.

A He asked me whether I am the gentleman who bought the house, and I told him I was, and he congratulated me and he told I had a good piece of property, and he told me the boundary, and he called me aside and asked me whether I would not consider building a bungalow on the lower side and sell him my house which I just bought three days previously. I couldn't understand his question. I said: "What will you do with the house?" Well, he said: "My place is being overcrowded." I asked him: "What place?" Well, he says: "Here it is." I says: "What are you conducting there?" He says: "A hotel." I said: "That is the first time I heard you are conducting a hotel." Then he changed around and he said: "Well, for my acquaintances and their friends."

30

40

Israel O. Palefski, cross.

Q When did he tell you that? A He told me that three days after I bought this house.

Q When did you first see this property that you purchased? A About a week before I signed the contract.

Q How often did you see it before you signed
10 the contract? A Only once.

Q Who showed it to you? A Mr. Altenbrand and his daughter and there is the lady sitting there in the back of this room.

Q Did you see the sign "Passaic Country Club"? A There was no sign.

Q What time of the year did you say you signed the contract? A On the 19th of September, 1924.

Q Had not Mr. Altenbrand told you that there
20 was a boarding house next door? A He did not.

Q Didn't he tell you that that was one of the reasons he wanted to sell? A He did not.

Q When was the first time that you knew that they were running a boarding house there; when was the first time you saw any people there? A Well, as soon as my family got there.

Q When did that become objectionable to you? A From the very first day I got there.

Q In what respect? A In these conditions
30 that I specified before.

Q Well, you do not mean all of them, do you?
A That was a continual affair. The music—I found the music when I got there.

Q You saw there was music in 1924? A I don't know anything about 1924. I was never in—

Q When did you get there? A You mean with my folks? 1925.

Q What month? A The last two days in
40 June.

Israel O. Palefski, cross.

The Court: Then he got sick and had to go back to New York and returned to the Lake the middle of July.

Q Were you ever at Lake Hopatcong in 1924?

A I was.

Q Were you ever on this property? A Never. Pardon me, until I became interested in the property. 10

Q Did you ever tell Mr. Drosness that these things were bothering you? A I did not. I did not see him until in court, since my first meeting.

Q Were you ever in Mr. Drosness' house? A I was in the rear part.

Q What was that occasion? A I wanted to see what he was conducting there. 20

Q Did he invite you in? A No; I went in myself.

Q Did you meet him there? A I did not meet him.

Q How many people were there then? A I think the place was crowded.

Q Well, how many people were there? A About a hundred.

Q Did you see Mr. Drosness? A I never saw any one of that family except a young lady, the bookkeeper. I don't know whether she was a daughter or not. 30

Q Did you see Mr. Drosness at any time after that? A I did not.

Q Did you ever make any complaint to him? A Personally, no. I used to send my father-in-law to find out why that cesspool went on so long. I heard that Mr. Thomas and Mr. Schreiber made complaints and then I realized it is no use making complaints because if their 40

Abram Preiskel, direct.

complaints were not answered, mine would not be answered.

Q How long before the cesspool was fixed? A Oh, at least two weeks.

Q After that, there wasn't any odor? A (Interrupting) There was still odor when we left; there was still an odor.

COMPLAINANTS REST.

ABRAM PREISKEL, sworn as a witness on the part of the defendants, testifies as follows:

Direct examination by Mr. Holland.

20 Q Where do you live? A Passaic, New Jersey.

Q What position do you occupy? A Director of Public Safety.

Q Where? A Passaic, New Jersey.

Q Are you acquainted with the Drosness place in Lake Hopatcong? A I am.

Q Do you own any property nearby? A I own a piece of property practically opposite, directly opposite.

30 Q Across the street? A Across the street.

Q Were you a member of the Marmon Holding Company who took title in 1922? A I was.

Q How many men belonged to that corporation? A I think there were nine—eight or nine.

Q Were these premises of the defendants occupied by the members of this corporation and their families? A They were.

40 Q For how long a period? A For the season of 1922.

Abram Preiskel, direct.

Q To whom were the premises then sold? A To Mr. Drosness and Mr. Levy.

Q Have you since been a boarder at their place in 1923 and thereafter? A I visited the place a number of occasions.

Q Whom did you visit? A Mr. and Mrs. Drosness. 10

Q You knew them in Passaic? A I knew them as friends for years.

Q Did they maintain a boarding house there during 1923? A They did.

Q What was your observation—how many people did you see there at the time you were there? A Well, I visited several times during the week and there were not many there—probably fifteen or eighteen.

Q Did you visit that house during 1924? A I did. 20

Q Did you board there during that year? A I did not.

Q Just simply visited Mr. and Mrs. Drosness? A Yes.

Q How many people did you find were boarding there then? A I think when I was there during the week-ends of 1924, I should judge there were probably thirty. 30

Q Did you visit them in 1925? A I did.

Q When? A A week-end, that is, Saturdays or Sundays—I don't remember just exactly.

Q How many people did you find there then? A The time I was there I should judge there was probably thirty to thirty-five.

Q How much time did you spend there during 1925 altogether; how many different times did you visit there? A I should judge about three different times. 40

Abram Preiskel, direct.

Q Did you come early and stay late or what did you do? A I would drive up from Passaic, leaving there in the morning and stay for lunch and dinner and then drive back.

10 Q During the time you were there did you find any actions on the part of the people who were boarding there to be obnoxious? A I did not.

Q What kind of a group of people did you find there? A Well, I should judge they were a respectable group of people. I would not come back if they were not.

Q Were they all Jewish people? A Yes, to my knowledge.

Q Did you notice during the times you were there any carryings-on which were nuisances? 20 A I did not.

Q Sometime in 1925 did Mr. Drosness speak to you concerning your property across the street? A He did.

Q What did he want? A Well, he spoke to me before 1925. He asked me if I would give him the privilege of parking cars on my property.

Q Did you? A I did.

30 Q On the occasions that you came up to visit the Passaic Country Club, did you ever notice or see cars on your property? A Every time I came up there, especially week ends.

By the Court.

Q Did you occupy your house? A I have not a house, just a vacant piece of land right opposite.

40 Q Did you stay overnight in 1925 at Drosness' place? A No, I did not.

Abram Preiskel, direct.

By Mr. Holland.

Q Whom did you buy your tract from? A From Mr. Rooney.

Q When the Marmon Holding Company purchased this property from Colonel Patton, what was said about the general change in the neighborhood? 10

Mr. Price: I object.

The Court: Objection sustained.

Q How long have you known the general layout of Lake Hopatcong in through there? A About fifteen or eighteen years.

Q During that time have you noticed any changes taking place in the general neighborhood? 20

Mr. Price: I object unless it is limited to the scheme which was laid out in the place known as North Park, Lake Hopatcong Land & Improvement Company.

The Court: Objection sustained.

Q Have you noticed any change in the immediate vicinity of the premises of the defendant? A I have. 30

Q What? A Well, there are a number of small bungalows in the neighborhood.

Q Is there a dock at the foot of Altenbrand avenue? A Yes; there is a dock there; there is a public thoroughfare, a street, that leads to that dock.

Q During your visits have you ever visited the dock and the place down near it? A I have. 40

Abram Preiskel, direct.

Q Is that a dock for the landing of public picnic parties?

Mr. Price: I object as immaterial. That is at least a ten-minutes walk from this restricted zone.

10 Q How far away from the premises in question is this dock? A Only a few minutes' walk.

By the Court.

Q Can you tell us in feet? A Well, I should judge, walking along the main road and then down to the dock it is probably about 1,500 feet.

By Mr. Holland.

20 Q It is immediately adjoining the property which on the map is encircled in red? A As near as I remember, it is right back of Mr.—

Q Just answer my question: It is immediately adjoining the property which on the map is encircled in red, is it? A No; it is outside of that.

Q How far outside? A I don't know the scale. Probably 200 feet.

30 Q Can people walk from that dock to the end of the water, around to the Alamac beach? A Well, they can, but it is quite a walk.

By the Court.

Q Is the character of that waterfront such that they could walk along there without going on the property of private owners? A No; they would have to go on property of private owners.

By Mr. Holland.

40 Q They could walk there? A Yes.

Abram Preiskel, cross.

Q Have you ever seen picnic parties unloading at that dock?

Mr. Price: I object.

The Court: Objection overruled.

A Yes; Sundays—Saturdays and Sundays.

Q And is the character of the land such that any noise made at the unloading of the picnic parties would clearly carry across toward the land to the defendants and where they could hear it?

10

Mr. Price: Objected to.

The Court: That is too speculative. Objection sustained.

Q Did you ever see any people walking from the unloading of these picnic parties over the lands of these various complainants and over Mr. Drosness' land as well? A Well, they have walked over the Drosness property when it was ours in 1922.

20

Q From the picnics? A From that landing.

Cross examination by Mr. Price.

30

Q You said that the Marmon Holding Company held its title to this property until October 16, 1922, which I believe is the date of the deed—that is correct, is it? A Correct.

Q You had acquired title only that spring, had you not? A That spring.

Q In other words, you only held the property for a few months? A One season.

Q You are a commissioner in Passaic? A Yes.

40

Abram Preiskel, cross.

Q The purpose of the Marmon Holding Company was to enable you and some of your official friends in Passaic to have a place to take your families week ends? A Yes.

10 Q During the summer of 1922 you and your official friends who were part owners of this company could take their families there for a pleasant week end—that was the object of the purchase of the property? A Well, we stayed not only week ends.

Q During the week? A Yes.

Q You didn't run it as a boarding house or hotel? A We ran a club; we had a club.

Q You formed a little club among yourselves, you and other officials of the City of Passaic? A Officials and friends.

20 Q The object of that was so that you could have a place up there were you could spend vacations? A Right.

Q When you conveyed this property to Nathan Drosness and Louis Levy you took care to incorporate in it, did you not—calling your attention to the deed—to the clause that it was to be subject to the covenants and restrictions in deed of record in book W-12 of Deeds for Morris County?

30 The Court: If it is there, is it there?

Q Do you recall that? A I had no part in that. I don't know.

Q Was Dr. Liebson president of the corporation at that time? A Yes; he was president of the corporation.

40 Q The character of the land between the dock and the part which is outlined in red on the map is swampy? A Some is swampy. It is kind of a hollow.

Henry A. Greenfield, direct.

Q It is very much so in seasons? A I don't know. I have not been in there when it was wet.

Q You did not observe that? A No.

HENRY A. GREENFIELD, sworn as a witness
on the part of the defendants, testifies as follows: 10

Direct examination by Mr. Holland.

Q Where do you live? A I live in Brooklyn, New York.

Q In 1923, and '24 and '25, what was your occupation? A I was in the Federal Prohibition Service.

Q During those years, 1923, 1924 and 1925, did you board at Mr. Drosness' place, Lake Hopatcong? A I did. My family lived there during 1923, 1924 and 1925, and I was out there Saturdays and Sundays. 20

Q What does your family consist of? A My wife and two children.

Q Did you come out to stay with them every week end that they were there? A Every Saturday and Sunday; yes, sir.

Q During 1923 do you remember what room or rooms you occupied? A Yes, sir; the room right above the dance floor. That consisted of two rooms and a private bathroom. 30

Q During that year how many people were boarding there? A Why, on Saturday and Sunday I should judge between fifty, seventy-five and a hundred. I could not say positively how many there were.

Q I am speaking of 1923? A About thirty or thirty-five. 40

Henry A. Greenfield, direct.

Q How long did you stay there? A I stayed there Saturday and Sunday.

Q How long did your family live out there?
A From the first of July until Labor Day.

Q During 1924 how long did your family live up there? A From the first of July until Labor
10 Day.

Q Did you come to visit them during 1924?
A I did.

Q Do you remember what rooms they occupied then? A The same rooms.

Q You had the same family? A Yes, sir.

Q During 1925 how long did your family live up there? A From the first of July until Labor
Day.

Q Did you come to visit them week ends?
20 A I did.

Q In the same way? A Yes, sir.

Q What rooms did you occupy then? A The same rooms.

Q And your family was the same? A Yes, sir.

Q How many people were there in 1924?
A Well, the general run was about the same way. It was always during the week days, about
30 fifteen to twenty or maybe thirty. Over Saturdays and Sundays it probably increased to seventy-five to a hundred, maybe a hundred and twenty-five. I am not sure.

Q Was that during 1924? A Yes.

Q What about 1925? A About the same.

Q During the time that you spent at Mr. Drosness' place did you observe—just tell us what you did observe in and around that place?

A I think it was a very proper place.

Q Did you observe anything objectionable?
40 A I did not.

Henry A. Greenfield, direct.

Q Was there anything there that was considered a nuisance? A No, sir.

Q Was there any unusual loud talk? A Not as far as I heard.

Q Did you hear any? A No, sir; I did not.

Q Did you hear any on the Saturdays and Sundays that you were there? A No, sir. That sort of a crowd usually went to the Alamac. 10

Q They generally went to the Alamac? A Yes, sir.

Q Where was the Alamac in reference to this Drosness place? A It is diagonally across the road; it is about 500 feet away.

Q During 1923 and 1924 were there orchestras at the Drosness place? A Occasionally.

Q In 1925 were there any orchestras at the Drosness place? A Yes, sir. 20

Q More so than during the previous years?

A Well, they played after supper.

Q What? A The orchestra played after supper.

By the Court.

Q Every night? A Mostly every night; yes, sir. 30

By Mr. Holland.

Q How long would they play after the evening meal? A Until about eleven-thirty.

Q Were you ever there on any week day when the orchestra played later than eleven-thirty? A No, sir; they did not play later than eleven-thirty.

Q Did they play later than eleven-thirty on holidays or week ends? A Well, I remember once they played and I came down and got them 40

Henry A. Greenfield, direct.

to stop because we lived right above the dance hall.

Q That was once? A Yes.

Q When was that? A On a Saturday night. I don't remember the date.

Q You requested that it stop? A Yes.

10 Q And it did? A Yes.

Q Did you say that your room was directly over the ballroom? A Yes.

Q Or the dancing room? A Yes.

Q During the years that you lived there, from July to Labor Day, you and your family, were your slumbers ever disturbed by the music that was being played in the dance room? A No, sir, it was not. I want to add that I had a little baby during those three years and if it was disturbing the baby could not have slept.

20 Q That is the reason I asked you whether your family remained the same. A The baby is three years old now. The baby was born when we moved out there the first year.

Q The baby is all right today? A Absolutely.

Q During the time that you were out there did you notice any objectionable odors? A I did not.

30 Q Now, you said that the rooms that you occupied consisted of two rooms and a private bath. On which side of the house was this private bathroom located with reference to Dr. Palefski's house? A Right facing his room—his house.

Q You heard his testimony a while ago? A Yes.

40 Q The bathroom or water closet that he referred to was the bathroom used by you and your family? A That is right.

Henry A. Greenfield, cross.

Q Is it so that the lights were going on and off every few minutes? A That room was used by my wife and children and no one else.

Q You made use of it the same as you would in the ordinary occupancy of your own home?

A That is right.

Cross examination by Mr. Price.

10

Q Are you related to Mr. Levy or Mr. Drossness? A I am not.

Q Are you a member of the Passaic Country Club? A I am not.

Q When did you first learn of this place at Lake Hopatcong? A A friend of mine in Passaic told me about it.

Q And upon his recommendation you went out there in 1923 the first time? A Yes; I went out there the first time and I rented the rooms. 20

Q And since then, you have testified, each year you have gone out there again? A Yes.

Q How much do you pay? A Eighty-five dollars.

Q A week? A A week.

Q For how many? A My wife and two children, maid and myself and my two boys.

Q Are you there during the week? A Part of the time. 30

Q Did that rate include meals? A Everything.

Q Did the rates remain the same to you during those three years? A Yes, sir.

By Mr. Holland.

Q During the time that you lived there, during the three years, did you ever see or know of any acts of rowdyism on the part of people who boarded in this house? A I did not. 40

Louis Levy, direct.

By Mr. Price.

Q Did they have a clerk in this place who took care of the guests at the desk downstairs?

A Why, Mrs. Drosness.

Q Wasn't there a young man named Hol-
10 lander as manager there? A Last year I be-
lieve there was a young man by that name.

Q Did you register when you came there? A
I did.

Q They had a regular register in which you
put your name? A Yes.

Q And that of your family also and others
who stayed there? A Yes.

Q Did they have a bellboy, a bellhop, who
carried your grips around for you when you
20 moved in or out? A I couldn't tell you.

Q There was a boy to assist the guests to
their rooms? A I believe there was somebody.

Q The rooms were numbered? A Yes.

Q And they had a card on the inside with
the hours of meals printed? A That I cannot
tell you. I did not pay any attention to it.

Q You would not deny that was the fact,
would you? A Well, I wouldn't say there was.
I don't know.

30

LOUIS LEVY, sworn as a witness on the part
of the defendants, testifies as follows:

Direct examination by Mr. Holland.

Q Where do you live? A Passaic, New
Jersey.

Q Are you one of the owners of the place
40 known as the Drosness place? A I am.

Louis Levy, direct.

Q When did you acquire the premises? A I believe it was 1923.

Q Whom did you get them from? A The Marmon Holding Company.

Q When you bought them from the Marmon Holding Company, what did you do with them?

A We opened the Country Club.

10

Q Just explain to the Court the nature of that. A We conducted it as the Marmon Holding Company.

Q How long did that continue? A Well, up to the present time.

Q You mean you are running now as the Marmon Holding Company ran it? A The Passaic Country Club now is the same way—boarders and one thing or another.

Q Just explain about the boarders; how do you get them and what do you do with them?

A Well, they make applications for a certain length of time. That is all there is to it.

20

By the Court.

Q A certain length of time is what length of time? A They come and stay there week ends or a week or three weeks, or whatever it is.

30

By Mr. Holland.

Q Do you accommodate transients? A No, sir.

Q All of the people that you accommodated you have done so upon contract to furnish them with lodging and meals as boarders? A Yes, sir.

Q Who conducted the business? A Mr. Drosness.

40

Louis Levy, direct.

By the Court.

Q Who? A Mr. and Mrs. Drosness.

By Mr. Holland.

Q You are a brother to Mrs. Drosness? A I am.

10 Q Have you been there during all of the years that you and Mr. Drosness have owned the place? A I have been, on and off.

Q How many people were there in 1923? A Oh, it varied; it ran anywhere from fifteen to thirty to thirty-five people.

Q During 1924 how many people were accommodated? A Quite a little bit more. Maybe it ran as high as forty or fifty people; that is, week ends. During the midweek there was

20 hardly anybody there.

Q Who lived there during the midweek? A We had regular guests.

Q Wives and children? A Wives and children.

Q Who were the people that came up there week ends? A Friends of the people that stayed there and registered guests.

30 *By Mr. Price.*

Q "And registered guests"? A That is, people who had made applications to come there.

By Mr. Holland.

Q Husbands of the women that lived there? A Yes.

40 Q During 1925 how many people were accommodated? A I don't believe there was any more than about fifty or fifty-five at the utmost.

Louis Levy, direct.

Q During the week? A No; never during the week; we never had that many people during the week.

Q How many week ends? A What I say.

Q During 1923 did you have music? A I don't believe we did.

Q During 1924 did you have music? A I 10 think we did.

Q During 1925 did you have music? A Yes; we had music in 1925.

Q During the time that you owned the place were there ever any acts of rowdyism by the people who lived there? A Not to my knowledge.

Q Were there ever any loud talking or vulgar doings late at night? A No, sir.

Q During 1923 and 1924 was there ever any 20 complaint made to you as to the character of the boarding house that you conducted? A No, sir.

Q During 1925 did the character of the boarding house change? A No, sir.

Q Was there a complaint made to you about a break in the pipe of the cesspool? A No, sir.

Q Not to you? A No, sir.

Q Was there a complaint made, do you know? 30 A I know of none.

Q You are crippled, are you? A Yes.

Q You do not walk very fast? A No, sir.

Q While you were at your place could you hear the people who were disporting themselves at the Alamac Hotel? A Very much so.

Q Could you hear their orchestra? A Yes, sir.

Q Did you ever hear that from their front porch? A Yes, sir.

Louis Levy, cross.

Q Was the music just as incessant and just as sweet as it was from your place? A Probably.

Q Did you ever hear both the music and the noise made by human voices at Bertram Island? A Yes, sir.

10 Q Is there a scenic railway in operation there? A There is.

Q Did you hear the rumble of that? A Yes, sir.

Cross examination by Mr. Price.

Q You say Mr. and Mrs. Drosness operate this place? A Yes.

Q Mr. Drosness is part owner with you in profit? A Yes.

20 Q So, really, you and he run this together, don't you? A We own it together, yes.

Q In addition to being owners, Mr. Drosness and his wife have acted as the actual managers of the place? A Yes, sir.

Q Now, you run this place for monetary gain, don't you? A Absolutely, sir.

Q You are in the business of conducting this place up there to make money? A Right, sir.

30 Q And so you collect moneys from these persons who come to use the benefits of this house, don't you? A Yes.

Q What are your rates? A I really cannot answer that.

Q Why not? A Mrs. Drosness states that.

Q Can you give us any idea what your rates were? A Anywhere from \$40 to \$45 a week.

Q Per person? A Per person.

Q And that includes meals? A Yes, sir.

40 Q You serve breakfast, lunch and dinner at the place? A Yes, sir.

Louis Levy, cross.

Q Are there different prices for different located rooms in this place? A I believe there are.

Q Do some of the prices run in excess of \$45 a week where the room is particularly attractive? A Yes, sir.

Q How high is the highest? A Probably \$50. 10

Q If I want to come to your place to have a meal, could I come in? A No, sir.

Q You say I would have to make application? A Yes, sir.

Q And what do I have to do to make application? A Make a reservation.

Q Well, that is what you do when you go to a hotel, is it not? A I don't know what you term it. You would have to make a reservation before we could accommodate you. 20

Q If you were going to a hotel which in a busy season was crowded, would you not ask them to reserve you a place ahead of time? A Yes.

Q So the only reason you think this is different from any other hotel is that a person who desires to come there cannot just come in there any time and ask for accommodations? A Unless you write—

Q (Interrupting) Ahead of time? A Yes. 30

Q And find out whether the room is available or not? A Yes.

Q That is right? A Yes.

Q Suppose I was in New York and heard of the Passaic Country Club; I could call up your office and if you had a vacant room I could reserve it, could I not? A If you were known to us, yes.

Q Suppose I were a stranger? A We would not want it. 40

Louis Levy, cross.

Q You would not let me come? A No, sir.

Q I will call your attention to the following advertisement: "The Passaic Country Club—Delightfully located on Lake Hopatcong. Good fishing, boating and bathing. Delicious Hungarian food. Reasonable rates. Opens May 25th. Accommodations for week-enders. Telephone Hopatcong 120. N. Drosness, manager." Do you see anything in that ad. which is in evidence in this case, signed by the co-owner with you, being the manager of this place, which says anything at all to the effect that the persons who respond to this ad. must be persons known to the management?

Mr. Holland: I object to what the ad. says. The ad. speaks for itself.

The Court: Objection sustained. Mr. Holland admits the defendants run a boarding house. He has also characterized it as a boarding house in his questions.

Mr. Price: The only reason I was persistent in this line is that I want to show that even in addition to running what might term a boarding house, they were actually running a hotel.

Q There is nothing that you held out to the general public in this ad. to which you can call my attention which says that persons who might answer this ad. must be persons known to you or Mr. Drosness before they could be accommodated? A It was not necessary, because it is limited. We could not take all of New York.

Q Is that your answer to that question?
A Yes, sir.

Louis Levy, cross.

By the Court.

Q How many rooms have you in your place?

A I believe there are twenty. I do not know exactly.

Q Sleeping rooms? A Yes, sir.

Q How many have you in the boat house? A Well, that is a partition down there. 10

Q How many rooms in it? A I cannot say. I have never been in the boat house. That is too much of a climb for me.

Q Have you been in the gardener's house?

A No, sir.

Q Do you know how many rooms there are there? A No, sir.

Q Do you know it is partitioned off into rooms? A Yes.

Q For boarders? A Yes, sir. 20

By Mr. Holland.

Q Did you and Mr. Drosness repair and later renovate the place? A We did.

Q When? A It was 1924 or 1925, I don't recall—during the fall of either one of those years—1925, I believe.

Q How much did it cost you? A About \$20,000.

Q That is, in addition to the purchase price that you paid for it? A Yes, sir. 30

Nathan Drosness, direct.

NATHAN DROSNESS, one of the defendants, already sworn as a witness on the part of the complainants, called as a witness on the part of the defendants, testifies as follows:

Direct examination by Mr. Holland.

10 Q You are Mr. Levy's partner? A Yes.

Q You are in active charge of the property?

A Yes.

Q That is, you conduct it as a boarding house? A Yes, sir.

Q During 1923 about how many people were there accommodated? A In the week we had five or twelve or fifteen.

Q How many over week ends? A About thirty-five or forty.

20 Q Did you have music? A Very seldom; only for holidays.

Q That is, during 1923? A Yes.

Q Was there anything objectionable in the conduct of the people who boarded there? A No, sir.

Q Was there any complaint made to you about their conduct? A No, sir.

