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NOTICE OF APPEAL.

(Filed Feb. 8, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill, &c. Notice of Appeal.	10
BRYN BELLA LAND COM-			
PANY,			
Complainant,			
and			
WILLIAM T. PURNELL, <i>et</i>	}		
<i>ux., et als.,</i>			
Defendants.			

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The complainant hereby appeals from an order 20  
made on the thirty-first day of January, 1927, by  
the Chancellor on the advice of the Honorable E. B.  
Leaming, Vice-Chancellor, dismissing the bill of  
complaint on the application of Thomas R. Bromley,  
William T. Purnell and Mary S. Prunell, three of  
the above-named defendants, and from the whole and  
every part thereof, to the Court of Errors and Ap-  
peals in the last resort in all causes.

Dated, February 7, 1927.

CARR & CARROLL, 30  
*Solicitors for and of Counsel*  
*with the Complainant.*

2            *Acknowledgment of Service*

I conceive that there is a good cause for appeal in the above stated cause.

HARVEY F. CARR,  
*Of Counsel with Complainant.*

10            ACKNOWLEDGMENT OF SERVICE.

(Filed Feb. 11, 1927.)

Service of a copy of notice of appeal in the above matter is hereby acknowledged this eighth day of February, 1927.

20            GEO. B. EVANS,  
*Solicitor for Thomas R. Bromley, William T. Purnell and Mary S. Purnell, Defendants.*

30

*Petition of Appeal*            3

PETITION OF APPEAL.

(Filed Feb. 16, 1927.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

Between	}	Petition of Appeal.
BRYN BELLA LAND COMPANY,		
<i>Complainant-Appellant,</i>		
and		
WILLIAM T. PURNELL, <i>et ux., et als.,</i>		
<i>Defendants-Appellees.</i>	20	

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

The petition of Bryn Bella Land Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an order made in the Court of Chancery by the Honorable Edwin Robert Walker, Chancellor, on the advice of the Honorable E. B. Leaming, Vice-Chancellor, bearing date the thirty-first day of January, 1927, wherein the said Bryn Bella Land Company was complainant, and William T. Purnell, *et ux., et als.*, were defendants, in this respect, to wit:

That the said order adjudges that the bill of complaint in said cause be dismissed as to the defendants, Thomas R. Bromley, William T. Purnell, and Mary S. Purnell, with costs, upon the ground that the same is erroneous, for that in and by the said order it was recited, "And it appearing that due notice has been given to the complainant of this application \* \* \* and upon an affidavit setting forth that the bill of particulars heretofore ordered filed

10 has not been filed by the complainant, and the time to file the same having expired," the bill of complaint was dismissed, whereas the said bill of complaint disclosed a valid cause of action, and in itself contained the full particulars of complainant's claim.

Your petitioner, therefore, prays that the order of the said Chancellor may be reversed, set aside, and for nothing holden.

20 And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

CARR & CARROLL,  
*Solicitors for and of Counsel  
 with Complainant-Appellant.*

ACKNOWLEDGMENT OF SERVICE OF PETITION OF APPEAL.

(Filed Feb. 25, 1927.)

Service of a true copy of the petition of appeal in the above matter is hereby acknowledged this nineteenth day of February, A. D. 1927.

GEO. B. EVANS,  
*Solicitor for and of Counsel  
 with Defendants, Thomas  
 R. Bromley, William T.  
 Purnell and Mary S. Purnell.*

10

20

ANSWER TO PETITION OF APPEAL.

(Filed April 16, 1927.)

The answer of Thomas R. Bromley, William T. Purnell and Mary S. Purnell, three of the above named respondents to the petition of appeal of the above named appellants.

30 These respondents not acknowledging all or any of the matters, which in the petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that the order was on the thirty-first day of January, 1927, made and entered in the Court of Chancery, in the cause for that purpose mentioned

in said petition as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said order is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

10 GEO. B. EVANS,  
*Solicitor and of Counsel with  
the Respondents, Thomas  
R. Bromley, William T.  
Purnell and Mary S. Purnell.*

[ENDORSED]

20 We hereby consent to the filing of the  
within answer as of time.  
Carr & Carroll,  
Solicitors for Appellant.  
Dated Apr. 14, 1927.

30

BILL OF COMPLAINT.

(Filed Dec. 18, 1926.)

IN CHANCERY OF NEW JERSEY.

