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NEW JERSEY
COURT OF ERRORS AND APPEALS.

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| <p>Between</p> <p>WILLIAM ERB, et al., <i>(Defendants),</i> <i>Appellants,</i></p> <p>and</p> <p>WILLIAM H. KENEASTER and ELSIE M. KENEAS- TER, substituted in the place and stead of LIL- LIAN M. KENEASTER, deceased, <i>(Complainants),</i> <i>Respondents.</i></p> | } | <p>ON BILL FOR PARTI- TION.</p> <p>APPEAL FROM DECREE</p> <p>IN CHANCERY OF NEW JERSEY.</p> | <p>10</p> <p>20</p> |
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BRIEF.

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MESSRS. WILLIAM J. KRAFT and CHARLES K. LANDIS,
JR., of counsel for appellants.

STATEMENT.

Respondents' bill of complaint alleges (page 1, lines 10-36; page 2, lines 1-13), that by a previous suit to quiet title it was determined that complainant had a 5-392nd undivided interest in a large tract of land. That Matilda T. Landis, having all the other undivided interest in the tract (page 1, lines 33-36), conveyed all her interest in a specific portion of the tract to Ale, who conveyed to Sea Isle City Realty Company, who conveyed to Erb, the appellant (page 2, lines 15-30). It is not disputed that these conveyances are by deeds of bargain and sale purporting to convey the whole estate in certain specifically described parts of the original tract by metes and bounds (page 21, lines 30-34; Exhibits D ab 1, D ab 2, & D ab 3, page 81, line 14 to page 107). It is admitted by counsel that Matilda T. Landis has conveyed to Ale and divers others 73 acres of the original tract and that 281 acres still remain unconveyed (page 61, lines 1-14; page 78, lines 20-30).

The conveyance by Sea Isle City Realty Company to Erb is of a rectangle 100 feet by 95 feet comprising four lots on County Boulevard as shown on the company's plan of Venicean Park (page 101, lines 1-10; page 3, lines 1-11). It purports to convey all the "land and real estate" it describes by metes and bounds, with covenant of general warranty. (Exhibit D ab 3, page 100, lines 30-36; page 104, lines 14-28) to have and to hold to the only use of Erb and his heirs (page 102, lines 19-24). The suit is for partition with the grantee Erb of his particular 9500 square feet of land (page 3, lines 27-36; page 4, lines 11-20; page 3, lines 13-17). The original tract is omitted and Matilda T. Landis is ignored on the

theory that she had parted with all her interest in the 9500 square feet to Erb. It is not pretended that Erb avowedly entered as a tenant in common or under a deed which defined his title as such, but that the legal operation of his succession of title from Matilda T. Landis was to convey an undivided interest in his specific purchase subject to partition by complainant (page 30, lines 17-32).

Erb, by his answer, admits the allegations as to the original tract and his succession of title from Matilda T. Landis (page 9, lines 15-28), but denies that complainant has any undivided interest in his lands selected by the bill for partition or that a partition of the same should be made (page 11, lines 1-4). He defends that complainant's undivided interest in the whole tract should be located by an equitable partition of the whole tract and that the conveyances by Matilda T. Landis do not prejudice complainant's interest by such partition (page 10, lines 26-36). 10

All the land described in the decree to quiet title is shown by a map in two colors; the pink being the portion conveyed by Matilda T. Landis to divers grantees who are not parties to this suit and the green being the remaining unsold portion of the original tract (Exhibit D15, page 60, line 30. See map in back of book. Page 38, lines 10-36; page 79, lines 31-36. Decree in Suit to Quiet Title, pages 108 to 111; page 4, lines 1-8). According to the scale of the map, the tract is about two and one-half miles long; the green occupies about two miles of its length and about 4-5ths of its total acreage. We think the testimony convincingly shows that naturally the whole tract is a salt-marsh of one general condition and character, the green being as available for any purpose as the pink (page 41, lines 1-20; page 45, lines 24-35; page 51, lines 30-36; page 53, lines 10-14). 20 30

We do not contend that respondents should accept a 5-392nd of territory, strict measure, but a 5-392nd in value. By the same principle, the Landis share should receive a 387-392nd in value, and the adjustment of values should be made with regard to the share whose improvements have imparted the value. The decree in this suit ignores any consideration whatever of this tract in which the undivided interest is alleged. The Vice-Chancellor says in his
10 opinion that the defendant Erb filed an answer and cross-bill bringing into the case the land owned by Matilda T. Landis, but not bringing in the land sold by her (page 29, lines 14-20).

We submit that the language of the answer and cross-bill manifest the error of this statement in his opinion. The language of the answer is "These defendants say that the lots purchased as aforesaid by this defendant, William Erb, comprise less than
20 one twenty-five hundredths (1-2500ths) of the area of the said lands in which complainant's title to a five-three hundred and ninety-seconds (5-392nds) part was fixed and determined as alleged in her said bill of complaint; that her said undivided part is in the whole of said area and that a just and equitable partition or division thereof to said complainant may and can be made only as such part of said whole." (Page 10, lines 26-36).

The cross-bill particularly alleges the acreage of the whole tract, and of each of the sold and unsold
30 parts (page 11, line 10, to page 12, line 10), and that "These defendants say that the portion of said lands sold and conveyed as aforesaid by Matilda T. Landis, including the said lots of this defendant, William Erb, is much less than the undivided part of said Matilda T. Landis in the whole of said lands and these defendants charge that the part to be di-

vided or partitioned to said Matilda T. Landis should in equity and good conscience include said portion in confirmation of said sales and conveyances and in consideration of the improvement of the same and the injury, loss, cost, expense and multiplicity of suits that would otherwise result from complainant's silence and laches in the premises; that such division or partition of the whole of said lands should be made as to locate complainant's part in the whole of said lands within that portion of the same in the seizin and possession of Matilda T. Landis as aforesaid." (Page 12, line 29 to page 13, line 9), And prays "that a fair partition and division may be made between the said complainant and the said defendant, Matilda T. Landis, of all the lands in which they in common with each other are entitled to undivided parts as alleged in said bill of complaint, according to their respective rights and interests therein and the course and practice of this Honorable Court; that any portion or portions thereof sold and conveyed by said Matilda T. Landis may be included in the part divided and partitioned to her in confirmation of said sales and conveyances; &c." (Page 13, lines 17-28.)

Respondents' answer to the cross-bill objected that numerous grantees and owners of the portion sold by Matilda T. Landis had not been made defendants to the cross-bill. (Page 24, line 24, to page 25, line 28.) Conceiving that they should be parties to the suit and that the cross-bill could not make them parties upon issues on which they were entitled to be heard in defense against their adversary, the original complainant, it was by counsel for the cross-bill moved at final hearing that the cross-bill be dismissed, resting his defense upon the answer to the original bill and proofs (page 74, line 24, to page 75, line 6).

6 *Statement—Point I. The Right by Partition*

The final decree dismisses the cross-bill and the dismissal of the cross-bill is not appealed from. (Page 33, lines 34-36.)

10 Appellant says by his answer that he purchased in good faith for \$1,000 cash (page 10, lines 16-20), which is the consideration expressed in his deed. (Exhibit D ab 3, page 100, lines 20-22.) This being so, complainant's 5-392nd claim in his lots is not worth \$13—reckoned on the value of the improvements made by Sea Isle City Realty Company from whom Erb purchased and who is not a party to the suit. The pretended object of the suit is this \$13 claim; the obvious effect is to establish a precedent for a multiplicity of suits by piecemeal partition with each of the numerous purchasers.

POINT I.

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The right by partition is to have an undivided interest in land located as a divided part of the land in severalty. If a co-tenant has granted a specific part of the tract by metes and bounds, the grantee has an equitable title that cannot be defeated except by partition to the adverse interest of a divided part of the whole tract. If the adverse interest thus acquires in severalty a divided part overlying the grant, the proper remedy is by ejectment of the grantee.

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Equitable partition regards not merely the strict legal rights of the original tenants in common but also the equitable rights of derivative alienees.

In *Bigelow vs. Littlefield*, 52 *Maine* 24, a husband and wife were co-tenants; the husband conveyed a

certain piece of the common estate by metes and bounds, for a full consideration, and the wife afterwards sought partition of the tract thus conveyed. The Court said, "She does not ask that partition be made of the whole tract in which she claims to be a tenant in common, but only of that portion held by the respondents; and if she could succeed, she would take from them one half of the land for which her husband has been paid the full value. But she cannot succeed. When partition of real estate held in common is to be enforced by legal process, the whole tract so held must be partitioned at the same time. One tenant in common cannot enforce partition of part only of the common estate. Nor does a conveyance by one tenant in common of his interest in a part only of the land thus held, authorize a co-tenant to enforce partition of such part against the grantee, leaving the residue of the estate unpartitioned. Such a course would lead to fraud and oppression, as this case fully illustrates."

In *Barnes vs. Lynch*, 151 Mass. 510, the Court said, "The co-tenants must either treat the deed of the separate parcel to Lynch as good, or must avoid it. If it is treated by them as good, then Lynch is entitled to the parcel it undertakes to convey. If they avoid it, they have no further concern with Lynch, but must proceed against Benjamin G. Boardman, Jr., for a division of the whole common land. They cannot treat the deed as good to the extent of conveying the interest of Benjamin G. Boardman, Jr., in the specific parcel, and thus make Lynch their co-tenant in a distinct portion of the common land. Benjamin G. Boardman, Jr., had no more right to convey his interest in such a parcel than the parcel itself, nor did he undertake to do so. If, as the result of a partition between the other co-tenants and

Benjamin G. Boardman, Jr., the lot of land conveyed to Lynch shall be assigned to Benjamin G. Boardman, Jr., then the conveyance made by him might operate by way of estoppel against him. *Varnum vs. Abbot*, 12 Mass. 474. Whether such a partition will be made is indeed uncertain, but Lynch is entitled to the chance that it may be made and thus he may be invested with a title.”

- 10 The true doctrine, as deduced from actual decisions, is that such conveyances are absolutely void against the original right to partition the whole tract, but are protected in such partition against a co-tenant whose rights would not be prejudiced by allotting to the grantor that portion of the land conveyed; and wherever practicable, a court of equity will thus confirm the title of the grantee. A full discussion and exposition of this doctrine will be found in *Kenoye vs. Brown*, 82 Miss. 607, and *Emeric vs. Alvarado*, 90 Cal. 456; *Freeman on Co-Tenancy and Partition*, 2nd. Ed. Sec. 199, &c. See also *Holcomb vs. Coryell*, 11 N. J. Eq. 548, and *The Boston Franklinite Co. vs. Condit and Torrey*, 19 N. J. Eq. 394; *Luther vs. Luther*, (N. C.), 73 S. E. 102; *Middlecoff vs. Cronise*, 100 P. 232, 155 Cal. 185; *Koon vs. Koon* (Fla. 1908) 46 So. 633; *Beetson vs. Stoops*, 86 N. Y. S. 332, 91 App. Div. 185; *Sanford vs. Goodell*, 82 Hun. 369; *Heirs of Beale vs. Johnson*, 45 Tex. Civ. App. 119.
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- 30 If upon partition of the whole tract any conveyed portion shall be allotted to the grantor's co-tenant, the proper remedy is by ejectment against the grantee. *Harlan vs. Langham*, 69 Pa. 235.

The later decisions regard the grantee as a necessary party with his grantor in recognition of his right to an equitable partition of the whole. 30 *Cyc.* 206 Sec. 10, see note 17, page 207. *Partition. Per-*

sons whose right or title is dependent on that of a cotenant. a. Grantees. In *Atha vs. Jewell*, 33 N. J. Eq. 417, at page 421, the Court says, "It is an established principle that a court of equity, in decreeing partition, does not act ministerially and in obedience to the call of those who have a right to the partition, but founds itself on its general jurisdiction as a court of equity, and administers its relief *ex aequo et bono* according to its own notions of general justice and equity between the parties. It will, therefore, by its decree adjust the equitable rights of all the parties interested in the estate, and see to it that partition is made accordingly. And in making these adjustments, it will not confine itself to the mere legal rights of the original tenants in common, but will have regard to the legal and equitable rights of all other parties interested in the estate which have been derived from any of the original tenants in common, and will, if necessary for this purpose, direct a distinct partition of several portions of the estate in which the derivative alienees have a distinct interest, in order to protect that interest. *Story's Eq. Jur.* 656 b, 656 c." * * * * "It is quite clear that the complainants in this case are entitled to the aid of equity; that they are entitled to have a partition in which the land on which their buildings stand will be set off to them." See also *Shipman vs. Shipman*, 65 N. J. Eq. 557. The defense by Erb's answer is that there should be a distinct partition of that portion of the estate conveyed by Matilda T. Landis from the greater portion remaining unconveyed as two several portions, in order to protect the distinct interests of her derivative alienees in their purchases and improvements.

Prior to the alleged conveyance to Ale by Matilda T. Landis, she filed a bill for partition of the whole

tract with Keneaster, et als., (see Chancery Docket 30, page 46), to which a plea was filed that this same undivided interest was in the whole island and that the tract of land being only part of the island, partition could not be had of part but should be sought of the whole. This plea was filed by Mr. George A. Bourgeois of counsel with respondents in this case and certified by his associate Mr. William F. Sooy as well founded in point of law. It is cited here as a precedent.

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The defendant Erb claimed by the same title as the other purchasers from the common grantor Landis and therefore could not make them defendants to his cross-bill against the purport of their title as a valid grant of the whole estate (page 10, lines 7-12). In *Robertson vs. Pickrell*, 109 U. S. 608 cited in *Schmitt vs. Traphagen*, 3 Buch. 399, the Court says at page 615: "Nor can the grantee in a contest with another, whilst relying solely upon

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the title conveyed to him, question its validity when set up by the latter. In other words, he cannot assert that the title obtained from his grantor, or through him, is sufficient for his protection and not available to his contestant. Where both parties assert title from a common grantor, and no other source, neither can deny that such grantor had a valid title when he executed the conveyance." In *Phila. Brewing Co. vs. McOwen*, 76 N. J. Law 636, the Court says at page 640: "If the defendant in

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error was setting up against the plaintiff in error no title other than the title it got from the common grantor, a question would be presented that is not now before us." See 16 Cyc. 717 note 60. The mere presence of the purchasers in court by process of the cross-bill would not give jurisdiction because they are entitled to an *issue and hearing* on the outstanding claim against them and they therefore should be

brought in as defendants to that pleading which can and does submit allegations and proof of the paramount right. *Munday vs. Vail*, 34 N. J. Law 418.

As defendants to Erb's cross-bill, they would be deprived of any issue with Keneaster, the common adversary; nor could the complainant in original bill present these issues by making a cross-bill out of his answer to the cross-bill, *Brown vs. Troupe*, 33 Miss. 35; *Campbell vs. Johnston*, 4 Dana. (Ky.) 177; *V. Ency. Pleading & Practice "Cross-bills" X. pp.* 10 659; nor could there be a departure by cross-bill from the original object and subject matter of the suit, i. e., partition of only Erb's part. *Wood vs. Haddonfield and Camden Turnpike Co.*, XI. *Buchanan*, 239; *Doremus vs. Paterson*, 70 N. J. Eq. 296; *Patton vs. Marshall*, 173 Fed. 350. A cross-bill to partition lands other than described in petition is not germane to the relief asked for in the original suit. *Deuter vs. Deuter*, 214 Ill. 308. A suit in partition is *in rem* and jurisdiction is confined to the 20 subject matter set forth and described in the petition. *Corwithe vs. Griffing*, 21 Barb. 9, 14. As a general rule, a cross-bill in a partition suit is neither necessary or proper. *Koon vs. Koon*, (Fla. 1908), 46 So. 633; *Prichard vs. Littlejohn*, 128 Ill. 123.

In *Jackson vs. Beach, et als*, (N. J. Chancery), 2 Atl. 22, the bill described only a part of the land held by the tenants in common, leaving unnoticed a large tract. The defendant was not a grantee of the described part but a co-owner with complainant and 30 others of *all* the land of which only a part was described and selected by the bill for partition. It was said in this case that if a party in interest conceives that he will suffer because a portion of the lands held in common have been omitted, he can by proper pleading, have all the land *so held* disposed of in one suit and for one bill of costs. That all the land held

in common need not be included in a bill for partition but, if a defendant desires it, he can obtain it by means of his pleadings. The case quoted did not contemplate nor decide that this could be done by a defendant other than a tenant in common whose interest was an undivided interest in all of the lands sought to be included and who could exercise by cross-bill his right as a tenant in common to partition by original bill. It was held in *Chalmers vs.*

10 *Trent*, 11 *Utah* 88, 39 *Pac.* 488, that a defendant co-tenant could by cross-bill bring in necessary parties omitted by plaintiff. But in this case, the defendant's right was that of a co-tenant in the whole tract and the same as plaintiff's to partition. In *Hazen vs. Webb*, 65 *Kan.* 38, judgment creditors of one co-tenant brought in all omitted necessary parties by cross-bill. Their judgment covered the whole tract as it was against the undivided interest of the co-tenant in the whole.

20 Proof of an undivided interest in the original tract is not *per se*, proof of any interest in a certain particular part. A grantee of a particular part has a right by estoppel to the chance that partition of the original tract may divide the interests in exoneration of the grant. This estoppel is not only against the grantor but against the grantor's co-tenant who treats the grant as good. As a manifest possibility in partition of the original tract, it cannot be known until such partition whether the outstanding co-tenant has been prejudiced by the grant or what, as to any particular part, is the legal effect of his undivided interest in the whole. Mere proof of an undivided interest as a basis of attack on any particular part before partition is not proof of any right that might be otherwise interpreted by such partition; as the interest can operate specifically

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Point I. The Right by Partition—Point II. 13
Partition Will Not Lie Against an
Ouster

on any particular part only by and through partition, it cannot specifically operate until after partition of the original tract; and such attack is an attempt to seek a pretended equity by an evasion of the duty to do equity by partition according to the essential principles and established practice of equity, and by such evasion, to ignore the rights of the grantee to equitable protection through the interest of his grantor. It is not necessary, if proper, to seek affirmative relief by cross-bill, because the defense by estoppel is sufficient. It is not necessary to file a cross-bill to insist that he who seeks equity must do equity, as disclosed by his own showing. The part of an answer by way of cross-bill will be struck out when the defense by answer is sufficient without it. *Van Winkle vs. Armstrong*, 41 N. J. Eq. 402. 10

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POINT 2.

Partition Will Not Lie Against an Ouster.

The respondents claim a common right and possession with Erb by virtue of a deed of bargain and sale purporting to convey to Erb all the "land and real estate" described, with covenant of general warranty, and recorded in the County Clerk's office before commencement of this suit (Exhibit D ab 3, pages 100-107; page 107, lines 3-6). The respondents complain by allegations of their bill that Erb is in possession of the premises appropriating to himself the entire profits (page 3, lines 19-25). In *Foulke vs. Bond*, 41 N. J. Law 527, this Court says, at page 540: "Entry by a grantee holding under a 30

14 *Point II. Partition Will Not Lie Against
an Ouster*

deed of conveyance for the entire estate, made by one of the co-tenants and duly placed on record, has all the constituent elements of a disseizin at common law. The conveyance by one tenant of the estate in entirety is decisive of his purpose to appropriate the entire estate to his own use, especially if his deed contain full covenants of seizin and warranty. The entry of the grantee under such a conveyance is equally evincive of his intention to claim the whole to the exclusion of the other co-tenants, and if the deed be duly recorded the transaction acquires that notoriety which is equivalent to the notoriety of livery of seizin. *The disseizin thereupon becomes complete*, and if possession be held continuously thereafter for the period of twenty years by open and notorious acts of ownership, without any interference on the part of the other co-tenants, title to the whole estate may be acquired by adverse possession." See *Elder et al vs. McClaskey et al*, 70 Fed. 529.