30 Q During 1924 about how many people were accommodated during the week? A We had the same, about fifteen or eighteen people.

Q And over week ends how many people? A Forty-five, fifty, sometimes sixty.

Q During 1924 did you indulge any in music? A Only on Saturdays.

Q Was there anything objectionable in the conduct of the people who lived there that year? A No, sir.

40 Q In 1925 how many people did you accommodate during the week? A About seventeen or eighteen; sometimes twenty.

Nathan Drosness, direct.

Q Over the week end how many people came and were accommodated? A About sixty or sixty-five.

Q Did you have music during 1925? A Yes, sir; for week ends.

Q Did you have it during the week? A No.

Q To what hours would they play? A Until 10 twelve o'clock Saturdays.

Q What hours did they play on Sunday? A Sunday the people used to go home.

By the Court.

Q What hours was the music played on Sunday? A Very seldom.

Q What hours did the music play on Sunday? A Until eleven or twelve o'clock, if they were playing. 20

By Mr. Holland.

Q If they played, it was until eleven or twelve o'clock? A Until eleven or twelve o'clock, if they were playing.

Q Did they play every Sunday? A No.

Q Did they play holidays? A Yes.

Q The music that they played, was that just ordinary music for dancing? A Yes, sir. 30

Q Was there any complaint ever made to you about the playing of the music? A No, sir.

Q After the music stopped, did your guests indulge in loud and boisterous conduct and talking? A Everybody went to sleep.

Q Did you permit any loud and boisterous conduct? A I would try to keep the place in the best shape and the best way.

Q You mean it was your endeavor? A Yes.

Q And did you? A Yes, sir. 40

Nathan Drosness, direct.

Q Was there ever any complaint made to you about a cesspool? A No, sir.

10 Q What about that cesspool? A That cesspool was overflowing and we could not get around to see if it is full or not, but our driver told me that the cesspool is overflowing. I called up a man in Dover and he said he is coming today, but he came two days later. At the same time I made another cesspool in the two days until he came; I made another cesspool, an overflow.

Q So that you built an overflow cesspool? A Yes, sir.

Q Did the plumber that you called fix your cesspool? A No; a cesspool man.

Q What was his name? A Frank Cullery.

20 Q After he fixed the cesspool and you had this overflow cesspool constructed was there any more trouble about the cesspool? A No, sir.

Q Did Mr. Thomas make a complaint to you once upon a time about cars parking in front of his place? A Once he called up that one of our machines stopped on his lawn. As soon as I heard the telephone I went out. I never spoke to Mr. Thomas. I introduced myself and in two seconds the car was taken away. That was all.

30 Q Was there ever any other complaint? A No.

Q Did you provide a parking place for these cars? A Yes.

Q Whereabouts was the parking place that you provided? A Over on the commissioner's property. He is here.

Q Commissioner Preiskel? A Yes.

40 Q You had the cars parked on his lot? A Yes, sir; I got a sign there—"Parking place for Passaic Country Club."

Nathan Drosness, cross.

Q Right across the street from your place?

A Right by the corner.

Q What have you to say about these complaints that you heard in court this morning about the nuisances that were being committed by you and the boarders that were there? A Well, I could say that everything is not the truth.

10

Q Was there ever any nuisance at all there committed in your sight? A No, sir.

Q Or hearing? A No, sir. We can prove. We are there three years, we can prove by the marshall, how many times he was called; he was only called once on account of the machines, for the three years we are there. He was called once. If he would have so much trouble there the marshall would be every day there.

Q You say the marshall was called once about a machine. What machine? A Our machine went on Mr. Thomas' lawn.

20

Q And that was the same time— A That was the same time. When the marshall came the machine was taken away already.

Q Were there six machines or only one machine? A Only one machine.

Q When was that; what year was that? A That was in 1925.

30

Q Just recently? A Last season.

Cross examination by Mr. Price.

Q How many toilets were in the building when you bought it? A Four.

Q How many did you add? A Five.

Q You added five? A Today there are five.

Q How many did you add? A Two.

Q Where are they? A One I put upstairs and one downstairs.

40

Nathan Drosness, cross.

Q Have you added any more since you put those two in? A No, sir.

Q Did you enlarge the cesspool after you bought the property? A I made one cesspool; I made a new one; we have five cesspools.

10 Q Did you enlarge the cesspools that are on the property? A No; I made a new one when I bought it and one I made last season.

By the Court.

Q So that you have three now? A I have five altogether.

By Mr. Price.

20 Q How many cesspools were there when you bought the property? A Three.

Q And you added two more? A Two more.

Q When did you put them in? A One I put in when it was overflowing and I could not wait for the man to come. I took three men and they dug an overflow and I fixed it up: and one I made three years ago.

Q What was the size of this one that you dug, the one that you dug when it overflowed? A Nine by nine.

30 Q Then, did you correct the overflow of the other one; did you fix that up? A Yes, sir.

Q How long was it before you fixed it? A It was two days altogether and then the men came to clean out the old one.

Q You say it was two days? A Three days—about three days it took altogether.

Q Now, you said that in 1923 you had people boarding at your place up there? A Yes, sir.

40 Q In 1924 a few more and in 1925 still more? A Yes, sir.

Nathan Drosness, cross.

Q Mr. Altenbrand, who owned this property away back, in the fall of 1923, or summer of 1923, protested, did he not, about this property? A Protested?

Q Yes. A Against me?

Q Yes—against the mere fact that you had a boarding house there? A He only— 10

Q Did he or did he not? A I want to tell how he came to protest.

By the Court.

Q Do you call it a protest—what he said to you? Was it a protest or not? A No, sir.

Q Then say no, he did not protest. A No; he did not.

By Mr. Price. 20

Q Did anybody protest on his behalf? A No, sir.

By the Court.

Q Did you have some conversation with him on the subject of your running a boarding house? A No, sir.

By Mr. Price. 30

Q You got a letter, didn't you, from Mr. Charles Rathbun, attorney for Mr. Altenbrand, dated July, 1925, copy of which I show you? Look at it. Can you see this without your glasses?

Mr. Holland: I submit I have not been served with any notice to produce any letters. This takes me by surprise. 40

Nathan Drosness, cross.

The Court: This is only shown for the purpose of refreshing his recollection as to any conversation or correspondence that he had with Altenbrand or Altenbrand's attorney.

10 Q Did you receive the letter which I now show you for the purpose of refreshing your recollection, from Mr. Rathbun, the attorney for Mr. Altenbrand? A Yes.

Q Do you identify that as being a copy? A I don't remember what was in that letter, but I received a letter.

Q You received a letter? A Yes.

Q Look at that letter? A If I would look, I would not know what it was.

Q Can you read English? A No.

20 Q Looking at it would not help you? A No.

Q The letter which Mr. Rathbun wrote to you, I suppose was read to you by somebody, was it? A Yes.

Q Did the letter which Mr. Rathbun wrote to you protest against the use of this property for a boarding house?

Mr. Holland: I object.

The Court: Objection overruled.

30

A Yes, but after I received—

Mr. Holland: Perhaps I am wrong in the stand I have taken, but I would be willing to admit the letter. I do not want to keep anything out that ought to go in. Do you want to offer the letter, Mr. Price?

Mr. Price: Not now.

40 Q (Showing witness) Is that your signature? A Not my signature.

Nathan Drosness, cross.

Q It is "N. Drosness"? A It is not my signature.

Q Whose writing is that? A I don't know. It is not my signature.

Q Does anybody up in your place write like that? A I don't know.

Q Do you know a Doctor Morris Gleisch, of New York City? A Morris Gleisch. 10

Q Yes. A No, sir.

Mr. Holland: May I see that letter or copy of letter which was shown the witness to refresh his recollection as to whether he heard from the attorney of Mr. Altenbrand with respect to keeping a boarding house? The letter is characterized as a protest. Perhaps rightfully so, but if it is, it seems to me that since he asked the witness with reference to it, we ought to know what the letter protested about. That was my objection. He characterized it as a protest. He received a letter, of course, but whether it is really a protest or whether it is something in the nature of a concession, I don't know. 20

By Mr. Holland.

Q Do you remember at all what was in that letter? A No, but I know one thing, two days later I was on the lake and he met me—I met Mr. Altenbrand and he started talking I should buy his property. He said: "If you would buy my property, all the restrictions is off." 30

Q Did you buy his property? A No, sir.

Q Did you afterwards have any conversation with Senator Rathbun? A He said: "I am the only man—" 40

Frank Cullary, direct.

By the Court.

Q Did you have any conversation with Senator Rathbun? A Only this time.

Q Did you have any conversation with Senator Rathbun—yes or no? A No.

10

FRANK CULLARY, sworn as a witness on the part of the defendants, testifies as follows:

Direct examination by Mr. Holland.

Q Did you fix the cesspool at the Drosness place? A I did.

Q Do you remember when? A July or August, I believe.

20 Q 1925? A 1925.

Q What did you do? A Pumped it out.

Q What did you find—anything? A Nothing just but water.

Q Was there an overflow cesspool connected with it thereafter? A At that time do you mean?

Q Yes. A Not at that time.

30 Q Was there afterwards? A That I don't know.

Q So that you pumped it out first? A I did.

Q You don't know when the overflow cesspool was built? A He consulted me about it right away.

Q He did. A He did.

Q You did not build it, however? A No; I did not build it.

40 Q After you pumped the cesspool out, was there any odor after that? A Not before or after.

Charles Bunn, direct.

Q Neither before nor after? A No, sir.

Cross examination by Mr. Price.

Q Why did you pump it out? A It was overflowing on the lawn.

Q Running down the lawn? A Running down on the back lawn. 10

Q Was there a cover over the top? A There was.

Q Was it oozing out? A It didn't come out on the top of the cover. When they flushed the toilet, the pipe line was—

Q Every time a toilet was flushed in the house it came under the cover? A It came out of the pipe line.

By Mr. Holland.

Q Was there any broken pipe? A Not that I discovered. 20

CHARLES BUNN, sworn as a witness on the part of the defendants, testified as follows:

Direct examination by Mr. Holland.

Q Where do you live? A Mt. Arlington. 30

Q Mt. Arlington is the corporate name of all of this property, is it? A Yes, sir.

Q What is your position in Mt. Arlington? A Chief of Police of Mt. Arlington.

Q Do you remember that a complaint was made once upon a time about an automobile being parked in front of Mr. Thomas? A Yes.

Q When you got there was the automobile there or had it been moved? A It had been moved. 40

Charles Bunn, direct.

Q How soon did you get there after the call? A Oh, I should judge it was half to three-quarters of a hour.

Q When you got there was there any other automobile parked in front of Thomas'? A Not that I know of.

10 Q How long have you been chief of police at Mt. Arlington? A I think since 1921.

Q During 1922, 1923, 1924 and 1925, have you ever had any complaint about boisterous language or boisterous doings at the Drossness place? A Not until 1925.

Q What happened in 1925? A Why, I was called there by Mr. Thomas.

Q On how many occasions? A Two.

Q Was the automobile occasion one of those? A Yes.

20 Q So that there was one occasion for the automobile and one other time? A Yes, sir.

Q What time of day was the complaint made to you? A Sometime in the afternoon.

Q After this second occasion was there ever any other occasion upon which you were called? A I think so.

Q What is that? A I think so.

30 Q When? A In the latter part of the year 1925.

Q What was that occasion? A Why, that was in connection with some bungalows that belonged to Anderson.

Q By whom were you called? A I don't remember that.

Q What was the complaint against the bungalows belonging to Anderson—noisy and boisterous? A Yes, sir.

40 Q Don't you remember who made the complaint? A I think the complaint was made to the mayor.

Charles Bunn, cross.

Q The mayor told you? A Yes, sir.

Q You did not get the complaint direct? A No, sir.

Q Now, in your official observation as chief of police, has the Drosness place been conducted with propriety and good behavior? A As far as I know.

10

Cross examination by Mr. Price.

Q These bungalows that you referred to were the Anderson bungalows? A Yes.

Q And the Passaic Country Club uses them for overflow sometimes? A That is what I understood.

Q It was the Passaic Country Club guests in the Anderson bungalows, that caused the disturbance on that occasion? A That was the understanding I had.

20

Q That is what you believe happened, was it? A Yes, sir.

Q Were you telephoned to regarding the incident between the man and girl down on the property, by Mr. Thomas? A Not directly; no.

Q Through whom? A Why, the mayor notified me to go there.

Q In other words, the mayor had received the complaint and notified you to go there? A Yes.

30

Q Did he inform you that the complaint came from Mr. Thomas? A I could not say.

Q Did you go there? A Yes.

Q By the time you had got there they had separated? A Yes, sir.

Q Where were you at the time the word reached you? A I couldn't say.

Q You don't know where you were at that time? A No; I couldn't say.

40

Charles Bunn, cross.

Q So that you don't know how long you were in getting there, do you? A No.

By the Court.

Q What time of the year was it that this took place? A It was in May, I think.

10

By Mr. Price.

Q Now, you were also called up by the management of the Passaic Country Club on one occasion, for a disturbance in their place, were you not? A It seems to me I was.

Q Have you got your book with you? A No, sir.

Q You keep your calls in a record book, don't you? A Not everything; not all cases like that.

20

Q You keep matters in that book which lead to arrest? A Regarding automobiles, mostly.

Q Do you remember being called to the Passaic Country Club by the manager regarding some disturbance in the club itself? A I do.

Q When? A I cannot remember the date.

Q What year? A 1925.

Q The disturbance was over some financial matter with two girls, was it not? A Yes, sir.

30

Q Some dispute about rates, was it not? A Yes, sir.

Q You went down with the girls to the place? A I met the girls at headquarters and from there went over.

By the Court.

Q Did the manager call you up about it or did the girls make a complaint? A The girls made the complaint.

40

Charles Bunn, cross.

By Mr. Price.

Q Where did they make the complaint? A They came to headquarters—

Q Were you called up on the telephone? A There is a 'phone there and they called my home up.

Q What was the complaint they made? 10

Mr. Holland: I object unless it has something to do with the nuisance.

A I understood that they had made an arrangement for the week end, and one of the girls' mother was taken sick, and she wanted to get some of her money back.

Q And they refused to give it? A That is the way I understood it. That is the way she put it to me. 20

Q Did you go down to settle the matter? A Yes.

Q In addition to that incident, and the incident of the man and the girl, you also referred to the incident relative to parking the cars when Mr. Thomas made the complaint, did you? A Parking cars, yes.

Q There was no other complaint from Thomas besides that, that you recall? A Not that I can recall. 30

Q You would recall, would you? A I think so.

By Mr. Holland.

Q On the occasion of these two girls and their complaint, that was not an occasion for loud and boisterous or vulgar talk, was it? A No.

Q On the occasion in May when there was a complaint about two people who apparently were 40

Charles Bunn, cross.

not acting properly, you went over to the boarding house, did you? A No, sir.

Q Didn't you say you went there and by the time you got there they had separated? A I went first to Mr. Thomas. Mr. Thomas explained the matter to me.

10 Q Was the boarding house open for business at that time? A No, sir.

Q It was closed? A This happened before.

Q Before what? A Before it was opened.

Q Before it was opened for business? A Yes.

Q It had nothing to do with the conduct of the place as a boarding house, had it? A No, sir.

20 *By Mr. Price.*

Q Mr. Thomas did not call you up on the 'phone at all? A Not as I can recall.

Q Why did you say that? Can you tell me—yes or no? A No.

Q You say no, you cannot tell?— A I don't know.

30 Mr. Holland: I have two deeds which I referred to this morning, which I would like to introduce in evidence, but I have not certified copies. I want to introduce in evidence the deed from Lake Hopatcong Land & Improvement Company to the Breslin Hotel and Land Company, a corporation, dated September 13, ~~1898~~, recorded in Book ~~12~~ ¹⁸⁶⁸ -12, page 42

40 I would also like to offer in evidence deed from Louise Altenbrand and Henry, her husband, to the Lake Hopatcong Land & Im-

Henry Altenbrand, direct.

provement Company, dated August 29, 1885, recorded in Book P-11, page 149.

Mr. Price: I want to object to these deeds unless the certified copies are here, for this reason, that I deem them immaterial to the issue involved; but if the Court should decide against me on that point, believing they have some materiality, I would like to call Mr. Altenbrand who is here in court, to show the scheme under which this property was originally restricted. 10

The Court: I think I would admit the deeds if they were here in proper form to be admitted in evidence. I will have to rule out the copies Mr. Holland has now, but I will give him a chance to offer certified copies, and if he does, then I will admit them. 20

Mr. Price: Then I will have to call Mr. Altenbrand in rebuttal.

The Court: I will give you the opportunity to call Mr. Altenbrand.

REBUTTAL.

HENRY ALTENBRAND, sworn as a witness on the part of the complainants in rebuttal, testifies as follows: 30

Direct examination by Mr. Price.

Q Where do you live? A I live now in St. Albans, Long Island, for the winter.

Q What is your age? A Do you want to know how old I am or how young?

Q Tell us how young you are. A I will be eighty-three in October. 40

Henry Altenbrand, direct.

Q You are one of the original incorporators of the Lake Hopatcong Land & Improvement Company? A Yes, sir; I am.

10 Q You are one of the men who were in possession and control of that company's property at the time when these restrictions were imposed which are set forth in these deeds which our clients have? A Yes.

Q That is, which our clients succeeded to under the earlier deed; is that correct? A What is that?

Q You are one of the men in control of the Lake Hopatcong Land & Improvement Company at the time these restrictions were imposed up at North Park, Lake Hopatcong? A Yes; I made it myself.

20 Q You are the gentleman who originally owned all of this land? A Yes, sir.

Q Which was subsequently conveyed, a portion of it, to the Lake Hopatcong Land & Improvement Company? A Yes, sir.

Q You are familiar, are you not, with this map marked Exhibit C. 2? A Yes; I have looked at it.

30 Q Is there any other person connected with the Lake Hopatcong Land & Improvement Company living at the present time except you? A No, sir; I am the only one.

Q If you will look at this map, do you observe on this map the section marked "North Park" which is enclosed in red, in which the properties described are restricted in the deed; you observe that? A Yes; I made that myself.

40 Q Is this a map which your company caused to be prepared for them back in 1886, in which you outline in red a portion of the restricted territory? A North Park.

Henry Altenbrand, direct.

Q Is that correct? A That is correct.

Q Did you live at Lake Hopatcong at that time? A Yes, sir.

Q Where was your home? A At that time I had a house, a farm house, on the main road, on the left. I owned at the same time a lake house, too.

10

Q Did you continue to be around Lake Hopatcong from the time this corporation was formed and these restrictions were imposed down to the year 1924? A I did.

Q That was your legal residence, was it not? A Yes; my residence.

Q There are shown on this map, which is dated 1886, the outlines of a hotel? A Yes.

Q When was that hotel constructed? A 1884. We organized the company in 1884 and commenced to build probably the latter part of that year.

20

Q So that in 1886 it was erected on the ground as shown here? A Yes.

Q That is why you made it on the map that way? A Yes.

Q What year would you say it was finally built? A Well, it was built in 1886.

Q Now, in making these deeds for the various properties, for all the property shown in their park, the restricted area, did your company or did it not, impose in each case these restrictions? A Yes, sir.

30

Q Was there or was there not excepted from the building restriction covenant, so far as the hotel was concerned, the section known as block 9? A Yes.

Q Just tell the Court, in your own language, Mr. Altenbrand, what was the original plan or scheme for this North Park section, as you peo-

40

Henry Altenbrand, direct.

10 ple accomplished or attempted to accomplish it, by these restrictions which you had drawn and this map which you have filed? A Well, we had made arrangement with Mr. Breslin to build this hotel and the land involved would be out of the restrictions and all the other land would be restricted as regular residence property and nothing else according to our restrictions.

Q That is to say, you indicated by the shaded portion the hotel property? A Yes.

Q And excepted it from the operation of the restriction—the hotel land? A Yes.

20 Q Now, during the continuance of your residence, Mr. Altenbrand, in this section, from the year when this hotel was started to be constructed, the Hotel Breslin, which was afterwards known as the Alamac— A (Interrupting.) Yes, sir.

30 Q (Continuing.)—from that time down to 1924, when you moved to New York State, what have you to say about the character of the neighborhood in this restricted North Park area which is outlined on this map in red—what have you to say as to the general character which has been maintained during this period? A Why, a select neighborhood. I myself have selected the first house there and naturally I would look out to have the balance of residences in every way restricted and first-class.

Q What have you to say as to whether these restrictions imposed originally by your company—what have you to say as to whether or not they were observed within this restricted area from the time when these restrictions were first imposed down to 1924? A Very strictly.

40 Q They were adhered to? A Yes; and we had at the time a committee of five, who were

Henry Altenbrand, direct.

trustees, and we five took particular notice and care that the restrictions were carried out.

Q Five persons who were trustees of what?

A Of the entire Land Improvement Company.

Q And what were their duties as trustees? A Trustees to look to the benefit of the whole enterprise in the way of looking after the restrictions. 10

Q Did they have any additional powers by way of mortgage to insure observation of the restrictions? A Yes; they took a mortgage of \$300.

Q To whom was that given? A To our Land & Improvement Company with the understanding as to the rights and all other restrictions.

Q You say: "With the understanding." Suppose you took a mortgage for \$300 from each of the purchasers— A Yes; we either took a mortgage for \$300 or \$300 cash. 20

Q And that was deposited with you, either the mortgage or the cash, as security, was it? A Yes.

Q As security for what? A As security that we would carry out the conditions of our contract.

Mr. Holland: I am wondering if all this is not a matter of record which could be produced. 30

The Court: I imagine the books of the Lake Hopatcong Land & Improvement Company are not available now.

Q Have you any records of your company, any records, the minutes of the corporation or any other book to which you could have access which would show the receipt by the company 40

Henry Altenbrand, direct.

of these mortgages as security to guarantee the performance of the covenants and restrictions?

A It is forty odd years ago. I don't know. Mr. Dunlap was our treasurer. Whether he might have something or not I couldn't say.

10 Q Do you know whether there are such books in existence? A They are matters of record.

Q The mortgages are? A Yes; the whole thing; I am the only surviving trustee, and every once in a while I get served with a paper to get my signature to wipe it off.

Q In other words, like a foreclosure suit or something of that kind? A Yes, sir.

By the Court.

20 Q When was the hotel operated as a club—the Breslin? A We had a short period there—

Q When was that—what year was that—1888 or 1890? A It is later than that.

By Mr. Price.

30 Q You have testified that this hotel was commenced in 1884 and was completed in 1886, and that your company in laying out this scheme for the North Park area, the restricted lots, left out of that scheme block No. 9, upon which the Hotel Breslin was located; that is correct, is it? A Yes.

Q You eliminated that by a deed, did you not? A Yes, sir.

Mr. Holland: I offer in evidence as an exhibit deed dated January 20, 1886, recorded in Book R-11, page 586, from the Lake Hopatcong Land & Improvement Company to the hotel company.

40 (Marked Exhibit D. 1.)

Henry Altenbrand, cross.

Q By that deed you specifically eliminated from the restrictions, so far as the hotel was concerned, this property in block 9? A Yes.

Q What was the purpose in not including block 9 in this general scheme? A The purpose of allowing the hotel without restrictions is that we did not want any other hotel up there. 10

Q So block 9 was excluded from the general scheme? A For the purpose of giving Mr. Breslin and his associates title to build the hotel unrestricted.

Q What was the purpose of restricting the remaining lots in the North Park area? A Naturally, we wanted to have that in the best settlement, select people, who would adhere to our restrictions.

Q For private residences? A Yes; not for 20
boarding houses.

Q During the period since that time is it your testimony that in all of this part, in this area, which was the subject of this scheme, the restrictions have been adhered to down to the time of the present complaint? A Up to the present day.

Q With the exception of this allegation against the Passaic Country Club? A That 30
is the only one.

Cross examination by Mr. Holland.

Q So that it was intended to restrict not only against hotels, but also against boarding houses; is that right? A That is right, in that territory.

Q Mr. Altenbrand, you and the other members of the Lake Hopatcong Land & Improvement Company had numerous agreements as to 40

Henry Altenbrand, cross.

how these restrictions were to be removed, hadn't you? A How is that?

Q You and the other trustees had numerous agreements as to how these restrictions were to be removed, had you not? A I don't know about that; I never knew we had any such agreement.
10

Q Was there ever made an agreement which provided that if the trustees thought fit to do so the restrictions could be removed from the entire territory? A Never such an agreement made, to my knowledge.

Q Well, didn't you tell Mr. Drosness that if he bought your place, that that would break the restrictions? A Never; nothing of that kind.

Q What did you tell him? A I advised him that he better be careful spending any money until he knew where he stood.
20

Q When was that? A That was July, when I was up there.

Q What year? A 1923.

Q Did you offer to sell him your property? A I did. That is right, and they sent another man there that wanted to buy my property, too, but they offered me such an infernal price for it that I would not sell.

Q When did you move away from there? A I moved away in 1924.
30

Q When you moved away, you and Mr. Drosness were on fairly good terms? A Fairly good terms. I like to be on good terms with everybody. I recall a conversation that I had with her.

Q With whom? A Mrs. Drosness.

