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Exhibit P-1—Bricker Deed, Addenda
Inserted by written consent of Counsel.

1872

Received of the Treasurer of the State of New Jersey
the sum of \$1000.00 for the year 1872
in full for the year 1872
of the sum of \$1000.00 for the year 1872
of the sum of \$1000.00 for the year 1872

John
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AGREED STATE OF FACTS.

NEW JERSEY SUPREME COURT.

CAPE MAY COUNTY.

ELEANOR C. EBY,

Plaintiff,

v.

JENNIE E. PONTIERE, STAN-
LEY M. PONTIERE, and
JOSEPH KILMER,

Defendants.

Action at Law.
In Ejectment.
Agreed State of
Facts.

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The said plaintiff and defendants, by their respective attorneys, hereby agree that the following facts are admitted and that the issues raised by the pleadings shall be argued and submitted on said facts, to the determination of the New Jersey Supreme Court before his Honor, Rulif V. Lawrence, Circuit Court Judge, sitting for said New Jersey Supreme Court at such time and place as he may fix for the purpose; reserving to each of said parties the right upon said argument, to object to any admitted facts as evidence in like manner as if proof of said facts had been offered upon trial of said issues, and to prove such other facts and introduce such other evidence as may be necessary or proper, and also reserving to each of said parties the right to non-suit or directed verdict and to appeal from the final judgment to be rendered upon said issues as aforesaid and to any equitable relief in the Court of Chancery of New Jersey, to which either party might otherwise be entitled.

20

30

1. The following is a bill of particulars of the claim of title of the plaintiff to said premises mentioned in the plaintiff's complaint, the same being an abstract of such documentary evidence of the title as the plaintiff intends to give in evidence on the trial of the above stated cause.

10 1. On a warranty deed—Bella O. Bricker, of the City and County of Philadelphia and State of Pennsylvania, wife of William H. Bricker, Sr., Physician, to Caroline Engstrom, widow, dated April 6, 1920, and recorded in the clerk's office of the County of Cape May, in Deed Book 352, page 178, etc.

20 2. Warranty deed, Caroline Engstrom, widow, of the City and County of Philadelphia, to Eleanor C. Ely, singlewoman, of the same place, dated January 18th, 1921, and recorded in the clerk's office of the County of Cape May, in Deed Book 410, on page 266.

The above is a copy of bill of particulars demanded by defendants and filed in the above stated cause.

30 3. By an agreement in writing made May 1, 1924, between the plaintiff by Francis C. Ely, agent, and the defendants, Jennie E. Pontiere and Stanley M. Pontiere, her husband, the said plaintiff sold the premises to the said defendants, Jennie E. Pontiere and Stanley M. Pontiere, her husband, for a purchase price of \$7500 on account of which said defendants paid the sum of \$500 to plaintiff and entered into possession of the premises as purchasers under said agreement about May 1, 1924. Said two defendants have not paid the balance of purchase monies or made settlement within the time which by said agreement was to be on or before May 1, 1925, when said two defendants were to pay the

sum of \$1000 and plaintiff was to convey a good and marketable title to said two defendants free and clear of encumbrance subject to a purchase money mortgage to be then made by said two defendants to plaintiff to secure payment of the sum of \$6000 as the balance of said purchase price in yearly payments of at least \$1000 each.

4. Plaintiff's attorney addressed a letter dated July 9th, 1925, a true copy of which letter is annexed hereto. 10

5. Under date of July 24th, 1925, Mrs. Bella O. Bricker answered plaintiff's attorney's letter, a true copy of which is annexed hereto.

6. Thereafter attorney of plaintiff, advised that his client would not purchase the alleged outstanding interest of Mrs. Bricker or Mr. Bricker, and such right, title and interest as remained in Bella O. Bricker and her husband in the premises involved in this action was conveyed to Joseph Kilmer, by said Bella O. Bricker and William H. Bricker, her husband, by deed dated August 31, 1925; said Joseph Kilmer being at the time employed as a farm hand on the premises by said Stanley M. Pontiere. 20

7. Thereafter, said Stanley M. Pontiere and Jennie E. Pontiere requested plaintiff's attorney to allow and deduct from the contract price the cost of acquiring the interest of Bella O. Bricker and her husband, and the attorney of the plaintiff in the latter part of September, 1925, consulted his client and replied that the plaintiff herein would make no allowance or deduction whatever. 30

8. The said Jennie E. Pontiere and Stanley M. Pontiere, her husband, were notified by plaintiff that settlement would take place on May 1st, 1925, and on May 12th, 1925, and on each occasion a deed was presented by plaintiff, duly and properly executed by plaintiff, but the said Jennie E. Pontiere or Stanley M. Pontiere did not appear.

10 9. On November 10, 1925, said Jennie E. Pontiere and Stanley M. Pontiere, her husband, were notified that plaintiff was still willing to make settlement. Plaintiff stated that time was the essence of the agreement and notified said Jennie E. Pontiere and said Stanley M. Pontiere to appear at the office of plaintiff's attorney on November 18th, 1925, at 10:30 A. M., for the purpose of making settlement, or deposit would be forfeited; at which time the plaintiff was ready to tender a deed, but said Jennie E. Pontiere or Stanley M. Pontiere did not appear.
20 Dated July 14, 1926.

CHARLES K. LANDIS, JR.,
Attorney for Defendants.
F. STANLEY KREPS,
Attorney for Plaintiff.

Agreed State of Facts

5

July 9th, 1925.

Mrs. Bella O. Bricker,
2317 N. Broad Street,
Philadelphia, Penna.

Dear Madam:

I represent Francis C. Ely to whom you sold a property at Beesley's Point, New Jersey. My client advises me that he left with you a Quit-Claim Deed to be signed by yourself and your husband for the purpose of correcting a defect in his title which was caused through the improper conveyance of the above mentioned property to him. 10

Mr. Ely has waited several weeks for this deed, and has requested me to write you and ask that you forward the same to me as quickly as possible.

I am enclosing herewith a self-addressed envelope for your convenience.

Very truly yours,
F. Stanley Kreps.

20

FSK/R

30

July 24, 1925.

Stanley Kreps, Esq.
Counsellor at Law,
Ocean City, N. J.

Dear Sir:

10 Your letter of recent date addressed to Bella O. Bricker, of Philadelphia, regarding the deed to premises located at Beesley's Point, Cape May in which a Mr. Ely was to be made the grantor has been handed to us. It is our understanding that the original deed from Mrs. Bricker was not joined in by her husband, although he affixed his signature thereto. In such case, under the adjudicated cases of this State, Mrs. Bricker is still the legal owner of the premises in question, and is desirous of recovering them. She has informed me that she is ready and willing to do the equitable thing by refunding the \$1200.00 she received at the time the former deed was executed.