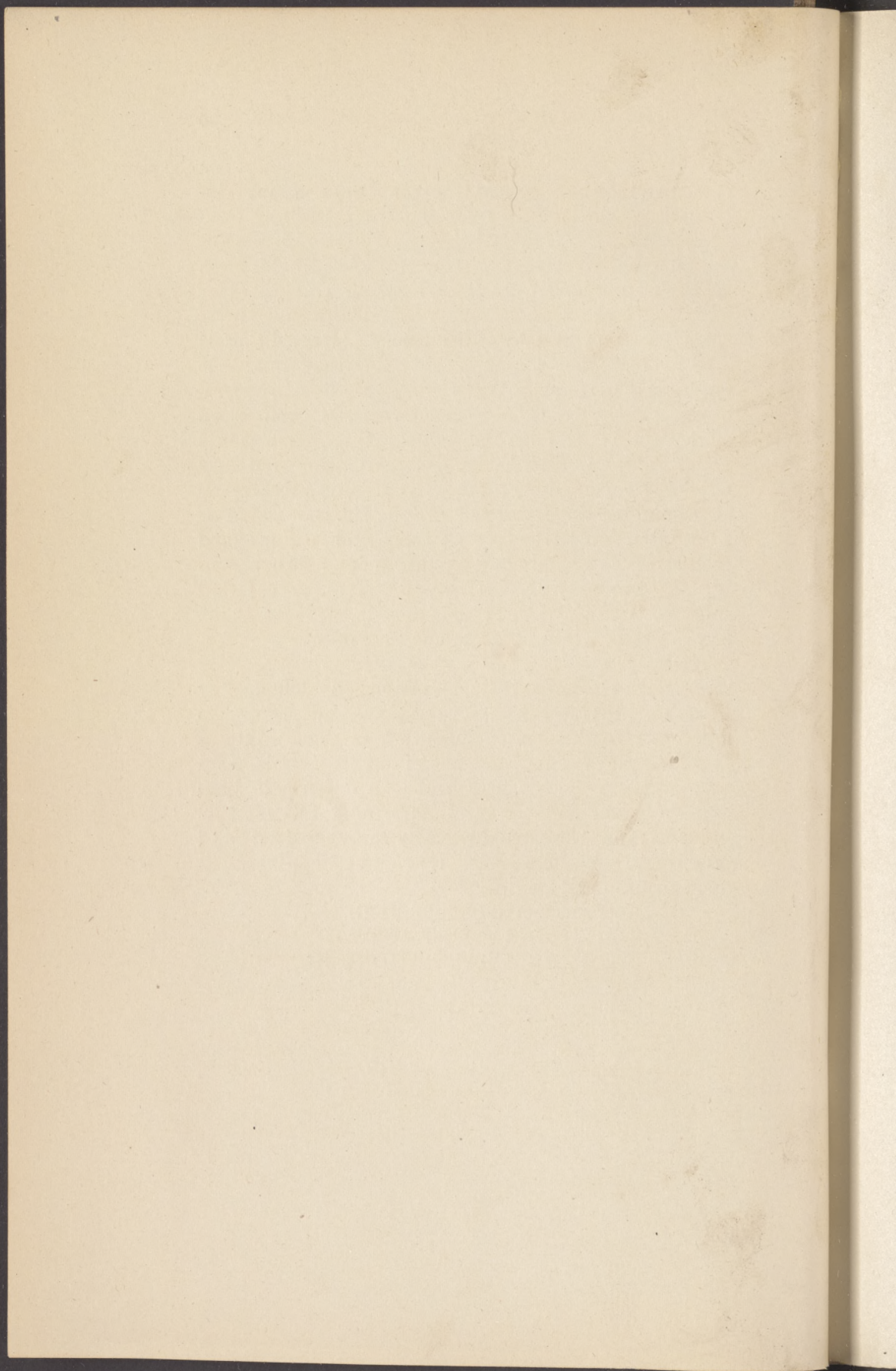
Ouster is the *beginning* of adverse possession which, if continued for twenty years as begun, matures into title. Within that time it may be challenged by ejectment; but partition will not lie because the disseized interest has no present possession to submit for the purposes of the suit. Ouster is hostile to any presumption that possession is held in common with the adversary. *Bearden vs. Benner*, 120 Fed. 690. *Carlson vs. Sullivan*, 146 Fed. 476. *Ellis vs. Feist*, 65 N. J. Eq. 548. *Roll vs. Everett*, 73 N. J. Eq. 697.

Ale's deed to the Realty Company from whom Appellant purchased his building lots is an ouster deed (*Exhibit D ab 2, pages 91 to 99*), and the proof by respondents' witness as well as by appellants' wit-

nesses is that the Realty Company took actual possession of the lands conveyed to it by filling with sand to about four feet above tide (*page 42, lines 19-36; page 69, lines 20-29; page 45, lines 17-23; page 49, lines 30-33; page 39, lines 7-20*); lands which before the improvement were "practically on a level with the water at every high tide." (Page 40, lines 3-12.) The answer and proofs show that appellant purchased by ouster deed from a grantor in actual possession by expensive improvements under an ouster deed. It does not appear that respondents nor Lillian M. Keneaster, deceased, ever had any possession whatever, their only pretense to possession being as they seek to construe the succession of title which purports to oust them and to disregard the actual possession and exclusive conduct concerning the property by improvements, purchases and sales proclaiming every defiance of what they ask the Court to presume as to such conduct. 10 20

As the ouster and adverse possession appears by answer and proofs, the conclusions of Chancellor Pitney on the motion before answer and proofs, do not apply to this point. The defense by this point is not by an equity in the defendant. "Disseizin ever implyeth a wrong," and is a defense in bar; not by cross-bill. Complainants must fail on this point because they are denied by the very deeds and possession on which they rely and which, when in open proof, disclose a false suit. 30

Most respectfully submitted,
WILLIAM J. KRAFT,
CHARLES K. LANDIS, JR.,
Of Counsel with Appellants.



NEW JERSEY COURT OF ERRORS
AND APPEALS.

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| BETWEEN | |
| WILLIAM H. KENEASTER and ELSIE M. KENEAS- TER, substituted in the place and stead of Lil- lian M. Keneaster, de- ceased, | 10 |
| Complainants and Appellees, | } On Bill for Partition. |
| and | |
| WILLIAM ERB, et al., Defendants and Appellants. | 20 |

BRIEF OF BOURGEOIS & COULOMB,
SOLICITORS FOR COMPLAINANTS AND APPELLEES.

The appeal in this case seeks to set aside a decree of the Court of Chancery directing the partition of several lots of land in Sea Isle City.

The land in question is part of a larger tract of land in which, by a decree of the Court of Chancery, entered in a suit to quiet title, Lillian M. Keneaster was adjudged to be the owner of an undivided five three hundred and ninety-seconds part, i. e., approximately one-eightieth. This decree was made September 24, 1907, in a suit to quiet title, wherein Ma-

tilda T. Landis, one of the parties to this suit, and Lillian M. Keneaster, et al., were defendants, after the trial of a feigned issue, before a jury.

Subsequently, on the 22nd day of April, 1908, Matilda T. Landis conveyed, by deed in fee, a part of the above mentioned tract of land, including the lots involved in this partition suit, to one Edgar S. Ale. Ale conveyed the same tract to the Sea Isle City Realty Company, which Company plotted it into lots, and on the 2nd day of August, 1909, sold the land decreed to be partitioned in this suit, to the defendant, William Erb.

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While the case was pending in the Court of Chancery, Lillian M. Keneaster, the owner of the land in question, died, leaving her surviving her husband, William H. Keneaster, and her daughter, Elsie M. Keneaster, who were substituted as parties complainant in this action.

After the bill had been filed originally for the partition of the land in question, Matilda Landis made a motion to strike out the bill or compel the defendants to include therein all the lands, the title to which was settled by the decree in the suit to quiet title brought by Matilda Landis against Lillian M. Keneaster, and also to include Matilda T. Landis, Executrix, as a party defendant, p. 8. The motion was defended upon the ground that the land in the bill was all of the land held by the defendant Erb and Mrs. Keneaster as tenants in common; that Erb had no interest in any other land than that described in the bill of complaint and Matilda T. Landis had no interest in the land described in the bill of complaint. This motion was heard before Chancellor Pitney, who filed the following opinion, p. 8:—

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“The motion to strike out the bill of complaint or require complainant to so amend the same as to include a prayer for partition of all the lands held in co-tenancy, of which the plot described in the bill is part, and to require complainant to join Matilda T. Landis, Executrix, &c. of Charles K. Landis, deceased, as a party defendant, will be denied with costs.

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“If the grounds upon which this motion was based are well taken, the defendant can obtain the benefit of them by a cross-bill.”

After the decree was entered on the above opinion, the defendant, Erb, filed an answer and cross-bill, making Matilda T. Landis a party to the cross-bill, and bringing into the case all of the land then owned by Matilda T. Landis, but not bringing in the lands sold by Matilda T. Landis to Edgar S. Ale and by Edgar S. Ale to the Sea Isle City Realty Company.

A motion was made to strike out this cross-bill because it did not include all of the lands in which the complainant Keneaster had an interest. The motion was refused because it did not appear from the pleadings that there was any other land other than that contained in the bill and cross-bill. In other words, it was a question of fact whether or not all of the land was included, and therefore the question could not be solved upon a preliminary motion. 10

Upon the over-ruling of the complainant's motion to strike out the complaint, the complainant filed her answer to the cross-bill, setting up these same defenses. 20

When the case came on for trial the testimony showed, first, that the original tract of land was approximately five hundred acres; that the portion of it sold to Edgar S. Ale and by Edgar S. Ale to Sea Isle Realty Company, a portion of which was sold by the Realty Company to defendant Erb, consisted of about one hundred acres. The testimony further showed that the one hundred acres of land so as aforesaid sold to the Realty Company was the only salable portion of the land, the balance having no market whatsoever, it being proved that all of the improvements in Sea Isle City were moving Southwardly and not Northwardly in the direction of the land to which Matilda T. Landis held the title. 30

In view of the fact that the one hundred acres of land, the title to which stood in the Realty Company, had not been brought into the partition suit,

either by the bill or the cross-bill, it could not be considered in determining either the value or the amount of land to which Mrs. Keneaster would be entitled. If commissioners had been appointed to divide the land, they would have been obliged under the pleadings to have given to Mrs. Keneaster her interest out of the portion of the land still remaining in Matilda T. Landis. This could not be done by simply giving her her approximate one-fifth in acreage alone, because the land was of unequal value. It would therefore be necessary for the commissioners to determine, first, the value in money of Mrs. Keneaster's interest, and this could not be done without determining the value of the acreage in the Sea Isle City Realty Company in which Mrs. Keneaster had an interest, but, in view of the pleadings, the commissioners would have no authority to consider this land because it was not part of the lands involved in the partition suit. Another difficulty in the way of making a fair partition is that it is impossible to set a market value for the remaining four hundred acres, because there is no market for it. The only fair way that a partition could be made in this suit, other than permitting Mrs. Keneaster to partition each separate tract of land held in severalty, is to have the commissioners determine, first, the value of all the land, including the value of the Sea Isle City Realty Company's land; then determine the value of Mrs. Keneaster's share in that land, which would be approximately one-fifth thereof; then sell the remaining four hundred acres of land remaining in Miss Landis, and if upon the sale of that land, it brought enough money to pay Mrs. Keneaster her one-fifth interest in the value of the whole tract, there need no other land be sold. If that land did not bring sufficient to pay Mrs. Keneaster her one-fifth interest in the value of all of the land, then the remaining lands, namely, the one hundred acres owned by the Sea Isle City Realty Company, should be sold to make up the deficiency. To try to apportion to Mrs. Keneaster her share by a physical division of the land remaining in Miss Landis, would be neither fair nor equitable, because that land, as has been shown, has no market whatsoever.

II.

The defendant Erb seeks to have the whole proceedings dismissed upon the ground that the decree in the suit to quiet title was improperly entered because Miss Landis was trustee and the cestui que trustents were not made parties to that proceeding.

It is submitted in answer to this proposition, first, that it is not necessary that the cestui que trustents be made parties to a suit of this character because their interests are fully represented by the trustee herself.

Sweet vs. Parker, 22 N. J. Eq., 456

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N. J. Franklinites Co. vs. Anes, 12 N. J. Eq. 507; and secondly, because the decree of a court of equity, or of any other court, cannot be collaterally attacked, but must be directly attacked.

Podeska vs. Binns, 69 N. J. Eq., 387.

III.

The main point raised by the defendants is that the complainants have no right to a partition of the land held by Mr. Erb, because Mr. Erb's title is not that of a co-tenant, but that he had an absolute title to the lands in question because the deed did not express that he held in co-tenancy, or that he got an undivided interest.

20

Chancellor Pitney, however, decided that his interest could be partitioned. (See above opinion). It appeared from the pleadings upon which this opinion was written, that there were other lands remaining in Matilda T. Landis at the time of the partition suit, and it also appeared that the Chancellor had this in mind, for he expressly states so in his opinion. So that the point raised by the complainant that so far as appeared by the pleadings that might have been all the land owned, is without weight. The complainant further contends that this opinion is without force in this present inquiry because, so far as it appeared from the pleadings, Mr. Erb's interest might not have been an undivided

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interest, but that the deed itself might have shown that he only got a divided interest.

We submit, however, that the pleadings distinctly show that he claimed to have an undivided interest in the land. The fifth paragraph of the bill, page 2, says:

“That without the consent or authority of your oratrix, some person presumed to divide the land into lots and presumed to designate said lots,” etc.

10 The seventh paragraph on page 3 shows that William Erb is in possession of a lot and claims to own the whole of it and appropriates to himself the entire profits thereof.

20 The defendant contends that the conclusion of the Chancellor upon the bill was upon the theory that Erb had an undivided interest and only purchased an undivided interest, but we submit that it can make no difference in this inquiry whether or not he supposed that he had an undivided interest or a divided interest, or whether or not he supposed he was a complete owner or a partial owner of the lands in question. At the time he bought the land the decree was a matter of record. He was served with notice of the fact that Matilda Landis was not the owner of all of the land in question. Matilda Landis could only convey what she had: she only had an undivided interest; she conveyed the whole of her interest, so that she had no further interest in the land conveyed to Erb, and whatever obligation she may be chargeable with upon her warranty would not change the situation with respect to Mrs. Ken-easter's interest in the property.

30 Defendant's counsel's contention is in effect that all one co-tenant has to do in order to defeat his other co-tenant's right to partition certain property, which might be a small or inconsiderable portion of the entire property, is to undertake or purport to convey the whole of it.

The case cited by defendant's counsel in support of this absurd proposition is entirely beyond the point, because in the very case cited (Foulke vs.

Bond, 12 Vr., 529), the disseizin did not operate as a disseizin or as a transfer of the title until twenty years had expired after the entry under a claim of right.

There is no such situation in this present suit. Had Miss Landis gone into possession and stayed in possession for twenty years, there might be some room for the application of *Foulke vs. Bond*, but inasmuch as her possession had been for about a year, it certainly cannot be urged as having any force. In effect the defendant undertakes to say to the complainant "You have no interest whatever in my piece of land altho' you are a part owner thereof, because Matilda T. Landis undertook to convey to me all of the land." 10

In the case of *Foulke vs. Bond*, above referred to, it was held that the entry under such a conveyance would a disseizin of the whole premises. If, therefore, the theory of Mr. Landis is right, had Miss Landis undertaken to have sold the whole of the land to the Sea Isle City Realty Company or to Erb, the complainants would not have been entitled to partition the land at all, notwithstanding that Miss Landis had no interest in it after she had made the conveyance of the whole of the land, and notwithstanding that Mrs. Keneaster was still the owner of an undivided interest in the land. The case of *Foulke vs. Bond* is not authority for the proposition advanced by the complainant. 20

The cases of *Holcomb vs. Coryell*, 11 N. J. Eq., 548 and *Boston Franklinite Co. vs. Condit*, 19 N. J. Eq., 394, are authority for the proposition that one tenant in common of certain lands cannot prejudice his co-tenants by a partition of a part of the land by meets and bounds. The prejudice of Mrs. Keneaster in the present case would not be by the fact that there was a conveyance made, but by permitting that conveyance to have the legal effect of ousting Mrs. Keneaster of any interest in the premises thereby conveyed, notwithstanding said premises may be peculiarly situate with respect to the whole of the land so as to have a peculiar value with respect thereto. To permit the conveyance to have such an effect 30

would be to permit any one of the co-tenants selecting for her own use a particular part of the premises in question, and then saying to the other co-tenant "You must get your interest out of the lands remaining," notwithstanding such lands remaining as in the present case, may have no market value at all.

It is well settled that a conveyance may be made by a tenant in common of his entire interest in the premises, and his grantee becomes a tenant in common in his stead.

- 10 See Holcomb vs. Coryell, 11 N. J. E., 548;
Boston Franklinite Co. vs. Condit, 19 N. J. 29,
394-401.
See 17 Am. & Eng. 661;
Bracken vs. Cooper, 80 Ill. 221;
Liscomb vs. Root, 8 Pickering 375.

- 20 It is admitted, as is set out in the bill of complaint, that the lands held in common between Miss Landis and Mrs. Keneaster have been divided into building lots by a survey and a map. Each building lot constitutes a separate parcel of land under the decisions and the conveyance by Miss Landis to Erb of the premises described in the bill of complaint is a conveyance of all her interest in a separate parcel of land of which she was a tenant in common, which conveyance there can be no doubt of the validity of, consequently, Erb became a tenant in common of Mrs. Keneaster in the premises which she holds, and admitting, for the purpose of argument, that the defendant's contention in his motion, viz: that a part of the premises cannot be conveyed by one tenant in common to the prejudice of his co-tenant, is true, still Miss Landis has parted with her entire interest in the premises now held by Erb.

- 30 See Jones on Real property, Par. 1977;
Butler vs. Roys, 25 Mich. 53;
Green vs. Arnold, 11 R. I. 264.

"It is axiomatic that partition can be had only of property which is held in co-tenancy, and that

there can be no judgment or decree for partition where the parties to the action or suit are neither co-partners, joint tenants nor tenants in common."

See 21 Am. & Eng. 1159;

Honnwell vs. Taylor, 3 Grey Ill.;

Jones on Real Property, Par. 1957.

In the matter of *Ebenezer Prentiss*, 7 Ohio 129, where one party had a one-third interest in several parcels of land the two-thirds interest in each parcel being owned by different persons, the court's rule that partition could not be made of the premises because each party must have a common interest with each of the other parties in all of the lands. "A is a tenant in common with B in one section of land, and with C in another. Can he join the two together in one partition? It seems to the court clearly that he could not for the reason that he is joining together in the same suit those who have no common interest. In order to sustain the proceedings the petitioner must have a common interest in all of the land sought to be divided." 10

In *Brownell vs. Bradley*, 16 Vt. 105, partition was asked of several tracts of land against several defendants, all of whom are not interested in all of the tracts of land. The court denied the right to partition under these circumstances and dismissed the petition on the ground that the defendants were mis-joined. 20

In *Honnwell vs. Taylor*, 3 Gray, Ill. the Supreme Court of Massachusetts laid down the same rule to the effect that partition could not be had of all the lands in the same action by A when he holds part of the parcel with B and the other part with C.

To the same effect see *Cromwell vs. Hull*, 97 N. Y. 209; *Seiders vs. Giles*, 141 Pa. 93. 30

Defendant's counsel stated upon the argument that he would not amend his cross-bill so as to include within it all of the lands in which Mrs. Ken-easter had an interest, but would stand or fall on

his present cross-bill which included only about three-fourths of the land, being that portion of the whole tract to which Miss Landis still had title. This is in effect an abandonment of the cross-bill, or rather of any rights which might be raised by way of a cross-bill, because if the defendant Erb and the defendant Landis have any equity at all, it is that Mrs. Keneaster's interest should be made out of the whole land and that the whole land must be considered in determining what Mrs. Keneaster's interest is. The Court of Chancery has already stated that complainant Keneaster had a right to partition the lands described in the bill of complaint, notwithstanding the said lands were only a small portion of all of the land in which Mrs. Keneaster had an interest, upon the ground that so far as the lands described in the bill of complaint were concerned, only Mr. Erb and Mrs. Keneaster had any interest in them. The Court of Chancery in its opinion, however, stated that if the grounds upon which the motion to strike out was made were well taken, they could be raised by way of cross-bill. These grounds are as follows, as appears from the notice to strike out, given by counsel of the defendant Erb:

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- 20
1. To include for partition all of the lands held in co-tenancy.
2. To join Matilda T. Landis as executrix.
3. Because the bill asked for partition of what appears by the bill to be only a small portion of the land.
4. Because Matilda T. Landis is not a party to the suit.

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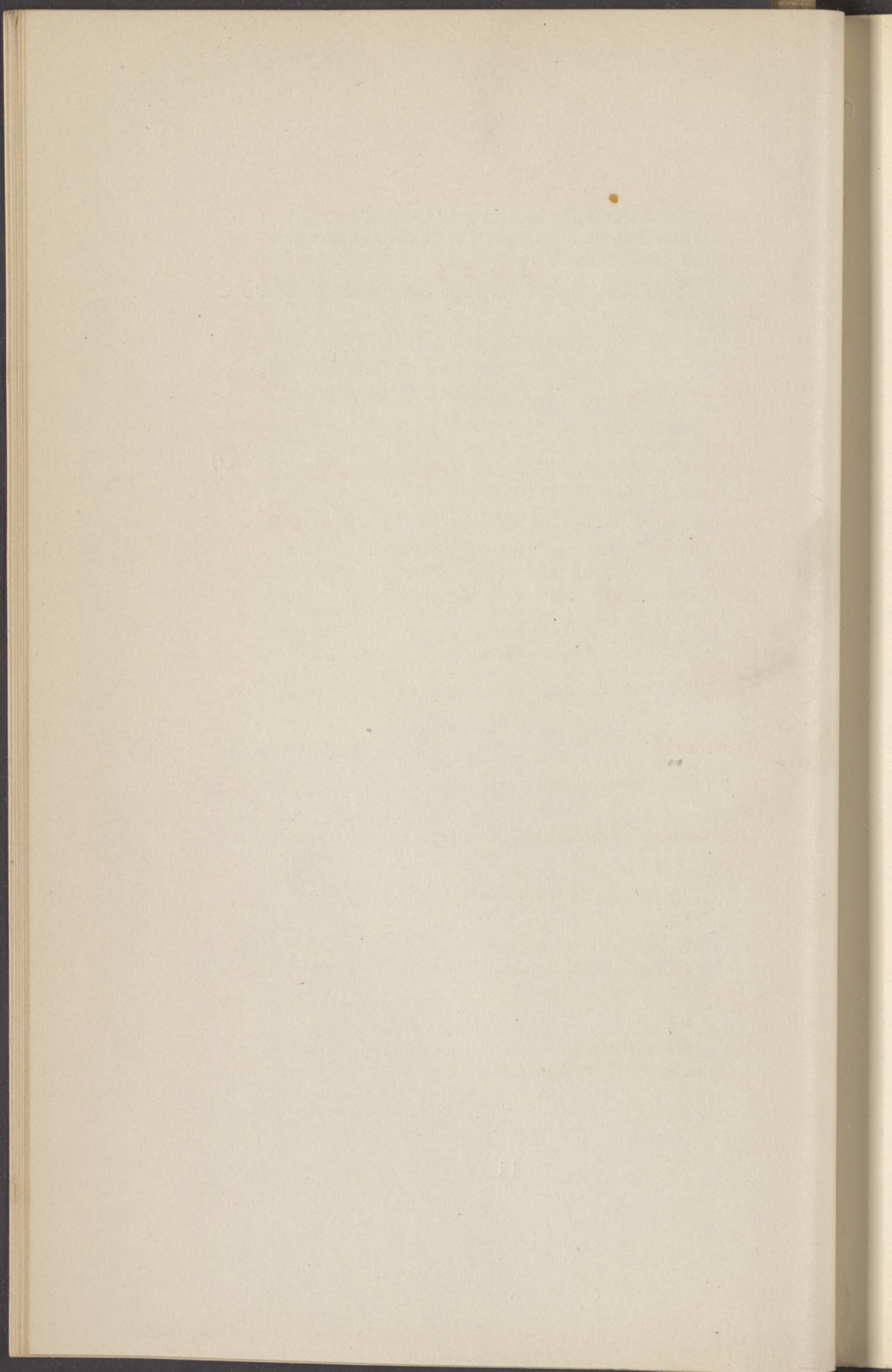
The only one of these reasons in which we are interested in the present inquiry is the first one, namely, that all of the lands must be included. If this were a proper equity it should have been raised by a cross-bill as suggested, and it is respectfully submitted that it has not been done, because manifestly all of the lands have not been included. In other words, the defendant, by not filing a cross-bill, including all of the land in which Mrs. Keneaster was a co-tenant, has abandoned any pretended equity

such as the Chancellor had in mind when he said in his opinion that such an equity if it existed could be protected by a cross-bill.