Q When was that? A That was in June, I think, 1924.

Q June, 1924? A Yes.
40

Henry Altenbrand, cross.

Q Was it in reference to the sale of your property? A No.

Q Was it in reference to the restrictions?
A In reference to the restrictions, and I gave her warning—she spoke to me herself, having received notice from my lawyer. I said: “Yes; that is right.” She said: “It is no use. We have got lawyers and we know we can win out.” I said: “I gave fair warning.”

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Q She said that to you? A She said that to me and I said: “Don’t you take it so sure. Look out. I give you fair warning.”

Q You knew in 1924 I was not her lawyer? A No.

Q I represented you, didn’t I? Didn’t I represent you prior to that time? A I don’t remember.

20

Q You don’t remember? A Whereabouts?

Q In connection with the Morristown Trust Company? A What were you there—were you employed by me?

Q Didn’t you pay me? A Didn’t I what?

Q Didn’t you pay me? A I don’t know. If I paid you that was in reference to some other property or mortgage. That has nothing to do with this.

30

Q Wasn’t that a mortgage on some of this property?

Mr. Price: I object to that as immaterial.

The Court: Objection sustained.

Q Mr. Altenbrand, was there or not an agreement made between the trustees that these restrictions were only to continue in so far as the company continued to function? A No.

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Notice of Application to take Further Testimony.

Q You do not recall that? A No; no, sir; that would not be right.

CASE CLOSED.

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**NOTICE OF APPLICATION
TO TAKE FURTHER TESTIMONY.**

To ALBERT H. HOLLAND, Esq., Solicitor of Defendants.

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TAKE NOTICE, That on Monday the 24th day of May, 1926, at the hour of 10 o'clock in the forenoon, or as soon thereafter as the matter can be heard, before his Honor James F. Fielder, Vice-Chancellor, at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, we will make application for an order to take additional testimony, such order being based on the fact that while the above-entitled case is pending and undecided before this Court, the defendants have caused to be issued and circulated a notice of which the attached is a true copy. This particular notice was sent to Dr. Morris Gleich, who is not a member of the Passaic Country Club and has never attended at

30 said club, visited the same or been a guest there and does not know the manager or owners thereof. Said application is based upon the ground that the enclosed notice, in the opinion of the complainants, indicates clearly and emphasizes strongly the evidence already offered by the complainants, that the defendants are operating a hotel.

KING & VOGT,
Solicitors of Complainants.

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Notice of Application to take Further Testimony.

May 24, 1926.

Upon application of complainants made on due notice to defendants, it is consented that the affidavit of Morris Gleisch, annexed to the notice of motion, be considered evidence with the same effect as though the affiant had appeared and testified to the facts therein contained; and it is also agreed that the notice, copy of which is annexed to the said affidavit, be also marked in evidence and treated with the same effect as though the same were produced by the affiant and offered in open court.

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Affidavit of Morris Gleich.

IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">AUGUSTE SCHREIBER, <i>et al.</i>, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">NATHAN DROSNESS, <i>et als.</i>, <i>Defendants.</i></p>	}	<i>Affidavit.</i>
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STATE OF NEW YORK, }
COUNTY OF NEW YORK. }^{ss.}

MORRIS GLEICH, of full age, being duly sworn according to law, upon his oath deposes and says:

20 I am a resident of New York City, residing at No. 9 Post avenue; I am not personally acquainted with the Passaic Country Club or any of its officers or owners of the property under that name, nor am I acquainted with Nathan Drosness, Rose Drosness or Louis Levy. I communicated some time ago, at the request of Dr. Palefsky, with the Passaic Country Club, with reference to securing accommodations, so that

30 the only information that the defendants have about me is to the effect that I made inquiry about their rates.

On May 14th, 1926, I received a notice, copy of which is annexed hereto.

MORRIS GLEICH.

Sworn and subscribed before me
this 19th day of May, A. D.
1926.

CATHERINE M. GEIGER,
Notary Public, Queens County, No. 4863.

40 New York County Clerk's, No. 759.

Affidavit of Morris Gleich.

RATES
\$7.00 and \$8.00
Per Day

Reservations are confirmed upon receipt of deposit of \$10 per person.

THE PASSAIC
COUNTRY CLUB
Reservation Blank
.....192

Please reserve accommodations for my party consisting of... ladies and... gentlemen for the DECORATION DAY WEEK END.

10

Enclosed find check for \$..... to confirm reservation.

Name
Address
City

Phone

20

THE PASSAIC COUNTRY CLUB
Mt. Arlington, N. J.
On Lake Hopatcong

Dear Friend:—

Decoration Day—a real three-day, week-end Holiday—Will soon be with us. Green will once more be the color of the landscape and your real outdoor vacation begins.

The Passaic Country Club is ready for you, ready to entertain you again, if you are an old timer. If this is your first visit you will be added to our host of friends.

30

Here's what awaits you.

FOOD—the very best, served amid cheerful surroundings by an efficient staff—spotless linen. Everything just right. You will be so pleased that you, like others, will tell us so.

ACCOMMODATIONS—in building and bungalows. Hotel maid service.

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Affidavit of Morris Gleich.

SPORTS—At your beck and call. Tennis, baseball, handball, swimming, canoeing, horse-back riding, hiking.

INDOORS—A Type of entertainment that will make you think of dear old Broadway.

You will meet pleasant and congenial folks;
 10 The Passaic Country Club's spirit will get you.
 Make up your party now; let us have your reservations early. We should very much regret to say, "No more room."

Yours for a Glorious Holiday

THE PASSAIC COUNTRY CLUB.

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Conclusions of Vice-Chancellor.

CONCLUSIONS.

Filed June 18, 1926.

Messrs. King & Vogt for complainants.
Albert H. Holland, Esq., for defendants.

FIELDER, V.-C.

By deed dated August 29, 1885, the Lake Hopatcong Land and Improvement Company acquired title to an unimproved tract of land on and adjacent to the shore of the lake. It thereupon filed a map of the tract in the Morris County Clerk's office, showing the tract laid out in streets and blocks, the blocks being numbered and subdivided into lots. One of these blocks, numbered 9, is designated on the map as hotel property and on that block the erection of a hotel was commenced in 1885 and completed in 1886, said block being conveyed to the Lake Hopatcong Hotel Company by deed dated January 28, 1886. This hotel was known as "The Breslin" and is now known as "The Alamac." Surrounding the hotel property was a section laid out in blocks and known as "North Park," in which section all lots were conveyed by the Lake Hopatcong Land and Improvement Company by deeds referring to the filed map and containing a covenant binding each grantee, his heirs and assigns substantially as follows:

That they will not at any time hereafter erect or suffer to be erected upon the premises conveyed, or on any part thereof, any building to be used or occupied for any of the purposes herein and hereby prohibited, nor at any time use or employ, permit or suffer to be used, any building erected or which may hereafter be erected on said premises, or any part thereof,

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Conclusions of Vice-Chancellor.

for use or purpose of various named uses (unnecessary here to name) or any hotel or inn, or any buildings whatever other than private dwellings with their necessary boat houses and outbuildings, which covenant shall attach to and run with the land and shall be enforceable
 10 against the grantee, his heirs and grantees by the grantor or other grantees and that it shall be lawful not only for the grantor, but also for the owner of any lot in the vicinity or adjoining the premises granted, deriving title through the grantor, to institute and prosecute proceedings at law or in equity against the persons violating the covenant, for an injunction and for specific execution thereof and for damages.

The property conveyed to the Hotel Company contained an identical covenant, except that it
 20 did not include the restriction against a hotel or inn, or against buildings other than private dwellings. The scheme of the Lake Hopatcong Land and Improvement Company seems to have been to provide for the erection of a hotel and to establish North Park, near it, as a section devoted to residential purposes only.

The complainants and defendants own property in the North Park section, all deriving their
 30 titles through deeds from Lake Hopatcong Land and Improvement Company containing the covenant first mentioned. Upon the respective properties owned by the parties, buildings were erected, designed and used for dwelling purposes only until the owner of one of the properties conveyed to Marmon Holding Company by deed dated June 21, 1922. The summer of 1922 the Marmon Holding Company used the dwelling house on its property as a summer vacation
 40 home for its stockholders, their families and friends and by deed dated October 16, 1922,

Conclusions of Vice-Chancellor.

it conveyed to the defendants, Nathan Drosness and Louis Levy, who, in the summers of 1923, 1924 and 1925, ran the place under the name of Passaic Country Club for the accommodation of boarders. They enlarged the dwelling house, claiming to have expended \$20,000 for improvements and extensions and they put up partitions in the gardener's cottage and boat house, using both of those buildings as sleeping quarters for guests. The complainants allege that the use to which the defendants have put their property violates the restrictions and they complain that the number of persons who occupy the enlarged dwelling house, the gardener's cottage and boat house and swarm over the complainants' lands; the loud noises of shouting, singing, instrumental music and dancing all day and into the late hours of the night and early morning, especially Saturdays, Sundays and holidays and the parking of many automobiles on and in front of complainants' properties, constitute a nuisance and they pray that the defendants, Drosness, Levy and Passaic Country Club be restrained from using their property as a boarding house, hotel or inn.

That the defendants are operating a boarding house, hotel or inn under the guise of a club is apparent. No effort was made to prove that the persons enjoying the accommodations offered by the defendants are members of a club and I do not think it would affect the situation if they were. The testimony for the complainants is that during the summer of 1925 from one hundred to one hundred and fifty persons at a time and especially on Saturdays, Sundays and holidays occupied the defendants' buildings, while defendants admit to accommodating sixty to

Conclusions of Vice-Chancellor.

seventy-five persons at a time. The defendants say they furnish board and lodging to their patrons for a profit but admit no transients or persons not properly introduced. The evidence shows that the defendants have not restricted the use of their place to acquaintances, "club members," or regular boarders, for they advertise its accommodations and attractions in newspapers whereby they announce particularly that rooms can be had by "week-enders," thus inviting the public to use their house as a boarding house for a few days or for a longer period. There can be no doubt but that the defendants are using their property for other than private dwelling purposes and that such use is a clear violation of the restrictions thereon and that the complainants suffer from and are injured by such violation and are therefore entitled to have such violation restrained. (*Sanford v. Keer*, 80 N. J. Equity, 240; *Detsloff v. Hockstetter*, 96 N. J. Equity, 391.)

The defendants contend that the restrictions should not be enforced against them for the following reasons:

(a) They do not apply alike to all property in the neighborhood, in that the property occupied by The Alamac Hotel is not restricted against business uses or against a hotel or inn.

It is not necessary to the efficacy of the restrictions imposed on the lots in the North Park section that the same restrictions be applied to all property owned by the original grantor shown on its filed map. Restrictions for various sections of the tract may vary in accordance with the design of the original grantor for the character of each section. The promoter of a land selling scheme may allot one section of his tract

Conclusions of Vice-Chancellor.

for stores, another for a railroad station, another for a hotel and another for private residences and it is sufficient if the restrictions for each section are uniform according to the use for which the promoter has designed such section (*Sanford v. Keer, supra*).

The property to be devoted to hotel use was conveyed to a hotel company by deed recorded more than a year prior to the date of the conveyance from the Lake Hopatcong Land and Improvement Company to the person through whom the defendants claim title and it was designated and plainly delineated on the map filed by the common grantor before it sold lots on the tract, as hotel property. Each deed made by the common grantor refers to said map, so that the grantee to whom the common grantor conveyed and through whom defendants claim title, had notice when he accepted a deed containing the restrictions, that a portion of the property shown on the map was to be devoted to hotel purposes. Moreover the hotel building was actually on the land when the defendants' predecessor in title accepted his deed from the Lake Hopatcong Land and Improvement Company.

(b) The Lake Hopatcong Land and Improvement Company conveyed a portion of its tract without any restrictions. This has reference to a deed dated September 13, 1888, made by the Lake Hopatcong Land and Improvement Company to Breslin Hotel and Land Company, conveying all the grantor's property, real, personal and mixed, wheresoever situated, which deed contains no restrictions. No description of the land intended to be conveyed is given in this deed and there is no evidence to show that it

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Conclusions of Vice-Chancellor.

conveyed any lot in the North Park section or, indeed, any property shown on the filed map heretofore referred to. Neither is there any evidence that on any property conveyed by this deed is there a structure intended or used for a purpose in conflict with the restrictions under consideration. The deeds from the Lake Hopatcong Land and Improvement Company under which the complainants' claim are dated 1885 and 1886 and the deeds under which the defendants' claim are dated 1887, so that the restrictions upon the properties owned by all the parties to this suit and the rights and liabilities arising therefrom, were in effect as a neighborhood scheme prior to the deed to the Breslin Hotel and Land Company. By conveying (if it did) adjoining land without similar restrictions, the common grantor could not affect the rights of their grantees (or the rights of those claiming under them) acquired by its prior deeds containing the restrictive covenant, which covenant expressly gave the grantees the right to enforce the restrictions against other grantees of the common grantor (*Bridgewater v. Ocean City, &c.*, 62 N. J. Equity, 276, affirmed 63 N. J. Equity, 798; *Shoyer v. Mermelstein*, 93 N. J. Equity, 57).

Such evidence as the defendants presented to show stores, a public dock and an amusement park, related to property outside and a considerable distance away from the North Park section. The evidence does not show that such business or amusement places are maintained contrary to a restrictive covenant affecting the section in which they are located and if they are, they are so far distant from the North Park section as to be of little concern to the complainants and therefore laches, acquiescence

Conclusions of Vice-Chancellor.

or abandonment on the part of the complainants cannot be urged. (*Detsloff v. Hockstetter, supra.*)

(c) The locality known as Lake Hopatcong has, since 1885, grown from a sparsely settled community to a popular summer resort and is now visited by a large number of people who require hotel and boarding house accommodations for summer vacations; therefore the restrictions against the use of defendants' property for hotel, inn and business purposes are obsolete and should not now be enforced by this court. 10

This is an argument that the complainants' property rights are too minute to be protected as against that portion of the public who might desire to patronize a boarding house, hotel or inn on the defendants' lot and that if the complainants are injured by a violation of the restrictions, they should be left to pursue their remedy at law for damages. But damages afford inadequate relief. The complainants are not required to surrender their property rights for the benefit of strangers to the restrictive covenant, but they are entitled to the specific enforcement of the covenant so that they may enjoy their properties in the manner secured to them thereby (*Bridgewater v. Ocean City &c., supra; Sandusky v. Allsopp, 131 Atl. 633.*) 20 30

(d) Finally, the first violation of the covenant occurred in 1922 but the complainants stood by and allowed the defendants to expend much money on the property, which the defendants will lose if the restrictions are enforced.

The Marmon Holding Company used the dwelling house during the summer of 1922 and the first use of the house by the defendants was the summer of 1923. That summer and the sum- 40

Conclusions of Vice-Chancellor.

mer of 1924, its use was confined to a small number of boarders, but for the summer of 1925 the defendants enlarged the house and it was not until the latter summer that their patrons came in such numbers that it became apparent that their place was being operated as a business enterprise for the accommodation of the public and the complainants filed their bill January 21, 1926.

10 The defendants were notified personally in 1923 that the property was restricted against business uses and to expend money thereon at their peril. Their deed contains a reference to the restrictions and an examination of the records would disclose what those restrictions are and that the defendants could see that all houses in the North Park section are private dwelling
20 houses, should have put them on inquiry. They therefore had notice of the complainants' rights and having such notice they cannot complain that the complainants did not make earlier objection to the use they were making of their property. (*Bridgewater v. Ocean City, &c., supra.*)

30 It being my opinion that the complainants are entitled to the relief they seek, on the ground that the defendants are violating the restrictions on their property, it is unnecessary to refer to the other reason urged by the complainants for the same relief, namely, that the defendants' use of their property constitutes a nuisance, except to say that I do not think the evidence adduced will warrant a restraint for the latter reason.

Final Decree.

FINAL DECREE.

Filed June 28, 1926.

This matter being opened to the Court by Messrs. King & Vogt, solicitors of the complainants, and on due notice of the settlement of this decree given to Albert H. Holland, Esq., solicitor of the defendants, and no one appearing for the defendants and it appearing that the above-entitled cause was heard on amended bill, answer, the oral proofs, taken in open court, and the Court having duly considered the same and being of the opinion that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint, 10

It is, on this 28th day of June, 1926, 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, doth hereby ORDER, ADJUDGE and DECREE that an injunction issue restraining and enjoining the defendants, Nathan Drosness, Rose Drosness, Louis Levy and Pas-saic Country Club, a corporation, their agents, servants and employees from using, permitting or suffering the property, described in the bill of complaint herein, located in the Borough of Mount Arlington, Morris County, New Jersey, for the purpose of an inn, boarding house or hotel or for any business purpose whatsoever; and enjoining and restraining said named persons and corporation from using, permitting or suffering said property to be used for any purpose other than as a private dwelling, with its necessary boat house and outbuildings. 20 30

And it is further ORDERED, ADJUDGED and DECREED, that the defendants pay to the complain- 40

Notice of Appeal.

ants the costs of this suit to be taxed and that execution issue therefor, according to the practice of this Court; and it is further ORDERED, that the defendants pay to the complainants a counsel fee of \$350 which amount shall be included in the taxed costs herein and for which execution may issue.

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E. R. WALKER,

C.

Respectfully advised,

JAMES F. FIELDER,
V.-C.

NOTICE OF APPEAL.

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Filed June 29, 1926.

The defendants, Nathan Drosness, Rose Drosness, Louis Levy and Passaic Country Club, a corporation, hereby appeal from the whole and every part of the final decree made in the above-entitled cause by the Chancellor on the advice of the Honorable James F. Fielder, Vice-Chancellor to the Court of Errors and Appeals in the last resort in all causes.

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Dated: June 29, 1926.

ALBERT H. HOLLAND,
Solicitor of Defendants.

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

MERRITT LANE.

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Petition of Appeal.

PETITION OF APPEAL.

Filed June 29, 1926.

To the Honorable, the Court of Errors and Appeals, in the last resort in all causes.

The humble petition of Nathan Drosness, Rose Drosness, Louis Levy and Passaic Country Club, a corporation, the appellants in the above-stated cause, respectfully show that your petitioners find themselves aggrieved by an order made in the Court of Chancery made by his Honor, Edwin Robert Walker, on the advice of the Honorable James F. Fielder, Vice-Chancellor, bearing date the 28th day of June, 1926, in a cause wherein the said Auguste Schreiber, Silas Thomas and Janet Frame Thomas, Nicholas H. Steneck and Amalie Steneck, Karoline Vintschger, Sidney J. Stern, and Israel O. Palefski were complainants and your petitioners were defendants, in this respect, to wit: That the said decree orders, adjudges and decrees that an injunction issue restraining and enjoining the defendants from using, permitting or suffering the property described in the bill of complaint located in the Borough of Mount Arlington, Morris County, New Jersey, for the purpose of an inn, boarding house or hotel or for any business purpose whatsoever and enjoining and restraining the defendants from using, permitting or suffering said property to be used for any purpose other than as a private dwelling, with its necessary boat house and outbuildings, and in this respect, to wit: that the said decree orders, adjudges and decrees that the defendants pay to the complainants the costs of this suit to be taxed including a counsel fee of \$350.00 and your petitioners humbly appeal from said order

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Petition of Appeal.

which decrees as aforesaid upon the ground that the same is erroneous for that the manner in which it was proven the defendants had conducted their property was not in violation of any restriction upon the ground or in violation in anywise of complainants' rights; for that
10 after the restrictions involved in this suit had been imposed the entire character of the neighborhood had changed so that under the rules of equity relief by injunction should not have been allowed; for that the scheme which it was proposed to be carried into effect by the imposition of the restrictions involved in this suit had failed and it was not equitable to grant the relief granted to complainants by the decree; for that the restrictions involved in this suit were a part
20 of a neighborhood plan which had been violated in many respects and complainants lost any right to enforce the specific restrictions upon the property involved in this suit; for that the relief which complainants could obtain by injunction by reason of the violations of the restrictions by reason of the change of the locality is so minute at that equity ought not to intervene to grant relief by injunction; for that the complainants are estopped from seeking relief because
30 they stood by and permitted complainants to commit the acts which they did commit and which are now stated to be in violation of the said restrictive covenants involved in this litigation and to spend large sums of money to reconstruct the house upon said lands and premises and the effect of the injunction will be to deprive the defendants of such large investment which was made with the knowledge of the complainants; for that the complainants are guilty of laches; for that the Court of Chancery should
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Petition of Appeal.

have in its discretion denied relief by injunction.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet. 10

ALBERT H. HOLLAND,
Solicitor of Defendant-Appellant.

Journal Answer to Pet. of Appeal filed.

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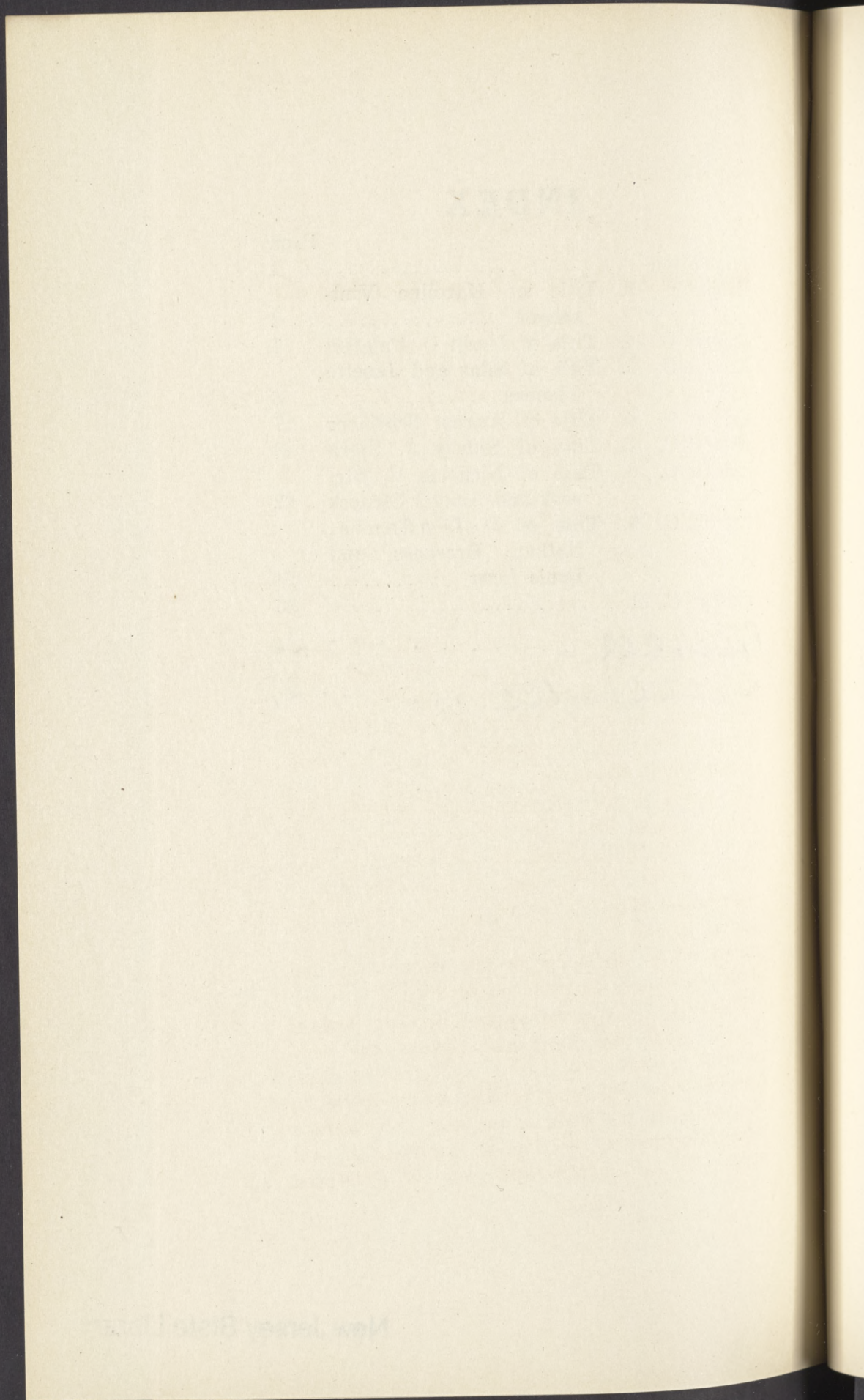
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Stipulation.

STIPULATION.