20 Will you be good enough to advise whether your client desires to accept the return of the money or whether the institution of legal proceedings will be necessary for the recovery of the premises. Our client, might, however, resell the premises to your client if the terms are sufficiently attractive. Trusting you will advise us in this matter, we are,

Yours very truly,
William H. Campbell

30 WHC/G

FINDING OF FACTS AND RULE FOR
JUDGMENT.

(Filed September 1, 1926.)

NEW JERSEY SUPREME COURT.

CAPE MAY COUNTY CIRCUIT COURT.

10

ELEANOR C. ELY,

Plaintiff,

v.

JENNIE E. PONTIERE, STAN-
LEY M. PONTIERE, her hus-
band, and JOSEPH KIL-
MER,

Defendants.

(Postea.)

Action at Law.

In Ejectment.

Finding of Facts and
Rule for Judgment.

20

This action was tried before Rulif V. Lawrence, Circuit Court Judge, without a jury, by consent of the parties, on an agreed state of facts, and is decided on the facts found and the law. The complaint sets forth a demand for possession of certain lands and premises particularly described, alleging that the right thereto accrued May 1, 1925. The defendants file a joint answer containing a general denial.

30

The following facts are found

1. On April 6, 1920, Bella O. Bricker, wife of William H. Bricker, Sr., then the owner in fee of lands and premises in question, executed and delivered

8 *Finding of Facts and Rule for Judgment*

a deed purporting to convey them to one Caroline Engstrom, widow, which was recorded in the clerk's office of Cape May County, January 18, 1921, in Book 352 of Deeds, folio 178, &c., (Deed offered in evidence and marked Exhibit P1.)

10 2. The designation of the party of the first part in this deed is "Bella O. Bricker, of the City of Philadelphia, State of Pennsylvania, wife of Wil-
10 liam H. Bricker, Sr., physician," thus omitting the name of the husband as a party grantor. The covenants, likewise, fail to specifically indicate the inclusion of the husband, although that covering the warranty of title is in the form usually made by a grantor owing the fee, in this case the wife. Notwithstanding these omissions, the instrument was signed by both husband and wife in the presence of witnesses and duly acknowledged in the recognized and
20 customary form as appears by the certificate attached. With the exception above noted, the deed is in other respects good and valid as to form to convey the fee of the lands and premises in question to the grantee.

30 3. Under this deed the grantee, Mrs. Engstrom, went into possession, and on January 18, 1921, conveyed the premises to the plaintiff by deed containing the usual covenants and warranty of title. This deed was recorded in the county clerk's office on August 27, 1925, in Book 410 of Deed, on pages 200, &c. (Deed offered in evidence and marked Exhibit P2.) It was duly executed and acknowledged by the grantor in accordance with the statute and is in all respects good and valid as a conveyance of the fee to plaintiff who took possession of the premises under it.

4. On May 1, 1924, plaintiff entered into a written agreement for sale of the premises with the defendants, Jennie E. Pontiere and Stanley M. Pontiere, her husband, for a consideration of \$7500, \$500 of which, as stipulated, was paid on the signing of the agreement, while the further sum of \$1000 was to be paid on May 1, 1925, when the balance of the purchase price (\$6000) was to be secured by a purchase money mortgage and a deed conveying a good and marketable title free and clear of encumbrance was to be delivered. As permitted by this agreement for sale, Mr. and Mrs. Pontiere entered into possession of the premises and still occupy them. On or before May 1, 1925, plaintiff duly executed the deed of conveyance, pursuant to the terms of the agreement, and tendered the same to Mr. and Mrs. Pontiere who refused to accept it. The tender was renewed on a number of occasions subsequent to that date and prior to the commencement of this action on November 24, 1925. They not only refused to accept the deed but declined to make the cash payment stipulated and to comply with the terms of the agreement, although remaining in possession of the premises. They base their refusal to take title on the ground that the deed from Mrs. Bricker to Mrs. Engstrom was void because her husband was not named as a party therein, claiming the title not marketable for that reason.

5. On the suggestion that Mrs. Bricker might still claim the legal title, owing to the alleged defect in the deed (Exhibit P1), negotiations were entered into between Mr. and Mrs. Pontiere and the plaintiff, to secure another deed from Mrs. Bricker and her husband, upon the payment of an additional sum of money and a reduction of the purchase price

10 *Finding of Facts and Rule for Judgment*

to be paid plaintiff under the agreement. These negotiations failed. The correspondence is incorporated in the agreed state of facts. On August 31, 1925, Mrs. Bricker and her husband, executed a deed for the premises to the defendant, Joseph Kilmer, a farm hand employed on the premises by Mr. and Mrs. Pontiere, who now claims to be in joint possession with them.

10 6. The defendant, Joseph Kilmer, at the time an employee of Mr. and Mrs. Pontiere on the premises, not only had actual notice of their possession at the time of the execution and delivery of the deed of Mrs. Bricker and her husband to him, but constructive notice of the state of the title of record, inasmuch as the deed from Mrs. Bricker, which her husband had signed and acknowledged, to Mrs. Engstrom as well as that from Mrs. Engstrom to the plaintiff, had been duly recorded in the county clerk's office.

20 7. While the complaint filed herein includes a demand for damages, no proof or evidence thereof is submitted beyond those of a nominal character implied: the question of mesne profits under the statute not arising in this action.

CONCLUSION.

30 Defendants attack the title of plaintiff and her right to convey on the ground that the deed of Mrs. Bricker to Mrs. Engstrom was void under the 14th Section of the Married Women's Act (Comp. Stats., Vol. 3, p. 3237) for the reason that the husband is not named as a party grantor in the body thereof,

although she is stated to be his wife and it appears to have been signed, sealed and delivered by her and her husband in the presence of witnesses and acknowledged by both of them as grantors, a fact which is not denied. It seems clear, however, that the omission of the husband's name in the stating part of the deed was an error of the scrivener and that in the circumstances his signature and the execution of it was intended to register not only his consent to his wife's disposal of her estate in the premises but a conveyance of his own therein. The instrument in other respects being good and valid, the facts found would appear to make applicable the provisions of the statute, P. L. 1924, p. 347, Chap. 150, by which a legislative purpose to validate such a deed is apparent. This statute was passed and in effect before the execution of the agreement for sale by the plaintiff and Mr. and Mrs. Pontiere and prior to the alleged conveyance by Mrs. Bricker and her husband to the defendant, Kilmer. In addition to the statute cited, another found in P. L. 1926, at p. 258, Chap. 154 (which is also retroactive), is likewise suggested as applying to the situation of the title here involved, although passed after the institution of the present action. But it is argued that these statutes are unconstitutional because they purport to validate deeds of conveyance void under Section 14 of the Married Women's Act, with the result that such legislation would be tantamount to taking property without due process of law. While ordinarily the trial Court will not pass on the question involving the constitutionality of a statute, but will leave it for the consideration of the appellate courts, it is not perceived that the point is entitled to serious consideration here since the power of the legislature to pass curative acts

12 *Finding of Facts and Rule for Judgment*

relating to conveyances to make effective the obvious intent of the parties where technical error appears has been repeatedly exercised. The point made, moreover, would if sustained, in the circumstances of this case, result in enabling Mrs. Bricker to take advantage of a technicality and perpetrate a legal fraud on plaintiff by repudiating her conveyance to Mrs. Engstrom and dispose of the premises to another, or extort from plaintiff an additional consideration to that mutually agreed upon between her and Mrs. Engstrom and paid to her. It is to be noted that there are no interests involved in title in question unaffected by actual or constructive notice of the issue here raised and the application of the statutes invoked.