It is submitted, therefore, that the decree should be affirmed.

BOURGEOIS & COULOMB,
Solicitors of Complainant,
Lillian M. Keneaster.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

(Filed Aug. 20th, 1910)

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*To his Honor, Mahlon Pitney, Chancellor of the
State of New Jersey:*

Complaining shows unto your Honor your oratrix,
Lillian M. Keneaster, of the City of Washington in
the District of Columbia:

1. That Richard T. Smith, late of the City of Sea
Isle City, in the County of Cape May and State of **20**
New Jersey, was the father of your oratrix, and dur-
ing his lifetime and at the time of his death was
seized in fee simple of an undivided share or inter-
est in a large tract of land situate within the bounds
of what is now Sea Isle City.

2. That your oratrix's father departed this life
intestate, about October fourth, nineteen hundred
and one, and thereupon your oratrix, by inheritance,
became seized in fee simple of an undivided five- **30**
three hundred and ninety-seconds part of the whole
of the lands above mentioned, and later, to wit, about
the year nineteen hundred and three, the entire
right, title and interest in and to the lands above
mentioned, excepting the interest of your oratrix,
became vested by purchase in Matilda Landis.

3. That afterwards, about the year nineteen hundred and five, Matilda Landis, alleging herself to be seized in fee simple of the entire tract of land and premises aforesaid, filed her bill in this Honorable Court to quiet her alleged title against the claim to your oratrix's undivided interest aforesaid; that by a decree made in this Honorable Court in said cause your oratrix's right and title to an undivided five-
10 of the lands in said bill of complaint described were decreed to be vested in your oratrix, and that as to said undivided interest your oratrix's title was fixed and determined.

4. Your oratrix further shows that after the making and filing of the decree aforesaid, the said Matilda Landis, to wit, on the twenty-second day of April, nineteen hundred and eight, sold and conveyed all of her interest in the lands hereinafter described to one Edgar S. Ale, and the said Edgar S.
20 Ale afterwards, to wit, on the twenty-second day of July, nineteen hundred and eight, conveyed all his interest in and to the lands hereinafter described to the Sea Isle City Realty Company, and the Sea Isle City Realty Company, afterwards, to wit, on August second, nineteen hundred and nine, sold and conveyed, and the Vineland Trust Company as mortgagee released all their interest respectively in and to the lands herein particularly described to Wil-
30 liam Erb.

5. Your oratrix further shows that without the consent or authority of your oratrix, some person presumed to divide the lands hereinafter particularly described into lots and presumed to designate said lands hereinafter particularly described as lots

numbered 28, 29, 30 and 31 in Block A on the Sea Isle City Realty Company's plan of Venetian Park, Sea Isle City, New Jersey, which said tract or parcel of land so conveyed to William Erb is particularly described as follows:

Beginning in the southwesterly line of the County Boulevard five hundred feet northwestwardly from the northwesterly side of Park Road, containing together in front or breadth northwestely on the County Boulevard one hundred feet and of that width extending southwesterly ninety-five feet. 10

6. Your oratrix further shows that the parcel of lands last above mentioned is part and parcel of the lands described in the bill of complaint filed in this Honorable Court by the said Matilda Landis, complainant, against your oratrix, defendant.

7. Your oratrix further shows that William Erb is in possession of said above described tract of land and premises and is in the enjoyment of the profits thereof, and that the said William Erb appropriates to himself the entire profits and does not in any manner account to your oratrix for any part or portion thereof. 20

8. Your oratrix further shows that your oratrix is entitled to the undivided five-three hundred and ninety-seconds part of the lands so conveyed to the said William Erb and that the said William Erb is seized and entitled to the undivided three hundred and eighty-seven three hundred and ninety-seconds part of said premises, as will more fully appear from the decree, pleadings and proofs filed of record in the office of this Honorable Court in the cause of Matilda T. Landis, complainant, against your oratrix, de- 30

pendant, above mentioned, which said decree, pleadings and proofs are here brought into court and are binding and conclusive upon the said William Erb, defendant, as fully and completely as against the said Matilda T. Landis, through whom the said defendant William Erb claims title.

9. Your oratrix further shows that your oratrix is a married woman, living separate and apart from her husband, whose name is William H. Keneaster.

10. Your oratrix further shows that she is desirous that a partition or division of the interest of your oratrix and the said William Erb in the tract of land and premises aforesaid should be made between your oratrix and the said William Erb, according to their several and respective rights, interests and estates therein or in case, as your oratrix believes and avers the fact to be, that the said tract of land and premises cannot be divided between the owners thereof without great prejudice to their interests, then that the same may be sold and the proceeds thereof divided between your oratrix and the said defendant, William Erb, according to their respective rights and interests, but your oratrix is advised that no valid or effectual partition, division or sale can be effected without the aid and interposition of some competent court, and that this Honorable Court has full and complete jurisdiction in the premises.

30 In consideration whereof, and to the end that the defendants, William Erb and William H. Keneaster, may, without oath, full, true, direct and perfect answer make to all and singular the charges and matters aforesaid, as fully and particularly as if the same were here again repeated and they thereunto

particularly interrogated, and that a fair partition and division of the above described premises may be made according to the course and practice of this Court, if the same be practicable and consistent with the rights of all the parties interested therein, among your oratrix and the other persons entitled to shares of said premises according to their respective rights and interests therein, and in case such partition and division in fact of the said premises shall be found to be impracticable or if it should appear that the same cannot be made without great prejudice to the owners of the said premises, then the said tract of land and premises may be decreed by this Honorable Court to be sold and the proceeds thereof, after paying the costs and charges of this suit, divided among your oratrix and the parties interested therein, according to their respective rights, shares and interests, and that your oratrix may have such further and other relief as the nature and circumstances of the case may require, and as shall be agreeable to equity. 10 20

May it please your Honor to grant unto your oratrix the State's writ of subpoena to be directed to the said William Erb and William H. Keneaster, commanding them and each of them at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises and to stand to, abide by and perform such decree therein as to your Honor shall seem meet. 30

And your oratrix will ever pray, etc.

GEO. A. BOURGEOIS,
Solicitor and of Counsel with Compl't.

NOTICE.

IN CHANCERY OF NEW JERSEY.

(Filed Feby. 29th, 1912.)

| | | | |
|----|--|---|--|
| 10 | Between LILLIAN M. KENEASTER, <i>Complainant,</i> and WILLIAM ERB, et al., <i>Defendants.</i> | } | ON BILL FOR PARTI- TION. NOTICE. |
|----|--|---|--|

20 *George A. Bourgeois, Esq.,*
Sol'r and of Counsel with Complainant:

Please take notice that I will make a motion before the Chancellor at the State House at Trenton on Tuesday the fourth day of October next at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, that complainant be required to so amend her bill filed in the above said cause as

30 1st. To include for partition all the land held in co-tenancy of which the plot described and referred to in paragraphs 5 and 6 of said bill, is a part.

2nd. To join Matilda T. Landis, as executrix of the last will and testament of Charles K. Landis, deceased, as a party defendant.

The particular grounds of objection to said bill are

1st. That it seeks partition of what appears by the bill to be only a small part of the lands held in cotenancy.

2nd. That Matilda T. Landis, the alleged cotenant, is not a party to the suit.

3rd. That by the decree, pleadings, and proofs referred to in paragraph 8 of the bill and brought into court by complainant, it appears that the said Matilda T. Landis is cotenant, not as alleged, but as executrix of the last will and testament of Charles K. Landis, deceased. **10**

Dated September 22nd, A. D. 1910.

Yours truly,

CHAS. K. LANDIS, JR.,
Of Counsel with Defendant,
Wm. Erb.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

(Filed Feby. 29th, 1912)

32-643.

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| | | |
|--|---|--|
| Between LILLIAN M. KENEASTER, <i>Complainant,</i> and WILLIAM ERB, et al., <i>Defendants.</i> | } | ON BILL FOR PARTI- TION. ON MOTION OBJECT- ING TO BILL, PUR- SUANT TO RULE 213 |
|--|---|--|

20

For the Complainant, GEORGE A. BOURGEOIS.
 For the Defendant Erb, CHARLES K. LANDIS, JR.

PITNEY, Chancellor.

30

The motion to strike out the bill of complaint or require complainant to so amend the same as to include a prayer for partition of all the land held in co-tenancy, of which the plot described in the bill is a part, and to require complainant to join Matilda T. Landis, executrix, &c., of Charles K. Landis, deceased, as a party defendant, will be denied, with costs.

If the grounds upon which this motion was based are well taken, the defendant can obtain the benefit of them by cross-bill.

**ANSWER OF WILLIAM ERB AND EMMA
ROSIE ERB.**

IN CHANCERY OF NEW JERSEY.

(Filed March 12th, 1912.)

The joint answer of **William Erb** and **Emma Rosie Erb**, his wife, defendants, to the Bill of Complaint of **Lillian M. Keneaster**.

10

These defendants answering, say:

They admit that by a decree of this Honorable Court, complainant's title was fixed and determined to an undivided five-three hundred and ninety-seconds part of certain lands, the title to all other parts of the same being in Matilda T. Landis, and that this defendant, William Erb, is in possession of certain lots particularly mentioned and described in said bill of complaint by virtue of successive sales and conveyances, the first from said Matilda T. Landis as therein alleged. They admit that said lots are a several part of the lands in which complainant's title was fixed and determined as aforesaid, but deny that such severance and division was without complainant's consent or authority.

20

They say that the sale and conveyance to Sea Isle City Realty Company mentioned and referred to in said bill of complaint was of about one hundred (100) acres, being not more than one-fifth of the whole acreage in which complainant's title was fixed and determined as aforesaid, which at the time of said sale and conveyance were a salt-marsh overflowed by frequent tides of the sea. That when this

30

defendant, William Erb, purchased said lots, as said complainant then well knew, said Sea Isle City Realty Company had improved its said lands as building lots at great cost and expenditure of money according to its published plan of Venetian Park, was in peaceful and apparently exclusive actual possession of its said lands, advertising and selling the same in separate lots to the public generally as a sole and undisputed owner by conveyances with covenants of
10 general warranty of all the title against the claim or demand of any and every person or persons in equity or at law. That said complainant never appeared nor made known her claim to these defendants nor to any one who dealt with or might deal with said Sea Isle City Realty Company in ignorance of her claim. That this defendant, William Erb, purchased said lots in good faith and paid one thousand dollars cash purchase money to said Sea Isle City Realty Company without any actual knowledge or
20 information of complainant's claim nor any cause to inquire as to any such claim but in confidence by said conveyance of purchasing all the title to his said lots and possession thereof against the claim or demand in equity or at law of any and every other person or persons.

These defendants say that the said lots purchased as aforesaid by this defendant, William Erb, comprise less than one-twenty-five hundredths (1-2500ths) of the area of the said lands in which
30 complainant's title to a five-three hundred and ninety-seconds (5-392nds), part was fixed and determined as alleged in her said bill of complaint, that her said undivided part is in the whole of said area and that a just and equitable partition or division thereof to said complainant may and can be made only as such part of said whole.

These defendants deny that said complainant is entitled to any undivided part of said lots purchased as aforesaid by this defendant, William Erb, or that a partition or division of the same should be made.

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

10

And these defendants by way of cross-bill exhibited against the complainant, Lillian M. Keneaster, the defendant, William H. Keneaster, and Matilda T. Landis, say:

That the lands in which complainant's title was fixed and determined to an undivided five-three hundred and ninety-seconds (5-392nds) part by decree of this Honorable Court mentioned and referred to by complainant's bill of complaint, contain **five hundred and thirty-six** (536) acres or more and that Matilda T. Landis is yet seized and in possession of **four hundred and twenty-seven** (427) acres or more thereof with title to all parts of the same other than complainant's said undivided part. That complainant has not nor ever had possession of any part of said **Five Hundred and Thirty-six** (536) acres and has not nor ever improved, nor paid for or contributed to the improvement or other cost, charge, or expense of or concerning any part of the same. That a just and equitable partition or division of said **Five Hundred and Thirty-six** (536) acres may and can be made only by locating complainant's part within the limits of said **Four Hundred and Twenty-seven** (427) acres thereof which are of ample quantity for the purpose and of like condition, character, and value as the whole without improvements. That

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the other portion of said whole is not more than **One Hundred and Nine** (109) acres, including the said lots purchased by this defendant, William Erb, said lots being less than one-fifth (1-5th) of an acre and that said **One Hundred and Nine** (109) acres have been improved by many divers strangers to the title of said complainant in possession of numerous several parts thereof by respective sales and conveyances to them by said Matilda T. Landis or her assigns. That said strangers purchased and improved said portion in ignorance of complainant's claim, in good faith and for adequate valuable considerations paid for their several purchases. That said complainant never before the commencement of this suit asserted her said claim but silently permitted said Matilda T. Landis and her assigns to apparently be in peaceful and exclusive possession of said lands advertising the same and dealing with the public generally for more than thirty years as sole and undisputed owners of the same.

These defendants charge that they and the public generally had good cause and equitable right to understand and believe that complainant consented to said sales and conveyances by Matilda T. Landis and her assigns and that complainant was or would be willingly satisfied of her said claim from the greater and ample portion of said lands remaining unsold and in possession of said Matilda T. Landis. These defendants say that the portion of said lands sold and conveyed as aforesaid by Matilda T. Landis including the said lots of this defendant, William Erb, is much less than the undivided part of said Matilda T. Landis in the whole of said lands and these defendants charge that the part to be divided or partitioned to said Matilda T. Landis should in equity and good conscience include said portion in confirmation of said sales and conveyances and in

consideration of the improvement of the same and the injury, loss, cost, expense, and multiplicity of suits that would otherwise result from complainant's silence and laches in the premises; that such division or partition of the whole of said lands should be made as to locate complainant's part in the whole of said lands within that portion of the same in the seizin and possession of Matilda T. Landis as aforesaid.

In consideration whereof, these defendants pray 10
that the complainant, **Lillian M. Keneaster**, and the
defendants, **William H. Keneaster** and **Matilda T.**
Landis, may, without oath, full, true, direct, and per-
fect answer make to all and singular the charges and
matters aforesaid, as fully and particularly as if the
same were here again repeated and they thereunto
particularly interrogated, and that a fair partition
and division may be made between the said com-
plainant and the said defendant, **Matilda T. Landis**, 20
of all the lands in which they in common with each
other are entitled to undivided parts as alleged in
said bill of complaint, according to their respective
rights and interests therein and the course and prac-
tice of this Honorable Court: that any portion or
portions thereof sold and conveyed by said Matilda
T. Landis may be included in the part divided and
partitioned to her in confirmation of said sales and
conveyances; and that these defendants may have
such other or further relief in the premises as the 30
nature and circumstances of the case may require
and as shall be agreeable to equity and good
conscience.

And these defendants will ever pray, &c.

CHAS. K. LANDIS, JR.,
Of Counsel with Defendants
William Erb and Emma
Rosie Erb.

ANSWER OF MATILDA T. LANDIS.
IN CHANCERY OF NEW JERSEY.

(Filed March 12, 1912.)

The answer of **Matilda T. Landis**, defendant, to the joint answer by way of Cross-Bill of **William Erb** and **Emma Rosie Erb**, his wife, defendants, to the Bill of Complaint of **Lillian M. Keneaster**, complainant.

This defendant answering says:

That she is not married.

That she admits all and singular the allegations and charges of said defendants, William Erb and Emma Rosie Erb, his wife, in their said joint answer by way of cross-bill, are just and true, and submits to such decree as this Honorable Court may make according to the prayer of said defendants in their said cross-bill that a fair partition and division may be made between the said complainant, Lillian M. Keneaster, and this defendant, Matilda T. Landis, of all the lands in which they in common with each other are entitled to undivided parts as alleged in the bill of complaint filed in this cause by the said complainant, Lillian M. Keneaster, according to their respective rights and interests therein and the course and practice of this Honorable Court and that any portion or portions thereof sold and conveyed by said Matilda T. Landis may be included in the part divided and partitioned to her in confirmation of said sales and conveyances.

All which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct.

MATILDA T. LANDIS.

Executrix.

**NOTICE OF MOTION TO STRIKE OUT
ANSWER AND CROSS-BILL.**

IN CHANCERY OF NEW JERSEY.

(Served but not filed)

10

Between

LILLIAN KENEASTER,
Complainant,

and

WILLIAM ERB and EMMA
ROSIE ERB,

Defendants,

and

MATILDA T. LANDIS,
Defendant in Cross-bill.

ON BILL FOR PARTI-
TION.

NOTICE OF MOTION TO
STRIKE OUT AN-
SWER AND CROSS-
BILL.

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*To Charles K. Landis, Esq., Solicitor for and of
Counsel with Defendant in Cross-bill and De-
fendants.*

Dear Sir:

Please take notice that on Tuesday, the second day
of April, A. D. nineteen hundred and twelve, at the
State House, in the City of Trenton, at the hour of
10.30 o'clock in the forenoon, or as soon thereafter
as counsel shall be heard, I shall move before the
Honorable Edwin R. Walker, Chancellor of the State
of New Jersey, or such Vice-Chancellor as may be
then sitting at the State House in Trenton, to strike

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16 *Notice of Motion to Strike Out Answer
and Cross-bill*

out and expunge all the parts of the answer filed in the above cause, to wit:

10 First: All that part of said answer on page one thereof, beginning with the words, "They say that the sale and conveyance to the Sea Isle Realty Company" and concluding with the words, "against the claim or demand in equity or at law of every other person or persons."

20 Second. All that part of said answer on page two thereof, beginning with the words, "These defendants say" and concluding with the words, "can be made only as such part of said whole;" because the same are not matter material to said suit, and cannot aid the defendants in maintaining their defense to said suit, and because the said defendants cannot compel the complainant to have a division or partition of lands other than those described in the bill of complaint, of which the said defendants William Erb and Emma Rosie Erb are seized.

At the same time and place I shall also move to strike out the cross-bill filed herein on the following grounds, to wit:

30 First. Because the matters therein contained and set forth are immaterial and cannot aid the defendants in maintaining their defense to said suit.

Second. Because the said defendants are not entitled to the relief therein prayed for, and are not entitled to have the said complainant accept a partition of the lands other than those set forth and described in the bill of complaint, of which the said de-

Notice of Motion to Strike Out Answer 17
and Cross-bill

endants, William Erb and Emma Rosie Erb are seized, and are not entitled to have the complainant accept a partition or division of the four hundred and twenty-seven acres of land remaining, title to which is in Matilda T. Landis.

Third. Because said cross-bill introduces a new party to said suit.

Dated March 20, 1912.

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Respectfully,

BOURGEOIS & COULOMB,
Solicitors for and of Counsel
with Complainant.

ORDER.

IN CHANCERY OF NEW JERSEY.

(Filed April 8th, 1912)

32-643.

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Between

LILLIAN M. KENEASTER,
Complainant,
andWILLIAM ERB and EMMA
ROSIE ERB,
Defendants,
andMATILDA T. LANDIS,
*Defendant in Cross-bill.*ON BILL FOR PARTI-
TION.MOTION TO STRIKE
OUT ANSWER AND
CROSS-BILL.

ORDER.

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On motion of Messrs. Bourgeois and Coulomb, solicitors for and of counsel with complainant, in the presence of Mr. Charles K. Landis, Jr., solicitor for and of counsel with William Erb and Emma Rosie Erb, defendants, and Matilda T. Landis, defendant in cross-bill, to strike out and expunge parts of the answer and to strike out the cross-bill filed in the above stated cause by William Erb and Emma Rosie Erb, defendants. It is on this second day of April, A. D. nineteen hundred and twelve (1912), ordered, that said motion be denied and that complainant pay to said defendants, William Erb and Emma Rosie Erb, their costs of this motion to be taxed.

E. R. WALKER, C.

REPLICATION AND ANSWER TO CROSS-BILL.

IN CHANCERY OF NEW JERSEY.

(Filed May 7th, 1912)

| | | | |
|--|---|---|-----------|
| Between LILLIAN M. KENEASTER, <i>Complainant,</i> and WILLIAM ERB and EMMA ROSIE ERB, <i>Defendants.</i> | } | ON BILL FOR PARTI- TION. REPLICATION AND AN- SWER TO CROSS- BILL. | 10 |
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To the Honorable Edwin R. Walker, Chancellor of the State of New Jersey:

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The complainant joins issue on the answer of the defendant in the above cause.