New Jersey Court of Errors and Appeals

<i>Between</i>	}	<i>On Bill, &c.</i>	
AUGUSTE SCHRIEBER, <i>et al.</i> , <i>Complainants,</i> <i>Respondents,</i>		<i>On Appeal from the Court of Chancery.</i>	10
<i>and</i>			
NATHAN DROSNESS, <i>et al.</i> , <i>Defendants,</i> <i>Appellants.</i>		<i>Stipulation Covering Printing of Exhibits.</i>	

WHEREAS, a final decree was rendered in favor of the complainants in the above-entitled cause against the defendants therein; and 20

WHEREAS, an appeal has been taken from the Court of Chancery of the State of New Jersey by said defendants; and

WHEREAS, in the printing of the state of the case on appeal, it is desired to shorten, as far as possible, the amount of printing necessary for the present presentation of the case; and

WHEREAS, Exhibits C. 10 to C. 20, both inclusive, in the Court of Chancery were photographs of the property of the defendants and of the various complainants; and 30

WHEREAS, it is agreed by and between counsel in this cause that said photographs are very material in said case, but it is desired to eliminate the cost of having further prints made, to be annexed to the state of the case, it is agreed between counsel at the time of argument of said appeal, the said photographs may be presented 40

Exhibit C. 3.

by counsel to the Court without the necessity of having copies thereof printed in the state of the case; and

10 WHEREAS, C. 3 to C. 8 (both inclusive) in said cause were abstracts of title of the various complainants, and Exhibit C. 9 was abstract of the title of defendants, Nathan Drosness and Lewis Levy; and

WHEREAS, the purpose of said exhibits was to show the presence or absence of restrictive covenants in the various deeds, and the location of the various properties therein, and it is agreed by and between counsel that instead of having said abstracts printed in their entirety, it will be satisfactory to stipulate as to the restrictive covenants in the various deeds in the several titles of the complainants and of the defendants;

20 NOW, THEREFORE, IT IS STIPULATED in reference to the several abstracts, as follows:

EXHIBIT C. 3.

TITLE OF KAROLINE VINTSCHGER.

To Northerly half of Lot #3 in Block #7.
Lot #4 in Block #7.

- 30 1. The Lake Hopatcong Land & Improvement Co. To Ann Louisa Culver. Deed dated Feb. 25th, 1886, Recorded Book T-11, page 54.

Refers to Map No. 1, of Mt. Arlington, Exhibit C-1. Conveys Lot #3 in Block No. 7.

Restrictive covenant therein set forth as follows:

- 40 “And further subject, nevertheless, to the covenants, conditions and restrictions hereinafter expressed.

Exhibit C. 3.

And the said party of the second part, for herself, her heirs, executors, administrators, grantees and assigns, doth covenant and agree to and with the said The Lake Hopatcong Land and Improvement Company, its successors and assigns, as follows: That the party of the second part, her heirs, or assigns, shall not at any time hereafter, erect, or cause, or procure, permit or suffer to be erected upon the premises hereby conveyed or any part thereof, any building to be used or occupied, or for the purpose of being used or occupied for any of the purposes herein and hereby prohibited, nor at any time use or employ or cause, procure, permit or suffer to be used or employed by her heirs or grantees, lessees or tenants of said premises, or any part thereof, or by any other person holding possession of said premises or any part thereof, under her title, any building erected or which may hereafter be erected on said premises or any part thereof, for the use or purpose of, or as a brewery, distillery, slaughter house, smith-shop, carpenter shop, forge or furnace, steam engine for manufacturing purposes, brass foundery, nail or other iron foundery, soap, candle, starch, varnish, vitriol, glue, ink, turpentine, or bone factory, or manufactory of gunpowder or other explosive substances, or mineral or animal oils, or any bone boiling establishment, or factory for tanning, dressing or preparing skins, hides or leather, or a cow or livery or other stable or cattle yard, or hogpen, or any buildings, erections, pits or excavations, for the purpose of mining, or any other noxious or dangerous trade or business, or any hotel or inn, or any establishments, booth or saloon for the sale of malt or other spirituous liquor, or any buildings whatsoever other than private dwellings, with their necessary boat-houses and out-buildings, and any fences, except of growing plants or shrubs,

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Exhibit C. 3.

AND IT IS FURTHER UNDERSTOOD AND AGREED that the foregoing covenant restricting the use of said premises shall attach to and run with the land hereby conveyed, and shall be enforceable against said party of the second part, her heirs or grantees or those deriving title under her or them by said party of the first part, its successors, assigns or other grantees. And it shall be lawful, not only for the said party of the first part, its successors and assigns, but also for the owner or owners of any lot or lots in the vicinity or adjoining the premises hereby granted, deriving title from or through the said party of the first part, to institute and prosecute any proceeding at law or in equity against the person or persons violating or threatening to violate the said covenant restricting the use of said premises, it being understood, however, that said covenant is not to be enforced personally for damages against the said party of the second part, her heirs or assigns, unless he or they be the owner or owners of the said premises or some part thereof, at the time of a violation of the said covenant or of a threatened or attempted violation thereof; but the said covenant may be proceeded or for an injunction of, and for a specific execution thereof against the said party of the second part, her heirs or assigns, and for damages against the said party or parties violating the said covenant, or their heirs, executors, administrators or assigns.

2. Ann Louise Culver and husband To DeWitt C. Ward. Dated October 12th, 1887, Book E-12, page 235.

Conveys Lot No. 3, Block No. 7.

Said deed contains the following clause: The grantee agrees "to perform all the said other covenants and conditions contained in said deed

Exhibit C. 3.

from the Land Company to Ann Louise Culver to be done and performed by said grantee, Anna L. Culver with like effect as if same had been fully and at large stated, set forth and contained in this conveyance."

3. DeWitt C. Ward and Leonora M. Ward, his wife, To The Byram Cove Land Co. Dated March 19th, 1891, Book H-13, page 119. 10

Lots No. 7, and 8, in Block No. 10. Lot No. 3, Block No. 7.

Recites: "Said premises are conveyed subject to all legal encumbrances."

4. The Byram Cove Land Co. To Alfred Walton. Dated September 6th, 1892, Book C-14, page 552.

Conveys Lots No. 7, and No. 8, in Block No. 10. 20

Recites: "Said lots are conveyed subject to all the special covenants and limitations as to the use and enjoyment of said lands particularly referred to in the records of conveyance thereof reference to which is hereby made and allowed."

5. Alfred Walton To Bankers Surety Co. Dated May 28th, 1908, Book N-27, page 158.

Conveys Lot 3, in Block No. 7. 30

Makes no reference to restrictions.

6. Bankers Surety Co. To Karoline Vintschger. Dated May 12, 1923, Book O-28, page 392.

Conveys Northerly one-half of Lot 3, in Block 7.

Recites: "Subject to all the covenants and restrictions as to the uses of said lot as fully described in the deed from the Lake Hopatcong Land & Improvement Co. To Ann Louise Culver in Book T-11, page 54 &c. 40

Exhibit C. 3.

7. L. Roberts Walton and Sarah P. Walton,
his wife, To Karoline Vintschger. Dated
May 12th, 1923, Book O-28, page 375.
Conveys Northerly half of Lot No. 3, Block
No. 7.
Same restrictive covenants as last deed.
- 10 8. Lake Hopatcong Land & Improvement Co.
To Helen M. Oldner. Dated April 8th,
1886, Book S-11, page 378.
Refers to Map No. 1, of Mt. Arlington, Exhibit
C-1.
Conveys Lot 4, in Block 7.
Recites: "Subject, nevertheless, to covenants,
conditions and restrictions heretofore ex-
pressed."
Recites full restrictions as above.
- 20 9. Patrick H. Nugent, Special Guardian of
Peter M. Oldner, Helen M. Oldner and
John G. Oldner, To Gustav Vintschger.
Dated April 14, 1894, Book G-14, page 501.
Conveys Lot No. 4, in Block No. 7.
No statement of restrictions.
- 30 10. Patrick H. Nugent, Administrator with the
Will annexed of Helen M. Oldner, To
Gustav Vintschger. Dated April 14, 1894,
Book G-14, page 504.
Conveys Lot No. 4, Block 7.
No mention made of restrictions.
- 40 11. Gustav Vintschger and wife To Alfred C.
Doehring. Dated February 1st, 1917,
Book A-24, page 302.
Conveys Lot 4, in Block No. 7.
Subject to restrictions and easements con-
tained in former deeds above referred to.

Exhibit C. 4.

12. Alfred C. Doehring To Karoline Vintschger.
Dated February 1st, 1917, Book A-24,
page 307.

Conveys Lot No. 4, in Block 7.

Recites: Subject to restrictions and easements
contained in prior deeds affecting all the above
described premises.

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EXHIBIT C. 4.

TITLE OF ISRAEL O. PALEFSKI

To Lot 3, in Block 6. Lot 3, in Block 5.

1. The Lake Hopatcong Land and Improve-
ment Co. To Louisa Altenbrand. March
19th, 1886, Book S-11, page 445.

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Refers to Map No. 1, of Mt. Arlington, Ex-
hibit C. 1.

Lot No. 3, in Block 6. Lot No. 3, in Block 5.

Subject to all of the restrictive covenants.

2. Louisa Altenbrand and husband To Lulu
Gray. Dated August 12th, 1896, Book S-
22, page 373.

Conveys Lot 3, in Block 6, Lot 3, in Block 5,
and other lands.

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Restrictions incorporated by reference.

3. Louise A. Gray To Israel O. Palefski. Dated
October 20, 1924, Book G-29, page 174.

Lot 3, in Block 6. Lot 3, in Block 5.

Made subject to restrictive covenants by ref-
erence.

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Exhibit C. 5.

EXHIBIT C. 5.

TITLE OF SILAS AND JANETTE THOMAS

To Lot 6, in Block 5. Lot 6, in Block 6, Part of Lot 5, in Block 5. Part of Lot 5, in Block 6. Lots 7 and 8, in Block 10.

- 10 1. The Lake Hopatcong Land & Improvement Co. To Norman W. Dodge. Dated October 24th, 1885, Recorded in Book R-11, page 106.

Refers to Map No. 1, of Mt. Arlington, Exhibit C. 1.

Conveys Lot No. 6, in Block 5. Lot 6, in Block 6.

Restrictive covenants in full.

- 20 2. Norman W. Dodge (Unmarried) To Robert Dunlap. Dated August 27th, 1888, Book L-12, page 352.

First Tract: Lot No. 1, in Block No. 7.

Second Tract: Lot No. 6, in Block No. 5, and Lot No. 6, in Block No. 6.

- 30 Being same premises conveyed to Norman W. Dodge by The Lake Hopatcong Land & Improvement Co. by deed dated October 24, 1885, recorded in Book R-11, page 106, &c., subject nevertheless to a certain mortgage, &c. And subject further, nevertheless, to all the covenants, conditions and restrictions contained in the deeds by the said The Lake Hopatcong Land & Improvement Co. to the said Norman W. Dodge before referred to as conveying to him the title to said premises hereby conveyed.

Exhibit C. 5.

3. Lake Hopatcong Land & Improvement Co.
To Amelia N. Dunlap. Dated January 30,
1886, Book S-11, page 1.

Refers to Map No. 1, of Mt. Arlington, Exhibit C. 1.

Conveys Lots No. 4, and 5, in Block 5. Lots
No. 4, and 5, in Block 6.

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Restrictive covenants in full.

4. Amelia N. Dunlap and Robert Dunlap, her
husband, To Julia A. Frothingham, wife
of Howard P. Frothingham. Dated Sep-
tember 14th, 1888, Book M12, page 307.

Being Lot #5, Block No. 6. Lot 5, Block No. 5.

Being a portion of the premises hitherto con-
veyed to the said Amelia N. Dunlap by The Lake
Hopatcong Land & Improvement Co. by deed
dated January 13th, 1886, Recorded in Book S-
11, page 1, &c.

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"Subject, nevertheless, to a certain indenture
of Mortgage, &c. and further subject neverthe-
less to all the covenants, conditions and restric-
tions contained in the said deed above-mentioned
from said Land Company to the said Amelia N.
Dunlap.

5. Lake Hopatcong Land & Improvement Co.
To George Stratford. Dated January 11,
1886, Book T-11, page 215.

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Refers to Map No. 1, of Mt. Arlington, Ex-
hibit C. 1.

Conveys Lots 7, and 8, in Block 10.

Restrictive covenants in full.

6. George Stratford and Delphine A., his wife,
To DeWitt C. Ward. Dated Oct. 12th,
1887, Book E-12, page 292.

Lot No. 7, Block 10. Lot No. 8, Block 10.

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Exhibit C. 5.

Being the same premises conveyed to the said George Stratford by The Lake Hopatcong Land & Improvement Co. January 11th, 1886, Book T-11, page 215.

“Subject nevertheless to the payment of and discharge of a certain mortgage.”

- 10 “Subject, nevertheless, to the mortgage and restrictions above mentioned.”

7. DeWitt C. Ward To The Byram Cove Land Co. Dated March 19, 1891, Book H-13, page 119.

Restrictions referred to and incorporated by reference.

Conveys Lots 7, and 8, in Block No. 10, and other property.

- 20 8. The Byram Cove Land Co. To Alfred Walton. Dated September 6th, 1892, Book C-14, page 552.

Lots No. 7, and No. 8, Block No. 10, also Lot No. 3, in Block No. 7.

- 30 Said lots are conveyed subject to all the special covenants and limitations as to the use and enjoyment of said lands, particularly referred to in the record of conveyances thereof, reference to which is hereby made and allowed.

Being the same three lots conveyed by deed from DeWitt C. Ward and wife to said The Byram Cove Land Co. March 19th, 1891, Book H-13, page 119.

9. Robert Dunlap and Amelia N. Dunlap, his wife, To Julia A. Frothingham, wife of Howard P. Frothingham. Dated Sept. 15th, 1888, Book M-12, page 311.

- 40 Lot No. 6, in Block No. 5, and Lot No. 6, in Block No. 6.

Exhibit C. 5.

Being the same premises hitherto conveyed by a similar description by The Lake Hopatcong Land & Improvement Co. to Norman W. Dodge Oct. 24, 1885, Book R-11, page 106, and thereafter conveyed by the said Norman K. Dodge to the said Robert Dunlap, August 27th, 1888 and recorded in said Clerk's Office.

"Subject, nevertheless, to the said Mortgage, restrictions, conditions, covenants and agreements of re-sale above mentioned and the said Robert Dunlap &c."

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10. Julia A. Frothingham and husband, To The New Jersey Title Guarantee and Trust Co. as Trustee. Dated Nov. 2, 1895, Book U-14, page 325.

Conveys Lots 5, and 6, in Block 5, and 5, and 6, in Block 6. Also Lots 7, and 8, in Block 10.

20

In trust, pursuant to terms of certain trust deed bearing even date herewith and deposited with the New Jersey Title Guarantee and Trust Company, Trustee.

With provision that the trusts may be ended and discharged as to any or all of the above mentioned parcels of land by the concurrence of the parties hereto.

11. Howard P. Frothingham and Julia A., his wife, To The N. J. Title Guaranty & Trust Co. September 8th, 1897, Book L-15, page 150.

30

WHEREAS, by deed dated November 2, 1895, we did convey to you the property therein described and which is described as follows:

Lots No. 5, and 6, in Block 5, and Lots No. 5, and 6, in Block 6, conveyed to Julia A. Frothingham by Robert Dunlap and wife by two deeds

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Exhibit C. 5.

dated Sept. 15, 1888—Recorded in Book M-12, page 307 and 311, respectively, to which deeds reference is made for a more particular description of said lands. Also all those lots No. 7, and 8, in Block No. 10, conveyed to said Julia A. Frothingham by Alfred Walton. * * And
 10 whereas, the trust in said articles contained have been discharged and fulfilled and it has been by mutual consent agreed that the said land should be re-conveyed to the said Julia A. Frothingham and the said trust ended. Now therefore, these presents are desired and request you
 20 “The N. J. Title Guaranty & Trust Co. forthwith to re-transfer and re-convey the said lands and all the other trust funds to the said Julia A. Frothington and her heirs forever by a good and sufficient deed in which deed the said Howard P. Frothingham shall join to the end that all
 the title in said Company and all the right, title and interest of said Howard P. Frothingham may be vested in fee simple in the said Julia A. Frothingham who was lately, the wife of said Howard P. Frothingham, the marriage between them having been lately dissolved by a decree of the Court of Chancery of New Jersey.”

(Reference is here made to the two other
 30 tracts owned by Janette F. Thomas, viz: Lots 7, and 8, in Block 10.)

12. The N. J. Title Guarantee & Trust Co. and Howard B. Frothingham To Julia A. Frothingham. Dated September 8th, 1896, Book L-15, page 154.

Lots Nos. 5, and 6, Block 5, and Lots 5, and 6, in Block 6. Being the same premises conveyed to Julia A. Frothingham by Robert Dunlap and wife by two deeds dated September 15th, 1888,
 40 recorded in Book M-12, page 307, and 311 re-

Exhibit C. 5.

spectively and to which deed reference is made for a more particular description of the lands.

Also Lots No. 7, and No. 8, in Block No. 10; being the same two lots conveyed to Julia A. Frothingham by Alfred Walton and wife dated November 25th, 1893, recorded in Book F-14, page 104, &c., to which deed reference is made for a more particular description of the lands. 10

13. Alfred Walton and wife, Frances Helen Walton To Julia A. Frothingham, wife of Howard P. Frothingham. Dated November 25th, 1893, Book F-14, page 104.

Lot No. 7, in Block No. 10, Lot No. 8, in Block No. 10.

Being the same premises heretofore conveyed to George Stratford by the Lake Hopatcong Land & Improvement Co. by deed dated January 11th, 1886, and recorded in Morris County Clerk's Office in Book E-12, page 220, said premises are subject nevertheless to certain covenants and restrictions contained in the deed above mentioned and the grantee in this deed assumes said covenants and agrees to do and perform all the said covenants and conditions in said deed above recited to be done and performed by the grantee therein George Stratford with like effect as if the same had been fully and at large stated, set forth and contained in this conveyance. 20 30

Together with &c.

14. Will, Julia A. Frothingham. Dated October 4th, 1902, Recorded E-2, page 414. Devises said property to Fanny M. Bedlow.

Exhibit C. 5.

15. Fanny M. Bedlow, widow, To Charles H. Holton. January 2nd, 1907, Book Q-18, page 207.

Description same as in W-18, page 492, hereinafter set forth.

- 10 Being a portion of the premises conveyed to Julia A. Frothingham by the New Jersey Title Guarantee & Trust Co. and Howard P. Frothingham by deed dated Sept. 8th, 1897, and Recorded in Morris County Clerk's Office in Book L-15, page 154.

- 20 The premises hereby intended to be conveyed being a portion of the premises devised by Julia A. Anderson (formerly Julia A. Frothingham) to the party of the first part by her last Will and Testament bearing date October 4th, 1902, an exemplified copy whereof is recorded in the Morris County Surrogate's office in Book E-2 of Wills, page 414 &c.

- 30 This conveyance is made expressly subject to all of the covenants, conditions and restrictions mentioned and set forth in a certain deed from Amelia W. Dunlap and Robt. Dunlap to Julia A. Frothingham dated September 15th, 1888 and recorded in Morris County Clerk's Office in Book M-12, page 307, and in a certain other deed from Alfred Walton and wife to Julia A. Frothingham dated Nov. 25th, 1893 and recorded in said Clerk's Office in Book F-14, page 104.

16. Chas. H. Holton, To Maud M. Dyer, wife of Philip S. Dyer. Dated July 23rd, 1907, Book W-18, page 492.

First Parcel: On Southwesterly corner Windemer & Arlington Ave.

- 40 Second Parcel: Southeasterly corner Windemer & Arlington Ave. with description same as in B-27, page 158.

Exhibit C. 5.

This conveyance is made expressly subject to all of the covenants, conditions and restrictions mentioned and set forth in a certain deed from Amelia N. Dunlap and Robert Dunlap to Julia A. Frothingham dated Sept. 15th, 1888 and recorded in the Morris County Clerk's Office in Book M-12, pages 307 &c. and in a certain deed from Alfred Walton and wife, to Julia A. Frothingham dated November 25th, 1893, and recorded in said Clerk's Office in Book F-14, page 104. 10

Being the same two tracts of land conveyed to the said Charles H. Holton by Fanny M. Bedlow by deed dated January 2nd, 1907 and recorded in the Morris County Clerk's Office in Book Q-18, page 207.

17. Gladys Robinson Duff and J. Robinson Duff, her husband, To Elise B. Wood. Dated July 21st, 1920, Book B-27, page 153. 20

Description not by Lot Numbers but covers part of Lots 5, and all of Lot 6, in Block 5, and 6.

On the Southwesterly corner of Windemere and Arlington Avenues and extending from Windemere Ave. to Lake Hopatcong and having a frontage on Windemere Avenue of 135 feet and a frontage on Arlington Avenue of about 438 feet and a frontage on said Lake of about 135 feet. 30

Lot 7, and Lot 8, Block 10.

On the Southeasterly corner of said Avenue and having a frontage on Windemere Avenue of 135 feet and on Arlington Avenue of 203 feet and being 135 feet in width in the rear and 203 feet in depth on the southerly side. Being all of said dimensions, more or less.

Together with all the right, title and interest of the party of the first part of, in and to Arling- 40

Exhibit C. 5.

ton Avenue in Windemere Ave. adjoining the said premises.

10 Together also with all the right, title and interest of the party of the first part hereto, of, in and to all the strip of land lying directly opposite and adjacent to the shore line of the 3rd lot above described within the lines formed by
 20 prolonging the centre line of Arlington Ave. and the southerly side line of this lot with Lake Hopatcong to the outside line of a tract of land conveyed by a certain deed made by Louisa Altenbrand and husband to the Lake Hopatcong Land and Improvement Co. dated August 29th, 1885, and recorded in Morris County Clerk's Office in Book P-11, of Deeds, page 14 &c. as fully as the same was conveyed to Julia A. Frothingham by the Trustees of Mt. Arlington Park Association by deed dated August 27th, 1895 and recorded in the Morris County Clerk's Office in Book T-14, page 518.

Together &c.

No mention made of reservations or restrictions.

18. William C. Heppenheimer, Jr. unmarried,
 To Elise S. Wood. Quitclaim Deed,
 30 Dated Sept. 7th, 1920, Book B-27, page 158.

Describes Lots same as in deed B-27, page 153.

“Subject, however, to all the covenants, conditions, restrictions and reservations contained in all former deeds of record.

Together with &c.

Exhibit C. 6.

19. Marjorie Dyer formerly Marjorie Dyer O'Sullivan, To Elise S. Wood. Dated December 13th, 1920, Book B-27, page 161.

Descriptions same as in B-27, page 158, with same reservations, restrictions &c.

20. The Trust Co. of New Jersey Trustees under the last Will and Testament of Maud Miller Dyer, dec'd. To Elise S. Wood. Dated July 1st, 1921, Book B-27, page 164. 10

Descriptions same as in B-27, page 158 &c. with same reservations, restrictions &c.

"Subject, however, to all the covenants, conditions, restrictions and reservations contained in all former deeds of record."

21. Elsie S. Wood and M. Russling Wood, her husband, To Janette F. Thomas & Silas Thomas. Dated April 30th, 1924, Book Z-28, page 411. 20

Part of Lot 5, and all of Lot 6, in Block 5. Part of Lot 5, and all of Lot 6, in Block 6. Lots 7, and 8, in Block 10.

EXHIBIT C. 6

30

TITLE OF AUGUST SCHREIBER

Lot No. 1, in Block 8. Lot No. 1, in Block 7. (½ interest therein)

1. The Lake Hopatcong Land & Improvement Co. To Louisa Altenbrand. March 19th, 1886, Book S-11, page 437.

Refers to Map No. 1, of Mt. Arlington, Exhibit C. 1.

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Exhibit C. 6.

Conveys Lot #1, Block 8.

Subject to full restrictive covenants.

2. Louisa Altenbrand and Henry Altenbrand, her husband, To Lulu Gray. Dated August 12th, 1896, Book A-18, page 234.

10 Being Lot #1, in Block No. 8.

Being same premises conveyed to the said Louisa Altenbrand by the Lake Hopatcong Land and Improvement Co. by deed dated March 19th, 1886, recorded in Book S-11 of Deeds, page 437, and this conveyance being subject to the conditions and restrictions in said deed contained.

3. Louisa Gray (otherwise known as Lulu Gray) To Auguste Schreiber. Oct. 11th, 1923, Book U-28, page 304.

20 Being Lot No. 1, in Block No. 8.

“Subject, nevertheless, to all covenants, restrictions and conditions contained in a certain deed dated the 19th day of March, 1886, from The Lake Hopatcong Land and Improvement Co. to one Louisa Altenbrand and which said deed was recorded in the office of the Clerk of the County of Morris on the 14th day of April in Book S-11, pages 437 and being the same premises as in the said deed mentioned and described”

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TITLE OF AUGUSTE SCHREIBER TO
LOT NO. 1, IN BLOCK 7.

1. The Lake Hopatcong Land & Improvement Co. To Norman W. Dodge. Oct. 1, 1885, Book R-11, page 100.

Refers to Map No. 1, of Mt. Arlington, Exhibit C. 1.

40 Conveys Lot No. 1, in Block No. 7.
Restrictive covenants set forth in full.

Exhibit C. 6.

2. Norman W. Dodge, To Robert Dunlap.
Dated August 27th, 1888, Book L-12, page
352.

Conveys Lot No. 1, in Block No. 7.

Made expressly subject by reference to full
restrictive covenants.

3. Amelia N. Dunlap, *et als.*, Executrix of last
Will and Testament of Robt. Dunlap,
dec'd. To Francis G. Himpler, *et al.* Gus-
tav Vinschger. Executor's Deed. Dated
January 31st, 1900, Book F-18, page 534.