It must be held, therefore, that the deed executed by Mrs. Bricker and her husband, validated by the statutes, was legally sufficient to vest the fee in the premises in Mrs. Engstrom and to provide a marketable title subject to mesne conveyance to plaintiff who in turn had the right to negotiate a sale to Mr. and Mrs. Pontiere. The pretended deed made by Mrs. Bricker and her husband to the defendant Kilmer was therefore void and did not serve to give him legal possession of the premises. Since Mr. and Mrs. Pontiere admittedly failed to perform as stipulated in the agreement for sale entered into with the plaintiff, they, likewise, forfeited their right to possession.

RULINGS.

(a) A certificate of acknowledgment of due execution in the form required by the statute attached to a deed of conveyance, while not essential to the validity of the instrument, is *prima facie* evidence

of the designation and relation thereto of the parties making the same when it appears that they actually signed the instrument with the intention of becoming such parties. *Black v. Purnell*, 50 N. J. Eq., 365, 368:

(b) P. L. 1924, Chap. 150, p. 347; also P. L. 1926, Chap. 154, p. 258, are applicable to the issue here involved, and, being retroactive, validate the deed of conveyance bearing date April 6, 1920, (Exhibit P1) which is held to have been made by Bella O. Bricker and William H. Bricker, her husband, and to have conveyed a title to the premises in question, confirmed as marketable by the statutes. 10

(c) But for the statutes invoked, the constitutionality of which is not passed on, it would seem that the case with which we are here concerned would have been controlled by *Jason v. Johnson*, 74 N. J. L., 529, and *Wright v. Pell*, 90 N. J. Eq., 11. 20

Exception to each of the foregoing is allowed as a ground for appeal.

RULE FOR JUDGMENT.

Judgment may be entered that the plaintiff do recover against the defendants the possession of the lands and premises set forth and described in the summons and complaint, with the appurtenances, together with the sum of six cents as damages and the costs of suit to be taxed. 30

RULIF V. LAWRENCE

Judge.

RULE FOR JUDGMENT.
NEW JERSEY SUPREME COURT.
(Filed September 1, 1926.)

	ELEANOR C. ELY,		
	<i>Plaintiff,</i>	}	
10	v.		Action at Law.
	JENNIE E. PONTIERE, STAN-	}	Ejectment
	LEY M. PONTIERE, her hus-		On Postea.
	band, and JOSEPH KIL-		
	MER,		
	<i>Defendants.</i>		

20 This cause having been tried before Rulif V. Lawrence, Circuit Court Judge, without a jury, by consent of the parties, on an agreed state of facts, and the Court having found for the plaintiff and against the defendants for the possession of the lands and premises set forth and described in the summons and complaint, with the appurtenances, together with the sum of six cents damages, as appears by the postea and findings now here returned.

30 It is ordered, that judgment be and hereby is entered in favor of the plaintiff and against the defendants for the possession of the lands and premises set forth and described in the summons and complaint, with the appurtenances, together with the sum of six cents damages, besides costs to be taxed *nisi*.

Entered September 1, 1926.

On Motion of

F. STANLEY KREPS,
Attorney.

JUDGMENT FINAL.

(Filed September 1, 1926.)

NEW JERSEY SUPREME COURT.

ELEANOR C. ELY,

Plaintiff,

v.

JENNIE E. PONTIERE, STAN-
LEY M. PONTIERE, her hus-
band, and JOSEPH KIL-
MER,

Defendants.

Judgment Record.

Action at Law.

On Postea.

Ejectment.

F. Stanley Kreps,

Attorney.

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Whereupon it is adjudged that the plaintiff, Eleanor C. Ely, do recover of the said defendants, Jennie E. Pontiere, Stanley M. Pontiere, her husband, and Joseph Kilmer, the possession of the lands and premises set forth and described in the complaint, with the appurtenances, together with the sum of six cents damages, and her costs, which have been taxed at the sum of dollars and cents, making in the whole the sum of dollars and cents.

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Damages \$.06
Costs

Judgment entered September 1, 1926.

WM. S. GUMMERE,

C. J.

NOTICE AND GROUNDS OF APPEAL.

(Filed September 20, 1926.)

NEW JERSEY SUPREME COURT.

CAPE MAY COUNTY.

10

ELEANOR C. ELY,
Plaintiff-Respondent,

v.

JENNIE E. PONTIERE, STAN-
LEY M. PONTIERE, and
20 JOSEPH KILMER,
Defendants-Appellants.

Action at Law.
In Ejectment.
On Appeal from New
Jersey Supreme
Court to the Court of
Errors and Appeals
of the State of New
Jersey.
Notice and Grounds
of Appeal.

Messrs. Kreps and Bell, Attorneys for Respondent;

30 Take notice, that the appellants, Jennie E. Pon-
tiere, Stanley M. Pontiere, and Joseph Kilmer, ap-
peal from New Jersey Supreme Court to the Court
of Errors and Appeals of the State of New Jersey,
from the whole of the judgment final entered in said
New Jersey Supreme Court in said action at law
in ejectment, on the following grounds:

1. Because said New Jersey Supreme Court erred
in its said judgment.

2. Because said New Jersey Supreme Court by its said judgment adjudged that the plaintiff, Eleanor C. Ely, do recover of the said defendants Jennie E. Pontiere, Stanley M. Pontiere, her husband, and Joseph Kilmer, the possession of the lands and premises set forth and described in the complaint, with the appurtenances, and erred in so doing.

3. Because said New Jersey Supreme Court by its judgment, adjudged that the said plaintiff do recover of the said defendants, six cents damages and costs; and erred in so doing. 10

4. Because said judgment should have been that said defendants are not guilty and that they recover of said plaintiff, their costs.

5. Because the deed dated April 6, 1920 (Exhibit P1) made by Bella O. Bricker, wife of William H. Bricker, did not convey the premises. 20

6. Because said husband was not named, mentioned, or referred to, as a party grantor in said deed.

7. Because said deed was not valid according to law or the statutes in such case made and provided when or since said deed was made.

8. Because each and every statute, if any, pur- 30
porting to enact that any such deed made before such statute, shall be good and valid, particularly New Jersey Laws, 1924, Chapter 150, page 347, and Laws, 1926, Chapter 154, page 258, is void and should be for nothing holden.