The complainant, by way of answer to so much of the defendants' answer as is filed, by way of cross-bill, says:

1. That she admits it to be true that her interest in the lands and premises in question is an undivided five three hundred and ninety-two one-hundredths (5-392) part thereof, which interest was fixed by a decree of this Honorable Court, and mentioned and referred to in the bill of complaint herein, and that the land in which said interest was fixed contains

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five hundred and thirty-six (536) acres or more, but as to whether or not the said Matilda T. Landis is as yet seized and in possession of four hundred and twenty-seven (427) acres thereof, this complainant has no knowledge, and prays that the said defendant may make such proof thereof as she may be advised to be necessary.

2. This complainant further answering said
- 10** cross-bill, respectfully shows unto your Honor that the five hundred and thirty-six acres of land is not at the present time nor was it at the time this complainant's interest was fixed therein, nor at the time the defendant, Matilda T. Landis, sold the same to the Sea Isle Realty Company and to others, of an equal value, but avers and shows the truth to be that the lands sold by Matilda T. Landis to the Sea Isle City Realty Company are more advantageously situated and of greater value than the balance of said
- 20** land; that the land so sold to the Sea Isle Realty Company was contiguous and adjacent to the Turnpike Crossing from the mainland to Sea Isle City, and also between the turnpike and the railroad and close to the railroad station at Sea Isle City; that the lands so sold and now possessed by the Sea Isle Realty Company and its various grantees, even before said lands were filled in and brought to grade, were readily salable, while there is no demand whatsoever for the remainder of said lands either in their
- 30** natural condition or filled in and brought to grade; that owing to the disadvantageous location of the lands now owned by the said Matilda T. Landis, and out of which she seeks to have this complainant accept partition, said lands are not salable at all in their present shape, and it would cost more to fill in said lands and bring the same to grade than said

lands would bring if exposed to sale, either at public or private sale, whether through the instrumentality of real estate agents or otherwise however; that it would not pay at the present time and perhaps not for a number of years, to fill in said lands to grade, and attempt to sell the same, whereas, the lands sold by the said Matilda T. Landis to the Sea Isle Realty Company, and now owned by the said Sea Isle Realty Company and its grantees, were so located and of such high value that it paid to fill in and bring said lands to grade, and the price obtainable for such lands justified the owners thereof in improving the same by filling in and grading as aforesaid. 10

3. This complainant further answering said cross-bill respectfully shows unto your Honor that the said Matilda T. Landis well knew of this complainant's interest in said lands and premises and well knew the values of the respective portions of the lands and premises in which this complainant had an interest, and well knew that the lands now retained by the said Matilda T. Landis are of no value whatsoever, and that it would not pay to fill in said lands and bring them to grade, and that said lands and premises could not be sold for sufficient, even if filled in and brought to grade, to pay the cost of such improvement, and that in order to deprive this complainant of her legal and equitable rights in said lands and premises, and in violation of this complainant's rights, attempted to sell and did sell to the Sea Isle Realty Company the lands and premises described in the answer and in the cross-bill by meets and bounds, and not an undivided interest therein. 20 80

4. This complainant further answering said cross-bill respectfully shows unto your Honor that the

said Sea Isle Realty Company is a close corporation, and that the majority of the stock therein is owned by Charles K. Landis, Jr., a nephew of the said Matilda T. Landis, and her solicitor and counsel in the present suit, and this complainant is informed and believes that the said Matilda T. Landis owns some of said stock in said corporation; that both the said Charles K. Landis, Jr., and Matilda T. Landis well knew of this complainant's interest in said lands and premises and her rights therein, and well knew the value of said lands and the respective portions thereof, and accepted and took title to said lands and premises from the said Matilda T. Landis with a view of depriving this complainant of her legal and equitable rights therein, well knowing that the lands and premises remaining would be unsalable and of no value whatever to this complainant.

5. This complainant further answering said cross-bill, respectfully shows unto your Honor that she has no knowledge as to whether the defendants, William Erb and Emma Rosie Erb and the other grantees of the said Sea Isle City Realty Company knew of this complainant's interest in the said lands and premises, but leaves them to such proof thereof as they may be advised to be necessary; but this complainant respectfully avers and shows the truth to be that at the time of the sales to the said defendants and the other grantees of the said Sea Isle City Realty Company, this complainant had an undivided interest in said lands and premises, which interest could have been readily ascertainable upon inquiry, and which interest the said Sea Isle City Realty Company well knew of, and this complainant believes that the said Sea Isle City Realty Company informed and advised the said defendants and other

grantees of this complainant's interest in the lands and premises.

6. This complainant further answering said cross-bill denies that she silently permitted the said Matilda T. Landis and the said Sea Isle City Realty Company or any one else to apparently be in peaceful and exclusive possession of said lands and premises, but on the contrary avers and shows the truth to be that for many years she attempted to get the said Matilda T. Landis to recognize her right and interest in said lands and premises, and that the said Matilda T. Landis and the said Charles K. Landis for many years before the said property was sold to the said Sea Isle Realty Company well knew of this complainant's interest in said lands and premises and well knew that she claimed to have an interest therein. 10

7. This complainant further answering said cross-bill denies that she consented to said sales and conveyances by the said Matilda T. Landis to the Sea Isle Realty Company, and denies that she ever by her conduct or word or deed gave the said Matilda T. Landis or the said Sea Isle Realty Company or Charles K. Landis, Jr., or the defendants or any or either of them, reason to suppose that this complainant would be willing to be satisfied of her said claim in and to said lands and premises from the remaining portion of said lands in possession of the said Matilda T. Landis. 20 30

8. This complainant further answering said cross-bill avers and shows the truth to be that if she is compelled to accept a partition of the lands and premises remaining in the said Matilda T. Landis,

her legal and equitable rights in the premises will be greatly destroyed and lessened in value, if not entirely made valueless; that if the lands and premises remaining are physically divided and this complainant's interest physically set off to her, that the said lands and premises so set off to this complainant will be unsalable in their present condition, and it would cost more to fill the same in to grade and improve the same than said premises would bring

10 if exposed to sale; that if, on the other hand, the remaining portion of the premises were sold and exposed for sale in their present condition, and this complainant awarded her interest therein in cash, that the amount which the present lands would bring would not be nearly so great and would not be worth as much as the lands so as aforesaid sold to the Sea Isle City Realty Company in the condition said lands were in when so sold; that it would be grossly inequitable to compel this complainant to accept a

20 physical division of the lands and premises remaining in the said Matilda T. Landis or to sell the said lands and accept her interest therein in cash.

9. This complainant further answering said cross-bill respectfully shows unto your Honor that the only new party brought in said cross-bill is Matilda T. Landis; that it appears, however, from said cross-bill, that the Sea Isle City Realty Company owns large portions of the lands formerly owned by the

30 said Matilda T. Landis, and in which this complainant has an undivided interest, and that the said Sea Isle City Realty Company has sold portions of its land to numerous persons, but that the said Sea Isle City Realty Company and none of its grantees are made parties to said cross-bill, and in and by the prayer of said cross-bill the said defendants attempt

to bring into said partition suit all the lands formerly owned by the said Matilda T. Landis and now owned by the defendants, the Sea Isle City Realty Company, and the numerous grantees of the said Sea Isle City Realty Company, and prays that partition be made out of the whole of said lands, alleging that the balance of the lands remaining in Matilda T. Landis are sufficient to satisfy unto this complainant her undivided interest in the whole of said lands, and that such division or partition of the whole of said lands should be made so as to locate this complainant's undivided interest in the whole of said lands within that portion of the same in the seizin and possession of Matilda T. Landis. This complainant, however, charges and shows the truth to be that a fair partition and division unto this complainant of her interest in said lands cannot be made out of the lands remaining in the said Matilda T. Landis, and if it becomes necessary, as it will be, to apportion unto this complainant other lands than those now in the seizin and possession of Matilda T. Landis, there will not be the proper parties before this Court, so that the Court can make a proper and valid and binding decree with respect to their respective interests in said lands and premises; and this complainant prays to have like advantage of this defense as though the same were interposed by way of demurrer.

And this complainant prays to be hence dismissed from the said cross-bill, with her reasonable costs and charges in this behalf most wrongfully sustained.

BOURGEOIS & COULOMB,
*Solicitors for and of Counsel
with Complainant.*

JOINDER OF ISSUE.

IN CHANCERY OF NEW JERSEY.

(Filed May 16th, 1912)

32-643

10

Between

LILLIAN M. KENEASTER,
Complainant,

and

WILLIAM ERB, et als.,
*Defendants.*ON BILL FOR PARTI-
TION.

JOINDER OF ISSUE.

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The defendants, WILLIAM ERB and EMMA ROSIE ERB, his wife, join issue on the answer of the complainant, LILLIAN M. KENEASTER, to their answer in the nature of a cross-bill.

CHAS. K. LANDIS, JR.,
Solicitor and of Counsel with
Defendants, William Erb
and Emma Rosie Erb, his
Wife.

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MEMORANDUM.

IN CHANCERY OF NEW JERSEY.

(Filed Feby. 27th, 1914)

| | | |
|------------------------------------|---|-------------|
| Between | } | |
| LILLIAN M. KENEASTER, | | 10 |
| <i>Complainant,</i> | | |
| and | | |
| WILLIAM ERB, et als., | | |
| <i>Defendants,</i> | | MEMORANDUM. |
| and | | |
| WILLIAM ERB, et als., | | |
| <i>Complainants in Cross-bill,</i> | | |
| and | | |
| LILLIAN M. KENEASTER | | 20 |
| and MATILDA T. LANDIS, | | |
| <i>Defendants in Cross-bill.</i> | | |

ON BILL FOR PARTITION.
FINAL HEARING ON PLEADINGS AND PROOFS.

MESSRS. BOURGEOIS & COULOMB, for the complainant.
Mr. CHARLES K. LANDIS, JR., for the defendants. 30

LEWIS, V. C.

Richard T. Smith at the time of his death was seized in fee simple of an undivided share in a large

tract of land situate within the bounds of what is now Sea Isle City. He died about October fourth, nineteen hundred and one, and the complainant, by inheritance, became seized in fee simple of an undivided five-three hundred and ninety-seconds part of the whole of the lands mentioned, and about the year nineteen hundred and three, the entire right, title and interest in and to the lands above mentioned, excepting the interest of the complainant, became vested by purchase in Matilda Landis.

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In the year nineteen hundred and five Matilda Landis, alleging herself to be seized in fee simple of the entire tract of land and premises aforesaid, filed her bill in this court to quiet her alleged title against the claim of the complainant's undivided interest, aforesaid, and a decree was made in this Court in favor of the complainant in this cause, and decreeing that as to said undivided interest her title was fixed and determined.

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This decree was made September twenty-fourth, nineteen hundred and seven. Notwithstanding this decree, however, on the twenty-second day of April, nineteen hundred and eight, Matilda Landis conveyed, by deed, in fee, a part of the above-mentioned tract of land, including the lot involved in this partition suit, to one Edgar S. Ale. Ale conveyed the same tract to the Sea Isle City Realty Company, which company plotted it into lots, and on the second day of August, nineteen hundred and nine, sold the lots involved in this partition suit to the defendant Erb.

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After the bill had been filed originally for the partition of the land in question, Matilda Landis made a motion to compel the complainant to include in the bill of complaint all the lands, the title to which was settled by the decree in the suit to quiet title brought

by Matilda Landis against Lillian M. Keneaster, and also to include Matilda T. Landis, executrix, as a party defendant. The motion was defended upon the ground that the land in the bill was all of the land held by the defendant Erb, and Mrs. Keneaster, as tenants in common; that Erb had no interest in any other land than that described in the bill of complainant, and Matilda T. Landis had no interest in the land described in the bill of complaint. This motion was heard before Chancellor Pitney, who filed an opinion that "If the grounds upon which this motion was based are well taken, the defendant can obtain the benefit of them by a cross-bill."

After the decree was entered on the above opinion, the defendant, Erb, filed an answer and cross-bill, making Matilda T. Landis a party to the cross-bill, and bringing into the case all of the land owned by Matilda T. Landis, but not bringing in the land sold by Matilda T. Landis to Edgar S. Ale, and by Edgar S. Ale to the Sea Isle City Realty Company.

A motion was made to strike out this cross-bill because it did not include all of the land in which the complainant Keneaster had an interest. The motion was refused because it did not appear from the pleadings that there was any other land other than that contained in the bill and cross-bill. In other words, it was a question of fact whether or not all of the land was included, and, therefore, the question cannot be solved upon a preliminary motion.

Upon the overruling of the complainant's motion to strike out this cross-bill, the complainant filed her answer to the cross-bill, setting up the same defenses.

When the case came on for trial, the testimony showed, first, that the original tract of land was approximately five hundred acres; that the portion of

it sold to Edgar S. Ale and by Edgar S. Ale to the Sea Isle Realty Company, a portion of which was sold by the Realty Company to defendant Erb, consisted of approximately one hundred acres.

The defendant Erb seeks to have the whole proceedings dismissed, upon the ground that the decree in the suit to quiet title was improperly entered because Miss Landis was trustee, and the *cestuis que trustent* were not made parties to that proceeding.

10 My conclusion as to that is, that they were not necessary parties.

Sweet vs. Parker, 22 N. J. Eq., 456;
New Jersey Franklinites Co. vs. Anes, 12
N. J. Eq., 607.

The defendants also claim that the complainant has no right to a partition of the land held by Mr. Erb, because Mr. Erb's title is not that of a co-tenant, but that he had an absolute title to the lands in question, and because the deed did not express that he held any co-tenancy, or that he got an undivided interest.

20 It is my opinion that Matilda Landis could only convey what she had; she only had an undivided interest, and she conveyed the whole of her interest in that particular portion of the land, and she has no further interest in the land conveyed to Erb, and whatever obligation she may be chargeable with upon her warranty would not change the situation with respect to Mrs. Keneaster's interest in the property.

30 I have decided that the defendant who filed the cross-bill to partition the four hundred acres has no standing to bring a partition suit before the Court of Chancery, having himself no ownership in that

portion of the property, and, therefore, by an order, the cross-bill be dismissed.

My conclusion is, that the original complainant had standing before the Court to require a partition of the property mentioned in the original bill, and that such partition should be made; and the testimony having shown that the land is incapable of partition, that a sale of the land should be made, and upon application of counsel an order of sale can be made.

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ORDER.

IN CHANCERY OF NEW JERSEY.

(Filed March 23d, 1914)

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Between

LILLIAN M. KENEASTER,
Complainant,

and

WILLIAM ERB, et als.,
Defendants.

ON BILL FOR PARTI-
TION.

Docket 32, page 643.
ORDER.

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It appearing by affidavit to the satisfaction of the Court that Lillian M. Keneaster, the complainant in the above cause, has departed this life intestate, leaving her surviving and still living her husband, WILLIAM H. KENEASTER, and a daughter, ELSIE M. KENEASTER; and it further appearing by affidavit that no administrator has been appointed;

It Is, on this twenty-third day of March, A. D. nineteen hundred and fourteen (1914), on motion of Bourgeois and Coulomb, solicitors for and of counsel with complainant, ORDERED, that the said WILLIAM H. KENEASTER and ELSIE M. KENEASTER be inserted as complainants in this suit, and that the said suit stand revived and continued in the name of the said WILLIAM H. KENEASTER and ELSIE M. KENEASTER.

E. R. WALKER,
C.

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I consent to the making of the above order without prejudice to any rights or defenses against the suit except by reason of the death of said complainant.

CHAS. K. LANDIS, JR.,
Solicitor for Defendants.

DECREE.

IN CHANCERY OF NEW JERSEY.

(Filed April 11th, 1914)

Between

WILLIAM H. KENEASTER
and ELSIE M. KENEAS-
TER, substituted in the
place and stead of Lil-
lian M. Kencaster, de-
ceased,

Complainants,

and

WILLIAM ERB, et al.,
Defendants.

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ON BILL FOR PARTI-
TION.
DECREE.

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This cause coming on to be heard in the presence of Bourgeois & Coulomb, solicitors for and of counsel with the complainants and Charles K. Landis, solicitor for and of counsel with defendants, upon bill, answer, answer in the nature of a cross-bill and replication and answer thereto and proofs, and the Court having read and considered the pleadings and heard the evidence and the arguments of counsel thereon, and being of the opinion that the prayer of the bill should be granted, and that the cross-bill should be dismissed and the complainants should have partition of the lands mentioned and described

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in the said bill of complaint; and being further of the opinion that the inchoate right of dower of Emma Rosie Erb, the wife of said William Erb in and to said premises and the right of courtesy of William H. Keneaster therein should be sold:

It Is Thereupon, on this ninth day of April, A. D. nineteen hundred and fourteen, by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, **ordered, adjudged and decreed**, and the said Chancellor does, by virtue of the power and authority of this Court, **order, adjudge and decree** that the parties to this suit hereinafter named, are seized of and entitled to the lands and premises described in the complainant's bill with the appurtenances, and their respective rights and interests are, and they are hereby ascertained and declared to be adjudged as follows:

The complainant, Elsie M. Keneaster, is seized in fee of and entitled to a one equal undivided five-three hundred and ninety-seconds part of the said premises subject to the right of courtesy of the said William H. Keneaster in said five-three hundred and ninety-seconds part; the defendant, William Erb, is seized of and entitled to a one equal undivided three hundred and eighty-seven three hundred and ninety-seconds part of said premises, subject to the inchoate right of dower of his wife, Emma Rosie Erb therein; and,

It Is Further Ordered, Adjudged and Decreed that all and singular the said premises mentioned in said bill of complaint and therein described as follows, to wit:

All those certain lots, tracts or parcels of land and premises situate in the City of Sea Isle City, in the County of Cape May and State of New Jersey, bounded and described as follows:

Beginning in the southwesterly line of the County Boulevard five hundred feet northwestwardly from the northwesterly side of Park Road, containing together in front or breadth northwesterly on the County Boulevard one hundred feet and of that width extending southwesterly ninety-five feet. **Being** known and designated as lots number 28, 29, 30 and 31, in Block A of the Sea Isle City Realty Company's plan of Venetian Park, Sea Isle City, New Jersey; including the estate and interest in courtesy of William H. Keneaster, one of the complainants, the husband of Lillian M. Keneaster, deceased, in five-three hundred and ninety-seconds part of said premises, and including also the inchoate right of dower of the defendant Emma Rosie Erb, the wife of the said William Erb, in three hundred and eighty-seven three hundred and ninety-seconds part of said premises; together with all and singular the hereditaments and appurtenances to the said premises belonging or in any wise appertaining, be sold at public vendue to the highest bidder, in the presence and under the direction of Samuel Parry, Esq., one of the Special Masters of this court; and,

It Is Further Ordered that the said Master sell the same in such portions as to him may seem most for the interest of the parties, and that he give public notice of the time and place of such sale and in all respects conduct the same according to the provisions of the statutes in such case made and provided, and that he forthwith, after such sale, make report thereof to this Court, and after his report of sale shall have been confirmed by this Court, make and execute unto the purchaser or purchasers good and sufficient conveyance in the law for the said real estate, upon their complying with the conditions of

such sale, and that such sale and conveyance or conveyances, duly executed, as aforesaid, be valid and effectual forever and operate as an effectual bar at law and in equity against the said parties complainant and defendant and all persons claiming by, from or under them or any of them; and,

It Is Further Ordered that the said parties or either of them, be at liberty to apply to this Court for further directions, if any shall be required.

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E. R. WALKER,
C.

Respectfully advised,
VIVIAN M. LEWIS,
V. C.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

LILLIAN M. KENEASTER,
Complainant,

and

WILLIAM ERB, et als.,
Defendants.

ON BILL, &C.

TESTIMONY.

10

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Trenton, New Jersey, on the twenty-fourth day of December, 1912, before Hon. Vivian M. Lewis, Vice-Chancellor.

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APPEARANCES:

BOURGEOIS & COULOMB, ESQS., for the complainant;
CHARLES K. LANDIS, JR., ESQ., for the defendants.

Mr. Coulomb: We offer the file in the case of Landis vs. Way; there are three files, and I think they are all here, Docket 26, page 51, Landis vs. Way and Keneaster; that was a bill to quiet title; that was tried before Justice Swayze. 80

And the pleadings in the present case, which is that of Keneaster vs. Erb, Docket 32, page 43, in which our right is admitted.

COMPLAINANT RESTS.

RALPH L. GOFF, sworn in behalf of the defendants, testified as follows:

Direct examination.

By Mr. Landis:

Q. Mr. Goff, what is your business?

A. Civil engineer and surveyor.

10 Q. Are you city engineer of Sea Isle City?

A. Yes, sir.

Q. Did you draft this map here?

A. I did.

Q. I will show you the final decree in Landis vs. Way and Keneaster, Docket 26, page 51; will you please show on this map the land described in that decree?

A. The map covered by this decree is shown in green and in pink.

20 Q. What are the pink lands on the map?

A. The pink lands are the lands which have been conveyed out of the original tract.

Q. I have here a certified copy of deed from Matilda T. Landis, executrix, to Lena S. Rhinehardt. Please show that on the map.

A. Two parcels, each marked "No. 1," within a circle.

Q. Have you used these certified copies of deeds in locating the pink upon the map?

30 A. I have.

Mr. Landis: If your Honor please, I will just offer them in evidence and have them marked.

Marked "Exhibits D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12."

Mr. Landis: The land, as the witness has explained, shown in green and pink, is that described in the decree in Landis vs. Way.

Mr. Coulomb: I understand.

Q. I will show you a deed here of Matilda D. Landis, executrix of Edgar S. Ale; I will read certain portions from the deed: "Beginning at the intersection of centre of Dolphin Street" (continuing reading). 10

Marked "Exhibit D13."

Q. That would be the property between the white space southwest of the railroad and Dolphin Street, and northwest of Central Avenue, marked pink?

A. Yes, sir.

Mr. Landis: Here was a piece sold to Marcus Frey; there is one black mark there that is not included in that deed—that is so—Marcus Frey. 20

I offer deed from decree sale to Sea Isle Realty Company.