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

Bryn Bella Land Company, a corporation of the State of New Jersey, respectfully shows that:

1. On the third day of December, 1926, William T. Purnell and Marv S. Purnell, his wife, of Cinnaminson Township, Burlington County, New Jersey; Thomas R. Bromley (single man), of the Township of Palmyra, Burlington County, New Jersey, and Palmyra-Riverton Realty Company, a corporation of the State of New Jersey (hereinafter called the "Sellers"), entered into a certain agreement with the complainant, whereby Sellers agreed to sell and to convey to the complainant, and the complainant agreed to buy at the sum or price of \$700 per acre, all that certain property located in Burlington County, New Jersey, known as the W. S. French Farm, and described as follows: 20

All those two certain tracts or parcels of land and premises situate in the Township of Moorestown (formerly Chester), in the County of Burlington and State of New Jersey; First: Beginning at a stone in the southerly line of the road leading from Moorestown to Westfield, near the middle of the Lenola Road and corner to lands of Alfred Leeds; and extending thence (1) along the line of said lands of 30

said Alfred Leeds, and along the said Lenola Road, south twenty degrees and forty minutes west, the distance of twenty-three chains and sixteen links to a stone near the middle of said Lenola Road, corner to lands of Walton Leeds; thence (2) along the line of said lands of said Walton Leeds, north, sixty-nine degrees and twenty minutes west, the distance of seventeen chains and sixty-eight links to a stake corner to the same; thence (3) still along the line of said lands of said Walton Leeds, south seventy-three degrees and thirty minutes west, the distance of six chains and thirty-eight links to a corner to lands of Heulings Lippincott; thence (4) along the line of said lands of said Heulings Lippincott, north thirty-one degrees and five minutes west, the distance of ten chains and twenty-five links to a stake corner to lands of Anthony Doppler; thence (5) along the line of said lands of said Anthony Doppler, north eighty-two degrees and forty minutes east, the distance of twenty-two chains and seventy-five links to a stone corner to the same; thence (6) still along the line of said lands of said Anthony Doppler, north twenty degrees and forty minutes east, the distance of ten chains and twenty-six links to a stake in the said road leading from Moorestown to Westfield, near the southerly line of said road in the line of lands of Heulings Lippincott; thence (7) along the said road from Moorestown to Westfield and along the line of said lands of Heulings Lippincott, south sixty-eight degrees east, the distance of ten chains and fifty-nine links to the place of beginning. Containing forty-two acres of land, be the same more or less.

Second: Beginning at a stone in the southerly line of the road leading from Moorestown to Westfield, near the middle of the Lenola Road, corner to the

lands above described, lands of Heulings Lippincott and lands of Alfred Leeds; and extending thence (1) along the line of said lands of Heulings Lippincott, passing over a stone at the side of the said road from Moorestown to Westfield, at the distance of eighty links from the corner north, twenty-one degrees and thirty minutes east, the distance of fourteen chains and eighty-eight links to a stone corner to said lands of said Heulings Lippincott; thence (2) still along the line of the same north, fifty-three degrees and forty-five minutes west, six chains and eighty-seven links to a black oak corner to same; thence (3) still along the line of the same south sixty-seven degrees and thirty minutes west, the distance of one chain and seventy links to a stone corner to same; thence (4) still along the line of the same north, thirty-four degrees and thirty minutes west, three chains and eighteen links, passing over a stone at the side of the Tom Brown Road to a point for a corner in said Tom Brown Road at the distance of fifty links from said last mentioned stone, in the line of lands of George L. Gillingham; thence (5) along the said Tom Brown Road and along the line of said lands of said George L. Gillingham, north sixty-eight degrees and thirty minutes east, the distance of fourteen chains and seventy-eight links to a stone near the northerly side of said Tom Brown Road, corner to lands of Edward C. Wood, late of Martha Roberts; thence (6) along the line of said lands of Edward C. Wood, late of Martha Roberts, south thirty-six degrees and forty-five minutes east, the distance of fourteen chains and seventy-five links to a stone corner to the same; thence (7) still along the line of the same south twenty-seven degrees and thirty-five minutes west, the distance of twelve chains and seventy-two links to a stone corner to the same; thence (8) still along

the line of the same and along the line of land of Edward Harmer, south thirty-nine degrees and thirty minutes west, the distance of six chains and fifty-eight links to a stake in the road leading from Moorestown to Westfield near the northerly line of said road, in the line of said lands of Alfred Leeds; thence (9) along the said last mentioned road and along the line of said lands of Alfred Leeds, north seventy-two degrees and fifty minutes west, nine chains and fifty-eight links to the place of beginning. Containing thirty-four and seven one-hundredths acres of land, be the same more or less; free and clear of all encumbrances, except the following:

Two certain mortgages, one made by the Sellers to Belzora B. French, dated September 15, 1925, payable within five years from its date, bearing interest at six per cent per annum, to secure the sum of \$32,000; the other made by the Sellers to D. W. Black and Charles H. Cloud, dated April 1, 1926, payable within two years from its date, and bearing interest at the rate of six per cent per annum, to secure the sum of \$10,000.