9. Because any such statute mentioned in paragraph 8 is contrary to the Constitution of the United States, particularly the 5th and 14th amendments thereof, that no person may be deprived of property without due process of law nor divested of vested rights therein.

10. Because said New Jersey Supreme Court ruled (a):

- (a) A certificate of acknowledgment of due execution in the form required by the statute attached to a deed of conveyance, while not essential to the validity of the instrument, is *prima facie* evidence of the designation and relation thereto of the parties making the same when it appears that they actually signed the instrument with the intention of becoming such parties. *Black v. Purnell*, 50 N. J. Eq., 363, 368: and erred in so doing.

20. 11. Because said New Jersey Supreme Court ruled (b):

- (b) *P. L. 1924, Chap. 150, p. 347; also P. L. 1926, Chap. 154, p. 258*, are applicable to the issue here involved, and, being retroactive, validate the deed of conveyance bearing date April 6, 1920, (Exhibit P1) which is held to have been made by Bella O. Bricker and William H. Bricker, her husband, and to have conveyed a title to the premises in question, confirmed as marketable by the statutes: and erred in so doing.

CHARLES K. LANDIS, JR.,
Attorney for and of Counsel with Defendants-Appellants.

Exhibit

EXHIBIT P1.

THIS INDENTURE, made the Sixth day of April in the year of our Lord one thousand nine hundred and twenty (1920). Between BELLA O. BRICKER of the City of Philadelphia, State of Pennsylvania wife of William H. Bricker, Sr. Physician of the first part, and CAROLINE ENGSTROM, of the said City, widow of the second part:

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WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Dollar lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensealing and delivery of these Presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, her heirs and assigns, ALL the following (here describes premises) Being the same premises which Joseph D. Worrall by Indenture dated the 31st day of August, 1908, and recorded in the Clerk's Office of Cape May County, at Cape May Court House, New Jersey in Book No. 229 of Deeds folio 502 &c. granted and conveyed unto the said Bella O. Bricker in fee. Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first

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Exhibit

part, of, in and to the said premises, with the appurtenances. To have and to hold the said premises, with all and singular the appurtenances, unto the said party of the second part her heirs and assigns,, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. And the said Bella O. Bricker, for herself, her—doth by these presents, covenant, grant and agree, to and with the said party of the second part,
10 her heirs and assigns, that she the said Bella O. Bricker and her heirs all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, her heirs and assigns, against her the said Bella O. Bricker and her heirs and against all and every other persons or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend. IN WIT-
20 NESS WHEREOF, the said party of the first part to these presents hath hereunto set her hand and seal dated the day and year first above written.
Signed, sealed)
and delivered) Bella O. Bricker (Seal)
in the presence) Wm. H. Bricker, M. D. (Seal)
of)

Anne C. McDonnell

Mary Weisenburger

State of Pennsylvania; Philadelphia County, ss. Be
30 it remembered that on this Sixth day of April in the year of our Lord one thousand and nine hundred and twenty, before, me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared William H. Bricker and Bello O. Bricker, who, I am satisfied are the granters mentioned in the above deed or conveyance, and I having first made known to them the

Exhibit

contents thereof, they acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed; and the said Bello O. Bricker, being of full age, on a private examination apart from her said husband before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

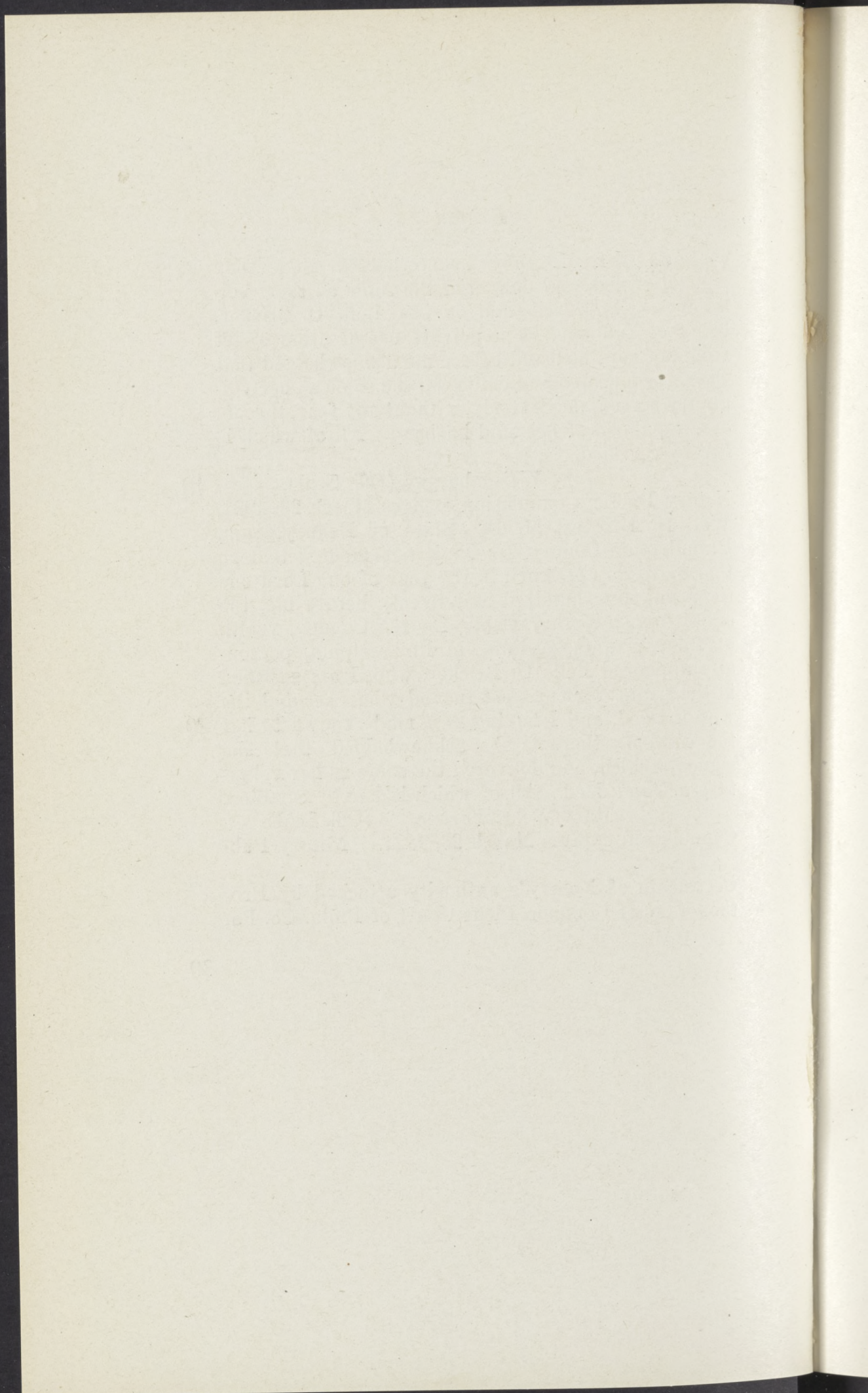
Mary Weisenburger (Offl. Seal). 10

Notary Public, Commission expires March 23, 1921.
Wm. H. Bricker, M. D. State of Pennsylvania,
Philadelphia County, ss. Be it remembered that on
this Sixth day of April in the year of our Lord one
thousand nine hundred and twenty before me, the
subscriber, a Notary Public for the Commonwealth
of Pennsylvania, residing in Philadelphia, person-
ally appeared Bella O. Bricker, who, I am satisfied
is the grantor mentioned in and who executed the
within Deed, and I having first made known to her 20
the contents thereof, she acknowledged that she
signed, Sealed, and delivered the same as her volun-
tary act and deed. All of which is hereby certified.