Marked "Exhibit D14."

Q. Do you know this land personally from soundings or scientific observations? 30

A. Yes, sir, I have been in charge of the improvements there for several years.

Q. How many years have you known that land?

A. I have known it practically all my life, but I have been in charge of the improvements there for several years past, ever since the Sea Isle Realty Company began their development.

Q. When was that?

A. I think that was about four years ago.

Q. At that time, what was the character of this land purchased by the Sea Isle Realty Company, the natural character, as compared with this land marked green?

A. It is all salt marsh.

Q. What is the average elevation of that marsh above sea level, the natural elevation?

10 A. It is practically on a level with the water at every high tide, part of it is covered, and it is all covered at spring tides or moon tides.

Q. How does it compare in elevation with marsh at Ocean City or Atlantic City, or Wildwood?

A. They are all the same level all the way through.

Q. It is the same kind of ground, then, upon which Atlantic City has been built?

20 A. Only the meadow portion of Atlantic City; back of Atlantic City there are a great many marshes, but the same identical character as this.

Q. Is there any portion of Atlantic City built upon ground similar to that marsh?

A. Yes, sir, filled in land.

Q. What portion of Atlantic City would that be?

A. Westerly, generally speaking, from Baltic Avenue.

Q. How about Ocean City?

30 A. Ocean City, generally westward, from West Avenue.

Q. How does it compare with ground at other places which has proved to be available for building purposes by filling—

A. Since it is all hydraulic dredging, meadow land is made available for improvements; prior to that time it had very little value, because there was

no way to bring it up to a grade above the level of the water.

Q. By that method, how does it compare?

A. Of the same identical character—

Q. What difference is there between the green land and the pink land?

A. The location of the land conveyed to the Realty Company is a little more valuable from the fact that it is directly back of the town—that is, from the railroad station—

10

Q. (Question read.)

A. The conditions are identical—all salt marsh.

Q. One could be filled as well as the other?

A. Yes, sir.

Q. One would make as firm bottom for filled land as the other?

A. Practically so.

Q. In this map, Mr. Goff, what are these dark blue rectangular marks?

A. Those are the buildings of the town—

20

Q. How did you fix them on that map?

A. We made the location on the ground, and then plotted them on the map.

Q. You mean they are buildings actually there?

A. Yes, sir.

Q. Did you go around and look at what buildings were there, and then put them on the map?

A. Yes, sir.

Q. Can you swear to some of these buildings—what building is this? (Indicating.)

30

A. That is the City Hall.

Q. What is this building? (Indicating.)

A. That is the Roman Catholic Church.

Q. Is this the principal part of Sea Isle City?

A. It represents the heart of Sea Isle City.

Q. Just designate that by a street.

A. Lying between Elm and Dolphin Street.

Q. Mr. Goff, what improvements have been actually made on this pink land sold to the City Sea Isle Realty Company?

A. We have excavated canals.

Q. Do you mean this shown in blue?

A. Yes, sir.

Q. How deep are those canals?

A. About 10 to 12 feet deep.

10 Q. At low tide?

A. No, sir; I think they will run about 8 feet at low tide, some of them deeper; some of them are 15 feet deep, and they are 100 feet wide.

Q. About what extent of canals have there been actually made there, about?

A. Some thousands of feet, lineal feet.

Q. More than half a mile?

A. Yes, sir.

20 Q. What material was obtained from those canals for filling purposes?

A. Sand and some mud.

Q. Was it unusually good material or not?

A. Yes, sir, it was good, clean sand, for a portion but when we got out near the thoroughfare, the material was a mixture of sand and mud.

Q. To what has that land been filled?

A. To about four feet above tide.

Q. And what portion of it has been filled?

30 A. All of it, northwardly from the Rio Delaluna and southeasterly from Park Row to Central Avenue.

Q. And also the ground on the Venetian Road Peninsula?

The Court: It is all one tract of land; now, by reason of these improvements, it has considerably

enhanced in value over and above the green tract; I understood that the pink tract and the green tract were in about the same condition.

Mr. Landis: Oh, no.

Mr. Coulomb: We say when these people put these improvements on the land, they put them on at their own peril.

Mr. Landis: His contention is, that it was more 10
valuable before we made the improvements.

The Court: I am considering the question as to whether he is entitled to a proportion out of the whole tract, or only out of a part.

Mr. Coulomb: That is the idea.

Mr. Landis: Including our improvements, where we have paid for them?

The Court: I don't know that he asks for that. 20

Mr. Landis: I have four witnesses here that really should go to the train.

(Witness withdrawn for the present.)

FRANK W. FOWKES, sworn in behalf of the defendants, testified as follows:

Direct examination.

80

By Mr. Landis:

Q. Where do you reside?

A. Sea Isle City.

Q. Have you any office down there?

A. Yes, sir.

Q. What is it?

A. City Clerk.

Q. Have you any way of being well acquainted with valuations of land?

A. Yes, sir; I have performed the duties of the assessors for four years past, that is, I have performed the clerical duties for them at their instigation.

10

Q. Are you well acquainted with the lands shown by this map?

A. Yes, sir.

Q. How does the value of the lands shown in pink compare with the lands shown in green?

Mr. Coulomb: Objected to, on the ground that this witness has not qualified; he says he simply does the clerical work of the assessors.

20

By the Court:

Q. Have you dealt in real estate down there?

A. Yes, sir, I do a real estate business as well.

Q. Are you thoroughly acquainted with values down that way?

A. Yes, sir, and have actually done the assessing for the assessors for three years.

30 Further direct.

Q. Are you a director of the Realty Company?

A. Yes, sir.

Q. Will you please inform us of the value of lands shown on this map, how one tract compares with another, and the reasons; deal with the pink and the

green and the white, the whole thing; step right down.

A. In assessing the valuations of Sea Isle City, the highest valuation has been taken at a point called Ocean Avenue, here is Ocean Avenue; that is the railroad station; now, the highest valuations are placed on the front lots, commencing at Ocean Avenue, and the value raised as you get further south towards Dolphin; and again, on the northern side, they raised in value as you journey north. This is considered the built-up portion of the city and the most valuable portion of the city, of course. Now, as you fall back from the ocean front, the value also raised; that is, a property on the front is considered more valuable than a lot further back, and as you go further back, the values are considered to be much lower. Now, in respect to this ground, the assessed valuations on these lots of the Realty Company have been raised since the time they commenced the improvements; the first year they were slightly raised where the ground was filled in with sand; and the next year another portion was filled in—that was raised; and as the streets were cut in any portion, the lots were again raised. Prior to the time that this land was filled in with sand, it bore practically the same value as the green, on this side; practically the same value as that; there may have been some slight difference owing to location, and this being the greater, that is, the more built-up portion of the town, it might have been slightly in excess of what this is today; it was practically of the same value as that before it was filled in—that is, the pink; there might have been a slight difference, but I don't think so. 10

Q. When was that work commenced, the filling in? 20 30

A. Nineteen hundred and eight.

Q. Has it had any effect in selling land up towards Elm Street, in the northeast section?

A. There have been a few purchasers; I cannot recall any purchasers of any magnitude on the north side.

Q. Do you know about what amount of improvements have been made by the Realty Company—about the cost of the improvements and fillings?

10 A. No, sir, I might not come near the mark; it would be somewhat of a hazard.

Cross-examination.

By Mr. Coulomb:

Q. Mr. Fowkes, the most valuable land, that is, the greatest assessments, are southwest of the railroad, are they not, in Sea Isle City?

20 A. Yes, sir, that is, the town is built up more largely on the south side.

Q. And it is built up in that direction more than it is in the other direction?

A. Yes, sir, it has, there has been a larger increase in the valuations on the south side than there has on the north.

Q. How long have you lived in Sea Isle City?

A. Twelve years.

30 Q. This County Boulevard there, how long has that been a road?

A. This County Boulevard—

Mr. Landis: I object; that is not cross-examination; I have a better witness on that.

The Court: The objection is overruled.

A. I believe it was 1909 when this was filled in by the company.

Q. Was there a road there before that?

A. There was a road there, to my knowledge, for the last 25 years—in the same location where it is now filled in.

Q. How long has the railroad been there?

A. Well, as long as I know, and that is over 25 years.

Q. As the land gets further away to the north of the railroad (having reference only to the green strip of land) it gets of less value, doesn't it? 10

A. I won't say that; I think, perhaps, in some instances, that would depend a great deal upon what other people thought about it that wished to locate there; I think it is all the same value all along there.

Q. Then, Mr. Fowkes, it would be just as good a proposition to fill in the land and attempt to sell it at, say Pennsylvania Avenue, as it would to fill in up here right along the railroad? 20

A. I believe it would be just as good a proposition, if any one was willing to take hold of it. I think the values at a resort of this kind are based largely upon the railroad accommodations; now, if you were within the same distance on this side of the railroad (indicating) as you are on this, I believe it is just as valuable.

Q. If you went down to Pennsylvania Avenue and started to improve this green land, you would be a considerably greater distance from the railroad station? 30

A. We have railroad communication all along.

Q. Where is the station?

A. The railroad station at Prospect Street, that is, a main station; every train stops there.

Q. What other accommodations have they got there?

A. Here is the Reading Railroad Station, main station; that makes this plot just as valuable as this (indicating).

Q. Is there any difference in the value of the beach front land north or south of Ocean Avenue?

A. On each side of Ocean Avenue the land is valued alike.

Q. Where is the greatest amount of improvement going on at Sea Isle City at the present time?

10 A. South of this somewhat.

Q. There is the railroad running to Stone Harbor (indicating)?

A. Yes, sir; as a matter of fact, there are very few improvements going on in Sea Isle City at the present time, but the city is improving, and the city is improving this avenue from Swan Street south, and they talk about making a through line there—north-eastward.

20 Re-direct examination.

By Mr. Landis:

Q. How does the Reading Railroad enter Sea Isle City?

A. From the northeast end.

Q. It comes from Polk Avenue and follows the edge of the green tract?

A. Yes, sir.

30 Q. The entire tract, of the green tract, down to the station?

A. Yes, sir.

Q. So the Philadelphia and Reading would come in here, and reach the green tract before it got to Sea Isle City?

A. Yes, sir.

- Q. And the Pennsylvania Railroad?
A. That comes in this way, leaves Sea Isle City Station, and proceeds northeastward to Ocean City.
Q. It parallels this green land the whole length?
A. Yes, sir.
Q. Is there a trolley line?
A. Yes, sir.
Q. Is there a station here near Polk Avenue?
A. Yes, sir, at Whale Beach.
Q. How far from Polk Avenue? 10
A. I think it is two blocks, next to Tyler, next to Polk, about 22 feet.
Q. What are the natural advantages of this section in the neighborhoods, say, from Pennsylvania to Polk; what are the natural advantages which make it desirable for a person to buy and improve for commercial purposes?
A. I don't know just how to answer that question.
Q. Is not this a large bay?
A. The plan will show the size of it; it extends 20 beyond Whale Beach from Sea Isle City; it makes this land very desirable for residences along the bay there.

By Mr. Coulomb:

- Q. Do you think it is as valuable as the land in the direction of Ocean Avenue?
A. Not quite as valuable.

Further re-direct. 30

- Q. This extra value of that pink ground is due to money that has been spent by the Realty Company?
A. Exactly.
Q. Do you think that the spending of that money has made these values greater here?

A. There is no doubt about it; it has increased the value of these front lots.

CHARLES H. CLOUTING, sworn in behalf of the defendants, testified as follows:

Direct examination.

10

By Mr. Landis:

Q. Where do you reside?

A. Sea Isle City.

Q. How long have you resided there?

A. About 24 years.

Q. Are you well acquainted with the land shown on the map?

A. Yes, sir.

20

Q. In what way can you qualify as having knowledge of values at Sea Isle City; were you ever tax assessor?

A. I was tax assessor about ten years.

Q. Do you know the buildings shown on this map?

A. I think so.

Q. What can you say about the value of the lands shown on this map in green and pink?

30 A. When I came to Sea Isle City, north of the railroad was the most valuable, and I did not know of any difference until some five or six years ago; the values in the southern section increased a little faster than they did in the north section of the island; I thought that was brought about by more improvements being made there all the time.

Q. In its natural condition you considered the land of about equal value?

A. Yes, sir; I did not see any difference to any land unless improvements are made.

Q. About what would be the value of the buildings erected upon this pink land improved by the Realty Company, taken all in all?

A. Well, I suppose about \$20,000.

Q. Wouldn't it amount to more than that?

A. It would amount to that, anyhow; that would be the least it would amount to.

Q. Well, now, this house here, Mr. Clouting, on the northeast side of the County Boulevard, northwest of Park Road? 10

A. It is worth about \$5,000.

Q. What is this house worth here, this double—

A. About \$2,500.

Q. What is this house worth here, Clarence Pfeiffer?

A. About \$5,000.

Q. When you first came to Sea Isle City, you bought in the northeast section? 20

A. Yes, sir, I bought at Swain Street, three blocks north of the depot.

Q. And had you lived about Cape May County all your life?

A. Yes, sir.

Q. And were you born there?

A. Yes, sir.

Q. Have you been acquainted with Sea Isle City land?

A. Yes, sir. 30

Q. In your judgment could the town have been built as well on the green land as it could on the pink?

A. Yes, sir, some parts of the island I would prefer to the part that was improved.

Q. For what purpose?

A. For building purposes.

Q. What about this land around Ludlow's Bay; is that good for building purposes; is it a good natural tract for purposes of improvement, filling up with sand?

A. Yes, sir.

Q. And if it was filled up with sand, would it be of commercial value?

A. Yes, sir.

10 Q. Why would that be desirable commercially; why would people go there and buy?

A. On account of the water front, I think.

Q. Hasn't it an unusual water front with this bay back of it?

A. Yes, sir.

Q. How wide is that bay?

A. About one and a half miles.

Q. What is your business?

A. I am in the lumber business.

20 Q. Have you furnished lumber for any houses there?

A. Yes, sir.

Q. What do you consider the value of the total number of houses northeast of Ocean Avenue, say between Williams Street and Ocean Avenue, as compared with those between Ocean Avenue and Dolphin Street?

30 Mr. Coulomb: I do not see what the use of this testimony is.

The Court: I don't either.

By the Court:

Q. Would you give just as much for a piece of

land bordering along this portion (indicating) as you would for a piece on the pink tract?

A. (No answer.)

Further direct.

Q. Would you give just as much for a lot of land there as you would on the pink tract?

A. Not at the present time, no, sir.

Q. Why not?

10

A. Because it is marsh land.

Q. The only difference is the money that has been spent by the Realty Company?

A. That is all the difference that I see.

Cross-examination.

By Mr. Coulomb:

Q. Which way are the improvements in Sea Isle City extending? 20

A. South.

Q. That is, south from Ocean Avenue?

A. Yes, sir.

Q. Beginning at Pennsylvania Avenue, running along the beach, say to Polk Avenue, is all the white portion on the map solid beach land?

A. I think all the white portion is sand.

Q. And all the green portion is marsh?

A. I think so.

Q. Do you know?

80

A. Practically so.

Q. What is the width of the white portion?

A. About 800 feet.

Q. What is the width of the green portion?

A. It is a little more—probably 800 to 1,000 feet.

Q. What is the width of the pink portion on the map, out to Ludlow's thoroughfare?

A. At what point?

Q. Beginning at Central Avenue and going along the County Boulevard?

A. About 3,000 feet.

Q. Do you know where the State waterway runs in Sea Isle City?

A. It follows the thoroughfare.

10 Q. Does it follow the thoroughfare all the way around?

A. It follows the thoroughfare all the way back of Sea Isle City.

Q. Does the business of that thoroughfare add anything to the value of real estate?

A. Some little, yes, sir.

Q. What office do you hold in the Sea Isle City Company?

A. I am a director.

20 Q. And how long have you been interested in that company?

A. Ever since it started.

Q. Were you interested in it when they bought the land?

A. Yes, sir.

Q. And you were interested in it when they improved the land?

A. Yes, sir.

30 Re-direct examination.

By Mr. Landis:

Q. Are you a member of the Board of Chosen Freeholders of Cape May County?

A. Yes, sir.

Q. How long have you been such?

A. Five years.

Q. Did you have anything to do with that turnpike that was referred to?

A. Yes, sir.

Q. Now, what was the turnpike there before the Realty Company bought?

A. Well, it was level with the marsh; it would stand about a foot above the level of the marsh.

Q. What did the Realty Company do to it? 10

A. They paid for filling it up, they filled it up to grade, up to a level with the other fill; the County gravelled it over.

By Mr. Coulomb:

Q. If you had not filled it up, it would have been three feet below the level of your other lots?

A. I suppose so.

Q. The turnpike ran through the piece of land 20 that you bought?

A. Yes, sir.

RALPH L. GOFF, resumes the witness stand.

Direct examination (continued).

By Mr. Landis:

30

Q. Between Philadelphia Avenue and Polk Avenue, what is the width of the white space on the map?

A. About 600 feet.

Q. What is the width of the green land back of it?

A. About 800 feet, average.

Q. Are commercial values generally, at seashore places, greater as they are nearer the ocean?

A. Usually the ocean front is the most valuable.

Q. Would that rule apply here?

A. The ocean front has a speculative value; the ocean front before it is improved has a speculative value in excess of other land; it has an actual value after improvements are made, it has an actual value
 10 in excess of other lands. The next valuable parcel of land, as a general thing, is the bay front; at least, that is our experience in Ocean City.

Q. This section between Philadelphia Avenue and Polk Avenue, is that a fine bay front or not?

A. With the exception of the tract from Jefferson to Van Raven's Avenue, the land is valuable, from Girard to Adams.

Q. By reason of its bay front?

A. By reason of its frontage on Ludlom's Bay, and its nearness to the ocean.
 20

Q. How about trolley and railroad accommodations?

A. The Pennsylvania Railroad runs through the tract; the Philadelphia and Reading Railroad runs through the tract, and the electric railroad runs through the tract—the three railroads side by side.

Q. In its natural condition, how would land here compare with the pink land in the neighborhood of the Venetian Road?

A. In speculative or prospective value, without
 30 improvement, I would not think there would be any difference in value.

Cross-examination.

By Mr. Coulomb:

Q. Then, in your opinion, the land at Ocean Ave-

nue is of no greater value than the land at Wisconsin Avenue, as is shown on the map?

A. I did not say that; you were speaking of the green tract here in the locality of Wisconsin Avenue, and the pink tract in the location of the Venetian Road before it was improved.

Q. At the present time, does the value of the land represented in pink in the neighborhood of Wisconsin Avenue, is the value greater or less than the value of land represented in green at Fritz Avenue? 10

A. There is no land shown in pink at Wisconsin Avenue.

Q. Land shown in green?

A. For development purposes, I don't think there would be a great deal of difference.

Q. Then, in your opinion, land is not of any greater value in the built-up section of Sea Isle City than it is in the unbuilt section?

A. That is not my opinion.

Q. Then the land is more valuable in the neighborhood of the built-up section, that is, in the neighborhood of the railroad? 20

A. It just depends on the particular spot which you might select, the land very close to June, in the neighborhood of July Street, has some commercial value, of course.

Q. Has the other land down Wisconsin Avenue a commercial value at present?

A. Yes, sir, for purposes of development.

Q. Is there any demand at this time in that vicinity? 30

A. I am not in the real estate business.

Q. Have you any office in the Sea Isle City Improvement Company?

A. I have done some work for them in having charge of the improvements; I have absolutely no

connection with them; I am not a stockholder or director.

Q. At the time the pink land was filled in, how much of it was meadow, and how much of it was high land?

A. It was all meadow.

Q. Beginning at Central Avenue?

A. Yes, sir, Central Avenue or Brewster Street

10 Q. And it was all meadow all the way out to Lud-
lom's thoroughfare?

A. Yes, sir.

Q. And at the same height above the sea?

A. Same character.

Q. What was the character of the land delineated in white on this map between Dolphin and Ocean Avenue, at the time the pink land was filled in?

20 A. A portion of that was meadow land, or slightly higher than the meadows, and the greater portion of it was improved land, had been graded and the streets made.

Q. Which has the greatest development, northward on Ocean Avenue or southward on Ocean Avenue?

A. The tendency at the present time seems to go south.

Q. In your opinion, is the land where there is such a narrow strip between the ocean and the bay, one and a half miles broad, a good place for development?

30 A. Particularly good.

Q. Is that a better place for development purposes where the Sea Isle City Improvement Company developed their land?

A. I don't think there would be any difference.

Q. Then, in your opinion, it would have made no difference if the Sea Isle City Company had developed their land in the vicinity of Wisconsin Avenue?

A. I do not think the difference would have been material.

Q. There would have been just as much demand?

A. Practically so; the purpose of that development was to make water front properties; and here we have the water front already.

Q. Therefore, it would have been better to have developed there—

A. It could have been done.

Q. Does the fact that the County Road comes in 10 over this strip, add anything to its value?

A. Yes, sir.

Q. Did it add anything to its value before it went up to grade—the fact that there was a County Road coming into Sea Isle City at that point?

A. Yes, sir, of course.

Q. And also the fact that the railroad was here, coming in at Ocean Avenue, you have a main station here with freight, and other developments there, haven't you? 20

A. There is no question but what it makes it more valuable.

Q. The tendency is to develop south, isn't it?

A. Yes, sir.

Re-direct examination.

By Mr. Landis:

Q. In regard to that around Ocean Avenue, is not 30 there a great deal of nuisance there with freight trains?

A. Yes, sir.

Q. Isn't there a coal yard and saw mill at Landis Avenue and West Jersey Avenue?

A. There is a lumber yard and fish house.

Q. Are not those heavy freight trains a menace and a nuisance in that part of the town?

A. Yes, sir.

Q. Would it be possible to build a large hotel between these freight trains and ocean front?

A. No, sir.

Q. That is rather an undesirable residence section near that railroad?

A. Yes, sir.

10

Re-cross examination.