Being Lot #1, Block No. 7.

No reservations or restrictions but

"Subject, nevertheless, to the easements of
any, of way and passage, or otherwise, as may
exist in, over or upon such portion of said
premises above described as are included in the
boundaries of Arlington Ave. and Edgemere
Ave. as shown on said map."

4. Sarah E. Oliver, Widow of Samuel Oliver,
To Francis G. Himpler. Quitclaim Deed.
Dated Feb. 23, 1910, Book E-20, page
307. Cons. \$100.

"Also all the right, title and interest of the
parties of the 1st part in and to the portion of
said Edgemere Ave. and Arlington Ave. and
the docks shown on said map lying opposite the
premises above described. Together with the
appurtenances thereunto belonging or in any
way appertaining so that neither I, the said
Sarah E. Oliver my heirs, executors, administra-
tors or assigns nor any other person or persons
for me, them or any of them shall have claim or
demand, or pretend to have, claim or demand any
dower or thirds or any right, title, claim or de-

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Exhibit C. 7.

mand, whatsoever of, in, or to the same, or any part thereof, in whosoever hands, seizen or possession the same may or can be but thereof and therefrom shall be utterly barred and excluded forever by these presents.

In Witness &c.

10 (No restriction)

5. Gustav Vintchger and Karoline, his wife,
To Auguste Schreiber. Warranty Deed.
Dated June 23rd, 1924, Book D-29, page
168.

All the right, title and interest of Gustav Vintchger in and to Lot No. 1, in Block No. 7.

20 No mention made of reservations or restrictions but states, "Subject, nevertheless to easements, if any, of way and passage, or otherwise as may exist in, over or upon such portion of said premises above described as are included in the boundaries of Arlington Ave. and Edgemere Ave. as shown on said map."

EXHIBIT C. 7.

TITLE OF SIDNEY J. STERN

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Lot #2, in Block 5.

Lot #2, in Block 6.

1. Lake Hopatcong Land & Improvement Co.
To Augustine Pottier. Dated Nov. 25th,
1885, Book R-11, page 161.

Refers to Map No. 1, of Mt. Arlington, Exhibit C. 1.

Conveys Lot 2, in Block 5. Lot 2, in Block 6.
Restrictive covenants set forth in full.

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Exhibit C. 7.

2. Emily M. A. Pottier To Hannah T. McManus. Dated February 24, 1911, Book V-20, page 149.

Conveys Lot 2, in Block 5. Lot 2, in Block 6.

Subject, however, to the covenants, conditions and restrictions contained in Book R-11, page 161.

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3. Hannah T. McManus To Robert J. Rooney. Dated January 13th, 1912, Book H-21, page 203.

Conveys property as follows: Lot 2, in Block

5. Lot 2, in Block 6, and other property.

Restrictions incorporated by reference.

4. Robert J. Rooney To Clarence M. Rooney. Dated July 3rd, 1916, Book Q-23, page 572.

20

Conveys Lot 2, in Block 5. Conveys Lot 2, in Block 6, together with other property.

“Made expressly subject to all the covenants, obligations and restrictions mentioned, described and contained in the deed from the Lake Hopatcong Land & Improvement Co., dated November 25, 1885, and recorded in Book R-11, page 161, and in the following deeds mentioned and referred to therein.” (Then follows a list of deeds from Lake Hopatcong Land & Improvement Co. to various individuals through which the Pottier Title comes.)

30

5. Clarence M. Rooney To Sidney J. Stern. Dated October 9th, 1922, Book E-28, page 143.

Conveys Lot 2, in Block 5. Lot 2, in Block 6.

Recites: “Subject to covenants, restrictions and reservations contained in former deeds of record.

40

Exhibit C. 8.

EXHIBIT C. 8.

TITLE OF NICHOLAS H. STENECK and
AMALIA STENECK, his wife, To Southerly
one-half of Lot 3, in Block 7, Part of Lot 2, in
Block 7.

- 10 1. Lake Hopatcong Land and Improvement Co.
To Albert Altenbrand. Dated January
14, 1886, Book S-11, page 192.

Refers to Map No. 1, of Mt. Arlington, Ex-
hibit C. 1.

Conveys Lot 2, in Block 7.

Restrictive covenants set forth in full.

- 20 2. Albert Altenbrand and Helen, his wife, To
Emma E. Norman, wife of Charles M.
Norman. Dated March 4th, 1889, Book
W-12, page 502.

Part of Lot 2, in Block 7.

Subject to all of the aforesaid restrictive cov-
enants.

3. Emma Norman (widow) To Nicholas H.
Steneck. Dated April 21, 1923, Book O-
28, page 130.

Conveys part of Lot #2 in Block 7.

- 30 Subject to all of the aforesaid restrictive cov-
enants by reference.

4. Lake Hopateong Land & Improvement Co.
To Anna Louise Culver. Dated Feb. 25,
1886, Book T-11, page 54.

Refers to Map No. 1, of Mt. Arlington, Ex-
hibit C. 1.

Conveys Lot 3, in Block 7, Lot 5, in Block 7.

Subject to full restrictive covenants.

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Exhibit C. 8.

5. Anna Louise Culver To DeWitt C. Ward.
Dated October 12th, 1887, Book E-12, page
235.
Conveys Lot No. 3, in Block 7.
Restrictive covenants included by reference.
6. DeWitt C. Ward and wife To The Byram 10
Cove Land Co. Dated March 19, 1891,
Book H-13, page 119.
Conveys Lot 3, in Block 7.
Subject to all legal covenants.
7. The Byram Cove Land Co. To Alfred Wal-
ton. Dated Sept. 6, 1892, Book C-14, page
552.
Conveys Lot 3, in Block 7, and other land.
Conveyed subject to all restrictive covenants
of record. 20
8. L. Roberts Walton and Sara P. Walton, his
wife, To Nicholas H. Steneck and Amalia
Steneck, his wife. Dated May 12, 1923,
Book O-28, page 377.
Southerly one-half of Lot 3, in Block 7, recit-
ing death of Alfred Walton intestate, leaving
L. Roberts Walton as his sole heir at law.
Subject to restrictive covenants set forth at 30
length in T-11, page 54.

Exhibit C. 9.

EXHIBIT C. 9.

TITLE OF DEFENDANTS, NATHAN DRO-
NESS and LOUIS LEVY, To Lots 4, and part
of 5, in Block No. 6. Lots 4, and part of 5, in
Block No. 5. Lot 6, in Block No. 10.

- 10 1. Lake Hopatcong Land & Improvement Co.
To Amelia N. Dunlap. Dated January
30th, 1886, Book S-11, page 1.

Refers to Map No. 1, of Mt. Arlington, Ex-
hibit C. 1.

Conveys Lots 4, and 5, in Block 5. Lots 4, and
5, in Block 6.

Subject to full restrictive covenants.

- 20 2. Amelia N. Dunlap To Adelaide V. Tilt.
Dated September 15, 1888, Book M-12,
page 302.

Conveys Southerly part of Lot 5, in Block 6,
and Lot 5, in Block 5; also Northerly part of
Lot 4, in Block 6, and Lot 4, in Block 5.

Lots 4, and 5, in Block No. 6, and Lots 4, and
5, in Block No. 5.

- 30 3. Lake Hopatcong Land & Improvement Co.
To Robert Dunlap. Dated Sept. 19th,
1887, Book D-12, page 446.

Refers to Map No. 2, of Mt. Arlington, Ex-
hibit C. 2.

Conveys Lot 6, in Block 10.

Subject to the full restrictive covenants.

4. Robert Dunlap and wife To Albert Tilt.
Dated August 13th, 1894, Book K-14, page
413.

Conveys Lot 6, in Block 10.

- 40 Restrictions incorporated by reference.

Exhibit C. 9.

5. Adelaide V. Patten, formerly Adelaide V. Tilt and William S. Patten, her husband, and Adelaide V. Patten, Executrix of the Estate of Albert Tilt, dec'd. To Marmon Holding Co. a corporation of New Jersey. Dated June 21, 1922, Book W-27, page 127.

10

Description substantially same as in G-28, page 36.

Subject to covenants and restrictions in deed recorded in Book W-12 of Morris County and other easements and restrictions of record.

6. Marmon Holding Co. To Nathan Drosness and Louis Levy. Dated October 16th, 1922, Book G-28, page 36.

Refers to Map No. 2, Exhibit C-2.

Among other lands, conveys Lot 4, and part of Lot 5, in Block 6. Lot 4 and part of Lot 5, in Block 5. Lot 6, in Block 10 and other property.

20

Subject to covenants and restrictions in deed recorded in W-12 of Morris County and other easements and restrictions of record.

It is STIPULATED and AGREED that wherever, in the various titles reference is made to the fact that the property is transferred subject to the restrictive covenants, it means the restrictive covenants as set forth and described in the deed from The Lake Hopatcong Land & Improvement Co. To Ann Louisa Culver recorded in Book T-11 of Deeds for Morris County, page 54., appearing in the Vintschger title set forth in this stipulation.

30

October 2nd, 1926.

KING & VOGT

Solicitors of Complainants

40

Irving Werkesman
Solicitor of Defendant

Merritt Lane
of Counsel.

Exhibit C. 21.

EXHIBIT C. 21.

10 "THE PASSAIC COUNTRY CLUB Delight-
fully located on Lake Hopatcong. Good fishing,
boating and bathing. Delicious Hungarian food.
Reasonable rates. Open May 25th. Accommoda-
tions for week-enders. Tel. Hopatcong 120 N.
Drosness, Mgr."

Exhibit 22.

*Same as C. 21., except
published June 5th 1925*

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30

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PART OF
MAP No 2
OF
MOUNT ARLINGTON
ON
LAKE HOPATCONG
MORRIS CO., NEW JERSEY
1886

SCALE 100=1."

W.C. CULVER, C.E.



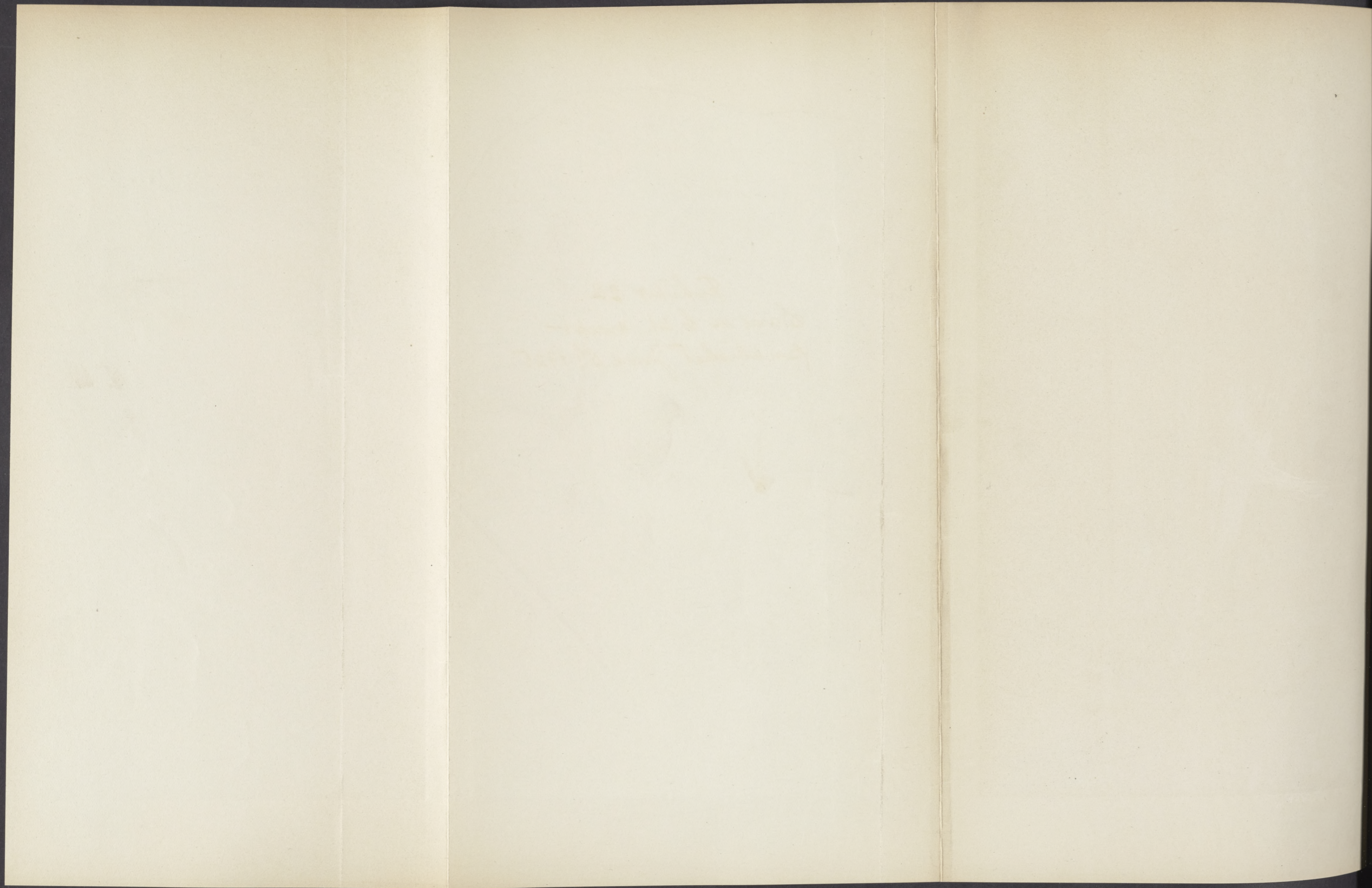
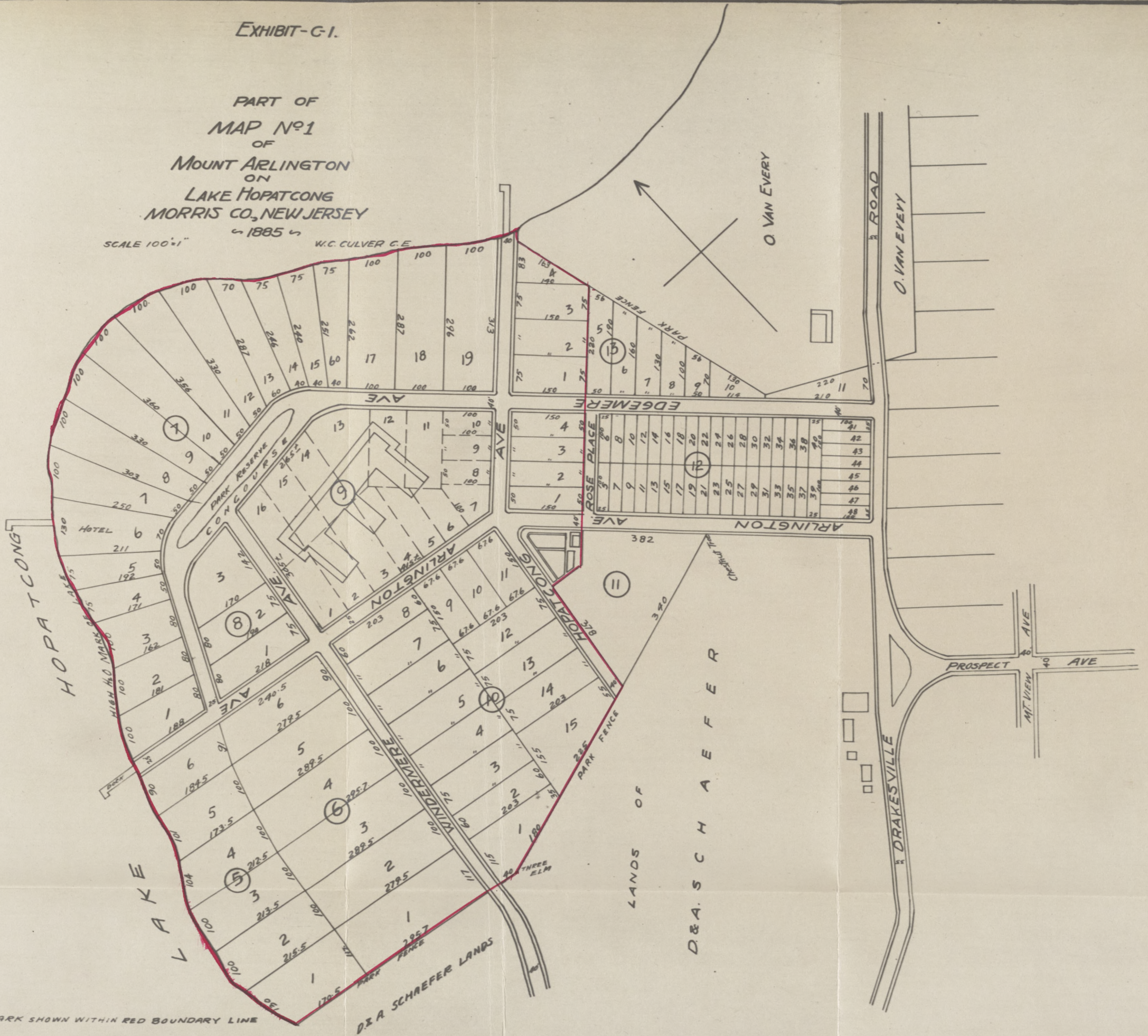


EXHIBIT-G-1.

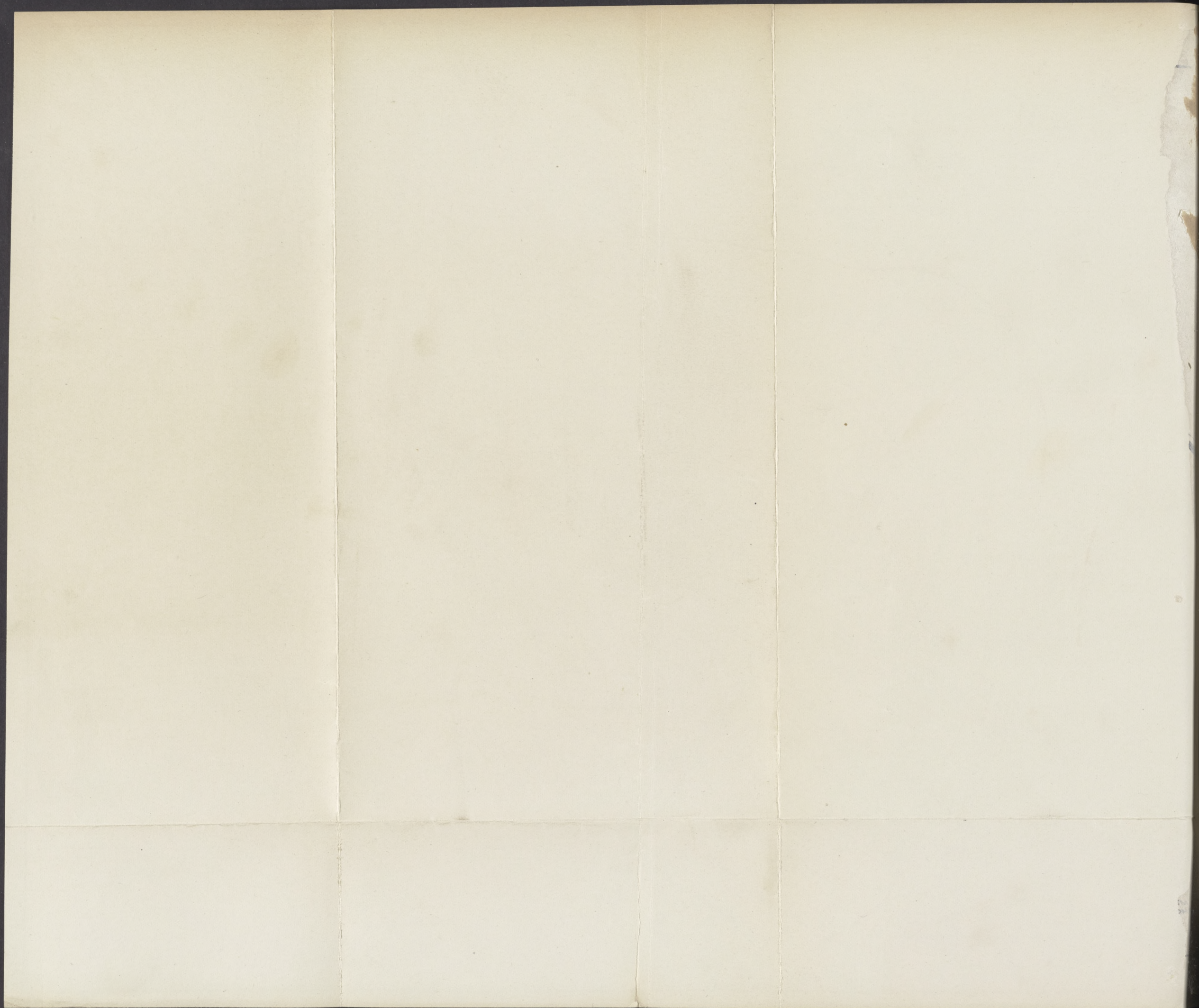
PART OF
MAP No 1
OF
MOUNT ARLINGTON
ON
LAKE HOPATCONG
MORRIS CO., NEW JERSEY

SCALE 100' = 1"

W.C. CULVER C.E.



NOTE: MOUNT ARLINGTON PARK SHOWN WITHIN RED BOUNDARY LINE



New Jersey Court of Errors and Appeals

<i>Between</i>	}	<i>On Bill, &c.</i>
AUGUSTE SCHREIBER, <i>et als.</i> , Complainants, Respondents,		<i>On Appeal from Court of Chancery.</i>
<i>and</i>	}	<i>Fielder, V.-C. Decree for Com- plainants.</i>
NATHAN DROSNES, <i>et als.</i> , Defendants, Appellants.		<i>Defendants' Appeal.</i>

Italics, etc., unless otherwise noted, are ours.

BRIEF FOR APPELLANTS.

Statement of the Case.

The Pleadings.

The bill was filed January 21, 1926. Complainants are owners of property in Mount Arlington, Morris County, New Jersey (p. 1). The lands of complainants are subject to restrictions, originally imposed in 1885, whereby many noxious trades and businesses are prohibited by name and "or any other noxious or dangerous trade or business, *or any hotel or inn, or any establishment, booth or saloon for the sale of malt or other spirituous liquor, or any buildings whatsoever other than private dwellings, with their necessary boat-houses and out-buildings and any fences, except of growing plants or shrubs*" (p. 2). (Proper punctuation Exhibit C. 3.)

The bill charges (p. 11) the defendants used their property, also subject to the restrictions—

“as a *hotel or inn property*, and, as the season progressed, *widened the activities of such user so that by the time of the height of the summer season* said properties owned by Drosness and Levy in said section were being operated and used exclusively for hotel purposes, the buildings located in Block 10 being likewise used for rooming purposes” (p. 11).

The bill then further charges (p. 12, paragraph 23):

“Said *hotel* was conducted in a noisy and offensive manner and formed a nuisance in said neighborhood. The cesspools on said property were inadequate for the use to which the property was subjected and also constituted a nuisance to the neighborhood.”

The bill repeats the charge of actual nuisance in paragraph 25.

The prayer of the bill (pp. 13, 15) is confined to a request for an injunction restraining defendants from using, permitting or suffering to be used any building or buildings on said property for any purpose other than as a private dwelling.

The answer (p. 16) sets up:

First: That, during the summer of 1922 the Marmon Holding Company, defendants' predecessor in the title, used and occupied the premises as a summer boarding house; all complainants, except one, whose property was far removed from that of defendants, purchased their properties subsequent to such user; during 1923 and from thence until the filing of the bill, defendants had used the premises as a summer boarding house without suit, let or hindrance and had expended large sums of money in renovating, altering and improving said premises.

Second: That, the neighborhood had changed and it would be inequitable now to enforce the restrictions as imposed in 1885.

Third: That there was no breach of covenant.

The Facts.

In 1885 the Lake Hopatcong Land and Improvement Co. acquired title to tracts of land bordering on Lake Hopatcong, in what is known as Mt. Arlington. It laid the property out in blocks and lots and sold off a number of lots, subject to the restrictions as substantially set forth in the bill, whereby many kinds of noxious trades and businesses were specifically prohibited and (Exhibit C. 3):

“or any other noxious or dangerous trade or business, or any *hotel or inn*, or any establishment, booth or saloon for the sale of malt or other spirituous liquor, or any *buildings whatsoever other than private dwellings*, with their necessary boat-house and out-buildings and any fences, except of growing plants or shrubs.”

In 1886 the Lake Hopatcong Land and Improvement Co. conveyed all of Block 9, containing 16 lots, and a part of Block 7, containing two lots, to the Lake Hopatcong Hotel Co. In this deed the restrictions and covenants were changed to the extent that the use prohibited, of hotels and inns, was omitted.

Henry Altenbrand, who was one of the original parties interested in the Lake Hopatcong Land and Improvement Co., testified (p. 139) that the purpose in not including Block No. 9 in the general scheme was:

“A The purpose of allowing the hotel without restrictions is that we did not want any other hotel up there.