2. On December 3, 1926, complainant paid to the Sellers the sum of \$5000 on account of the purchase price, and agreed to pay the balance of the purchase price within sixty days from the third day of December, 1926.

3. After the payment of the said moneys the Sellers repudiated the said agreement, and have stated to the complainant that they will not proceed thereunder, and that they will not sell and convey the said lands to complainant.

4. Complainant is able, willing and ready to make settlement as provided in said agreement, and to pay

the balance of the purchase price, in accordance with the terms thereof.

Complainant is without adequate remedy in the courts of law, and, therefore, prays:

1. That the said William T. Purnell and Mary S. Purnell, his wife, Thomas Bromley, and Palmyra-Riverton Realty company, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That the said William T. Purnell and Mary S. Purnell, his wife, Thomas R. Bromley, and Palmyra-Riverton Realty Company may be decreed specifically to perform the said agreement, the complainant tendering itself ready and willing and hereby offering specifically to perform the said agreement on its part.

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

CARR & CARROLL,  
*Solicitors for and of Counsel  
with Complainant.*

## NOTICE OF MOTION.

(Filed Jan. 11, 1927.)

10 Please take notice that I shall apply to the Chancellor of this State at Chancery Chambers, in the City of Camden, on Monday, the tenth day of January, instant, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order requiring the complainant to furnish a bill of particulars setting forth the agreement designated in paragraph No. 1 of the complaint, and whether said agreement was in writing and by whom signed, and for an order extending the time for filing an answer for twenty days from said date.

Yours, &amp;c.,

20

GEO. B. EVANS,  
*Solicitor of Defendants,*  
*Thomas R. Bromley, Wil-*  
*liam T. Purnell and Mary*  
*S. Purnell.*

TO CARR & CARROLL,  
*Solicitors of Complainant.*

[ENDORSED]

30

Service of the within Notice hereby acknowledged this 4th day of January, A. D. 1927.

Carr & Carroll,  
Solicitors of Complainant.

## ORDER FOR BILL OF PARTICULARS.

(Filed Jan. 17, 1927.)

This matter coming on to be heard in the presence of George B. Evans, solicitor of the petitioners, and Harvey F. Carr, of Carr & Carroll, solicitors of the complainant. 10

And it appearing by the allegations of the duly verified petition that William T. Purnell, Mary M. Purnell and Thomas R. Bromley are defendants to the bill of complaint, which alleges that an agreement was made on December 3, 1926, between William T. Purnell and Mary S. Purnell, his wife, Thomas R. Bromley and Palmyra-Riverton Realty Company to the complainant for the sale of a tract of land known as the "W. S. French Farm" and that petitioners did not sign any written agreement 20 for the sale of said farm, nor to their knowledge was it signed by any one acting for them and that they have no knowledge of any such an agreement; and praying that the complainant may be required to furnish said defendants with a bill of particulars setting forth the agreement designated in paragraph 1 of the complaint, and whether said agreement was in writing and by whom signed, and that the said defendants may be given a reasonable time thereafter to file their answers or other pleadings 30 thereto.

And it appearing that due notice of this application has been given to said complainant.

And the Court being satisfied that the allegations of said petition are true, and that the prayer of said petition should be granted.

It is, on this 17th day of January, 1927, ordered that the said complainant, within 5 days after the service of a true but uncertified copy of this order upon it, furnish to the said defendants a more particular statement, embodied in a bill of particulars, setting forth in detail the agreement designated in paragraph 1 of the complaint, and whether said agreement was in writing and by whom signed.

It is further ordered that the said defendants have 10 ten days after the service upon them of said bill of particulars for filing their answers or other pleadings to the bill of complaint.

E. R. WALKER,  
C.

Respectfully advised.  
E. B. LEAMING,  
V. C.

20

[ENDORSED]

Service acknowledged 1/19/27.  
Carr & Carroll.