By Mr. Coulomb:

Q. And yet the tendency is right in the direction of where this trouble is—to build—notwithstanding that it is undesirable and all that sort of thing; the greatest development has been right in that vicinity, hasn't it?

A. Yes, sir.

Q. And it is the development that adds to the value of land?

A. Population makes values.

Q. And the population is where there is the greatest development?

A. Yes, sir.

30 Mr. Landis: I offer the map in evidence. Marked "Exhibit D15."

RECESS TO 2 P. M.

AFTER RECESS.

Mr. Landis: I did not have Mr. Goff to prove the number of acres in the tract, I overlooked that.

The Court: Suppose you stipulate as to that.

Mr. Landis: I think I will write to Mr. Goff and let him write a letter. 10

Mr. Coulomb: That will suit me; I am perfectly willing that he should write.

MR. MARCUS FRY, sworn in behalf of the defendants, testified as follows:

20

Direct examination.

By Mr. Landis:

Q. Do you know the land shown on this map testified to by the witnesses?

A. Yes, sir.

Q. How did you become acquainted with it first?

A. In 1881, when Mr. Landis developed the place, Sea Isle City.

30

Q. Were you in Mr. Landis' employ at that time?

A. Yes, sir.

Q. How were you employed?

A. Attending generally to the outside business and surveying.

Q. You executed Mr. Landis' directions and orders?

A. Yes, sir.

Q. Do you know anything about the building of this railroad shown on the map along Ocean Avenue?

A. Yes, sir.

10 Mr. Landis: The pleadings set forth that the reason why that pink piece of land is worth more than any other portion is because the railroad and turnpike go through it. Now, the object of this witness is to show that Mr. Landis actually built that railroad and the turnpike—that is, the Matilda T. Landis title did. My theory is, that any improvements that we make are to be set off to us—if there is enough of the original tract to do justice, but if they took our improvements, they have to pay us for it.

20 Mr. Coulomb: I object to the testimony showing that the expense of the cost of this railroad was paid by Mr. Landis.

The Court: The objection is overruled.

Q. Who built this railroad?

30 A. Mr. Landis paid me for the right of way—had it graded—four miles and a half long from Sea Isle Junction to Sea Isle, and laid the road bed ready for the rods and ties; built one drawbridge and several small bridges across the different creeks on the meadows; also paid for the land at Ocean View for a station.

Q. This Charles K. Landis?

A. Yes, sir.

Q. Do you mean the Sea Isle City Improvement Company?

A. Charles K. Landis personally, at that time; he was also president of the Improvement Company, so they paid their share—the Improvement Company was charged to its share of the expenses.

Q. These books that you have here—what books of account are they?

A. The books we kept.

Q. Who?

A. Mr. Landis and the Sea Isle City Improvement Company, he being president of the company, he kept the books in the office. 10

Q. What book is that?

A. Southwest section.

Q. What book is it?

A. It is the ledger of the southwest section.

Q. I don't mean that; whose book of account is it?

A. Charles K. Landis'.

Q. Do you know the book; did you keep it?

A. No, sir, the bookkeeper kept it but I know all about it. 20

Q. Is this bookkeeper dead?

A. Yes, sir.

Q. How old a man was he at the time he kept the book?

A. About 75.

Q. Is this the first time you have seen the book?

A. The book was in the office for years.

Q. Is this the first time you examined it?

A. No, sir.

Q. Did you make any entries in it?

A. Not myself; I did not keep the book, but I know the book. 30

The Court: What do you want the book for?

Mr. Landis: Simply to show that what the man says is true.

The Witness: These sums were paid out for the railroad and the turnpike, as stated in this book.

Q. Have you had the book in your possession lately?

A. No, sir.

Q. How long is it since you saw it, prior to this time?

A. About two weeks; I have not been in Mr. Landis' office for about five years; for the past five years
10 I have not been in Mr. Landis' office.

Q. Were you in the office while the book was kept?

A. Yes, sir.

Q. Were you familiar with the actual transactions?

A. I employed all the men to do that work.

Q. And made the disbursements?

A. Yes, sir, through Mr. Landis.

Q. Why did Mr. Landis build that railroad; how
20 much did that railroad cost?

Mr. Coulomb: Objected to; I don't think he is qualified to state.

A. We reckoned it up at the time.

Q. Did you disburse the moneys?

A. Partly.

Q. Did you keep account of the men—the wages and work and labor?

A. Yes, sir, a great deal of it, except what was
30 given out by contract.

Mr. Coulomb: If it is admissible in evidence at all, it does not seem to me to be a proper way to prove it; he says he is familiar with part of the expense of the road.

The Witness: I am familiar with the whole business.

Q. How much do you know was paid out?

Mr. Coulomb: Objected to.

Mr. Landis: It shows how much the Landis interest expended on the railroad.

Mr. Coulomb: I object to it as irrelevant and incompetent. **10**

The Court: Objection overruled.

A. Ten thousand, five hundred dollars on the railroad, and \$8,000 for the turnpike.

Cross-examination.

By Mr. Coulomb: **20**

Q. Where did you get that information from?

A. I was in the office every day.

Q. Have you remembered it all this time?

A. I certainly have; a thing of as much importance as that was to Sea Isle.

Q. And that is the road that the Pennsylvania Railroad now uses to get down to Ocean City on the north, and Stone Harbor, and those other seashore towns on the south? **30**

A. Yes, sir.

Q. And the turnpike is the only county road, I suppose, which extends from the mainland over to the island?

A. Yes, sir.

Re-direct examination.

By Mr. Landis:

Q. Why is it a county road now; is that bought from Mr. Landis?

A. Yes, sir.

By the Court:

10

Q. Bought by the county?

A. Yes, sir.

Further re-direct.

Q. You say Mr. Landis spent this money—how did he spend it?

A. The owners of the island paid the money.

20 Q. Who paid the money; whose money was it paid for that?

A. The money was received from the sale of land.

Q. Who received the money from the sale of land?

A. Mr. Landis received it.

Q. Was he doing it by himself, personally?

A. As the attorney for Matilda T. Landis, who was the owner of the land, and he had a power of attorney.

30 Mr. Coulomb: I move that that be stricken out; he cannot testify to a power of attorney.

Mr. Landis: I can produce it; I can bring it up.

The Witness: It is recorded.

The Court: It ought to be here.

Mr. Landis: It is in the evidence in the other case.

The Court: It is unnecessary, if it is in there.

Mr. Coulomb: May I ask if Mr. Landis has finished all his testimony?

Mr. Landis: Yes, I have finished my testimony.

Mr. Coulomb: My testimony will not take over **10** half an hour.

The Court: We will adjourn to the motion day two weeks from today.

SECOND DAY.

Continuation of the taking of testimony in the above-entitled cause, at the State House, Trenton, New Jersey, on the seventh day of January, 1913, before Hon. Vivian M. Lewis.

10

Appearances as before noted.

REBUTTAL.

20 LEWIS S. CHESTER, sworn in rebuttal, testified as follows:

Direct examination.

By Mr. Coulomb:

Q. Where do you live?

A. Sea Isle City.

Q. How long have you lived there?

30 A. I have lived there for 28 years.

Q. What is your business?

A. I have been in the real estate business for the last 15 years.

Q. Are you familiar with the value of lands in Sea Isle City?

A. Yes, sir, I am.

Q. Where does the railroad come in to Sea Isle City, at this point between the pink and the green?

A. Yes, sir.

Q. Does the turnpike come in this avenue on the map marked "County Boulevard"; is that the turnpike?

A. Yes, sir.

Q. How long has the railroad been in that location?

A. I think about 30 years.

10

Q. How long has the turnpike been in its location?

A. About the same length of time.

Q. Where does the chief part of the town of Sea Isle City lie—north or south of where the railroad enters?

A. South.

Q. And where is the development at the present time, north or south of the railroad?

A. South.

Q. Do you know whether or not the land which is marked pink on this map, has been filled in and improved?

20

A. It has, yes, sir.

Q. And can you tell me about when that was done?

A. Within the last three years.

Q. And are there any cottages or houses built on it?

A. A few, yes, sir; I think about 15 or something like that.

Q. What is the condition of the land which is marked green, painted green on the map, at the present time?

30

A. Meadow land.

Q. What is the distance between the edge—what is the condition of the land which lies between the green portion and the ocean and marked white on this map?

A. It is very low.

Q. It is meadow or sand?

A. Sand, partly.

Q. What is the condition of the land between the pink portion and the ocean and marked white on this map?

A. That is high and good ground.

Q. Is there any difference in value between the land south of the railroad and north of the railroad?

10 A. In taking the assessed valuation of the books of Sea Isle City during the year of 1911—taking lots in the same distance from the center of the town, which is the railroad, and going south, four blocks south, lots are assessed there on the ocean front at \$1,125 and \$1,250.

Q. Going in which direction, south?

A. South; now, taking the ocean front north, three blocks, that is one block less, the assessed valuation there for four lots is \$4,000. Take Landis Avenue, 20 five blocks south, a lot is assessed there for \$950.00.

Q. Five blocks south of the railroad?

A. Yes, sir.

Q. That is Neptune Street?

A. Yes, sir; taking Landis Avenue and four blocks north, that would be Hartson Street. Lots are assessed there at \$300. Then taking lots in four blocks south, between Landis Avenue and Central Avenue, or Brewster Street, lots there are assessed for \$375 apiece; taking the same distance north, any lots between Landis Avenue and Brewster Street are assessed at \$50 apiece. 30

By Mr. Landis:

Q. How far north?

A. Four blocks.

Further direct.

Q. Brewster Street is the avenue which lies between the pink portion and the white portion?

A. Yes, sir. Now, taking the ocean front, this block south I think it is, which would be Carroll Street, that is assessed for \$1,050—sold less than two months ago for \$2500—lots north on the ocean front the same distance on Matilda Street, on the ocean front it is assessed for \$300 apiece; we have offered to sell them for \$1,000. 10

Q. What has been the difference in the sale of lots lying north of where the railroad enters Sea Isle City, and south of where the railroad enters Sea Isle City?

A. There are so many more south than north, I could not compare; taking the green portion there where the meadow ground is, I shall expect to get an assessed valuation of that section right there, but the section adjoining that on the north, that is, the section just above that; then on Ludlom's Island, north of where it is delineated on the map, there are 74 acres assessed in Upper Township, and the assessed valuation for the 71 acres is \$2,000. 20

Q. Now, you have been unable to get the valuation of the land marked in green?

A. That is right. Now, taking Dolphin Street on the south, lots unimproved on Dolphin Street on the south side between Landis Avenue and Brewster Street, are assessed for \$225.00 and \$275.00 apiece. 30

Q. Dolphin Avenue is where?

A. Right here in the south, the last street on the map.

Q. That is on the line of Sea Isle City?

A. No, sir, that is in Sea Isle City.

Q. Is there any demand in the market at the pres-

ent time for the land which is delineated in green; that is, this meadow land?

A. None whatever.

Cross-examination.

By Mr. Landis:

10 Q. Mr. Chester, did you get this information from tax duplicates?

A. Yes, sir.

Q. Why didn't you get the assessment on this green tract?

A. I went over to the collector's office yesterday.

Q. Did he refuse to give it to you?

20 A. He said that he could not give it to me, that the duplicates were not at his office. I went to the City Clerk's office and asked him to let me see the duplicates, and he said, what did I want with them, and I said that I wanted to look them over; that was yesterday; and he said, "What ones do you want?" and I said that I would like to see 1912, and he said, "That is away; I will let you have 1911," and I looked at it, and Mr. Fowkes, the clerk, was not there, and his assistant, Mr. Fitch, was there, and he allowed me the use of the 1911 for a small period.

Q. You could not get it then, yesterday?

A. No, sir.

30 Q. When did the Realty Company commence their work in May, do you remember; you said about three years ago?

A. Yes, sir.

Q. Well, before they commenced, was this land the same as this green over here?

A. Not entirely, no, sir.

Q. What was the difference between that and the green?

- A. Better ground; the foundation of it was better.
- Q. What do you mean?
- A. More solid—better ground.
- Q. Are you an engineer?
- A. No, sir, but I have been out over it.
- Q. Since it was filled?
- A. No, sir, before—
- Q. And just by walking on it you think it was better ground than this here?
- A. Yes, sir. 10
- Q. Was it any higher?
- A. Yes, sir.
- Q. Why do you think it was higher?
- A. When the tide would ebb and flow, then it would cover the green section sooner than the other.
- Q. It would cover it sooner than that section?
- A. Yes, sir, before it was improved.
- Q. Did the Realty Company fill in low ground between Central Avenue and Landis, where you spoke of the high value of lots; didn't the Realty Company fill Carroll Street and all this section round here? 20
- A. I have my value on Ariadne Street that the Realty Company did not fill.
- Q. Why didn't you take your assessments about three or four years ago, before the Realty Company commenced its improvements?
- A. Because they would not allow me the use of the books. I did not like to go over there and demand them; my attorney on the other side will bear me out that we had a subpoena to produce the books. 30
- Q. Do you know, Mr. Chester—you say you have been a real estate agent for 15 years—do you know whether the land is much more valuable here now than it was three or four years ago before the Realty Company commenced work?
- A. I cannot say that it is any more valuable now in that section.

Q. Do you know that it is not; you are selling lots all the time; do you know whether the market for lots is greater today than it was when the Realty Company commenced its improvements—than it was four years ago?

A. It is not.

Q. The market is not greater today than it was four years ago?

A. It is not as great.

10 Q. You mean as to volume of sales—how about prices?

A. There is very little difference as to prices.

Q. Do you think that this lot that was sold for \$2,500 on the corner of Carroll Street, could have been sold for that four years ago—your wife is a relative of the complainant in this suit?

A. Yes, sir.

Q. First cousin?

A. Yes, sir.

20 Q. You actively represent the complainant?

A. I do not represent the complainant in this case.

30 Mr. Landis: This complaint is brought against a single lot owner—about 100 by 95 feet, a lot right there; the bill itself sets up that Miss Landis and the complainant, are cotenants in this entire tract of about 500 acres, and this proceeds to ask partition for this particular building lot. Then, Mr. Erb files a cross-bill and brings in the whole tract, and Miss Landis. Now, should that man be required to do the work that the complainant should have done? I think I shall ask to dismiss my cross-bill, and leave Mr. Erb's answer to stand. His answer is to the effect that his lot is only a part of the whole tract, and that the whole tract should be brought in. Then,

the complainant is here without sufficient parties. Now, there are only two things to be done, one to dismiss the bill for lack of necessary parties, and the other would be to give her a reasonable time (to be specified) to hold the bill—within which to bring those parties into court. Now, the only difficulty I see about that is the fact that I shall have to bring to the attention of your honor—about four years ago Miss Landis commenced a suit in partition against Mrs. Keneaster; Miss Landis commenced suit in partition as to this entire tract to set off to her her claim; and Mr. Bourgeois, her attorney, filed a plea to that effect, that this entire 500 acres was only a part of the land in which he had a claim, because the whole was not in court; that, therefore, she is barred from any right to partition, and he explains here that the whole of the land that must be brought into court is the whole of Ludlom's Island, including the whole of Sea Isle City; and in addition to that, I may say that she claims that, because she herself has sold about half the territory of the island to other owners, that is, large owners, so that even if the whole thing is brought into court, her share would have to be located in the place where she sold it, and considering she has sold 38 times as much as she is entitled to, I really don't see where she would have any right in the court. My motion is this: To dismiss my cross-bill and stand on my answer, and to dismiss the original bill leaving it to the discretion of the Court whether it will bring the parties in within a reasonable time, or whether this lot owner should be held there all this time while the whole City of Sea Isle City is brought in. The answer is full and complete, that this is only a part of the whole, and that the whole must be brought in; and all this evidence I have taken is in corroboration of that; this evidence was proper under the answer.

Mr. Coulomb: (Argues.) We think that the decree of the Court should be that the whole of this land be sold, pink land and green land; the cases seem to hold that it is proper, although maybe not strictly necessary, that these owners of the pink land, for instance, he brought in, because these cases say that those are supposed to be void, but in the Court of Chancery we all know that anybody who has any interest whatever should be brought in. I think they should be brought in, not by us, but by the defendant in this suit, who says, "To protect me, I have bought this land in good faith, to protect me, the whole of this land should be brought in." Now, if each one was to go ahead and partition her land, all well and good; the Chancellor has determined that we have a right to do that.

The Court: I do not see that it will clarify the situation by withdrawing the cross-bill.

Mr. Landis: My idea is, that the claim is against the whole island, and the whole city has to be brought in, and here Mrs. Keneaster has brought suit just against one lot owner, Mr. Erb, whom I represent, and I cannot see why he should bring in everybody in this island; he is the grantee of one of the tenants in common.

Mr. Coulomb: Our contention is, that when Miss Landis undertook to convey this land by metes and bounds, that she conveyed the most valuable, as has appeared in the testimony, the only part that has any commercial value at the present time. Now, we are entitled to a conveyance of our interest out of that piece of land. We have no objection to Mrs. Keneaster bringing all these parties in, but we think

they should all be before the Court, so that when the decree is made, we are entitled to our portion out of the pink land. It does not seem to me that one tenant in common can appropriate a very valuable piece of land and improve it, and then say, "You can take yours out of the remainder." Your Honor may say, "We will allow you your interest in this 1-78 portion, if it be sufficient."

The Court: You want to get your parties in, I **10**
think. Have you put in all your evidence now?

Mr. Landis: No, I wish to complete my evidence.

Mr. Coulomb: Our whole point was this—simply that there was no way—our evidence all goes to the point—I expected to have the tax collector here, but I could not get him here; our entire point is, that it is impossible for the Court to do anything without selling the whole of it or dividing the whole of it. **20**

Mr. Landis: I move to dismiss the cross-bill and let his answer stand.

The Court: Who filed the cross-bill?

Mr. Landis: The lot owner; I wish to dismiss that cross-bill.

Mr. Coulomb: That would leave our partition in the position of partitioning this one piece of land. **30**

The Court: I won't dismiss the bill; the bill will stand.

Mr. Coulomb: The answer cannot stand without

the cross-bill, because the answer sets up that we are not entitled to partition out of her piece of land; now, we are entitled to it, unless she chooses to bring in the balance of it, which she has done by the cross-bill; in other words, the position as it was started was, that Mrs. Keneaster was a tenant in common with Mr. Erb in this lot, and we ask that we be given our portion of it (Continues arguing.)

- 10 Mr. Landis: I will bring in the tax assessments now to contradict this witness.

The Court: They are here before the Court, and it is a matter that can readily be concluded now, and we should not confuse the issue at all as set up by the pleadings; and I shall not dismiss the cross-bill under which you proceeded to take testimony.

20

ADMISSION.

Mr. Landis: It is admitted by counsel—I wish to complete the evidence in regard to the acreage of this land; all lands marked pink are 73 and 75-100 acres; all lands marked green 281 and 13-100 acres, total, 354 and 88-100 acres.

- 30 Mr. Landis: Now, here is a power of attorney that was referred to, to authorize Charles K. Landis to act for Matilda T. Landis in building the railroad. This is an exhibit in evidence in the suit to quiet title referred to in the bill in this cause, and that suit was marked "Exhibit D3, 12-13-05 (K)," page 152 of the testimony.

Mr. Coulomb: I do not object to having all this in evidence. I make formal objection, because I cannot see its relevancy at the present time.

The Court: It will be received in evidence; I will admit it in evidence.

Mr. Landis: I am not quite sure whether I understand Mr. Coulomb's views.

The Court: Do you want to argue the case now? 10

Mr. Landis: I want to bring in further evidence.

The Court: Then you had better not argue it.

Mr. Landis: I don't understand in what way this evidence is really very relevant, as long as I admit that these parties are necessary parties; why this question of value, because commissioners will have to be appointed, I assume, eventually, who will go down there and set off the amount of this claim. I understand that your Honor's idea is, that the Court can disregard all the rest of Ludlom's Island, and decide this suit upon what is colored on this map. 20

The Court: The Court has not come to any conclusion on the matter at all; it has intimated to you what the object of the testimony before the Court was. 30

Mr. Coulomb: The very thing that Mr. Landis has done is exactly what he has said. He has brought in by his cross-bill the land which is delineated on this map, and the surveyor identified it as being the land mentioned in a certain Chancery proceeding.

Mr. Landis: I think I will argue this case now.

The Court: The Court cannot hear you at the present time. You are ready for further testimony, are you? Come up here any Tuesday.

Mr. Landis: I will reserve the right to put further testimony in.

10

Adjourned to Tuesday, January 28, 1913.

THIRD DAY.

20

Continuation of the hearing in the above-entitled cause, at the State House, Trenton, New Jersey, on Tuesday, the 28th day of January, 1913, before Hon. Vivian M. Lewis, Vice-Chancellor.

Same appearances as before noted.

30

Mr. Coulomb: Mrs. Keneaster is dead; it occurred about a month ago; that is my client. That should be suggested on the record.

Mr. Landis: I will consent to anything to facilitate matters that way; that is the first I have heard of her death.

Mr. Coulomb: She owned about 1-80 of this tract of 500 acres. There was some litigation over it, whereby Mrs. Landis endeavored to quiet title so as to dispose of Mrs. Keneaster's interest, but the Court of Chancery decreed that she had a 1-80 undivided interest in this 500 acres of land. (Continuing.)

After the decree had been made in that bill to quiet title, Mrs. Landis sold to Mr. Ale, and from him to the Sea Isle Improvement Company, about 100 acres of this land, and as I understand it, that 100 acres of land was improved by the Realty Company. 10

Mr. Landis: There were two deeds, your Honor, offered in evidence, which have not been marked. I wish to have them marked; the deed from Matilda T. Landis to Edgar S. Ale; also a deed from Edgar S. Ale to Sea Isle City Realty Company.