Mary Weisenburger, (Offl. Seal)

Commission expires March 23, 1921. Notary Pub-
lic.

Certificate of Notary's authority attached by Pro-
thonotary of Common Pleas Court of Phila. Co. Pa.



Notice and Grounds of Appeal

19

[ENDORSED]

Acknowledgment of service September 18, 1926, endorsed by attorneys for plaintiff-respondent.

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THE HISTORY OF THE

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

ELEANOR C. ELY,
Plaintiff-Respondent,

v.

JENNIE E. PONTIERE, STANLEY M. PONTIERE and
JOSEPH KILMER,
Defendants-Appellants.

ACTION AT LAW.

IN EJECTMENT.

ON APPEAL FROM NEW JERSEY SUPREME COURT
TO THE COURT OF ERRORS AND APPEALS OF
THE STATE OF NEW JERSEY.

BRIEF FOR DEFENDANTS-APPELLANTS.

STATEMENT.

Two of the defendants, Pontiere and wife, entered into possession of the premises as purchasers under plaintiff's contract to convey a good and marketable title; defendants did not make settlement on or before May 1, 1925, the time for performance of said contract.

Agreed state of facts, paragraphs 3 to 5 and 7 to 9, inclusive.

Plaintiff claims by deed dated April 6, 1920, made by Bella O. Bricker, wife of William H. Bricker, in which the husband is not named, mentioned, or referred to, as a party grantor, though the deed is signed and acknowledged by both the husband and wife.

Agreed state of facts, paragraphs 1 to 2.

Said Bella O. Bricker and William H. Bricker, her husband, by deed August 31, 1925, conveyed the premises to the other defendant, Joseph Kilmer, who, at the time, was employed as a farm hand by Pontiere. It is admitted that Kilmer holds such title to the premises as the Brickers could convey at this time.

Agreed state of facts, paragraph 6.

POINT I.

IF SELLER BE UNABLE TO CONVEY GOOD TITLE OR DOES NOT OFFER TO PROCURE GOOD TITLE, HE CANNOT RECOVER ON THE CONTRACT AND THE BUYER NEED NOT TENDER PURCHASE MONEY.

Pontiere's possession is by a contract with plaintiff according to which Pontiere has the right to possession until plaintiff tenders or is at least able to convey good title to Pontiere. Plaintiff must therefore show that she could do so.

Caporale v. Rubine, 92 N. J. Law 463, 105 Atl. Rep. 226;

Bernstein v. Kohn, 96 N. J. Law 223-114, Atl. Rep. 543. See point IV.

POINT II.

THE DEED DATED APRIL 6, 1920, BRICKER TO ENGSTROM WAS VOID.

The deed purports to be made by Bella, wife of William. Both signed in witness that "the said party of the first part hath hereunto set *her* hand and seal." The deed does not name William as a grantor but only as the husband of the grantor. Such deed is void. *Jason v. Johnson*, 74 N. J. Law 530, 67 Atl. Rep. 42, cited in *Wright v. Pell*, 90 N. J. Equity 11, 105 Atl. Rep. 20. A married woman

cannot convey land without joinder of her husband in the deed. The deed is challenged not only because it fails to convey the husband's inchoate court-esy but more importantly because of the utter incapacity of a married woman to convey title by a deed in which her husband is not named as a party grantor. 3 Com. Stts. 3237, *Married Women Sec. 14*. See point IV.

POINT III.

ANY ACT OF THE LEGISLATURE IS UN-CONSTITUTIONAL WHICH ATTEMPTS TO RETROACTIVELY VALIDATE OR CURE A DEED WHICH, WHEN MADE, WAS VOID BECAUSE OF THE INCAPACITY OF THE GRAN-TOR TO CONVEY.

If the deed made by Mrs. Bricker to Engstrom was void, the title was not conveyed and therefore remained in Mrs. Bricker. Mrs. Bricker would thus continue to be vested with title until subsequent legislation, so that if such legislation could vest the title in Engstrom, Mrs. Bricker would be divested by the statute, not by her deed nor by any act of hers.

In *Marx v. Addoms*, 50 N. J. Law 253, 12 Atl. Rep. 909. The Court said "The legislature, by its fiat, cannot, as between husband and wife, destroy or impair rights of property that have become vested." The subject was considered in the case of *Westervelt v. Gregg*, 2 Kern. 202. The juncture was this:

a husband had become possessed of a vested interest in a legacy to his wife, of which he would have been deprived if a statute, subsequently passed, had been sustained; but the Court pronounced such provision unconstitutional, on the ground that to give it force would be to permit the husband's property to be taken without due process of law. Other cases to the same purpose will be found by a reference to:

- Cooley, Const. Lim.* 361;
Van Note v. Downey, 28 N. J. Law 219;
Boston Franklinite Co. v. Condit, 19 N. J. Eq. 394;
Colgan v. McKeon, 24 N. J. Law 566;
Hartson v. Elden, 50 N. J. Eq. 522, 26 Atl. Rep. 561.

In *State v. Newark*, 27 N. J. Law 185, the Court said at page 196-7, "A statute which undertakes to take away from one person vested rights of property, and transfer them to another, against the actual or fairly implied assent of the party injuriously affected, may well be considered as not a legitimate exercise of the legislative power, and as therefore unconstitutional and void. Acts attempting to declare that a will which for want of some essential solemnity, was not, at the death of the person professing to make it, entitled to that character, have on this ground been declared void, and perhaps rightly. But laws curing defects, which would otherwise operate to frustrate what must be presumed to be the desire of the party affected, cannot be considered as taking away vested rights. Courts do not regard rights as vested contrary to the justice and equity of the case. If the statute now in question be al-

lowed to render valid proceedings of the council, which would otherwise be invalid and inoperative, no one will be the least injured. So far from taking away any rights vested in the prosecutors, it will operate to confirm them. If it renders valid an otherwise illegal tax, it is to be presumed that the tax was levied for the public good."