Q So Block 9 was excluded from the general scheme? A For the purpose of giving Mr. Breslin and his associates title to build the hotel unrestricted."

In 1888 Lake Hopatcong Land and Improvement Co. sold, to the Breslin Hotel and Land Co., all the remaining property, of which it had retained ownership, without any restrictions or covenants.

The result is that the *general* scheme was departed from. A hotel or inn was allowed on Block No. 9, and part of Block No. 7, as early as 1886, and, in 1888, the remaining property then held by the Lake Hopatcong Land and Improvement Co. was disposed of to the Breslin Hotel and Land Co. without restriction of any kind. This left the restricted property only that enclosed in red on map, Exhibit C.

That complainants had notice, from 1922 or 1923, that the property of defendants was being used as a boarding house can admit of no question. It was openly conducted. Altenbrand, one of those originally interested in the Lake Hopatcong Land and Improvement Co., states that: in July, 1923, he offered to sell his property to defendant, Drosness (p. 140); he warned Drosness "that he better be careful spending any money until he knew where he stood"; he again warned him in 1924 (p. 140, 141). The story of Drosness, as to the conversation with Altenbrand, is somewhat different. He says that Altenbrand told him (p. 125) that: "If you would buy my property, all the restrictions is off."

Whatever the details of this conversation may have been there is no doubt but that Altenbrand knew that the property of defendants was being used for purposes other than as a private dwelling.

The testimony of complainant, Schreiber (p. 35), clearly indicates that he had knowledge, over a long period of time, that the property was being used for boarding house purposes. He knew that up until 1922 it had been used as a private dwelling house (p. 34). His house is about 200 to 230 feet from the house of defendants' (p. 39) and about 500 feet from the Alamac Hotel (p. 40). He says that he knew (p. 44) that in 1922 three or four families would come there—"possibly it changed a little, but very little."

"Q Might there have been six or seven?"

A Possibly; I don't know."

There were a few more in 1923 (p. 45). And p. 45):

"A In 1924 there was a change, as far as I can recall, in the character of the people who came there."

He learned that defendants had made interior improvements in 1924 (p. 48). He made no attempt to meet the defendants or talk the matter over with them. He says (p. 35) that he first considered bringing suit in 1925. It was at *his* instigation that the suit was instituted (p. 48). It is clear from his testimony that he had knowledge, from 1922 on, that the property was being used as a boarding house. He raised no objection until the conduct of the boarding house became such as to, in his judgment, constitute a nuisance, and this accounts for the insertion in the bill of the charges of nuisance made in paragraphs 23 and 25.

So with his wife (p. 52). She says that what happened in 1925 to induce her to bring the suit was: "The noise was maddening. We could not sleep; we had to keep our windows closed. That was more than once. It never stopped. It was really impossible to live there with all that noise going on."

And (p. 54):

“Q Did you notice any change in the character or type of people there and their actions between 1924 and 1925? A Why, yes; many more people, much louder, but 1924 was not so objectionable; they had a phonograph.

Q It became most objectionable at what time? A What do you mean?

Q In what season did it become so objectionable that you brought this suit? A Why, when we came out there in June.

Q What year? A 1925.”

And (p. 54):

“Q Prior to the use to which this property was put by the Passaic Country Club in 1924 and in 1925, you say the type of this property and the character and use of this property had been consistent since the beginning? A Yes.”

And, page 57, it is clear that the complaint of Mrs. Schreiber is not with respect to the violation of the restrictions but rather with respect to what she calls, the nuisance. As she says, on page 58 in 1925:

“I say when we were coming up in June, 1925, that we noticed that it was being run on a much *larger scale, and it was offensive in every way right from the beginning.*”

While she attempts to say (pp. 58, 59) that she did not *know* that defendants were operating the property as a boarding house in 1923-1924, it is clear from her testimony that she did know.

Complainant Thomas' property (p. 61) is adjacent to that of defendants and he could not help but know that defendants' property was being used as a boarding house from 1922 on. His complaint also is with respect to the actions of the guests during 1925, which he says constituted a nuisance (p. 64), particularly the parking of

cars. But there had been parking of cars in 1923 to which he objected, although, as he says, in 1925 this parking in his driveway was "*much more than in 1923.*" Most of his testimony from p. 65 on is taken up with a description of the nuisance. He describes on p. 70 the increase in the number of families in 1924 over 1923, and in 1925 over 1924, and his complaint is (p. 70):

"A In 1925 there were more young men and women, the type that wants a good time and don't care where it is gotten or how they have it."

He says the parties were later in 1925 than in 1924, and there was more music. And see his testimony (pp. 78, 79, 80). He says (p. 81):

"Q Did you have any objection to them at all in 1924? A *No, outside of the parking, which I had taken up two or three times, and which was corrected.*"

Steneck, another complainant (p. 87), indicates on p. 89 that he knew that defendants were using the property as a boarding house in 1924. He is about 200 feet away from the boarding house and *must* have known.

Palefski, another complainant, purchased from Altenbrand in October, 1924. His house is about 75 feet from defendants Altenbrand knew that defendants' house was being occupied and used as a boarding house. At least three days after Palefski "signed the deed" in October, 1924, he knew, for he admits a conversation with one of the defendants, which must have given him knowledge (p. 95). He says that from the very first day he got there he objected to the place (p. 96). His complaint, it is quite apparent (p. 92), was to "late hours, music and the late jokes after the music" (p. 92).

The manner in which this house has been conducted since 1922, as described by Preskel (p. 98), Greenfield (pp. 105, 107), Levy (pp. 110-112, 113), Drosness (p. 118), indicates that there could not have been any doubt in the minds of these neighbors but that it was being conducted as a boarding house, certainly not as a private dwelling. It may be true that defendants had more music and more people in 1925 than in 1924, and in 1924 than in 1923, but they *had* music in 1923 and 1924, and there *was* trouble about parking of the cars in 1924, and there *was* no doubt but that, in 1923 and 1924, as well as in 1922, the place was being conducted as a boarding house.

Nor is there any doubt but that the neighbors knew that interior changes were being made in the place in 1924 (p. 48) and that considerable money was being spent thereon.

Henry Altenbrand went to the extent, as he says, of warning one of the defendants in July, 1923, that "he better be careful spending any money until he knew where he stood" (p. 140), and again in 1924 (p. 141). It was Altenbrand who, in 1924, sold to Palefski (p. 91).

It is apparent that the substantial complaint of complainants is *not* that defendants have been conducting a boarding house in violation of the restrictions. They were apparently wholly unconcerned as to whether a boarding house was conducted or not. They acquiesced until, in their judgment, there was too much music and too many boarders and also smells and odors from an overflow and from a cesspool (p. 68). Their *real* complaint was to the so-called nuisance. Knowing, as they did, of the violation of the restrictions from 1922 they did not determine to

commence suit until the summer of 1925 (pp. 57, 58, 47, 35). And they do not start suit until January, 1926.

In the meantime defendants had expended some \$20,000 relying upon their acquiescence.

Schreiber says (p. 47): "A When I got there in June, 1924, I heard that they had altered the interior of their house during the winter."

It is not difficult to imagine why it was that complainants acquiesced. There has been a change in the neighborhood since 1885 when these restrictions were first imposed. Lake Hopatcong has become a popular summer resort. The restricted area is comparatively small in extent (enclosed in red on map, Exhibit C.). As early as 1886 the Lake Hopatcong Land and Improvement Co. conveyed all of Block 9, containing 16 lots, and a part of Block 7, containing two lots, to the hotel company, and the hotel which is now the Alamac was there constructed. This hotel is on the diagonally opposite corner of the street to the property of Thomas (pp. 76, 77). (Indicated on map presented, with this brief, which is Exhibit C. , marked by me.) There is music at the hotel, many guests who go in bathing and there are the usual concomitants of a summer resort hotel. The music can be heard at defendants' property (pp. 113, 114). The music of the summer guests at Bertram Island, in the Lake, can also be heard at any point on this restricted property. There is a scenic railroad in operation on Bertram's Island (p. 114). The Alamac Hotel is within 135 feet of defendants' property. There is a boat builders' shop on the same side of the street as complainants' property, within 510 feet of defendants' property (indicated on map presented

herewith). On the opposite side of the street from complainants' property, and within approximately 700 feet of defendants' property, there is Schaeffer's Hotel, and opposite Schaeffer's Hotel there are a group of small stores (indicated on map presented herewith). On property which immediately adjoins that of complainant Stern, outside the restricted territory, there are erected twelve bungalows (p. 26). (Indicated on map presented herewith.) At the foot of Altenbrand avenue a public dock has been erected (pp. 60, 61, 101). Mrs. Schreiber says that a number of bungalows have been erected, which were not there in 1894, but she does not know whether they are in the restricted area. They may not be within the restricted area, but that area is of small extent. The place has become one for picnic parties (pp. 102, 103) (p. 101) and small bungalows.

The restricted area is of such small extent as that the restrictions are of no practical use because it is possible to bring the restricted uses so near to the restricted property. And the Lake Hopatcong Land and Improvement Co. in 1888 disposed of all its remaining lots without restriction.

The result is that if one stands upon defendants' property, within a radius of 200 to 300 feet, he will see the Alamac Hotel property and the bungalow lot. Immediately adjacent are large areas of land, unrestricted, upon which can be erected hotels, inns, dance houses, buildings for trade or business of any kind. There is a public picnic ground below the bungalow lot from which and to which crowds pass in the summer time. Within a comparatively short distance is Schaeffer's Hotel, with the stores opposite it.

If the Lake Hopatecong Land and Improvement Co. had any idea in 1886 of establishing a high class restricted one-family dwelling development it selected too small a parcel of land upon which to impose the restrictions and accomplish its purposes, in view of the change of the neighboring land from a strictly rural community in 1886 to a popular summer resort.

It was either because of complainants' realization of the change in the character of the neighborhood that they raised no objection whatever to the conduct of this boarding house in 1922, 1923, 1924 and 1925 or because they did not think that the use of the property for boarding house purposes was prohibited. It was because they considered that the boarding house was being conducted in 1925 in such a way as to constitute a *real* nuisance that they, in January, 1926, laid hold of the restrictions to prevent, not only the nuisance, but the use of the property as a boarding house.

It will be observed that boarding houses are not forbidden by name. The restrictions are *very specific*. They refer to specific businesses and to specific uses of the property, such as for "any hotel or inn." The general language is then used: "or any buildings whatsoever other than private dwellings, with their necessary boat-house and out-buildings and any fences, except of growing plants or shrubs."

This general restriction seems to be with respect to the type of building rather than its use. The specific restriction is against the erection of buildings for use for certain trades. The restriction provides that the grantee "shall not at any time hereafter *erect*, or cause, procure, permit or suffer to be erected upon the premises

hereby conveyed * * * *any building* to be used for * * * nor at any time use or employ, or cause, procure, permit or suffer to be used or employed for himself * * * any building erected or which may hereafter be erected on said premises or any part thereof, for the use or purpose of, or as a brewery, distillery * * * *or any buildings* whatsoever, other than private dwellings, with their necessary boat-house and out-buildings, and any fences, except of growing plants or shrubs."

The words "or any buildings whatsoever" must go back to the first word "erect." If it were meant by this restriction to prevent the use of any building, which might be erected upon the property, for other than private dwelling purposes, whatever that may mean, it would have been wholly unnecessary to use any of the other restrictive language. These general words of restriction, which are those relied upon by complainants, must, therefore, have reference to the *type of building*. There is no proof in the case that the type of building occupied by defendants is not that of a private dwelling house.

Boarding houses are and were, at the time of the imposition of the restriction, well known. The parties descended to particulars. They included "hotels or inns" but they left out "boarding houses." It cannot, therefore, be said to be *clear* that the restrictive covenant forbids the use of defendants' property in the manner in which it is being used.

Conclusions of the Vice-Chancellor.

The Vice-Chancellor found that the conduct of the business of defendants was in violation of the restrictive covenant, particularly because

of the use of the language "other than private dwellings with their necessary boat houses * * *" (p. 148). He does not find that they were operating a hotel or inn, which is one of the uses *expressly* prohibited. The nearest approach he comes to that is on page 149, where he says, "That the defendants are operating a boarding house, hotel or inn under the guise of a club is apparent." There is no evidence to bring the business of defendants within that of a hotel or inn. The Vice-Chancellor makes it clear (p. 150), that he bases his conclusion upon the language "other than private dwellings," when he says on (p. 150), "There can be no doubt but that the defendants are using their property for other than private dwelling purposes and that such use is a clear violation of the restrictions thereon." He came to the conclusion: Sub-division A, that it was not necessary that the restrictions apply alike to all property owned by the original grantor shown upon the filed map, and that the fact that the property of the Alamac Hotel was not restricted against business uses or against a hotel or inn could not bar relief; Sub-division B, that the common grantor could not destroy the scheme by transferring the balance of its property free of restrictions, and that the evidence did not disclose that there was any violation of the restrictive covenant affecting the section in which complainants' properties are located.

Dealing with the contention that the neighborhood had changed, the Vice-Chancellor, in subdivision C, says that this is, in effect, an argument that the complainants' property rights are too minute to be protected as against that portion of the public who might desire to patronize a boarding house (p. 153). He then says—

“But damages afford inadequate relief. The complainants are not required to surrender their property rights for the benefit of strangers to the restrictive covenants, but they are entitled to the specific enforcement of the covenant so that they may enjoy their properties in the manner secured to them thereby” (p. 153).

It is submitted that the Vice-Chancellor does not here meet the contention that equity will not grant relief to enforce restrictive covenants of this kind unless the granting of relief will result in substantial benefit to the complainants and that, in the case at bar, it will not result in benefit to complainants because the unrestricted territory is so close to complainants' property as that the maintenance of the restrictions upon their particular properties will not result in any substantial benefit to them. He does not deal with the rule that a restrictive covenant, as a part of a general scheme, on lands will not be enforced against the owner unless there is a corresponding benefit to the lands because of the generality of the restrictions. The burden follows a benefit.

He deals, sub-division D, with the contention of complainants that complainants stood by from 1922 and let defendants expend large sums of money on the property, and holds that the use of the property as a boarding house since 1922, has increased in that each succeeding year, more boarders were taken. He also states (p. 154), “The defendants were notified personally in 1923, that the property was restricted against business uses and to expend money thereon at their peril.” He holds that, having notice of complainants' right, defendants cannot complain that the complainants did not make earlier objection (p. 154).

It is submitted that the Vice-Chancellor does not apply the proper rules with respect to acquiescence, estoppel and laches as laid down by this court.

Acquiescence, estoppel and laches are three separate and distinct defenses as will be hereafter argued.

Finally, the Vice-Chancellor (p. 154), finds that the evidence does not warrant a restraint upon the ground of nuisance (p. 154).

Final Decree.

On June 28, 1926, on these conclusions, a final decree was entered which enjoined the defendants "from using, permitting or suffering said property * * * for the purpose of an inn, boarding house or hotel or for any business purpose whatsoever; and enjoining and restraining said named persons and corporation from using, permitting or suffering said property to be used for any purpose other than as a private dwelling, with its necessary boat house and out-buildings."

From this decree, an appeal was taken (p. 156) (petition of appeal filed p. 157).

ARGUMENT.

The business conducted by defendants does not violate the restrictive covenants, or, at least, it is not so clear that it does as to warrant equitable relief.

This Court said in *Marsh v. Marsh*, 90 N. J. E. 244:

"It is also well settled that every doubt and ambiguity in the language of a restricting covenant must be resolved in favor of the owner's right. *Fortesque v. Carroll*, 76 N.

J. E. 583; *Howland v. Andrus*, 81 N. J. E. 175.”

It reversed the Court of Chancery, opinion reported 89 N. J. E. 110, upon the ground (90 N. J. E. 248):

“Since the complainant’s right to relief is at best doubtful, the decree below must be reversed.”

And Vice-Chancellor Backes said in *Bridge-water v. Ocean City Association*, 85 N. J. E. 379, at (p. 383):

“Courts of equity do not aid one man to restrict another in the uses to which he may lawfully put his property unless the right to such aid is clear.”

This Court affirmed upon the opinion below 88 N. J. E. 350.

And that restrictive covenants of this kind must be strictly construed, see also *Crane v. Hathaway*, 4 N. J. Misc. Reports 293; *Bourgeois v. Miller*, 89 N. J. E. 285; *Hilsinger v. Schwartz*, 4 N. J. A. R. 798.

There is a wide distinction between a boarding house and a hotel or inn.

Words and Phrases, 1st series, Vol. 4, p. 3624, where the distinction between a boarding house and inn is stated to be:

“In a boarding house the guest is under an express contract at a certain rate for a certain length of time; but in an inn, there is no express engagement. The guest being on his way, is entertained from day to day, according to his business, on an implied contract.”

Hotel and inn are synonymous.

Words and Phrases, Vol. 4., title “Hotel” p. 3349.

And see *Martin v. State Life Insurance Company*, 44 N. J. L., at p. 492.

The words "hotel" or "inn" connote the giving of accommodations to the general public without previous engagement and without previous agreement. Both words connote serving casuals or transient travelers.

See Volume 2, Words and Phrases, 2nd Series, title "Hotel," p. 915; title "Inn," p. 1083.

There is no testimony in the case that defendants accommodated transients or travelers. There is testimony that they did not and that they took no one except by previous agreement. The mere fact that they advertised their business is not sufficient to make the business that of a hotel or inn. A boarding house has the right to advertise precisely the same as a hotel or inn. The distinction between a summer boarding house and a summer hotel or inn is well known. It is clear that defendants' business falls within the category of a summer boarding house as usually understood.

The use of the property for boarding house purposes is not specifically prohibited by the restrictive covenant. Hotels and inns, among a great many other businesses, are specifically prohibited. If the language of the covenant, laid hold of by complainants to prohibit the carrying on of a boarding house business, "or any buildings whatsoever other than private dwelling with their necessary boat house and out-buildings and any fences except of growing plants or shrubs" prohibited *all* business use, what was the sense of using over 150 words to expressly prohibit *certain named businesses*.

Apparently, the parties had in mind every conceivable kind of business when they drafted

this covenant. They certainly had in mind "hotels and inns" for they mentioned them. Boarding houses were as well known as hotels and inns and, had they intended to prohibit boarding houses, they undoubtedly would have said so.

As I have heretofore stated, I urge that the words "or any buildings whatsoever other than private dwelling" must go back to the word "erect" in the third line of the restrictive covenant as printed on p. 2, and not to the words "used" or "occupied." If this phrase went back to the words "use" or "occupied" the word "buildings" would not have been used. Instead the phrase would have read "or *for any purpose* whatever other than a private dwelling."

The use of the word "buildings" indicates that the parties had in mind "erection" and "structures." If this is the meaning of the covenant, and I cannot see how it can otherwise be construed and make any grammatical sense, and without convicting the parties of using at least 150 unnecessary words, then the restrictive covenant has not been violated because no building has been erected on defendants' property other than a "private dwelling." That private dwelling is occupied by persons, other than members of the family, as boarders, but that is a distinctive feature of a boarding house. Boarding houses are usually private dwellings used for boarding house purposes.

If the covenant is to be construed as complainants contend, and as the Court below apparently has found it should be construed, where is the line to be drawn? If a family occupying one of these tracts of land should take in, during the summer, one boarder, or two boarders, or

three boarders, would that violate the restriction? Where is the line to be drawn?

There was a logical reason for making a distinction between "hotels and inns" and "boarding houses." While it is true that Lake Hopatcong, at the time of the making of these restrictive covenants, was not the summer resort it is today, it was recognized that it would become a summer resort, else the Lake Hopatcong Land and Improvement Co. would never, in 1886, have conveyed a certain portion of its property for hotel purposes. It must also have been recognized that it was the common custom of persons owning property at summer resorts, to take in summer boarders during the season. The restriction against "hotel or inn," as Mr. Altenbrand suggests, among other things, was to prevent competition with the hotel which was to be built upon the land sold to the hotel company (p. 139).

Hotels and inns cater to transients and casuals and have no right of selection. A boarding house is quite different. It is not competitive of a hotel or inn in the ordinary sense and it does not bring all classes of casuals into the neighborhood.

I submit that it was not the intent of the parties to restrict owners of land within the restricted tract from taking in summer boarders.

The fact that complainants permitted the operation of this house as a boarding house from 1922, without taking any proceedings to prevent it, although they had full knowledge that it was being so conducted, indicates that they did not believe that the restricted covenant prohibited boarding houses. If they had so believed, and had been awake to their rights, they would

have acted long before. It was only when they thought that the boarding house was conducted "as a nuisance" that, undoubtedly advised by counsel, they laid hold of the construction of the restrictive covenant which they now put upon it.

But, it is submitted that, in any event, it is not clear that the business carried on by defendants is within the restrictive covenant and, unless it is clear, equitable relief must be denied and the parties left to their remedy at law.

II.

There was acquiescence, estoppel and laches sufficient to bar relief.

Pomeroy says, 4th Edition, Vol. 4, Sec. 1702:

"One who stands by and acquiesces in repeated violations by the defendant and others cannot be heard to deny the right."

That is acquiescence.

He further says, same section:

"Of course, the injured party must make prompt application for relief, and must not knowingly permit money to be expended without taking any action."

The first part of this statement has to do with laches. The second estoppel.

The two are distinct.

In *Trout v. Lucas*, 54 N. J. E. 361, Vice-Chancellor Emery said, at p. 365:

"A court of equity does not invariably enforce such covenants, and there are several classes of cases in which the remedy by injunction is refused. Two of these classes may be specially mentioned, as claimed to be applicable here—first, where the person imposing the restriction has allowed or acquiesced in material violations of the

covenant or restriction, thus waiving the covenant *pro tanto*; and second, where the party injured has not made prompt application for the relief, and has permitted money to be expended. In these cases the party otherwise entitled to the benefit of the covenant cannot apply for an injunction, and whether there has been such waiver or laches depends upon the circumstances of the particular case."

In *Bridgewater v. Ocean City Association*, 85 N. J. R. 379, Vice-Chancellor Backes said:

"The complainant, Bridgewater (and it is not a remote surmise that the others did too) knew of the erection and improvements as they were being made, and stood by, and with the slightest protest, permitted these large expenditures to be made. He must be held to have acquiesced and to be barred from now being heard to complain. *Trout v. Lucas*, 54 N. J. E. 361; *Goater v. Ely*, 80 N. J. E. 40."

The Vice-Chancellor is here referring to acquiescence and estoppel.

He says on p. 388:

"As to Mrs. Buchanan, the complainants are guilty of laches. The first of these bills by Bridgewater was filed in 1910, and for 13 years they supinely slept upon their rights. Equity demands diligence whenever its remedy is sought in cases of this kind, and where the right to enforce building restrictions is of a purely equitable nature, a court of equity will not enforce them by mandatory injunction, unless prompt application is made by the person entitled to enforce the restrictions. *Trout v. Lucas*, supra."

This Court affirmed on the opinion of Vice-Chancellor Backes, 88 N. J. E. 350.

In *Polhemus v. Lisle*, 3 N. J. Advance Reports 1479, an injunction was sought to prevent the

use of property as a restaurant in violation of restrictive covenants. Laches was urged. The Court found there was no laches but it appeared that the bill was filed within 13 days after the complainants knew that the property was going to be used as a public restaurant—pp. 1496, 1497. The rule that lack of diligence in asserting their rights would have barred complainants was not denied. Of course the delay of 13 days did not show lack of due diligence. In that case the complainants testified to having spent some five thousand dollars in repairs to fit the property for use as a restaurant. In the case at bar there was a delay of three years, with knowledge of the violation of the covenants, until June of 1925, when complainants made up their minds to bring suit, and a delay from June, 1925, until January 1926, before they did bring suit, and the testimony is that over \$20,000 had been spent in improvements, defendants relying upon the fact that, from 1922, the place had been conducted as a boarding house without interference, and complainants had notice that these improvements were being made as early as June, 1924 (p. 48). It was a matter of common rumor (p. 48).

Vice-Chancellor Grey in *Ocean City Association v. Schurch*, 57 N. J. E. 268, at p. 271, said:

“In every case of this sort the party injured is bound to make immediate application to the court in the first instance, and cannot permit money to be expended by a grantee, even though he has notice of the covenant, and then apply for an injunction.”

Vice-Chancellor Fielder seemed to think, in the case at bar, that the fact that defendants had notice of the covenant, and had been warned, was sufficient to permit complainants to take their own time to bring their suit (p. 154). This is not the law.

Vice-Chancellor Garrison in *Lignot v. Jaekle*, 72 N. J. E. 233, said at p. 242:

“The restriction, therefore, will be enforced at the instance of the grantors against the grantee unless the former have in some way forfeited their right to insist on enforcement in equity.”

“*They undoubtedly may forfeit such right by consent.*”

“They may also lose it by abandonment or waiver.”

“Lastly, *the right may be lost by laches.*”

In *Leaver v. Gorman*, 73 N. J. E. 129, Vice-Chancellor Stevens cited with approval *Sayers v. Collyer*, 28 Ch. Div. 103, and said:

“It (*Sayers v. Collyer*) was the case of a beer shop, against the use of which, as such, plaintiff was protected by covenant, which, however, he had not sought to enforce by legal proceedings until the expiration of three years. *It was held that his acquiescence had barred his right to equitable relief.*”

If a party may be barred by laches because he waited for three years to enforce a restrictive covenant against a beer shop, complainants, who have waited for more than three years to enforce a restrictive covenant against the operation of a boarding house, are barred by laches.