Now, there is a deed that I should have offered and did not—that is the deed from the Sea Isle City Realty Company to William Erb. That connects the title. 20

I wish to offer the deed from the Sea Isle City Realty Company and Vineland Trust Company, the mortgagee, to William Erb, the defendant. This is a certified copy from the Cape May County records.

Mr. Coulomb: Place on the record the date of the deeds and their book and page records. 30

Mr. Landis: The date of the deed from the Sea Isle Realty Company to Erb, is August 2, 1909, and it is recorded in Book No. 244, page 233 of Cape May County.

Marked "Exhibit D. A. B. 1."

The deed from Matilda Landis to Edgar S. Ale, is dated April 2, 1908, and recorded in Book 222, page 388.

The deed from Edgar S. Ale to Sea Isle City Realty Company, dated July 22, 1908, and recorded in Book 222, pages 392, &c.

Marked "Exhibits D. A. B. 2, D. A. B. 3, Landis."

- 10 Now, there is another record that I think should be offered, and that is a record of the last will and testament of Charles K. Landis, deceased, and this is a certified copy from the Cape May County Record.

Mr. Coulomb: I have no objection.

- 20 Mr. Landis. Then I offer a certified copy of the last will and testament of Charles K. Landis, deceased, with various proofs, etc. It is recorded in the Surrogate's office of Cape May County, in Book C of Wills, page 430.

Marked "Exhibit D. A. B. 4."

Mr. Coulomb: We have no testimony to offer.

EXHIBIT D ab 1.

- 30 *Deed* Matilda T. Landis, Executrix To Edgar S. Ale Dated April 22nd, 1908. Received in the Clerk's Office of the County of Cape May on the 6th day of August, A. D. 1908 at 8 o'clock in the forenoon and Recorded in Book No. 222 of *Deeds* for said County, on pages 388 &c.

JULIUS WAY, *Clerk.*

This Indenture Made the Twenty-second day of April in the year of Our Lord One Thousand Nine Hundred and Eight (1908), Between Matilda T. Landis, unmarried, Executrix of the last Will and Testament of Charles K. Landis, deceased, of the Borough of Vineland, in the County of Cumberland, and State of New Jersey, party of the First Part; And Edgar S. Ale of the Borough of Vineland, in the County of Cumberland, and State of New Jersey, party of the Second Part: Witnesseth, That the said party of the first part, by virtue of the power and authority to her given, in and by said last Will and Testament, and for and in consideration of the sum of Twenty-three Thousand and Five Hundred (23,500) Dollars lawful money of the United States of America, to her in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey to the said party of the second part, and to his heirs and assigns forever, All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the City of Sea Isle City in the County of Cape May and State of New Jersey, in what is known as the Southwest Section accordingly as the plan of the same appears by a Map published January 1st, A. D. 1890, to wit:—

First Parcel Hereby Conveyed:—Beginning at the intersection of the centre of Dolphin Street with the Southeasterly shore of Ludlam's Thorofare and extending thence (1) along the centre of Dolphin Street Southeastwardly to the centre of Brewster Street; thence (2) along the centre of Brewster Street (parallel with and Thirty-three (33) Feet Northwest-

- wardly from the Southeasterly side of Brewster Street as now established) Northeastwardly to the centre of Italia Street; thence (3) along the centre of Italia Street Northwestwardly, *Four Hundred and Twenty-seven* (427) Feet; thence (4) at right angles to said centre of Italia Street Northeastwardly, *One Hundred and Forty* (140) Feet; thence (5) parallel with said centre of Italia Street Northwestwardly to the Southeasterly shore of Ludlam's Thorofare; and
- 10 thence (6) along said Southeasterly shore of Ludlam's Thorofare Southwestwardly to the Place of Beginning. *Excepting Thereout and Therefrom*; the following described parts of the same, to wit:—*Exception* (a) *Beginning* as described in a deed by Matilda T. Landis to Walter Nangel dated at or about October 30th, A. D. 1885 “at the intersection of the centre of Minerva Avenue with the easterly side of Ludlams Thorofare (high water mark) thence along the centre of said Minerva Avenue
- 20 Southeastwardly *One Hundred Feet*; thence South Forty-four degrees and nineteen minutes West, one hundred and thirty-seven feet and eight inches to the place of beginning,” being the easterly corner of lands conveyed to said Nangel by said Deed and the place of beginning of the lands hereby excepted; and extending from said Nangel corner (1) South Forty-four degrees and nineteen minutes West, *Twenty-five* (25) Feet to corner of land sold to McGloughlin; thence (2) South Sixty-four degrees West, *One Hundred and Ninety-four* and Five tenths (194.50) Feet
- 30 to the Southerly corner of land conveyed to Caroline Cronecker by Deed dated August 3rd, A. D. 1901, or thereabouts; thence (3) North thirty-one degrees and forty minutes West along said Cronecker land, about *One Hundred and Three* (103) Feet to the Southeasterly shore of Ludlam's Thorofare; thence

(4) along the Southeasterly shore of Ludlam's Thorofare, Northeastwardly to the Northerly corner of said Nangel land; and thence (5) South Forty-five degrees East about ninety-seven (97) Feet to the place of Beginning. *Exception (b) Beginning* at the Easterly corner of lands conveyed by The Sea Isle City Improvement Company to Theodore C. Wheaton, by Deed dated at or about May 8th, A. D. 1896, said place of beginning being South sixty-four degrees West *Ninety-Two* (92) Feet from the Southerly corner of lands conveyed to Caroline Cronecker above mentioned and referred to, and in a right line with the Southeasterly side of said Cronecker land; and from said place of beginning, extending South seventy-eight degrees West, *One Hundred and Twenty* (120) Feet to the Southerly corner of land conveyed to George F. Smith, Jr., by deed dated at or about July Twenty-fifth, A. D. 1907, and lying at right angles thereto between two parallel lines *One Hundred and Twenty* (120) Feet apart, Northwestwardly about One Hundred and Thirty (130) Feet, more or less, to and along the Southeasterly shore of Ludlam's Thorofare. *Exception (c) Beginning* in the centre of Minerva Avenue at the distance of six hundred and thirty-three (633) Feet Northwestwardly from the Northwesterly side of Landis Avenue, and extending thence along said centre of Minerva Avenue with a width of *Sixty* (60) Feet that is, Thirty (30) Feet on each side of said centre, Northwestwardly to the Southeasterly shore of Ludlam's Thorofare, being part of the same lands conveyed to the Board of Chosen Freeholders of the County of Cape May, for a public road, by Deed dated at or about April 25th, A. D. 1905.

Second Parcel Hereby Conveyed; Beginning at the intersection of the centres of Dolphin Street and

- Marine Place and extending thence (1) in a right line with said centre of Dolphin Street Southeastwardly to the waters of the Atlantic Ocean; thence (2) along the waters of the Atlantic Ocean Northeastwardly to a point in a right line with the centre of the Right of Way of the West Jersey and Seashore Railroad along Ocean Avenue; thence (3) along a right line with the centre of the Right of Way of the West Jersey and Seashore Railroad
- 10 along Ocean Avenue, Northwestwardly, to the centre of Marine Place; and thence (4) along the centre of Marine Place Southwestwardly *Twenty-two Hundred and Ninety-three* (2293) Feet to the place of Beginning. *Excepting Thereout and Therefrom* the following described part of the same, to wit: *Exception* (d) *Beginning* in the centre of Marine Place at the distance of Ten (10) Feet Northeastwardly from its intersection with the centre of Italia Street and thence bounding along said centre of Marine Place Northeastwardly *One Hundred and Seventy-six* (176) Feet and lying at right angles thereto between two parallel lines *One Hundred and Seventy-six* (176) Feet apart, Southeastwardly to and along the waters of the Atlantic Ocean.

- 20 *Third Parcel Hereby Conveyed:—Beginning* in the Northeasterly side of Pearl Street at the distance of Three Hundred (300) Feet Northwestwardly from the Northwesterly side of Landis Avenue and extending thence (1) along said side of Pearl Street Northwestwardly *Three Hundred* (300) Feet to the Southeasterly side of Brewster Street; thence (2) along the Southeasterly side of Brewster Street Northeastwardly *Seven Hundred and Eighty* (780) Feet to the Southwesterly side of Ariadne Street; thence (3) along said side of Ariadne Street Southeastwardly *Fifty* (50) Feet; thence (4) at right

angles to said side of Ariadne Street Southwestwardly *One Hundred and Ten* (110) Feet; thence (5) parallel with said side of Ariadne Street Southeastwardly *One Hundred* (100) Feet; thence (6) at right angles to and across both sides of Neptune Street Southwestwardly *Two Hundred and Eighty* Feet; thence (7) parallel with the Southwesterly side of Neptune Street Southeastwardly *Three Hundred and Fifty* (350) Feet; thence (8) at right angles to and across both sides of Coral Street, Southwestwardly *Two Hundred and Eighty* (280) Feet along a line parallel with and *One Hundred* (100) Feet Northwestwardly from the Northwesterly side of Landis Avenue; thence (9) parallel with the Southwesterly side of Coral Street Northwestwardly *Two Hundred* (200) Feet; and thence (10) at right angles to the Northeasterly side of Pearl Street, Southwestwardly *One Hundred and Ten* (110) Feet to the place of Beginning. *Comprising Lots Numbers One* (1), *Two* (2), *Three* (3), *Four* (4), *Five* (5), *Six* (6), *Thirteen* (13), *Fourteen* (14), *Fifteen* (15), *Sixteen* (16), *Seventeen* (17), *Eighteen* (18), *Nineteen* (19), *Twenty* (20), *Twenty-one* (21), and *Twenty-two* (22) of Block Number *Twenty-eight* (28); Lots Numbers *one* (1), *Two* (2), *Three* (3), *Four* (4), *Five* (5), *Six* (6), *Seven* (7), *Eight* (8), *Nine* (9), *Ten* (10), *Thirteen* (13), *Fourteen* (14), and *Fifteen* (15), of Block Number *Twenty-three* (23); and Lots Numbers *One* (1), *Two* (2), and *Three* (3), and the Northwestery halves of Lots Numbers *Thirteen* (13) and *Fourteen* (14) of Block Number *Nineteen* (19).

Fourth Parcel Hereby Conveyed; Beginning in the Southwesterly side of Italia Street at the distance of Four Hundred and Fifty (450) Feet Northwestwardly from the Northwesterly side of Landis

Avenue and thence bounding along said side of Italia Street Northwestwardly *One Hundred and Fifty* (150) Feet to the Southeasterly side of Brewster Street, and lying at right angles thereto (bounding along said side of Brewster Street) Southwestwardly *One Hundred and Ten* (110) Feet, between corresponding parallels to form a rectangle. *Comprising* Lots Numbers *Thirteen* (13), *Fourteen* (14), and *Fifteen* (15) of Block Number *Seven* (7).

- 10 *Fifth Parcel Hereby Conveyed:—Beginning* in the Northeasterly side of Italia Street at the distance of Four Hundred and Fifty (450) Feet Northwestwardly from the Northwesterly side of Landis Avenue, and thence bounding along said side of Italia Street Northwestwardly *One Hundred and Fifty* (150) Feet to the Southeasterly side of Brewster Street, and lying at right angles thereto (bounding along said side of Brewster Street) Northeastwardly *One Hundred and Ten* (110) Feet to and
- 20 along the Southwesterly side of West Jersey Avenue, between corresponding parallels to form a rectangle. *Comprising* Lots Numbers *One* (1), *Two* (2), and *Three* (3) of Block Number *Three* (3).

- Sixth Parcel Hereby Conveyed:—Beginning* in the Northeasterly side of Italia Street at the distance of Three Hundred and Fifty (350) Feet Northwestwardly from the Northwesterly side of Landis Avenue, and thence bounding along said side of Italia Street Northwestwardly *Fifty* (50) Feet and
- 30 lying at right angles thereto, Northeastwardly *One Hundred and Ten* (110) Feet, to and along the Southwesterly side of West Jersey Avenue, between corresponding parallels to form a rectangle. *Comprising* Lot Number *Five* (5) of Block Number *Three* (3).

Seventh Parcel Hereby Conveyed:—Beginning in

the Northeasterly side of Italia Street at the distance of One Hundred and Fifty-six and two-thirds (156 & 2-3rds) Feet Northwestwardly from the Northwesterly side of Marine Place, and thence bounding along said side of Italia Street Northwestwardly *Ninety-three* and one-third (93 & 1-3rd) Feet and lying at right angles thereto Northeastwardly *One Hundred and Ten* (110) Feet between corresponding parallels to form a rectangle. *Comprising* Lots Numbers *Five* (5) and *Six* (6) of Block Number *Four* (4). 10

Eighth Parcel Hereby Conveyed:—Any and all Other Lands besides those above particularly mentioned and described lying from the centre of the Right of Way of the West Jersey and Sea Shore Railroad along Ocean Avenue Southwestwardly *Twenty-two Hundred and Ninety-Three* (2293) Feet to the centre of Dolphin Street and from the Southeasterly shore of Ludlam's Thorofare Southeastwardly to the waters of the Atlantic Ocean or anywhere within said bounds, and which have not heretofore been sold or conveyed or agreed to be sold or conveyed by the said Matilda T. Landis, Executrix of the last Will and Testament of Charles K. Landis, deceased, or her predecessors in title. 20

Being part of the same lands conveyed to the said party of the first part by the Sea Isle City Improvement Company by Deed dated September 24th, A. D. 1900, and recorded in the Cape May County Clerk's Office in Book No. 152 of Deeds, at page 61, &c. 30

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. *And* also, all the estate,

right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, and of the said Testator, of, in, and to the above described premises, and every part and parcel thereof, with the appurtenances. *To Have and to Hold*, all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereunto set her hand and seal the day and year first above written.

MATILDA T. LANDIS,
Executrix. [SEAL]

Signed, sealed, and delivered
in the presence of
20 MARCUS FRY.

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

Be it Remembered That on this Twenty-second day of April, in the year of Our Lord One Thousand Nine Hundred and Eight (1908), before me, a Commissioner of Deeds of the State of New Jersey, personally appeared Matilda T. Landis, unmarried, Executrix of the last Will and Testament of Charles K. Landis, deceased, who, I am satisfied is the grantor in the within Deed of Conveyance named; and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed, and

delivered the same as her voluntary act and deed, for the uses and purposes therein expressed. All of which is hereby certified.

MARCUS FRY, *Commissioner.*

EXHIBIT D ab 2.

Deed Edgar S. Ale, unmarried, To Sea Isle City Realty Company, Dated July 22nd, 1908. Received in the Clerk's Office of Cape May County, N. J. at Cape May C. H. on the 6th day of August, 1908 and recorded in Book No. 222 of Deeds, pages 392 &c. at 8 A. M. 10

JULIUS WAY, *Clerk.*

This Indenture Made the Twenty-second day of July, in the year of Our Lord one thousand nine hundred and Eight (1908), *Between* Edgar S. Ale, unmarried, of Vineland, Cumberland County, New Jersey, party of the first part, *And* Sea Isle City Realty Company, a Corporation of New Jersey, party of the second part:—*Witnesseth*, That the said Edgar S. Ale for and in consideration of the sum of *Twenty-three Thousand and Five Hundred* (23,500) Dollars lawful money of the United States of America, unto him well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release and confirm unto the said party of the second part, its successors and assigns, *All Those Certain Tracts or Parcels of Land* and premises 30

hereinafter particularly described, *Situated* in the City of Sea Isle City, in the County of Cape May, and State of New Jersey, in what is known as the Southwest Section accordingly as the plan of the same appears by a Map published January 1st, A. D. 1890, to wit:

- First Parcel Hereby Conveyed*:—Beginning at the intersection of the centre of Dolphin Street with the Southeasterly shore of Ludlam's Thorofare and extending thence (1) along the centre of Dolphin Street Southeastwardly to the centre of Brewster Street; thence (2) along the centre of Brewster Street (parallel with and Thirty-three (33) Feet Northwestwardly from the Southeasterly side of Brewster Street as now established) Northeastwardly to the centre of Italia Street; thence (3) along the centre of Italia Street Northwestwardly, *Four Hundred and Twenty-seven* (427) Feet; thence (4) at right angles to said centre of Italia Street Northeastwardly, *One Hundred and Forty* (140) Feet; thence (5) parallel with said centre of Italia Street Northwestwardly to the Southeasterly shore of Ludlam's Thorofare; and thence (6) along said Southeasterly shore of Ludlam's Thorofare Southwestwardly to the Place of Beginning. *Excepting Thereout and Therefrom*; the following described parts of the same, to wit:—*Exception* (a) Beginning as described in a deed by Matilda T. Landis to Walter Nangel dated at or about October 30th, A. D. 1885 "at the intersection of the centre of Minerva Avenue with the easterly side of Ludlams Thorofare (high water mark) thence along the centre of said Minerva Avenue Southeastwardly *One Hundred* Feet; thence South Forty-four degrees and nineteen minutes West, one hundred and thirty-seven feet and eight inches to the place of beginning," being the easterly

corner of lands conveyed to said Nangel by said Deed and the place of beginning of the lands hereby excepted; and extending from said Nangel corner (1) South Forty-four degrees and nineteen minutes West, *Twenty-five* (25) Feet to corner of land sold to McGloughlin; thence (2) South Sixty-four degrees West, *One Hundred and Ninety-four and Five-tenths* (194.50) Feet to the Southerly corner of land conveyed to Caroline Cronecker by Deed dated August 3rd, A. D. 1901 or thereabouts; thence (3) **10** North thirty-one degrees and forty minutes West along said Cronecker land, about *One Hundred and Three* (103) Feet to the Southeasterly shore of Ludlam's Thorofare; thence (4) along the Southeasterly shore of Ludlam's Thorofare, Northeastwardly to the Northerly corner of said Nangel land; and thence (5) South Forty-five degrees East about ninety-seven (97) Feet to the place of Beginning.

Exception (b) Beginning at the Easterly corner of lands conveyed by The Sea Isle City Improvement Company to Theodore C. Wheaton, by Deed dated at or about May 8th, A. D. 1896, said place of beginning being south sixty-four degrees West *Ninety-Two* (92) Feet from the Southerly corner of lands conveyed to Caroline Cronecker above mentioned and referred to, and in a right line with the Southeasterly side of said Cronecker land; and from said place of beginning, extending South seventy-eight degrees West, *One Hundred and Twenty* (120) Feet to the Southerly corner of land conveyed to George **80** F. Smith, Jr., by deed dated at or about July Twenty-fifth, A. D. 1907, and lying at right angles thereto between two parallel lines *One Hundred and Twenty* (120) Feet apart, Northwestwardly about One Hundred and Thirty (130) Feet, more or less, to and along the Southeasterly shore of Ludlam's Thoro-

- fare. *Excepting (c) Beginning* in the centre of Minerva Avenue at the distance of six hundred and thirty-three (633) Feet Northwestwardly from the Northwesterly side of Landis Avenue, and extending thence along said centre of Minerva Avenue with a width of *Sixty* (60) Feet that is, Thirty (30) Feet on each side of said centre, Northwestwardly to the Southeasterly shore of Ludlam's Thorofare, being part of the same lands conveyed to the Board of
- 10 Chosen Freeholders of the County of Cape May, for a public road, by Deed dated at or about April 25th, A. D. 1905.

- Second Parcel Hereby Conveyed: Beginning* at the intersection of the centres of Dolphin Street and Marine Place and extending thence (1) in a right line with said centre of Dolphin Street Southeastwardly to the waters of the Atlantic Ocean; thence (2) along the waters of the Atlantic Ocean Northeastwardly to a point in a right line with the centre
- 20 of the Right of Way of the West Jersey and Seashore Railroad along Ocean Avenue; thence (3) along a right line with the centre of the Right of Way of the West Jersey and Seashore Railroad along Ocean Avenue, Northwestwardly, to the centre of Marine Place; and thence (4) along the centre of Marine Place Southwestwardly *Twenty-two Hundred and Ninety-three* (2293) Feet to the place of Beginning. *Excepting Thereout and Therefrom* the following described part of the same, to wit: *Ex-*
- 30 *ception (d) Beginning* in the centre of Marine Place at the distance of Ten (10) Feet Northeastwardly from its intersection with the centre of Italia Street and thence bounding along said centre of Marine Place Northeastwardly *One Hundred and Seventy-six* (176) Feet and lying at right angles thereto between two parallel lines *One Hundred and Seventy-*

six (176) Feet apart, Southeastwardly to and along the waters of the Atlantic Ocean.

Third Parcel Hereby Conveyed:—Beginning in the Northeasterly side of Pearl Street at the distance of Three Hundred (300) Feet Northwestwardly from the Northwesterly side of Landis Avenue and extending thence (1) along said side of Pearl Street Northwestwardly Three Hundred (300) Feet to the Southeasterly side of Brewster Street; thence (2) along the Southeast- 10
erly side of Brewster Street Northeastwardly Seven Hundred and Eighty (780) Feet to the Southwest- 20
erly side of Ariadne Street; thence (3) along said side of Ariadne Street Southeastwardly Fifty (50) Feet; thence (4) at right angles to said side of Ariadne Street Southwestwardly One Hundred and Ten (110) Feet; thence (5) parallel with said side of Ariadne Street Southeastwardly One Hundred (100) Feet; thence (6) at right angles to and across both sides of Neptune Street Southwestwardly Two Hun- 20
dred and Eighty Feet; thence (7) parallel with the Southwesterly side of Neptune Street Southeastwardly Three Hundred and Fifty (350) Feet; thence (8) at right angles to and across both sides of Coral Street, Southwestwardly Two Hundred and Eighty (280) Feet along a line parallel with and One Hun- 30
dred (100) Feet Northwestwardly from the Northwesterly side of Landis Avenue; thence (9) parallel with the Southwesterly side of Coral Street North- westwardly Two Hundred (200) Feet; and thence (10) at right angles to the Northeasterly side of Pearl Street, Southwestwardly One Hundred and Ten (110) Feet to the place of Beginning. Comprising Lots Numbers One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17),

Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), and Twenty-two (22) of Block Number Twenty-eight (28); Lots Numbers One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Thirteen (13), Fourteen (14), and Fifteen (15), of Block Number Twenty-three (23); and Lots Numbers One (1), Two (2), and Three (3), and the Northwesterly halves of Lots Numbers Thirteen (13) and Fourteen (14) of Block Number Nineteen (19).