In the present case, the question is the same as determined by this Court in *Jason v. Johnson, Id.*, in which the action was in ejectment founded upon a deed signed by Mary C. Baylor who was nowhere mentioned or referred to in the body of the deed as a party thereto. She was trustee for two persons named in the deed as grantors and who also signed it, her intention to join in the conveyance as trustee being as apparent from her signature in that case as any intention in the present case, of the husband by his signature to join in the Bricker deed here in question. There is no charge or proof of fraud in the present case. The argument of the plaintiff and ruling of the Court below is upon a presumption from the signature of the deed of a desire to convey. But this Court in *Jason v. Johnson*, 74 N. J. Law 530, 67 Atl. Rep. 42, held "It is unnecessary to say that in an action of ejectment the plaintiff must succeed, it at all, upon the strength of his legal title. An equitable title is not sufficient. Plaintiff, having shown a legal title in Mary C. Baylor, must fail in her action, unless she also shows that this title has been conveyed to herself. Whatever effect might be given in a Court of Equity to Mary C. Baylor's signature to the deed of 1903, it has, in our opinion, no effect against her as a legal conveyance; it being established that the signing of a deed of conveyance by one who is not mentioned or described in the body of the instrument as

a grantor is of no effect at law to convey such party's estate in the lands described therein."

The law, as interpreted by this Court, did not recognize any presumption of a desire to convey by the signature of one not named in the deed as a party grantor, and a curative act, in the absence of such presumption, could not apply without divesting by the statute vested rights not presumed to have been intended to be divested by such deed. See point IV.

For subsequent legislation to enact a meaning and effect not expressed by a deed nor presumed by the law at the time, is to do by interpretation what was not done by the person thus divested; and to adjudge without notice to the party affected or affording him an opportunity to be heard in explanation.

Numerous statutes have been passed validating defective acknowledgments of deeds. But an acknowledgment is not essential to the validity of the deed.

Moore v. Riddle, 82 N. J. Eq. 197, 87 Atl. Rep. 227;

Campbell v. Cavanaugh, 125 Atl. Rep. 569, affirmed *Campbell v. Smullen*, 125 Atl. 926.

Vol. 12, *Corpus Juris* "Constitutional Law," page 1097, Section 801—deeds and contracts of married women. Formal defects in deed may be validated, but not a deed void for want of her capacity to convey.

Also see Vol. 12, *Corpus Juris* "Constitutional Law"

Page 1255, Sec. 1046—*Curative Acts*;

Page 956, Sec. 486—*Power of State to divested rights*.

NEW JERSEY STATUTES.

Laws of 1924, Chapter 150;
Laws of 1926, Chapter 154;
Laws of 1926, Chapter 186;
Laws of 1926, Chapter 295.

POINT IV.

AS PLAINTIFF HAS NOT APPEALED FROM RULING (c), THE CAUSE SHOULD BE CONSIDERED ACCORDING TO SAID RULING.

Ruling (c). But for the statutes invoked, the constitutionality of which is not passed on, it would seem that the case with which we are here concerned would have been controlled by *Jason v. Johnson*, 74 N. J. L. 530, and *Wright v. Pell*, 90 N. J. Eq. 11.

This ruling is inconsistent with ruling (a) from which defendants have appealed.

The result is that the single question for determination is whether such a deed as determined by this Court to be essentially void, can be afterwards validated by a retroactive statute.

Most respectfully submitted,
HERBERT C. BARTLETT,
CHARLES K. LANDIS, JR.,
*Of Counsel with Defendants-
Appellants.*

NEW JERSEY COURT OF ERRORS AND
APPEALS

ELEANOR C. ELY,
Plaintiff-Respondent,

v.

JENNIE E. PONTIERE, STANLEY M. PONTIERE, and
JOSEPH KILMER,
Defendants-Appellants.

ACTION AT LAW.

IN EJECTMENT.

RESPONDENT'S BRIEF.

STATEMENT.

This is an action of ejectment brought by the plaintiff against the defendants to recover possession of a certain farm at Beesley's Point, New Jersey.

Plaintiff submits that the only question to be decided in this case is whether or not Eleanor C. Ely was the owner of the property in question in fee simple on May 1st, 1925, and whether or not she could convey a good and marketable title to the de-

fendants, Jennie E. Pontiere and Stanley M. Pontiere on that date.

It has been argued by counsel for the defendants that the deed from Bella O. Bricker of the City and County of Philadelphia, and State of Pennsylvania, wife of William H. Bricker, Sr., physician to Caroline Engstrom, dated April 6th, 1920, and recorded in the clerk's office of the County of Cape May in Deed Book 352 on page 178, did not convey title to the said Caroline Engstrom in fee simple, and that thereafter when Caroline Engstrom, widow, conveyed to the plaintiff, that the plaintiff received no title.

The counsel for the defendants bases his argument upon the case of *Jason v. Johnson*, 74 N. J. Law, which was decided by the Court of Errors and Appeals in 1907, in which case the doctrine was laid down that "the signing of a deed of conveyance by one who is not mentioned or described in the body of the instrument as the grantor has no effect at law to convey such party's estate in the lands described therein."

It is therefore argued that since William H. Bricker, Sr., is not named or described in the body of the instrument as a grantor, that the deed executed by himself and wife conveyed no estate to Caroline Engstrom and that, therefore, none has vested in the plaintiff.

ERROR REMEDIED BY STATUTE.

Plaintiff submits that if there was any defect in the deed from Bella O. Bricker and William H. Bricker, her husband, to Caroline Engstrom, that this defect was remedied and corrected by an act

of Legislature approved March 11, 1924, which is reported in the Pamphlet Laws of 1924, Chapter 150, page 347 as follows: "Where in any deed of conveyance of real property heretofore made by husband and wife, both the husband and wife have signed the said deed of conveyance and where their signatures have been duly witnessed and acknowledged as required by law, but where in the recital or the body of the deed of conveyance the name of one of the parties has been omitted, the said deed of conveyance shall be good and valid; provided, however, that the said deed is good and valid in all other respects."

The deed of conveyance in this case was properly signed by both Bella O. Bricker and William H. Bricker, her husband, and duly witnessed and acknowledged, the acknowledgment being taken before a notary public of the State of Pennsylvania, and the Prothonotary's certificate of authority was attached to the deed before it was sent to the Cape May County Clerk for record.

This act has also been re-enacted and will be found in the 1926 Pamphlet Laws, Chapter 154, and the plaintiff submits that if there was any mistake or defect in the deed from Bella O. Bricker, *et vir.* to Caroline Engstrom, that the same has been remedied by the acts of 1924 and 1926.

It may be argued that the acts above referred to are unconstitutional because they are restrospective acts depriving William H. Bricker of his vested rights.

RETROSPECTIVE ACTS ARE VALID IN NEW JERSEY.