What the courts have held is that actions of this kind are subject to all the rules governing cases in specific performance.

As the Chancellor said in *Page v. Murray*, 46 N. J. E. 325, at p. 330:

“The complainant has preferred resort to that relief, and, as it is specific performance, a discretionary relief, the question to be now determined is, whether it shall be afforded to him or whether he shall be left to his remedy at law.”

The rule requiring that there be no acquiescence, estoppel or laches is more stringent in this class of cases than in ordinary specific performance cases for the reason that the attempt is to prevent a person from making a lawful use of his property.

There may be acquiescence without estoppel. There may be estoppel without acquiescence. There may be laches without either acquiescence or estoppel.

Acquiescence may be presumed from long delay. There was sufficient delay in the case at bar to show acquiescence.

There was estoppel in the case at bar because complainants, although knowing that the business was being operated as a boarding house and that moneys were being expended, did not act. Their failure to act has resulted in loss to defendants. This is estoppel.

There was laches.

Due diligence in asserting ones rights is required by all the cases. It cannot be said that there was due diligence here.

III.

The land restricted was of such small extent and the character of the neighborhood has so changed as that relief by injunction will be denied.

I have already pointed out, in the statement of the facts, that the land restricted was small in area; within close proximity the common grantor itself, in 1886, permitted the erection of a hotel; in 1888, it sold all of its remaining property without restriction; within a com-

paratively short distance of this restricted tract there is another hotel (Schaeffer's), a row of stores, a public dock, an amusement park, etc.

It is quite true, as the Vice-Chancellor says, (p. 152), that the evidence does not show that any such business was maintained contrary to a restrictive covenant and that the evidence does show that they are on property outside of the restricted territory.

I submit, however, that the evidence does not show that "they are so far distant from the North Park section as to be of little concern to the complainants." On the contrary, the evidence demonstrates, I submit, that Lake Hopatcong has grown to a popular summer resort; there are hotels, boarding houses, amusement houses, public docks, etc., etc.; the Alamac Hotel, erected by consent of the common grantor, has grown to be a large establishment; there is music and dancing at that hotel, which can be heard over the entire restricted tract.

If the intent of the common grantor was to develop a scheme for a quiet, seclusive neighborhood, each of the houses being occupied by one family alone, it has completely failed.

The situation is analogous to one which would be created if a common grantor had restricted, to private dwelling use, three lots in the middle of a city block, in a street then built up solely of private one-family dwellings, and, as time went on, the street had changed so that all of the properties in the block, in which the restricted lots were located, were used for business purposes and the street had wholly lost its distinctive character as a place for private dwellings. While the restrictive covenants might not have been breached with respect to

the three lots restricted, it is submitted that equity would not enforce the covenant, in favor of the owner of one of these lots against the others, for to do so would be to confer no substantial benefit upon the party seeking the restraint. The scheme would have failed whether the business use was on restricted lots or not.

The Chancellor said in *Page v. Murray*, 46 N. J. E. 325, at p. 331:

“* * * but, now after 17 years have expired, and no buildings of the value contemplated, have been built on the land affected by the agreement, while, upon adjacent land, cheaper buildings have multiplied, it appears to be too late for the covenant to secure the desired end. I think that these circumstances present a case which, in principle, is not unlike the case of *The Trustees of Columbia College v. Thacher*, 87 N. Y. 311, where the Court of Appeals of New York held that equity would refuse to enforce a covenant, not to devote certain property to business purposes where there had been such a change in the character of the neighborhood by the building of an elevated railroad and the increase of business houses, as to defeat the object and purpose of the agreement, and render it inequitable to deprive such owner of the privilege of using his property as its surroundings required.”

This Court said in *Scull v. Ellenberg*, 94 N. J. E. 759, at p. 762:

“A neighborhood scheme of restrictions to be effective and enforceable must have certain characteristics. It must be universal, that is, the restrictions must apply to all lots of like character brought within the scheme. Unless it be universal it cannot be reciprocal. If it be not reciprocal, then it must as a neighborhood scheme fall, for the theory which sustains a scheme or plan of this character is that the restrictions

are a benefit to all. The consideration to each lot owner for the imposition of the restriction upon his lot is that the same restrictions are imposed upon the lots of others similarly situated. If the restrictions upon all lots similarly located are not alike, or some lots are not subject to the restrictions while others are, then a burden would be carried by some owners without a corresponding benefit. 'The burden follows the benefit,' as was said by Judge White in the case of *Sanford v. Keer*, 80 N. J. E. 240. When there is no benefit there should be no burden. If the benefit be destroyed the burden should end."

And in conclusion this Court said (p. 769):

"Where restrictions have ceased to be reasonable, courts of equity are loathe to enforce them. *Courts lay hold of circumstances evidencing a failure or abandonment of the restrictive scheme.*"

The Vice-Chancellor, in dealing with this contention of defendants made below, apparently considered that it was no defense whatever that the neighborhood had so changed as to make the scheme impossible of fulfillment so that injunctive relief would confer no substantial benefit upon complainants (p. 153). He seems to have thought that the mere fact that complainants had *legal* rights warranted them in asking for an injunction.

He cites *Sandusky v. Allsopp*, 131 Atl. 633.

But that was a bill to relieve land from building restrictions. It was not a bill to specifically enforce building restrictions.

But what Vice-Chancellor Backes there said was (p. 634):

"When the parties bound by the covenant have not themselves waived or abandoned or forfeited the restriction upon the use of

land, a change of character of the surrounding territory will not induce a court of equity to refuse to enforce the covenant, *unless the influence of the change upon the restricted area is such as to clearly neutralize the benefits of the restrictions to the point of defeating the object and purpose of the covenant.*"

This is exactly what has occurred in the case at bar.

I repeat that it is clear that complainants never thought of stopping the operation of the boarding house as a violation of the restrictive covenant until they were annoyed by what they considered was a nuisance.

To enforce the restrictive covenant would depreciate the value of the land, not enhance it. The property, to be useful at all, must be used for summer resort purposes. There is no possible benefit to defendants' lot from the restrictions imposed upon complainants' lots. The result is that, because of the failure of the neighborhood scheme, a burden is imposed upon defendants' lot without any corresponding benefit. It is quite immaterial whether the fact that there is no corresponding benefit is occasioned by reason of breaches of the restriction within the restricted territory or whether the neighborhood, surrounding the restricted territory, has so grown up as to nullify the effect of the restrictions and that is what has happened in this case.

IV.

Applying the rules applicable to specific performance, relief should be denied in the case at bar.

In *Brown v. Brown*, 33 N. J. E. 650 (at p. 655), this Court said:

“Where jurisdiction exists (to enforce specific performance) the remedy is not of right; the court holds it in judicial discretion controlled by principles of equity and justice. The question is not what the court must do, but what it may do under the circumstances.” *Radcliff v. Warrington*, 12 Ves. 332.

Again, this Court, in *Blake v. Flatley*, 44 N. J. E. 228 (at p. 231), said:

“But it is also held that courts of equity will not interfere to decree a specific performance except in cases where it would be strictly equitable to make such a decree. Whether, therefore, the contract shall be enforced specifically must rest in the sound and reasonable discretion of the court, depending on the equity of the particular case and the nature of the objections to it. It must determine what are the objectionable circumstances which will control its jurisdiction in such cases within the established rules of equity, though none of those rules are of absolute obligation or authority in all cases.”

In *Page v. Martin*, 46 N. J. E. 585 (at p. 589), Mr. Justice Garrison, speaking for this court, said:

“The attitude of courts of equity upon applications of this character (specific performance) may be summarized in two propositions—first, that the belief invoked is not a matter *ex debito justitiae*, but rests in the sound discretion of the court, and second, that where a contract is certain in all its parts, and for a fair consideration, and where the party seeking its enforcement is

not himself in default, it is as much a matter of course for courts of equity to decree the performance of the contract as it is for courts of law to give damages for the breach of it. That relief rests not upon what the court must do, but rather upon what, in view of all the circumstances, it ought to do, is a distinction which is of little or no practical moment. In every case of this character the court is chiefly concerned with the equities of the parties before it."

Subsequently this language was reiterated by this Court, again speaking through Mr. Justice Garrison, in *Murray v. Skirm*, 73 N. J. E. (at p. 378).

It is significant, however, that this court, in *Brisbane v. Sullivan*, 86 N. J. E. 411 (at p. 413), cited the quotation as follows:

"Mr. Justice Garrison, speaking for this court in *Page v. Martin*, 46 N. J. E. 585, said: 'That relief rests not upon what the court must do, but rather what, in view of all the circumstances, it ought to do. * * * In every case of this character, the court is chiefly concerned with the equities of the parties before it.'"

Subsequent to the decision of this court in *Page v. Martin*, Vice-Chancellor Van Fleet, in *Ten-Eyck v. Manning*, 52 N. J. E. 47 (at p. 49), said:

"The remedy by specific performance is not a matter of strict right, but of sound judicial discretion, and will be granted or denied as the justice and right of the particular case shall seem to the court, on full consideration of the rights and equities of the parties, to require."

This Court in *Pyatt v. Lyon*, 51 N. J. E. 308 (at p. 314), said:

"The relief invoked (specific performance) is not a matter of *ex debito justitiae*; the

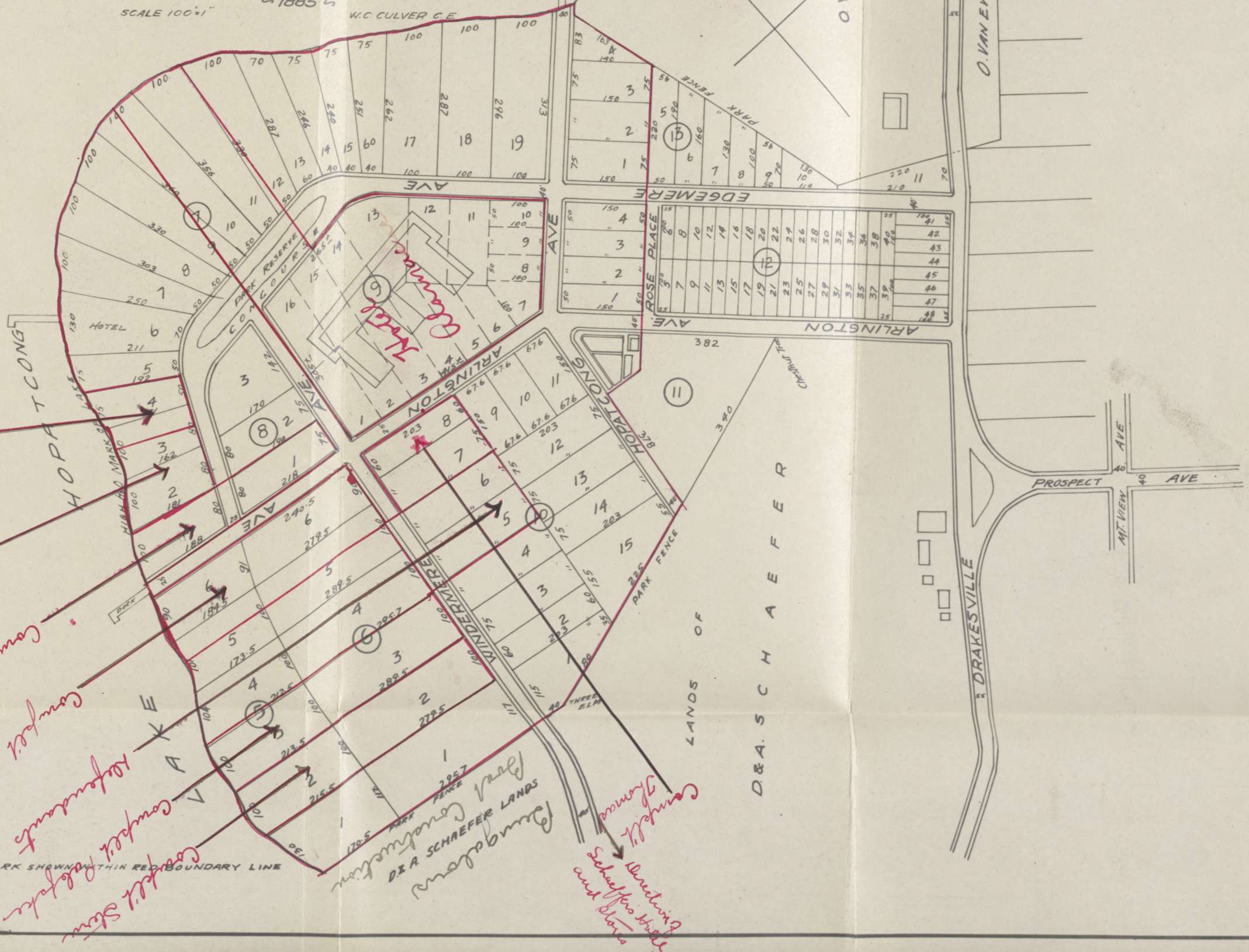
EXHIBIT-G-1.

PART OF
MAP No 1
OF
MOUNT ARLINGTON
ON
LAKE HOPATCONG
MORRIS CO., NEW JERSEY

SCALE 100'=1"

W.C. CULVER C.E.

1885



Campbell's Estate

Campbell & Howard

Campbell & Schaefer

Campbell & Stroman

Refundants

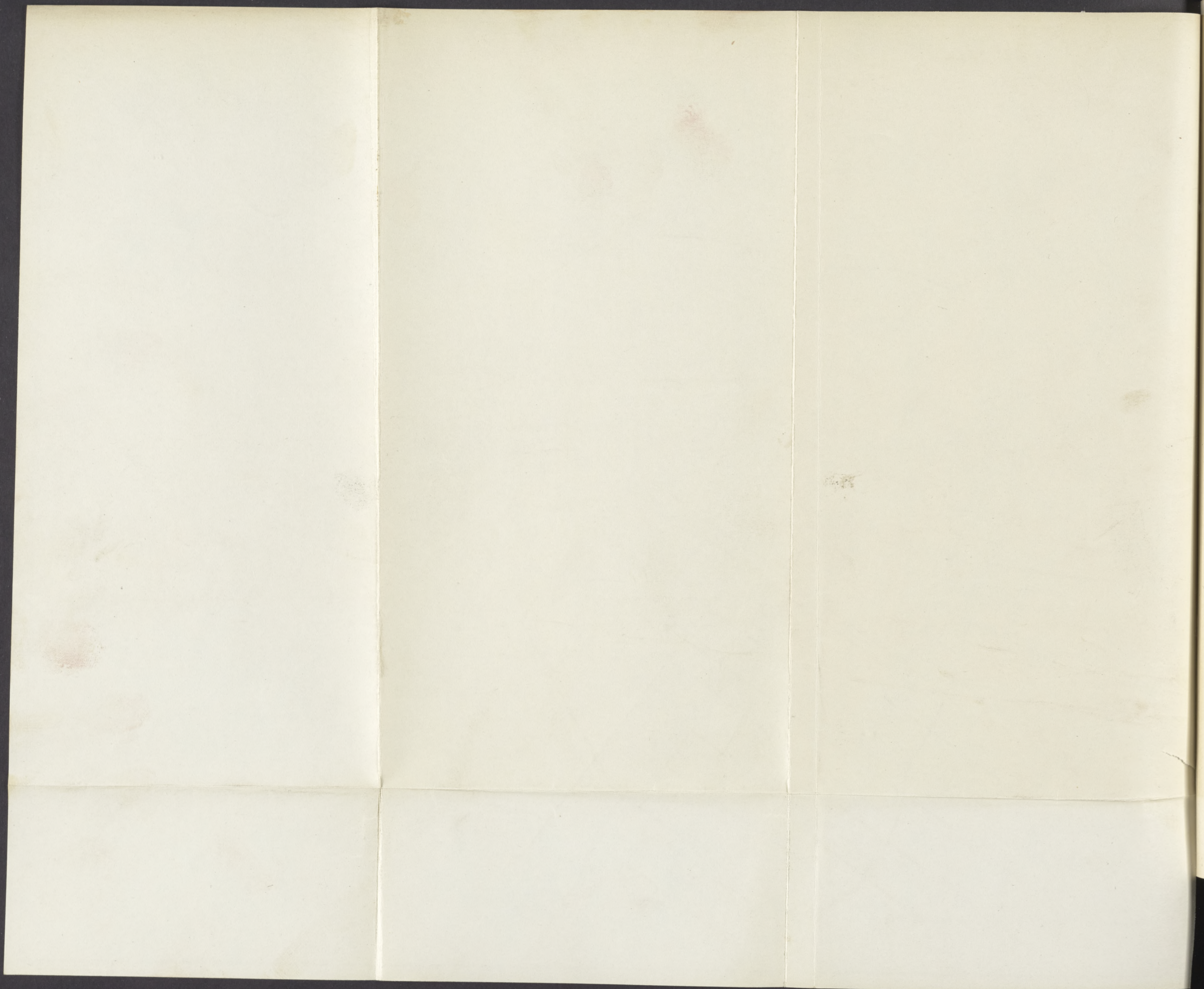
Campbell & Pollock

Campbell & Stroman

*Paul Conover
D.A. Schaefer Lands*

*Constructing
Storeroom
and
Shed*

NOTE: MOUNT ARLINGTON PARK SHOWN WITHIN RED BOUNDARY LINE



bill for specific performance is addressed to the extraordinary jurisdiction of a court of equity to be exercised according to its discretion * * *."

Probably the clearest and most succinct statement of the rule is that contained in *Blake v. Flatley*, 44 N. J. E. (at p. 231), as follows:

"But it is also held that courts of equity will not interfere to decree a specific performance except in cases where it would be strictly equitable to make such a decree."

Mr. Justice Garrison, when he used the term "a matter of course," in *Page v. Martin, supra*, could not have meant to overturn the rule that a court of equity will never make a decree against conscience or equity.

If, after considering all the circumstances proper to be considered, it then appears to this court that all the equities require that there should be a decree of specific performance, of course, as matter of course, a decree goes. I urge that *Page v. Martin*, in nowise limits the effect of the prior decisions on the right of the court to look into all the surrounding circumstances.

It is needless to cite cases to the effect that the utmost diligence is required in all cases of specific performance.

The rules applicable to specific performance apply to cases of this kind.

Murray v. Page, supra.

Indeed, as before stated, complainants are under a greater burden in a case of this kind where the attempt is to restrict a person in the lawful use of his property.

Conclusion.

It is submitted that, because: of the doubt as to whether defendants are, in fact, violating the restrictive covenant; of the acquiescence of complainants; of the fact that, while they remained quiescent, defendants expended large sums of money; of the delay of complainants in instituting suit; the conditions of the neighborhood are such as that no substantial benefit can come to complainants from the injunction enforcing the restrictive covenant; it appears that the real motive of complainants is not to enforce the restrictive covenant but to get rid of what they term to be a nuisance, which the court has found not to be a nuisance; the effect of the injunction will be to impose a burden upon defendants without any corresponding benefit; equity should deny relief and the parties should be left to their remedy at law.

It is respectfully submitted that the decree below should be reversed and the record remitted to the Court of Chancery with directions to dismiss the bill with costs.

Respectfully submitted,

IRVING WERKSMAN,
MERRITT LANE,
Of Counsel for Appellants.

New Jersey Court of Errors and Appeals.

Between

AUGUSTE SCHREIBER, SILAS THOMAS
and JANET FRAME THOMAS, NICHOLAS
H. STENECK and AMALIA STENECK,
KAROLINE VINTSCHGER, SIDNEY J.
STERN and ISRAEL O. PALEFSKI,
Complainants-Respondents,

and

NATHAN DROSNESS, ROSE DROSNESS,
LOUIS LEVY and PASSAIC COUNTRY
CLUB,
Defendants-Appellants.

On Bill for Injunction

On Final Decree

On Appeal from the
Court of Chancery.

BRIEF ON BEHALF OF COMPLAINANTS- RESPONDENTS.

Facts.

Defendants appeal from an adverse decree of the Court of Chancery, directing the issuance of an injunction against all the defendants, restraining them from violating restrictions operative against property in the section of Mt. Arlington, Lake Hopatcong, New Jersey, known as "North Park", and shown on maps filed in 1885 and 1886 by the Lake Hopatcong Land and Improvement Co., which imposed the restrictions. These maps are designated Exhibits C-1 and C-2, (19).

Complainants charged that the defendants were operating a hotel or inn on property in the restricted area in violation of the restrictive cove-

nants which prohibited such business and limited the use of the property therein to the purposes of private dwellings.

The restrictions on said land were as follows:

“That the said party of the 2nd part, his heirs or assigns shall not at any time hereafter erect, or cause, procure, permit or suffer to be erected upon the premises hereby conveyed, or any part thereof, any building to be used or occupied or for the purpose of being used or occupied for any of the purposes herein and hereby prohibited, nor at any time use or employ, or cause, procure, permit or suffer to be used or employed for himself, his heirs or grantees, lessees or tenants of said premises, or any part thereof, or by any other person holding possession of said premises or any part thereof under his or their title, any building erected or which may hereafter be erected on said premises or any part thereof, for the use or purpose of, or as a brewery, distillery, slaughter house, smith shop, carpenter shop, forge or furnace, steam engine, for manufacturing purposes, brass foundry, nail or other iron foundry, soap, candle, starch, varnish, vitriol, glue, ink, turpentine or bone factory, or manufactory of gun powder or other explosive substances or mineral or animal oils, or any bone boiling establishment or factory for tanning, dressing or preparing skins, hides or leather or a cow or livery or other stable, or cattle yard, or hog pen, or any buildings, erections, pits or excavations for the purpose of mining or any other noxious or dangerous trade or business, or any *hotel or inn*, or any establishment, booth or saloon for the sale of malt or other spirituous liquor or *any buildings whatsoever other than private dwellings*, with their necessary boat-house and outbuildings and any fences, except of growing plants or shrubs (italics ours).

And it is further understood and agreed that the foregoing covenant restricting the use of said premises shall attach to and run with the land hereby conveyed and shall be enforceable against said party, his heirs or grantees or

those deriving title under him by the said party of the first part, his successors, assigns or other grantees.

And it shall be lawful, not only by the said party of the 1st part, his successors and assigns, but also for the owner or owners of any lot or lots in the vicinity or adjoining the premises hereby granted, deriving title from or through the said party of the 1st part, to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate the said covenant restricting the use of said premises, it being understood, however, that said covenant is not to be enforced personally for damages against the said party of the 2nd part, his heirs or assigns, unless he or they be the owner or owners of the said premises, or some part thereof, at the time of a violation of the said covenant or of a threatened or attempted violation thereof, but the said covenant may be proceeded on for any injunction of, and for a specific execution thereof, against the said party of the second part, his heirs, or assigns, and for damages against the said party or parties violating the said covenant or their heirs, executors, administrators or assigns."

Complainants were property owners of similarly restricted lots, located in the same section and originally restricted under the same general scheme. Their property was either adjacent or very near to the property of defendants.

Complainant, Karoline Vintschger, is the owner of the Northerly half of Lot No. 3, in Block No. 7, and Lot No. 4, in Block No. 7.

Complainant, Israel O. Palefski, is the owner of Lot No. 3, in Block 6, and Lot No. 3, in Block 5.

Complainants, Silas and Janet Thomas, are the owners of Lot No. 6, in Block 5; Lot No. 6, in Block 6; Part of Lot No. 5, in Block 5; Part of Lot No. 5, in Block 6, and Lots No. 7, and 8, in Block 10.

Complainant, Auguste Schreiber, is the owner of Lot No. 1, in Block 8, and Lot No. 1, in Block 7.

Complainant, Sidney J. Stern, is the owner of Lot No. 2, in Block 5, and Lot No. 2, in Block 6.

Complainants, Nicholas H. Steneck and Amalia Steneck, are the owners of the Southerly one-half of Lot No. 3, in Block 7, and Part of Lot No. 2, in Block 7.

The defendants, Louis Levy and Nathan Drosness, are owners of Lots No. 4, and part of 5, in Block No. 6; Lots No. 4, and part of 5, in Block No. 5; and Lot No. 6, in Block No. 10.

The properties of the complainants and the property of the defendants started from a common source, The Lake Hopatcong Land & Improvement Company. Throughout the chains of title, with few exceptions, the restrictions were recited at length or incorporated by reference. The evidence is uniform throughout the case that, within the restricted territory, a high class, select residential section has been preserved until the acts occurred which form the basis of this suit (p. 139, line 25) (p. 136, line 38) (p. 34, line 25) (p. 52, line 3) (p. 88, line 25). The bill of complaint made as parties defendants, Nathan Drosness and Louis Levy, owners of record of the title of the land on which the buildings designated as the Passaic Country Club are located. Rose Drosness was made a party defendant because she is the wife of Nathan Drosness. The Passaic Country Club was made a party defendant because, as is shown by the evidence, it is a corporation under which name the buildings were being operated as a hotel. The injunction was sought and secured against all the defendants.