10 *Fourth Parcel Hereby Conveyed: Beginning in the Southwesterly side of Italia Street at the distance of Four Hundred and Fifty (450) Feet Northwestwardly from the Northwesterly side of Landis Avenue and thence bounding along said side of Italia Street Northwestwardly One Hundred and Fifty (150) Feet to the Southeasterly side of Brewster Street, and lying at right angles thereto (bounding along said side of Brewster Street) Southwestwardly One Hundred and Ten (110) Feet, between corresponding parallels to form a rectangle. Comprising Lots Numbers Thirteen (13), Fourteen (14), and Fifteen (15) of Block Number Seven (7).*

30 *Fifth Parcel Hereby Conveyed:—Beginning in the Northeasterly side of Italia Street at the distance of Four Hundred and Fifty (450) Feet Northwestwardly from the Northwesterly side of Landis Avenue, and thence bounding along said side of Italia Street Northwestwardly One Hundred and Fifty (150) Feet to the Southeasterly side of Brewster Street, and lying at right angles thereto (bounding along said side of Brewster Street) Northeastwardly One Hundred and Ten (110) Feet to and along the Southwesterly side of West Jersey Avenue, between corresponding parallels to form a rect-*

angle. *Comprising* Lots Numbers *One* (1), *Two* (2), and *Three* (3) of Block Number *Three* (3).

Sixth Parcel Hereby Conveyed:—*Beginning* in the Northeasterly side of Italia Street at the distance of Three Hundred and Fifty (350) Feet Northwestwardly from the Northwesterly side of Landis Avenue, and thence bounding along said side of Italia Street Northwestwardly *Fifty* (50) Feet and lying at right angles thereto, Northeastwardly *One Hundred and Ten* (110) Feet, to and along the Southwesterly side of West Jersey Avenue, between corresponding parallels to form a rectangle. *Comprising* Lot Number *Five* (5) of Block Number *Three* (3). 10

Seventh Parcel Hereby Conveyed:—*Beginning* in the Northeasterly side of Italia Street at the distance of One Hundred and Fifty-six and two-thirds (156 & 2-3rds) Feet Northwestwardly from the Northwesterly side of Marine Place, and thence bounding along said side of Italia Street Northwestwardly *Ninety-Three* and one-third (93 & 1-3rd) Feet and lying at right angles thereto Northeastwardly *One Hundred and Ten* (110) Feet between corresponding parallels to form a rectangle. *Comprising* Lots Numbers *Five* (5) and *Six* (6) of Block Number *Four* (4). 20

Eighth Parcel Hereby Conveyed:—*Any And All Other Lands* besides those above particularly mentioned and described lying from the centre of the Right of Way of the West Jersey and Sea shore Railroad along Ocean Avenue Southwestwardly *Twenty-two Hundred and Ninety-three* (2293) Feet to the centre of Dolphin Street and from the Southeastern shore of Ludlam's Thorofare Southeastwardly to the waters of the Atlantic Ocean or anywhere within said bounds, and which have not been 30

sold or conveyed or agreed to be sold or conveyed by the predecessors in title of the said party of the first part.

Being All the Same Lands conveyed to the said party of the first part by Matilda T. Landis, Executrix of the last Will and Testament of Charles K. Landis, deceased, by Deed dated April 22nd, A. D. 1908.

- 10 *Together* with all and singular the buildings, improvements, woods, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof, with the appurtenances. *To Have and to Hold the Said*
- 20 *Lands*, hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said Sea Isle City Realty Company, its successors and assigns to and for the only proper use and behoof of the said Sea Isle City Realty Company, its successors and assigns forever.

In Witness Whereof, the said party of the first part to the presents has hereunto set his hand and seal the day and year first above written.

EDGAR S. ALE [SEAL]

- 30 Sealed and Delivered
in the presence of
MARCUS FRY

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

Be It Remembered, that on this Twenty-second day of July in the year of our Lord one thousand nine hundred and Eight (1908), before me, a Commissioner of Deeds of New Jersey, personally appeared Edgar S. Ale, unmarried, who, I am satisfied, is the grantor mentioned in the above deed or conveyance, and I having first made known to him **10** the contents thereof, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed. All of which is hereby certified.

MARCUS FRY, *Commissioner.*

EXHIBIT D ab 3.

Certified copy of deed Sea Isle City Realty Company, owner, and Vineland Trust Company, mortgagee, to William Erb. Dated August 2nd, 1909, and recorded September 9th, 1909.

This Deed, made the Second day of August in the year of our Lord, one thousand nine hundred and
10 *nine (1909) between Sea Isle City Realty Company, a corporation of New Jersey, its Principal Office being at Sea Isle City, New Jersey, Owner, and Vineland Trust Company, a Corporation of New Jersey, its Principal Office being at Vineland, New Jersey, Mortgagee, of the first part, and William Erb, of No. 535 Callowhill Street, in the City of Philadelphia and State of Pennsylvania, of the second part: Witnesseth, That the said parties of the first part, for and in consideration of the Proviso or condition*
20 *hereinafter contained as well as the sum of One Thousand (1000) Dollars lawful money of the United States of America, well and truly paid by the said party of the second part to the said parties of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of*
30 *the second part, his heirs and assigns, All the following described lands and real estate situated in the City of Sea Isle City, County of Cape May, and State of New Jersey, to wit: Beginning in the Southwesterly side of County Boulevard at the distance of Five Hundred (500) feet Northwestwardly from its intersection with the Northwesteryly side of*

Park Road and thence bounding along said side of County Boulevard, Northwestwardly one hundred (100) feet and lying at right angles thereto Southwestwardly Ninety-five (95) feet to and along the Northeasterly shore of the Rio del' Amore waterway, between corresponding parallels to form a rectangle. Comprising Lots Numbers Twenty-eight (28), Twenty-nine (29), Thirty (30) and Thirty-one (31) of Block Letter A as demarcated and designated on said Sea Isle City Realty Company's published Plan of Venician Park. Being part of the first parcel of lands conveyed to the said Sea Isle City Realty Company by Edgar S. Ale by Deed dated July 22nd, A. D. 1908 and recorded in the Cape May County Clerk's Office in Book No. 222 of Deeds, pages 392 &c. Any shore boundary extends to the centre of the waterway; but the waterway shall forever remain open and unobstructed as a free public highway excepting and reserving to each and every owner the exclusive use of his shore with the right to maintain or restore said shore to its established line, and the exclusive right to fish and to anchor or moor a boat or boats on his premises within said waterway subject, to public regulation; provided that no boat or boats shall be anchored or moored within Thirty Feet from the centre of said waterway. *Together* with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; *And Also* all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said parties of the first part, of, in, and to the said

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premises, with the appurtenances. The said Vineland Trust Company, Mortgagee, party of the first part, participates as aforesaid to the intent that the above described premises may be discharged, and hereby covenants, grants and agrees as well to and with the said Sea Isle City Realty Company, its successors and assigns, as to and with the said party of the second part his heirs and assigns, that said premises are hereby discharged accordingly from

10 the lien and operation of a certain Indenture of Mortgage made by the said Sea Isle City Realty Company to the said Vineland Trust Company, Mortgagee, dated March 1st, A. D. 1909, and recorded in the Cape May County Clerk's Office in book Number 89 of Mortgages at pages 40 &c.; and Free from the encumbrance thereof. But in any other promises nor as to any other matters herein contained the said Vineland Trust Company, Mortgagee, has no part or concern. *To Have and To*

20 *Hold* the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. Provided always, Nevertheless, that if the said William Erb or his heirs, executors, administrators, or assigns, shall fail to well and truly abide by and perform or shall break or violate any covenant herein contained, that then and from thenceforth as well these presents as

30 the estate hereby shall cease, determine and become absolutely null and void, to all intents and purposes, anything herein before contained to the contrary thereof in anywise notwithstanding; and that the said Sea Isle City Realty Company, its successors and assigns, shall and may from time to time, and at all times after default shall be made in the perform-

ance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above described premises, with the improvements, rents, issues and profits thereof, and the appurtenances, without the let, suit, trouble, hindrance, or denial of the said party of the second part, his heirs or assigns, or of any other person or persons whatsoever. *And* the said William Erb for himself and his heirs, executors, administrators, and assigns, does by 10 these presents, covenant, grant and agree to and with the said Sea Isle City Realty Company, its successors and assigns, that no dock, wharf or approach nor any building or other fixture of any kind nor any part thereof shall extend or be within the limits of any waterway on said premises; that any nuisance nor whatever is foul, malodorous, or unsightly nor any noise or vibrations, other than may be reasonably occasioned by a proper enjoyment of the property for other than manufacturing or business pur- 20 poses, will not be permitted on said premises; that no house or other building shall be put or constructed on the premises at any time before the First day of January, A. D. 1919, at a less cost than Fifteen Hundred (1500) Dollars, except by the written consent of the said Sea Isle City Realty Company, or its successors, upon approval of submitted plans; and that intoxicating liquors of any kind shall not be sold on the premises except incidentally to the business of an inn of at least Fifty Sleeping Rooms. 30 *And* it is expressly understood and agreed, that the several covenants on the part of the said party of the second part, above specified shall attach to and run with the land, and it shall be lawful for the said Sea Isle City Realty Company, its successors and assigns, to institute and prosecute any proceeding

at law or in equity against the person or persons violating or threatening to violate the same, and that the right to institute and prosecute any such proceeding shall not be lost or impaired by a previous failure or neglect to do so or waiver in any instance of a like or other violation of the same; it being understood however, that this covenant is not to be enforced personally for damages against the said party of the second part, his heirs or assigns, unless he or they claim to have some interest in or right to said premises, or of some part thereof, at the time of a violation of the said covenant, or of a threatened or attempted violation thereof. And the Sea Isle City Realty Company, for itself and its successors, does by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said Sea Isle City Realty Company and its successors, all and singular the hereditaments and premises herein-
above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said Sea Isle City Realty Company, and the said Vineland Trust Company, and their successors and against all and every other person or persons, whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend, Provided as aforesaid. *In Witness Whereof*, the said parties of the first part have caused these Presents to be signed by their respective Presidents and their several corporate seals to be hereto affixed and attested by their respective Secretarys, as of the day and year first above written.

(Corp seal) SEA ISLE CITY REALTY COMPANY,
By CHARLES K. LANDIS, JR., *President.*

Attest: JAS. T. CHAPMAN, *Secy.*
(Corp Seal)

VINELAND TRUST Co.
MYRON J. KIMBALL, *Pres.*

Attest: WM. CHAMBERS, *Secy.*

STATE OF NEW JERSEY, COUNTY OF CAPE MAY, ss: Be it Remembered, that on this Sixteenth day of August, A. D. Nineteen hundred and nine (1909) before me, the subscriber, personally appeared James T. Chapman, who, being by me duly sworn, doth depose and make proof to my satisfaction that he is the Secretary and well knows the Corporate Seal of Sea Isle City Realty Company the within named party of the first part; that the seal affixed to the within instrument is the proper corporate seal of the said Corporation and that the same was so affixed and the within instrument signed and delivered, by Charles K. Landis, Jr., who was at the date and execution thereof the President of said Corporation, in the presence of the said deponent, as the voluntary act and deed of the said Corporation and that deponent thereupon signed the same as a subscribing witness. 10 20

JAS. T. CHAPMAN

Sworn to and subscribed before me this sixteenth day of August A. D. 1909.

LEWIS STEINMEYER,
Commissioner of Deeds.

STATE OF NEW JERSEY, COUNTY OF CUMBERLAND, ss. Be it Remembered, that on this Sixteenth day of August A. D. Nineteen hundred and nine before me, the subscriber, personally appeared William Chambers who, being by me duly sworn, doth depose and make proof to my satisfaction that he is the Secre- 30

tary and well knows the Corporate Seal of Vine-
land Trust Company the within named party of the
first part; that the seal affixed to the within instru-
ment is the proper corporate seal of the said Cor-
poration and that the same was so affixed and the
within instrument signed and delivered by Myron J.
Kimball who was at the date and execution thereof
the President of said Corporation, in the presence
of the said deponent as the voluntary act and deed
10 of the said Corporation, and that deponent there-
upon signed the same as a subscribing witness.

WM. CHAMBERS

Sworn to and subscribed before me this Sixteenth
day of August, A. D. 1909.

S. W. HURD,
Commissioner of Deeds of New Jersey.

Received and recorded this Deed, September 9,
20 A. D. 1909 at 8 A. M.

JULIUS WAY,
Clerk.

STATE OF NEW JERSEY.

(Shield)

30

COUNTY OF CAPE MAY.

I, A. C. HILDRETH, County Clerk, and Clerk of the
Court of Common Pleas in and for said County, Do
HEREBY CERTIFY that the foregoing is a true and

correct copy of deed from Sea Isle City Realty Company, owner, and Vineland Trust Company, mortgagee to William Erb as recorded, on the ninth (9th) day of September A. D. 1909, in the Clerk's Office of the County of Cape May, in Book No. 244 of Deeds at page 232, &c.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Cape May Court House, this twentieth (20th) day of March, A. D. 1913.

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A. C. HILDRETH,
Clerk.

[SEAL]

**EXHIBITED DECREE IN SUIT TO QUIET
TITLE.**

IN CHANCERY OF NEW JERSEY.

(Filed September 24th, 1907)

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Between

MATILDA T. LANDIS,
Complainant,

and

JULIUS T. WAY and LIL-
LIAN M. KENEASTER, et
als.,

Defendants.

ON BILL TO QUIET
TITLE.

FINAL DECREE.

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30 This cause coming on to be heard in the presence of Charles K. Landis, Jr., of counsel with complainant, and George A. Bourgeois, of counsel with the defendants, and the bill, answer, replication, proofs and exhibits, and the verdict and report of the feigned issue heretofore ordered in this cause having been opened, read and considered, and the arguments of the respective counsel having been heard, and the Chancellor having considered the same, and it appearing to his satisfaction that the defendants, Lillian M. Keneaster, who appeared and who filed answer in this cause, has by her said answer, set up

and relied on certain claims to an equal undivided five three hundred and ninety-second parts of the lands and premises described in complainant's bill of complaint.

And it further appearing from the report of said feigned issue that the jury of the County of Cape May before whom said feigned issue was tried, found that the claim of the defendant, Lillian M. Keneaster, to the said equal undivided five three hundred and ninety-second part of the lands and premises aforesaid was valid, and the Chancellor having considered the pleadings and proofs, and it appearing therefrom that the defendant, Lillian M. Keneaster, is seized of an equal undivided five three hundred and ninety-second part of the lands and premises described in complainant's bill of complaint: **10**

It is, on this twenty-fourth day of September, 1907, by William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged, and decreed that the said defendant Lillian M. Keneaster is seized of an equal undivided five three hundred and ninety-second part of the lands and premises mentioned in complainant's bill of complaint particularly described as follows, to wit: **20**

Beginning at the intersection of the centre of Polk Avenue with the southeasterly shore of Whale Creek and thence southeastwardly along the said centre of Polk Avenue as now marked upon the ground by a row of stakes to the northwesterly side of the right of way occupied by the tracks of the Atlantic City Railroad Company, thence southwestwardly, along said side of said right of way about 11,000 feet to the northeasterly side of Garrison Street, thence northwestwardly along the northeasterly side of Garrison Street to the centre of Brewster Street, thence southwestwardly along the said centre of **30**

- Brewster Street, to the northeasterly side of Ocean Avenue, thence northwestwardly along the said northeasterly side of Ocean Avenue to Ludlam's Thoroughfare, thence in a generally north course along the eastwardly shore of said Thoroughfare to Ludlam's Bay; thence in a generally eastwardly course along the southerly shore of said Ludlam's Bay, to the northeasterly side of Pennsylvania Avenue; thence southeastwardly along the said side of
- 10 Pennsylvania Avenue to a point six hundred and nineteen feet northwest of its intersection with the centre line of the right of way of the West Jersey and Seashore Railroad, thence north thirty-eight degrees and thirty-five minutes east seven hundred and twenty and three-fourths feet to a point; thence north fifty-one degrees and twenty-five minutes west, to the southeasterly shore of said Ludlam's Bay, thence in a generally northeastwardly course along said southeasterly shore of said Ludlam's
- 20 Bay, to Whale Creek, thence along the southeastwardly shore of Whale Creek to the place of beginning.

- Also Beginning at the intersection of the centre of Dolphin Street, with the southeastwardly shore of Ludlam's Thoroughfare and thence southeastwardly, along the said centre of said Dolphin Street to the centre of Brewster Street, thence northeastwardly along the said centre of Brewster Street to a point one hundred and ten feet from the south-
- 30 westerly side of Ocean Avenue; thence northwestwardly in a course parallel with said side of Ocean Avenue to the southeasterly shore of Ludlam's Thoroughfare, thence in a generally southwestwardly course along the said southeasterly side of Ludlam's Thoroughfare to the northeasterly side of Minerva Avenue; thence southeastwardly along said

side of Minerva Avenue to the centre of Sounds Avenue, thence in a westwardly course along the said centre of Sounds Avenue to the westerly side of Neptune Street, thence northwardly along the said side of Neptune Street to the southerly shore of Ludlam's Thoroughfare; and thence westwardly along the southerly shore of Ludlam's Thoroughfare to the place of beginning.

And in respect to the said equal undivided five three hundred and ninety-second part of all of said lands and premises so far as relates to any claim thereon by or on behalf of the complainant, or title of the defendants in the same and every part thereof, is hereby determined, fixed and settled, and declared to be good; and that the complainant do pay to the defendant her costs of suit to be taxed, and that the defendant have execution therefor, according to the rules and practice of this court. 10

W. J. MAGIE,
C.

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PETITION OF APPEAL.NEW JERSEY
COURT OF ERRORS AND APPEALS.

(Filed April 27, 1914)

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Between

WILLIAM ERB, et al.,
(*Defendants*),
Appellants,

and

WILLIAM H. KENEASTER
and ELSIE M. KENEAS-
TER, substituted in the
place and stead of LIL-
LIAN M. KENEASTER,
deceased,
(*Complainants*),
Respondents.

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ON BILL FOR PARTI-
TION.APPEAL FROM DECREE.
IN CHANCERY OF NEW
JERSEY.

PETITION.

30

*To the Honorable The Court of Errors and Appeals
of the State of New Jersey:*

The humble petition of WILLIAM ERB and EMMA ROSIE ERB, his wife, the appellants in the above stated cause, respectfully shows that your petitioners are aggrieved by a decree of the Court of Chancery of New Jersey made on the ninth day of April, A. D. nineteen hundred and fourteen (1914), wherein

the above said respondents were complainants and your petitioners were defendants, and whereby it is ordered, adjudged, and decreed that Elsie M. Keneaster is seized in fee of and entitled to an undivided part of the lands mentioned and described in said decree; that William H. Keneaster has a right of courtesy in such undivided part; that said lands shall be sold in the presence and under the direction of one of the Special Masters of said Court of Chancery; and that said Master sell the same in such portions as to him may seem most for the interest of the parties. And your said petitioners appeal from the whole and every part of said decree which orders, adjudges, or decrees as aforesaid or that the lands therein mentioned and described be partitioned or that the prayer of the bill of complaint considered, be granted. 10

The grounds of this appeal are:

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1st. That the lands mentioned and described in said decree are only a small part of a large tract in which said respondents allege the undivided shares to be partitioned and the said decree does not divide the tract according to the shares alleged but adjudges respondents' share in a part without partition of the whole and not as a quotient of the true dividend out of which the shares as alleged, should be divided. 30

2nd. That said respondents allege Matilda T. Landis to be seized of and entitled to much the greater undivided share of said large tract of land and said Matilda T. Landis is not a defendant to the bill of complaint nor party to said decree.

3rd. That the said decree is founded upon a succession of title from said Matilda T. Landis by deed purporting to convey by metes and bounds to William Erb, this appellant, the whole estate entirely in the lands mentioned and described in said decree; and said decree ignores all equities by which said lands it mentions and describes should be divided wholly and in entirety to the estate of William Erb, this appellant, by, through, and under the share of
10 said Matilda T. Landis as alleged.

4th. That William Erb, this appellant, has notoriously continued to hold exclusive, adverse possession of the lands mentioned and described in said decree by disseizin of respondents before the commencement of this suit and not as a tenant in common with Lillian M. Keneaster or said respondents.

20 5th. That these appellants, by their answer to said bill of complaint deny that said Lillian M. Keneaster or said respondents are entitled to any undivided part of the lands mentioned and described in said decree or that a partition or division of the same should be made.

6th. That said decree orders the lands of these appellants to be sold.

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7th. That said decree grants the prayer of said bill of complaint for partition of the lands mentioned and described in said decree contrary to equity and good conscience and in which lands, respondents' interests as considered by said decree, are not worth fifty (50) dollars.

Your petitioners therefore pray that the said decree may be 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.

CHARLES K. LANDIS, JR.,
Solicitor and of Counsel
with Appellants.

WILLIAM J. KRAFT,
Of Counsel with Appellants. 10

PLAN
OF A PORTION OF
SEA ISLE CITY, N.J.

SCALE 
R.L. GOFF ENGINEER
1912.