30

NOTICE FOR ORDER TO DISMISS BILL.

(Filed Jan. 31, 1927.)

Please take notice that I shall apply to the Chancellor of this State at Chancery Chambers, in the City of Camden, on Monday, the thirty-first day of January, instant, at ten o'clock in the forenoon, or 10 as soon thereafter as counsel can be heard, for an order dismissing the bill of complaint by reason of the failure to file a bill of particulars as required by the order of this Court.

Yours, &c.  
GEO. B. EVANS,  
*Solicitor of Defendants,*  
*Thomas R. Bromley, Wil-*  
*liam T. Purnell and Mary*  
*S. Purnell.*

20

TO CARR & CARROLL,  
*Solicitors of Complainant.*

[ENDORSED]

Service of the within notice hereby acknowledged this 26th day of January, A. D. 1927.

Carr & Carroll,  
Solicitors of Complainant.

30

## ORDER DISMISSING BILL.

(Filed Jan. 31, 1927.)

This matter being opened to the Court by George B. Evans, solicitor for defendants, Thomas R. Bromley, William T. Purnell and Mary S. Purnell, and it  
 10 appearing that due notice has been given to the complainant of this application, it is, on this 31st day of January, A. D. 1927, on motion and upon an affidavit setting forth that the bill of particulars heretofore ordered filed has not been filed by the complainant, and the time to file the same having expired, ordered that the bill of complaint in this cause be, and the same is, hereby dismissed as to the defendants, Thomas R. Bromley, William T. Purnell and Mary S. Purnell, with costs.

20 (Signed) E. R. WALKER,  
 C.

Respectfully advised.

(Signed) E. B. LEAMING,  
 V. C.

*No Opinion Filed*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between  
BRYN BELLA LAND COMPANY,  
*Complainant-Appellant,*  
and  
WILLIAM T. PURNELL, *et ux., et als.,*  
*Defendants-Appellees.*  
(THOMAS R. BROMLEY, WILLIAM T. PURNELL and  
MARY S. PURNELL,  
*Appellees.*)

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BRIEF FOR COMPLAINANT-APPELLANT.

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This is an appeal from an order advised by the Honorable E. B. Leaming, entered on the 31st day of January, 1927, dismissing the bill of complaint on the application of Thomas R. Bromley, William T. Purnell and Mary S. Purnell, three of the above-named defendants.

These defendants having filed a demand for a bill of particulars, and there being no response thereto, gave notice of an application before the Chancellor for an order directing the furnishing of such bill of particulars. An order was entered on the 17th day of January, 1927 (S. of C., p. 13), that the complainant serve a bill of particulars within five days from the service of such order. Proof having been

made to the satisfaction of the Court of non-compliance with said order, an order was entered on the 31st day of January, 1927, reciting that the bill of particulars theretofore ordered filed had not been filed by the complainant, and that the time to file the same had expired, it was ordered that the bill of complaint be dismissed as to the defendants, Thomas R. Bromley, William T. Purnell and Mary S. Purnell, with costs, from which order this appeal has been taken.

No memorandum or opinion was filed by the learned Vice-Chancellor.

The bill of complaint appears on page 7 of the record, and sets forth, in substance, that the defendants therein named entered into a certain agreement whereby the sellers (defendants) agreed to sell and convey to the complainant, and the complainant agreed to buy at the sum of \$700 per acre, certain lands in Burlington County, New Jersey, therein particularly described, and that the lands were to be free and clear of all liens and encumbrances except two certain mortgages particularly mentioned in said bill, and that the complainant on December 3rd, 1926, paid to the defendants the sum of \$5000 on account of the purchase price, and agreed to pay the balance of the purchase price within sixty days from the 3rd of December, 1926, and averred that the defendants had repudiated their agreement, and had stated to the complainant that they would not proceed thereunder, and that they would not sell and convey said lands to the complainant. The complainant tendered itself able, willing and ready to make the settlement as provided in said agreement and to pay the balance of the purchase price in accordance with the terms thereof, and prayed specific performance of the said agreement.

This bill seemed to counsel to fully apprise the defendants of the complainant's claim in such a manner as to afford the defendants' counsel an opportunity to intelligently prepare his pleadings and defense. It was because the complainant was unable to state his case with any greater particularity that no bill of particulars was furnished.