The evidence further showed that the various complainants have substantial property interests at the Lake represented by their ownership of either land or buildings within the restricted area. These property interests have a money value of many

thousands of dollars. The property of Silas H. Thomas and Janet Frame Thomas alone has an appraised valuation of \$85,000 (p. 63, line 23).

By way of answer to the bill of complaint, the defendants pleaded: *First*, that the complainants could not have relief because they did not bring suit until after the defendants had expended money renovating the Passaic Country Club property and were guilty of laches. *Second*, the character of the neighborhood had changed and that by reason thereof the restrictions had become inoperative. *Third*, that the defendants were conducting the Passaic Country Club under the corporate name so that "their friends and acquaintances are afforded a summer vacation in a summer boarding house at club rates" and that this does not constitute a violation of the building restrictions.

The first of these defenses is in substance a charge that the complainants are estopped and also barred by laches; the second,—a charge that the general neighborhood scheme has changed rendering the restrictions inoperative and third—that the manner of the conduct of the place is not violative of the restrictions. In the brief of appellants, they stress the following additional reasons: Fourth—the restrictions with reference to private dwellings do not control the *use* to which the property shall be put but merely the erection of buildings; Fifth—that the restrictive scheme was not uniform.

ARGUMENT.

The evidence and the law are conclusive against each of these several defenses.

FIRST.

The defense of estoppel based on the fact that the defendants expended money in renovating cannot avail the defendants in this case.

The only evidence produced by the defendants on this point is the testimony of defendant, Louis Levy, that about \$20,000 was spent in the fall of the year 1925 in renovation and improvement (p. 117, line 24).

In 1923, Henry Altenbrand (who then owned the property later acquired by Dr. Palefski, one of the complainants) had Mr. Charles A. Rathbun, his attorney, write a letter of warning to the Passaic Country Club against operating a boarding house (p. 124, line 25). Altenbrand testified that in June, 1924, he and Mrs. Drosness had a conversation; that she said that they (the owners) were going ahead with their improvements and Altenbrand told her that if they did so, they would proceed at their peril (p. 141, line 2) (p. 140, line 18).

In view of this situation, it cannot be said that the complainants are estopped from insisting upon the observance of the restrictions. As was said by Vice-Chancellor Fielder in the case of *Lavarack vs. Allen*, 2 Miscellaneous Reports, 637, at page 643:

“The defendant did not erect her building in ignorance of the complainant’s rights and, knowing those rights, she proceeded at her peril. It does not now lie with her to complain that the complainants did not object.

Bridgewater vs. Ocean City Railroad, 62 N. J. Equity, 276, at 292. Affirmed, Court of Errors and Appeals in 63 N. J. Equity, 798."

The Marmon Holding Company acquired title to the property (later owned by the defendants) on June 21, 1922. The directors of the corporation used the property for their families and friends (104). Drossness and Levy bought the property on October 16th, 1922, and have held title since that date. In 1923 and 1924, there were some people at the place, but in 1925 the numbers were so numerous that it became apparent that the defendants were engaging in a regular hotel business. The defendants then brought this suit.

The dates of the acquirement of the various titles by the respective complainants are as follows:

Karoline Vintschger, May 12th, 1923, and February 1, 1917.

Israel O. Palefski, October 20th, 1924.

Silas and Janet Thomas, April 30th, 1924.

Auguste Schreiber, October 11, 1923, and June 23, 1924.

Sidney J. Stern, October 9th, 1922.

Nicholas H. Steneck and Amalie Steneck, his wife, April 21, 1923, and May 12th, 1923.

Defendants cite *Trout vs. Lucas*, 54 N. J. E. 361, in support of their contention that complainants are estopped. The facts in that case are not comparable to the present issue. The bill in *Lucas* case sought a mandatory injunction for the destruction of a part of a hotel building, erected in violation of a building restriction. The hotel building proper had been allowed to stand *without objection by complainant's grantors*, who were owners and persons entitled to object, *for eight years from 1878 to 1886 and by complainant himself from February, 1886, to June, 1889.*

In the case at bar, the building itself was originally a private dwelling (as were the others in the North Park Section), and it was not until 1925 that business was engaged in by defendants on such a scale as to clearly indicate their violation of the covenants.

Neither is the case of *Bridgewater v. Ocean City*, 85 N. J. Equity, page 379, applicable to the case at bar. The Court there said, at page 387:

“The complainants contend that the estoppel should not work against them, because the expenditures were not made in ignorance of their rights under the covenant. It cannot, with any hope of belief, be said that Mrs. Buchanan was not put upon inquiry. The maps and the unimproved condition of the strip, compared with the adjoining and improved land, were enough to charge her with this duty; but my understanding of the law is that a failure to discharge it will not, at all events, estop one from setting up acquiescence, for, as Vice-Chancellor Pitney said, in *Sumner v. Seaton*, 47 N. J. Eq. 103, the question is not so much *what the party setting up the estoppel might or ought to have known or supposed, as what he actually did know and suppose to the knowledge of the other party*. It was not attempted to be proved that Mrs. Buchanan had actual notice of the covenant, or of its force and effect, and in view of the large purchase price of the property, and the heavy expenditure of money in its improvement the only reasonable inference is that she honestly believed, at the times she bought and built, the title to be good, and that she owned the property. More than this is not expected. *Sumner v. Seaton, supra.*”

In other words, in that case Mrs. Buchanan referred to, did not have actual notice of the covenant or its force and effect and she honestly believed her title to be good. In the case at bar, the facts are exactly opposed to that situation. The defendants purchased their title with a clause in their deed

specifically incorporating the restrictive covenants by reference. This gave them full notice. In addition to that, they had notice from Altenbrand, former owner of property now owned by complainant, Israel O. Palefski, and they did not thereafter expend money in the honest belief that the covenant was not operative. They expended money upon the basis of an allegation that they were going to take a chance and with this statement, "We have got lawyers and we can win out" (p. 141, line 10).

The defendants make the statement in their brief that the money expended by them was spent in reliance upon the fact that from 1922 the place had been conducted as a boarding house without interference. This is contrary to the testimony. The testimony of Mr. and Mrs. Schreiber is that in 1924 there were some people at the place but that there was not such confusion or noise as to move them to action. Mr. Thomas did not buy his property until April 30, 1924. Dr. Palefski did not come to live at the property until June, 1925, having signed a contract for the purchase thereof on September 19th, 1924. No proof in the case is submitted that complainants, Vintschger, Steneck or Stern had any knowledge of the operation of this place as a hotel or inn until the year 1925. The statement in appellant's brief that complainant Schreiber "had knowledge from 1922 on that the property was being occupied as a boarding house" is not a fair inference from his testimony. He merely said that he had heard that certain interior improvements had been made, the character of which he did not know, and that in 1924 there was a change in the character of the people who came there. The same criticism is applicable to the conclusions sought to be drawn in appellant's brief with reference to Mrs. Schreiber's testimony. The only evidence in the case of knowledge on the part of any predecessor in title of the complainants is that of Altenbrand, predecessor in

title of Palefski, who gave the defendants the warning referred to above. Neither is the statement correct that money was expended by defendants relying upon the fact that there had been no interference. The money was spent in defiance of the covenants, in the face of warning of their existence and in reliance upon the belief that they could be defeated. The doctrine of the estoppel flows from the fact that it would be inequitable for the complainants to enforce their rights where a violation which gives rise to those rights had been permitted to continue and persisted in by the defendants in reliance upon acquiescence by the complainants. This is not the situation in the case at bar, for, as Vice-Chancellor Fielder pointed out in his opinion below, the defendants had notice of the complainants' rights and were acting in defiance of them and at their peril.

Neither are the complainants guilty of laches.

Each of the arguments presented under the last point is applicable here. The complainants acted with due diligence in this matter. It was not until the year 1925 that it became apparent that the defendants were using the property in such a way as to make it apparent that their place was being operated as a business enterprise for the general accommodation of the public. Complainants filed this suit in January, 1926. It was highly proper that no move should be made by the complainants until the actions of the defendants justified the belief that they were defying the restrictive covenants. The institution of the suit in January, 1926, by these complainants following within three months of the closing of the season by these defendants was sufficient promptness to justify the consideration of this suit by the Court of Chancery.

SECOND.

The allegation that the North Park Area is not very large in extent and that outside of the restricted area there are business places should not nullify the restrictive covenants.

In the first place, the North Park Area is not restricted as to size. The numerous lots composing it are shown on the maps. It is sufficiently large to give to the section embraced within its boundaries the character of a residential neighborhood which the restrictions contemplated. The uncontradicted evidence is that from the time of imposition of these restrictions to the present time, they have been observed without default of any kind until the commission of the acts of the defendants. Within the restricted territory, there has been no deviation from the observance of these restrictions during that entire period. Defendants refer in their brief to Bertrand Island Amusement Park. This is over a mile from the North Park Area and across Lake Hopatcong. The boat builder's shop referred to is outside of the restricted area and there is nothing in the record to justify the statement in the appellant's brief that it is 510 feet from the defendants' property. Shaffer's Hotel is outside of the restricted area and there is nothing in the state of the case to justify the statement in the defendants' brief that it is 700 feet from the defendants' property. The twelve bungalows referred to in defendants' brief are outside of the restricted territory.

The statement is made in appellants' brief that "the restricted area is of such small extent as that the restrictions are of no particular use because it is possible to bring the restricted uses so near the restricted property."

This statement is entirely unwarranted. The photographs in this case show the character of the properties of complainants. The fact is that this North Park Section is so situated in Lake Hopatcong that it is isolated from the business places referred to in the testimony outside of the restricted area. The defendants say in their brief: "If the intention of the common grantor was to develop a scheme for a quiet exclusive neighborhood, all houses being occupied by one family alone, it has completely failed." This is not correct. The evidence in the case is that until the advent of the defendants this quiet and seclusion had been preserved.

The case of *Page v. Murray*, 46 N. J. Equity, page 325, cited by the appellants is not applicable to the facts in the case at bar. There, *for seventeen years*, following the imposition of the restrictive covenants no buildings of the value contemplated by the public had been built, while upon adjacent lands cheaper buildings had multiplied. The present case discloses a picture directly opposed to this situation. Here, *for nearly forty years*, the covenants had been strictly observed. The case of *Scull v. Eilenberg*, 94 Equity 759, cited by the appellants does not sustain their position. We agree with the doctrine, set forth in that case at page 762, that the restrictions must apply to all lots of like character brought within the scheme and that the restrictions must be a benefit to all within that scheme. That is the situation in the case at bar. The imposition of the restrictive covenants have operated to protect the property of complainants and others in the North Park Area. This latter case also held that where restrictions have ceased to be reasonable, courts of equity are loath to enforce them.

Inspection of the property involved in the North Park Area and the character of the buildings there

located would not lead one to conclude that the imposition of the restrictions have lost their efficacy from the standpoint of reasonableness. The presence of Shaffer's Hotel outside of the restricted area, the presence of Bertrand Island Amusement Park, a mile away from the North Park Section, the presence of certain bungalows outside of the restricted area and the presence of a public dock outside of the restricted area certainly cannot be said to neutralize the benefit of the restrictive covenants in the North Park Section to the point of defeating the object of the covenant.

In the case of *Laverack v. Allen*, 2 N. J. Mis. Rep. page 637, at page 642 (Chy) it is said:

"Changes in residential neighborhood depend on their number and character, and if, as in this case, *they do not interfere with the enjoyment by lot owners of the benefit of the neighborhood as a place of residence*, or show a general intention to abandon such plan, they are not material. *Morrow vs. Hasselman*, 69 N. J. Equity, 612; *Sanford vs. Keer*, 80 N. J. Equity, 240."

This is the situation in the case at bar, except that the present case is even stronger for, in the cited case, the business enterprises were located within the restricted area. In the present case *no violations of the covenants within the restricted area ever occurred* until the acts which form the basis of the present suit.

THIRD.

The defendants violated the restrictions.

It is only by ignoring evidence in the case that the statement can be made that the defendants in 1925 were not operating a hotel or inn.

Regular rates were charged for the rooms and meals, the European plan being in force (109) (111). The rates were \$40 to \$50 a week per person (114) (115). There was a clerk in the place (110). Mr. and Mrs. Drosness were the managers (p. 114, line 22). They maintained a register for the registration of guests (110). The rooms were numbered (110). They had a "bell boy" (110).

Levy (one of the defendants) testified that they did not accommodate transients or indiscriminately solicit the patronage of the public (111) (112). This was shown to be false for he had to admit the authenticity of an advertisement which was inserted in the *American Hebrew*, May 29th, 1925, and June 5th, 1925 (a Jewish weekly in New York) [this is incorrectly designated in the record as the *American "Leader"*] (84). This advertisement was as follows (116):

"THE PASSAIC COUNTRY CLUB

Delightfully located on Lake Hopatcong. Good fishing, boating and bathing. Delicious Hungarian food. Reasonable rates. Open May 25th. Accommodations for week-enders.

Tel. Hopatcong 120 N. Drosness, Mgr."

It, therefore, clearly appears that solicitation of public patronage was made by defendants with no restriction as to the identity of the guests. The fact that it was operated under the guise of the

club was a "blind". The effrontery of the defendants was clearly shown by the fact that after the case was tried by Vice-Chancellor Fielder and before decision had been rendered by him, these defendants caused a circular to be issued described on pages 144 to 146 of the record. In this circular the rates at the country club were given as \$7 and \$8 per day. The only restriction on reservations was that a \$10 deposit was required per person. The advertisement said that hotel maid service was furnished and that a type of entertainment would be furnished that "would make you think of dear old Broadway". Despite all this evidence, the appellants, in their brief, say: "There is no evidence to bring the business of the defendants within that of a hotel or inn." Then again in another portion of the brief, "There is no testimony in the case that the defendants accommodated transients or travelers."

Even if the Court rested its decision solely on the specific business enterprises proscribed in the restrictions, it would be amply justified in finding that the defendants were operating a hotel. We fail to see how the appellants can seriously urge in their brief that no transients or travelers were accommodated. The only justifiable inference from the testimony is that not only were transient guests accommodated but they were solicited.

FOURTH.

The covenant in question is not a building covenant alone as argued by the appellants, but is both a building covenant and a covenant restricting the use of the property.

Appellants urge that the covenant in question is simply a covenant with reference to the type of building to be erected and not its use, and seek to argue that the covenant is not violated unless it can be determined that the building to be erected is intended for a prohibited use.

Counsel for appellants do not cite the case of *Miller v. Jersey Coast Resorts Corp.*, 130 Atlantic Reporter, 824, but that case was one where the very same point was raised by the defendants and the Court there interpreted the covenant to be solely a building covenant and not a covenant restricting the use of the property. We cite it to show that the facts which there led the Court to that conclusion are radically different from those in the case at bar. In that case, decided by Vice-Chancellor Berry, the restrictive covenant read as follows:

“That the party of the second part, his heirs and assigns will not at any time hereafter erect or permit upon any part of the said land any hotel, drinking saloon, gaming house, slaughter house, furnace, manufactory, brewery, distillery, or building for the curing of fish, or for any other uses or purposes that shall depreciate the value of the neighboring property for dwelling houses.”

The decision of the Court turned on the fact that this covenant was strictly a building covenant and

not a covenant restricting the use of the property, for the Court said at page 827:

“It will be noted that the covenant is not to ‘erect or permit upon any part of said land any hotel * * * or building for the curing of fish, or for any other uses or purposes that shall depreciate the value of the property for dwelling houses’. The inhibition is against buildings intended for certain uses, and, as I read the covenant, unless it can be determined beforehand that the building is intended for a use specifically prohibited or a use that will depreciate the value of adjoining property, the building is not objectionable. The restriction is not against the use to which the lot is to be put, but is against the erection or permitting on the lots of buildings intended for particular purposes. It is strictly a building restriction. It is not a covenant against nuisances and trade, and, applying the rule of strict construction which it is uniformly held should be applied to covenants of this character, I apprehend that, if relief is to be granted in this case, it must be granted on the ground that the defendant is maintaining a nuisance, and not that its conduct and use of its property is in violation of the restrictions.”

In the present case, the covenant is not only against the erection of any building particularly specified in the covenant, but against the *use* of any building for any of the purposes named in the covenant.

Neither in the *Miller* case was there any specific restriction which limited the use of the property to *private dwellings with their necessary boat houses and outbuildings*.

In our opinion the *Miller* case was correctly decided on the facts, for the rule is that the restrictive covenants should be strictly construed. A strict construction of the covenants in our case will permit without question a finding in favor of the complainants.

Further, in the *Miller* case the Court, at page 827, referred to the case of *DeGray v. Monmouth Beach Club House*, 50 Eq. 329 (where the same covenant which was involved in the *Miller* case had been construed by Vice-Chancellor Green in the *DeGray* case), and in the *Miller* case Vice-Chancellor Berry approvingly points out that the covenant would not be deemed to be violated unless the use to which the property was being put was one which would run counter to the original purposes of the promoters of the scheme who exacted the covenant. It is clearly apparent from the evidence in our case that the use to which the Passaic Country Club is being put is counter to the original purposes of the Lake Hopatcong Land and Improvement Company, which exacted the covenant (p. 136).

The appellants in their brief ignore the fact that there are two parts to the restrictive covenants imposed upon the property in question, one prohibiting the *erection* of certain types of buildings, and the other prohibiting their *use*.

The covenant in question is as follows:

“That the said party of the second part, his heirs or assigns, shall not at any time hereafter *erect* or cause, procure, permit or suffer *to be erected* upon the premises hereby conveyed, or any part thereof, any building to be used or occupied or for the purpose of being used or occupied for any other purposes herein and hereby prohibited (this is the first part of the restrictive covenant), nor at any time *use or employ* or cause, procure, permit or suffer *to be used or employed* for himself, his heirs or grantees, lessees or tenants of said premises, or any part thereof, or by any other person holding possession of said premises, or any part thereof, under his or their title, any building erected or which may hereafter be erected on said premises, or any part thereof, for *the use or purpose of* (then follow certain

proscribed enterprises. This is the second part of the restrictive covenant as to the use to which the buildings erected on such property shall be put)." (Italics ours.)

This analysis of the restrictive covenant clearly shows that the proscription was directed at both the character of the building to be erected and the subsequent use thereof.

The general clause at the end "or any buildings whatsoever other than private dwellings" is governed by both parts of the restriction as are all the other proscribed enterprises.

We contend that a proper interpretation of the restrictive covenants indicates that the use of the property is limited to that of private dwellings. To adopt the interpretation of this covenant urged by the appellants, the Court would have to ignore the language which pertains to the use to which buildings should be put.

FIFTH.

There is no merit in the contention of the appellants that the exclusion of Block 9 from the imposition of the original restrictions destroyed the universality of the restrictive scheme.

There is no doubt that a neighborhood scheme of restrictions to be effective and enforceable must be universal. That is, the restrictions must apply to all lots of like character brought within the scheme. This rule is enunciated by this court in *Scully v. Eilenberg*, 94 Equity, page 759, and also in the case of *Fort v. Field*, 124 Atlantic Reporter, 314 (not cited by the appellants).

It was urged in the latter case that the restrictive covenants were not part of a general scheme but

the facts in that case were that the original creator of the restrictive covenants therein conveyed various parcels of a 210 acre tract without uniformity as to restrictions covering the number of dwelling houses to be erected upon the parcels thus conveyed and in many instances without any restriction of such nature.

This fact is directly opposed to the evidence before the Court in the instant case. All of the lots contained in the general scheme were subject to precisely the same restrictive covenants, and this is not a case as was the *Fort* case where no uniformity existed in the imposition of restrictions.

Defendants argue improperly that because a hotel was permitted to be erected on Block No. 9, the efficacy of the scheme was destroyed.

The fact is that the hotel's construction was commenced in 1884 and that, subsequent thereto, a deed to the owners of what was then known as the Hotel Breslin (now Alamac) was given which permitted the erection and maintenance of the hotel on that particular block. As Altenbrand testified, however, the situation was that Block No. 9 was excluded primarily from the restricted area and the covenant with reference to hotels was not imposed so as to have one high class hotel at that place and a large neighborhood surrounding that block limited solely to private dwellings (p. 136).

This is not a case of a "let down" in the general scheme of restrictions. The general scheme of restrictions imposed by the Lake Hopatecong Land and Improvement Company has been continuously maintained since the date of the imposition of the restrictions.

The further distinction between the case at bar and the *Fort v. Field* case is that the property used by the Hotel Breslin was totally distinct and apart from the territory upon which the restrictions were imposed and formed no part of the restricted area.

The deeds containing the restrictive covenants operative against and in favor of the respective complainants show that the title of Auguste Schreiber originated in deeds from the Lake Hopatcong Land and Improvement Company dated October 1st, 1885, and March 19, 1886, the title of Mr. and Mrs. Silas Thomas originated in deeds from the Lake Hopatcong Land and Improvement Company dated October 24, 1885, January 30th, 1886, and January 11th, 1886, the title of Nicholas Steneck and Amalie Steneck originated in deeds from the Lake Hopatcong Land and Improvement Company dated January 14, 1886, and February 25th, 1886, the title of Karoline Vintschger originated in deeds from the Lake Hopatcong Land and Improvement Company dated February 25, 1886, and April 8th, 1886, the title of Sidney J. Stern originated in a deed from the Lake Hopatcong Land and Improvement Company dated November 25, 1885, and the title of Israel O. Palefski originated in a deed from the Lake Hopatcong Land and Improvement Company dated March 19, 1886.

All property similarly situated was subject to precisely the same covenants and created a complete uniformity of restrictions, clearly distinguishing it from the facts in the case of *Fort v. Field*.

The lots restricted were in blocks surrounding Block No. 9 (p. 136, line 3) on which there was completed in 1886 (p. 135, line 23) a hotel building known as Hotel Breslin (now Alamac). The construction of this hotel began in 1884 (p. 135, line 20). This block was excluded from the general scheme of restrictions. The ground plan of this hotel is designated on the filed map (p. 135, line 23).

Henry Altenbrand, the only living organizer and officer of the Lake Hopatcong Land and Improvement Co., testified that the restrictive scheme was designed to form a restricted park area in the center

of which would be a high class hotel and surrounding the block on which the hotel was built would be lots with building restrictions thereon including therein a clause limiting the use thereof to residential purposes (136). The hotel property was *excluded* from the scheme of restrictions operative as against the construction of or use of a building as a hotel or inn (p. 136, line 3).

On January 20th, 1886, by deed recorded in Book R-11, page 586, the Lake Hopatcong Land & Improvement Co. conveyed to the Breslin Hotel and Land Co. the property in Block No. 9, on which the hotel was built (p. 138). In this deed the covenant against a hotel or inn was not included.

On September 13th, 1888 (p. 151), by deed recorded in the Morris County Clerk's Office in Book N-12, page 43 (p. 49, line 38), the Lake Hopatcong Land and Improvement Co. conveyed remaining land which they owned to the Breslin Hotel & Land Company. No description of the land intended to be conveyed is given in this deed and there is no evidence to show that it conveyed any lot in the North Park section. No restrictions were contained in this deed.

The restrictions upon the properties owned by all the parties to this suit and the rights and liabilities arising therefrom were in effect as a neighborhood scheme prior to the deed to the Breslin Hotel & Land Company in Book N-12, page 43. This could not affect the rights of complainants who trace their title to prior deeds containing the restrictive covenant, which covenant expressly gave the grantees the right to enforce the restrictions against other grantees of the common grantor.

Bridgewater vs. Ocean City, &c., 62

Equity, 276; affirmed 63 Equity, 798.

Shoyer v. Mermelstein, 93 N. J. Equity, 57.

Neither does the fact that, in the conveyance to Breslin Hotel & Land Company of Block 9, the inhibition against a hotel or inn was not included, militate against the complainants.

Restrictions for various sections of a tract may vary in accordance with the design of the original grantor.

Sanford v. Keer, 80 Equity, 240.

The originator of the restrictions may allot one section of his tract for stores, another for a railroad station, another for a hotel, and another for private residences and it is sufficient if the restrictions for each section are uniform according to the use for which the promoter has designed such section.

The construction of the Hotel Breslin was commenced in 1884 and completed in 1886 (135) and it was delineated as hotel property on the map filed by the common grantor before it sold lots on the tract. Each deed refers to said map, so that the grantees through whom the defendants claim title had notice that Block No. 9 was to be devoted to hotel purposes.

Sanford v. Keer, 80 N. J. E. 240, at 249.

It therefore clearly appears that the exclusion of Block No. 9 from the restricted area did not deprive the lots in question, involved in this suit, of the benefit of the neighborhood scheme of restriction.

It is true that the law is that to constitute a neighborhood scheme of restriction, the scheme must be universal, that is "the restrictions must apply to all lots of like character *brought within the scheme.*"

Scull v. Eilenberg, 121 Atl. Rep. 788.

Lavarack v. Allen, 2 Misc. Rep. 637.

The *uncontradicted evidence* in this case is that the restrictions were applied to all lots of like character brought within the scheme.

We respectfully submit that the decree of the Court of Chancery should be affirmed.

KING & VOGT,
Solicitors of Complainants-Respondents.

HAROLD A. PRICE,
Of Counsel.