It was held in *State v. City of Newark*, 27 N. J. Law, 185, that retrospective acts were valid in the State of New Jersey. The opinion in this case was rendered by Chief Justice Green, and the following citation may be found on page 196: "Very many acts of a similar character have been passed from time immemorial, by the British parliament and by the legislatures of this and of the other states of the Union. Some of the modern constitutions prohibit retrospective laws, but *that of this State does not*. In the case of *Watson v. Mercer*, 8 Peters 88, it was expressly decided that the constitution of the United States does not; and an act of the Legislature of Pennsylvania declaring acknowledgments of deeds by married women, in a form which had been judicially decided to be inoperative and void, so that no estate passed, to be nevertheless good and effectual, was held not to be prohibited by it." And the Chief Justice in the case of *State v. City of Newark*, upheld the doctrine above mentioned.

In general, legislation curing formal defects in deeds and other written instruments, and giving to them the same validity as though they had been properly executed, is constitutional; and as between the original parties to such instruments, such legislation renders them valid and binding to all intents and purposes. This rule applies also to deeds and mortgages invalid by reason of the grantee's or mortgagee's want of capacity, and such an instrument may be validated by a statute passed without the vendor's procurement or consent. It is not considered that legislation validating informal or defective deeds deprives anyone of any vested rights,

even though it operates to cut off a right of action that would otherwise exist. Such legislation, however, cannot be given the effect of cutting off intervening rights of third persons. 12 Corpus Juris, 1906-1907.

"A statute will not be held unconstitutional unless the conflict with the Constitution is apparent." *Grausman v. Porto Rican-American Tobacco Company*, 95 N. J. Equity, 155.

A reading of *State v. Freulli* shows quite clearly that the Courts of this State will hesitate to declare a clause in a statute unconstitutional where it may be considered to be constitutional.

Justice Swayne, in the case of *Jersey City v. North Jersey Street Railway Company*, 74 N. J. Law, 744, at page 784, lays down the following principle of law "Numerous statutes have been sustained the object of which was to correct the defective execution of deeds or defective municipal action. Such statutes operate to confer an exclusive privilege or even to make good a title to land, but the legislative power has never been doubted. Their justification is found in the meritorious ground of an already existing situation."

Den v. Downam, 1 Gr. 135; *State v. Newark*, 3 Dutcher 185, 196; *State ex rel, Walter v. Union*, 4 Vroom 350, 355; *State, Vreeland, pros. v. Bergen*, 5 Id. 438; *State, Kohler, pros. v. Guttenberg*, 9 Id. 419; *Mutual Benefit Life Insurance Co. v. Elizabeth*, 13 Id. 235.

In view of the above citations, and especially in view of the Acts of 1924 and 1926, and relying upon the cases of *State v. Newark* and *Jersey City v. North Jersey Street Railway Company*, we submit that if there was a defect in the deed from Bella O. Bricker and William H. Bricker, her husband to

Caroline Engstrom, that this defect has been corrected and argued, and that title now vests in fee simple in the plaintiff, Eleanor C. Ely, and we, therefore, submit that the plaintiff's action of ejectment against all of the defendants to this suit should be sustained, and judgment be rendered for the plaintiff.

Respectfully submitted,
KREPS & BELL,

*Attorneys for and of Counsel
with Plaintiff-Respondent.*

New Jersey Court of Errors and Appeals

ELEANOR C. ELY,
Plaintiff-Respondent,

v.

JENNIE E. PONTIERE, *et als.*,
Defendants-Appellants.

BRIEF OF DEFENDANTS-APPELLANTS IN REPLY TO BRIEF OF PLAINTIFF- RESPONDENT.

Respondent relies upon *Mayor Jersey City v. North Jersey St. Ry. Co.*, 74 N. J. Law 774—67 Atl. Rep 113, which held the Traction Act of 1893 to be constitutional because it was prospective as well as retrospective in its application to any street railways actually existing at or after the passage of the Act. The citations quoted in respondent's brief were not cited for the purpose for which respondent has quoted them, but for the purpose of illustrating how a law may be general though only a few avail themselves of its privileges and thus apparently become a privileged class and because the justification of retrospective legislation of the kind is found in the meritorious ground of an already existing situation. The Court (at page 781) says "even

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 to Brief of Plaintiff-Respondent*

if it (the street railway company) is without legal right to operate the road, it still has a property right in the rails, ties, poles and wires, which even the Legislature cannot take away. *Cleveland Electric Railway Co. v. Cleveland*, 204 U. S. 116."

The Court (at page 783) cites *State v. Post*, 55 N. J. Law 264, in which a statute granting an exclusive right to plant oysters to only those in actual occupancy of such oyster bed at the passage of the Act, was held unconstitutional as a local and special law because the legislature cannot select individuals as the objects of its bounty to the exclusion of other citizens of the State, but should have declared that all who may then have planted or thereafter plant oysters should receive its benefits.

The statute here in question applies exclusively to deeds made before the passage of the act, so that one claiming under such deed is declared to have title while another is not, accordingly whether such deed happened to be made before or after the passage of the act. The statute is therefore not remedial of all such deeds, but special.

Other citations are of decisions sustaining statutes:

1. Validating deeds or proceedings formally but not essentially defective; such as a sheriff's deed or ministerial acts of municipalities. *Den v. Downam*, 13 N. J. Law 135; *State, Ex rel Walter v. Union*, 33 N. J. Law 350.

2. Where the Legislature, having the sovereign right to exact a tax or grant a franchise, does, by remedial statute, what it had the right to do in the first instance and over which it retains sovereign