As this matter came up for hearing at the same time as the motion of the Palmyra-Riverton Realty Company (one of the defendants), demanding the service of a copy of the agreement referred to in the bill of complaint, it is a fair assumption that the learned Vice-Chancellor concluded that the agreement was by parol and, therefore, barred by the statute of frauds.

Under the cases it is not necessary to aver affirmatively that the contract was in writing.

*Douma v. Powers*, 111 Atl. 401 (N. J. Ch., 1920);

*Kotok v. Rossi*, 94 N. J. Eq. 327.

Certainly the defendants knew whether or not they had signed any agreement. If they had not they could, if they desired, set up the bar of the statute in their answer. The bill was sufficiently specific to apprise them of all matters necessary for them to intelligently prepare their defense.

#### BILL OF PARTICULARS.

"On application for a more specific bill of particulars, the principle which governs the courts is, that the party who avers matters which he must prove on the trial, should so far apprise his opponent concerning them that he can intelligently prepare his pleadings and defenses.

The particulars need not be the manner of proof, but only the matters themselves upon competent proof on which he proposes to rest his claim."

*Heppard v. Carr & Smith*, 12 N. J. Law J. 186, cited in 3 C. S., p. 4083, Note to Sec. 2.

If the bill of complaint was dismissed because it did not affirmatively negative the statute of frauds, clearly such dismissal was erroneous. If it was dismissed upon the ground that a bill of particulars was necessary to fairly apprise the defendants of the complainant's claim in order that the defendants could intelligently prepare their pleadings and defenses, it seems to us that mere inspection of the bill will dispose of this question. Counsel would be at a loss to make the bill any more specific unless, perchance, counsel is required either to annex the contract if in writing, or to negative the averments of the statute of frauds.

It is respectfully submitted that the decree of the Chancellor is erroneous and should be reversed.

CARR & CARROLL,  
*Counsel with Complainant-Appellant.*

67 MAY.T.1927

## NEW JERSEY COURT OF ERRORS AND APPEALS

Between

BRYN BELLA LAND COMPANY

*Complainant-Appellant,*

and

WILLIAM T. PURNELL, et ux., et als.,

*Defendants-Appellees.*

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On Appeal from Order Dismissing the Bill of Complaint on the Application of Defendants, Thomas R. Bromley, William T. Purnell and Mary S. Purnell.

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BRIEF OF DEFENDANTS

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GEORGE B. EVANS,

Solicitor for and of Counsel with Defendants-Appellees, Thomas R. Bromley, William T. Purnell and Mary M. Purnell.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between	}	BRIEF OF DEFENDANTS APPELLEES.
BRYN BELLA LAND COMPANY,		
<i>Complainant-Appellant,</i>		
and		
WILLIAM T. PURNELL, et ux.,		
et als.,		
<i>Defendants-Appellees.</i>		

(William T. Purnell, Mary M.  
Purnell and Thomas R. Bromley,  
Appellees.)

The bill in this cause was filed for specific performance and alleged a contract made between William T. Purnell and Mary S. Purnell, his wife, Thomas R. Bromley and Palmyra-Riverton Realty Company with the complainant.

The bill upon its face shows that Mary S. Purnell was the wife of William T. Purnell, and did not allege whether the contract was made by them or by their agent, nor did it allege an acknowledgment by Mrs. Purnell.

The appellees had no knowledge of any contract and without knowing by whom the contract was made or whether acknowledged by Mary S. Purnell, were not in a position intelligently to answer the bill of complaint.

Rules Nos. 44 and 45 Court of Chancery, provide that the Court may, in its discretion, order further and better particulars to be given of any matter stated in any pleading, or may order a bill of particulars to be given in any case in which it may be justly required.

The Court in its discretion ordered a bill of particulars requiring there be set forth in detail the agreement designated in Paragraph 1 of the complaint, and whether such agreement was in writing and by whom signed.

This was not a motion to strike out the complaint, altho by the decision in the case of Kotok vs. Rossi, 94 N. J. Eq., 327, 335, the complaint might have been stricken out by reason of not having alleged an acknowledgment of the defendant, Mary S. Purnell, wife of William T. Purnell. Without such a statement in the bill the same is defective.

The order was made under the Rules of Court and in the discretion of the Vice Chancellor as being necessary to enable the defendants to properly answer the bill.

It is respectfully submitted, the decree of the Chancellor was within power vested in him by the rules of Court and under the decision above quoted.

GEORGE B. EVANS,  
Counsel with Defendants-Appellees,  
William T. Purnell, Mary M. Purnell and Thomas R. Bromley.

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