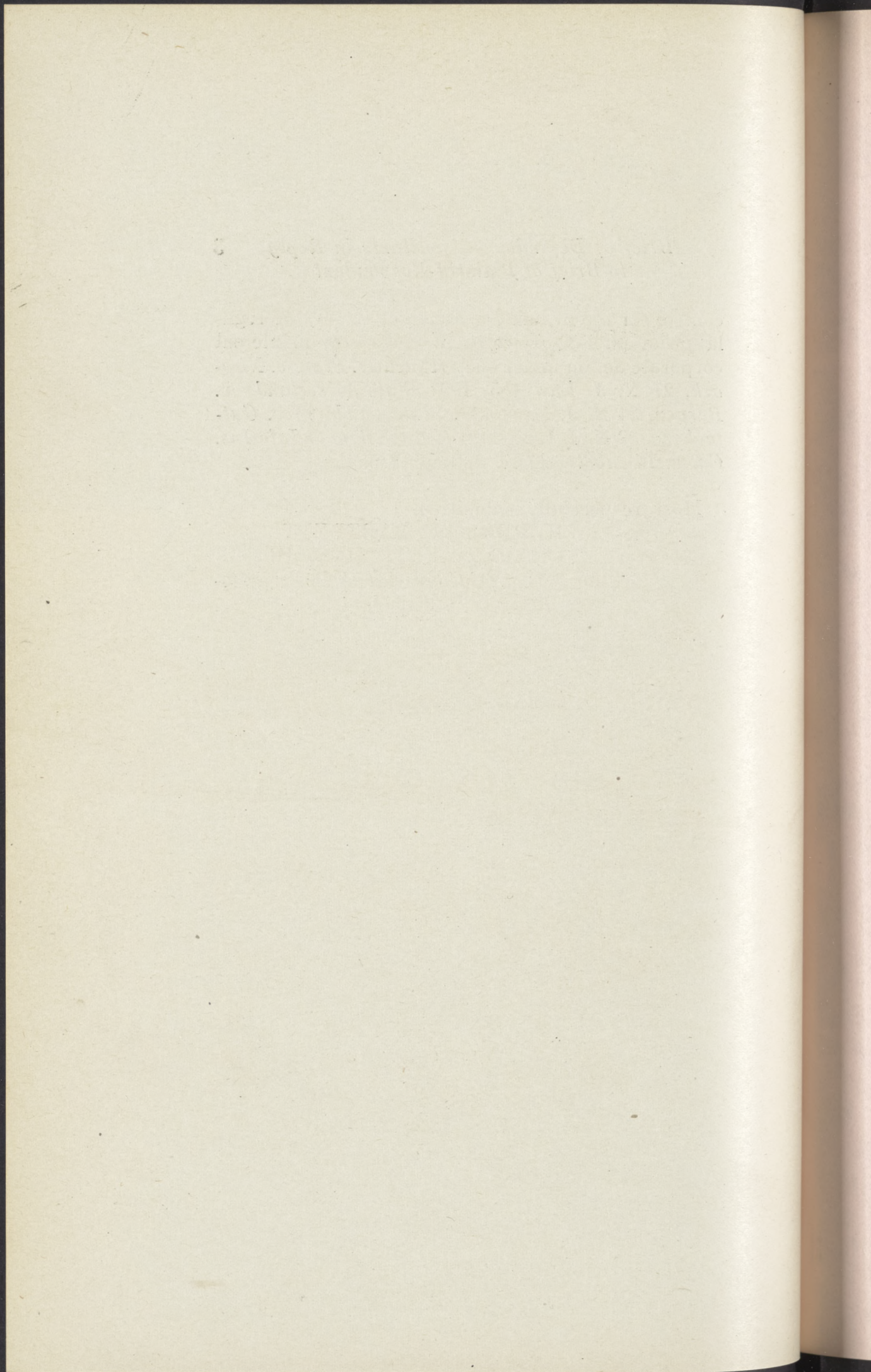
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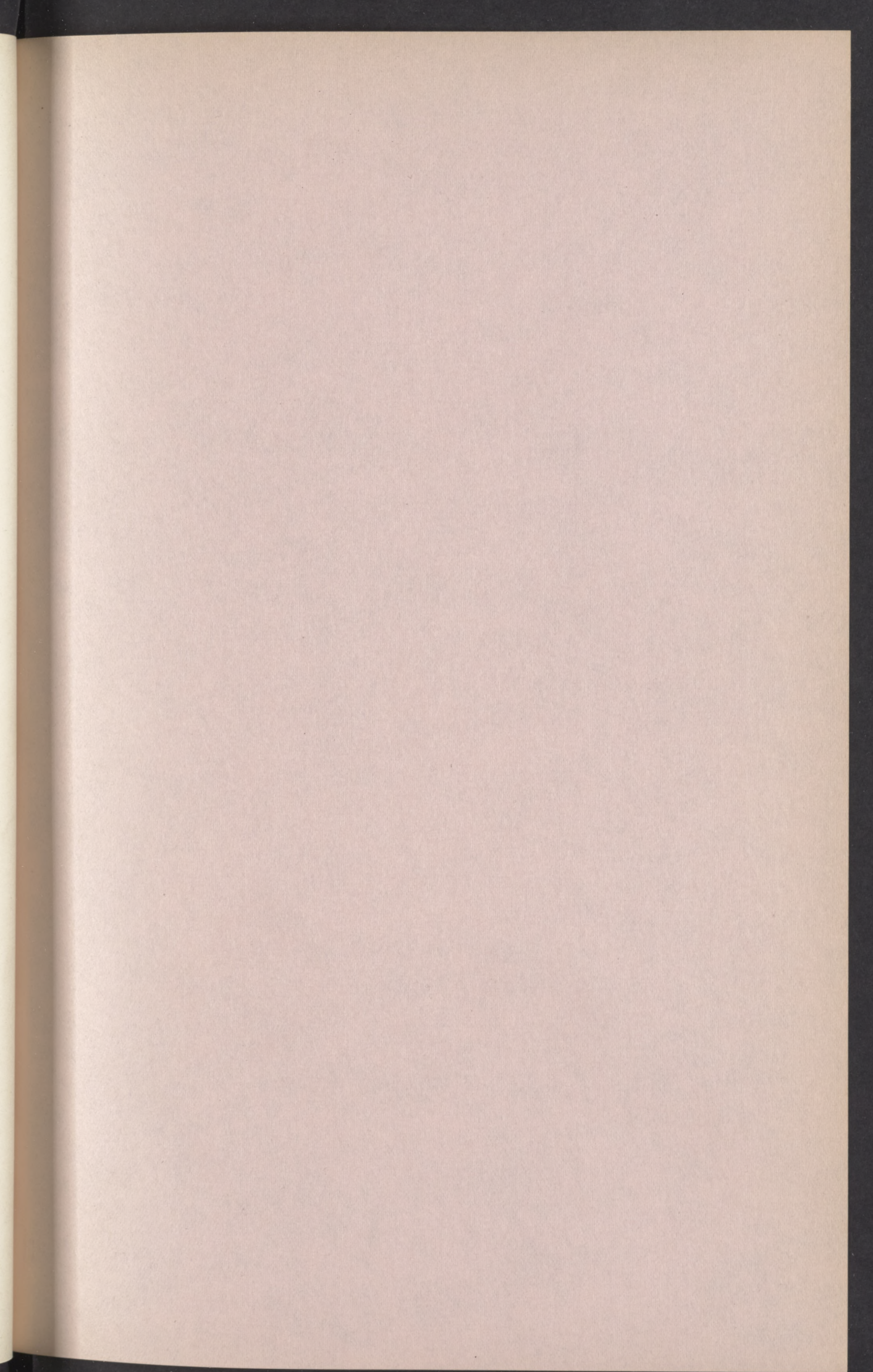
control for the ultimate exaction of the tax or regulation of public service or of private or municipal corporate action under such franchise. *State v. Newark*, 27 N. J. Law 185, 196; *State (Vreeland) v. Bergen*, 34 N. J. Law, 438; *State (Kohler) v. Guttenberg*, 38 N. J. Law, 419; *Mutual Benefit Life Ins. Co. v. Elizabeth*, 42 N. J. Law, 235.

Most respectfully submitted,

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