

In fact, as stated by the Court of Chancery, "The plaintiff has three times applied to the Chief Justice." Therefore, appellants are here asking a court of equity to sit as an appellate court over the three-repeated decisions of the Chief Justice of the Supreme Court.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed with costs.

STEWART & HARTSHORNE,
Solicitors for and of Counsel
with Defendant-Respondent.

INDEX

	PAGE
Answer to Affidavit	10
Answer to Petition	7
Appeal Amendment	23
Notice of Appeal	22
Order of Continuance	19
Order to Perform Contract	20
Order to Show Cause	6
Petition of Appeal	24
Petition on Master's Sale	1

IN CHANCERY OF NEW JERSEY

Between,
MARY L. GERLACH, et als,
Complainants and Appellees,
and
RENA H. BALL, G. D. W. SLACK,
et als,
Defendants and Appellants. } On Bill for
Partition.
Petition on Special
Master's Sale. 10

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

The petition of Mary L. Gerlach, one of the complainants in the above cause, respectfully shows that:

1. Pursuant to a decree made in this cause on December 21, 1926, it was, among other things, ordered and decreed that the premises described therein should be sold at public vendue to the highest bidder, in the presence and under the direction of William J. Backes, Special Master; and that he should give public notice of the time and place of such sale and in all respects conduct the same according to the provision of the statute in such case made and provided.

2. After duly advertising the same at public vendue on Wednesday, the 9th day of February, 1927, at two o'clock in the afternoon of said day, at the Court House in Trenton, he did expose the said lands and premises first described in the said decree, to sale to the highest bidder in two parcels, and one of the defendants, Garrett D. W. Slack then and there bidding for the premises consisting of a lot fronting 28.33 feet on South Broad Street, and having a depth

of 125 feet, on which building known as No. 212 South Broad Street, Trenton, N. J., is erected, the sum of \$28,500.00, and no one bidding so much or more for the same it was struck off and sold to the said Garrett D. W. Slack at the price aforesaid; and the said Garrett D. W. Slack bidding for that part of the premises consisting of a lot fronting 41.58 feet on Jackson Street, and having a depth of 107 feet, on which buildings known as Nos. 135-137 Jackson Street, Trenton, N. J., are erected, the sum of \$8,700.00, and no one bidding so much or more for the same, it was struck off and sold to the said Garrett D. W. Slack at the price aforesaid; and the said Garrett D. W. Slack, after the said premises were so struck off to him, acknowledged in writing, himself to be the purchaser of said premises, and gave to said Special Master in compliance with the Conditions of Sale, his check No. 15 on the Farmers' Trust Company, of Mount Holly, N. J., bearing date February 9, 1927, for the sum of \$3,720.00, stating to said Special Master that he had not on deposit in said bank money sufficient to pay the aforesaid check and requesting that the same be held by said Special Master until the deed should be delivered to him for said premises when he would pay the whole consideration price. Said Special Master relying upon the ownership of the said Garrett D. W. Slack of two-thirds of said premises, and upon his promise that he would, at the time of the delivery of a deed, make the said check good, accepted his uncertified check, notwithstanding the Conditions of Sale requiring the purchaser to pay on account of the purchase money 10% in cash or by certified check.

3. After duly advertising the same at public vendue on Friday, the 11th day of February, 1927, at two o'clock in the afternoon of said day, at the Court House in Mount Holly, he did expose the said lands

and premises secondly described in the said decree, to sale to the highest bidder, and one of the defendants, Garrett D. W. Slack, then and there bidding for the premises described as Tract No. 2 in the Bill of Complaint, the sum of \$5,100.00 and no one bidding so much or more for the same, it was struck off and sold to the said Garrett D. W. Slack at the price aforesaid; and the said Garrett D. W. Slack after the said premises were so struck off to him acknowledged, in writing, himself to be the purchaser of said premises, and gave to said Special Master in compliance with the Conditions of Sale, a deposit of 10% of the purchase price.

4. At the time appointed for said sale and before the same was put up, said Special Master publicly read the Conditions of Sale providing that the highest bidder for the property should be the purchaser, who shall sign the proper undertaking of his purchase annexed to the Conditions of Sale, and should pay to the Master 10% of the purchase money in cash or by certified check; that the sale would be reported to the Chancellor and if confirmed by him a proper deed would be delivered to the purchaser or purchasers at the office of the Master, 305 American Mechanics' Building, Trenton, N. J., on Wednesday, February 23, 1927, at ten o'clock in the forenoon, when and where the purchaser must attend, receive his deed and pay the balance of the purchase money in cash, copies of which condition of sale, with the undertaking of said purchase signed as aforesaid, are hereto annexed and made a part hereof.

5. On or about the 15th day of February, 1927, the said Garrett D. W. Slack informed said Special Master that he intended to take the said properties, but needed a few days further time to procure the entire amount of money necessary to pay for the same,

and requested said Special Master that the time set for the delivery of the deed and the payment of the balance of the purchase money, be continued from Wednesday, February 23, 1927, for one week; that is, to Wednesday, March 2, 1927, which said Special Master agreed to upon his promise that he would be ready at that time to take the deeds and pay the whole amount of the purchase money; that relying upon the said promise, said Special Master reported
 10 said sale to this Court and the same was, on the first day of March, 1927, duly confirmed and deeds ordered to be executed and delivered to the purchaser, in compliance with the Conditions of Sale, upon the purchaser complying with such conditions.

6. In pursuance of said confirmation and in accordance with the terms of the sale, said Special Master prepared a deed to the said Garrett D. W. Slack for the premises situate in the City of Trenton,
 20 so sold to the said Garrett D. W. Slack, describing the same by the same metes and bounds as is set forth in said decree; and likewise prepared a deed to the said Garrett D. W. Slack for the premises situate at Mount Holly, N. J., so sold to the said Garrett D. W. Slack, describing the same by the same metes and bounds as is set forth in the said decree; and on the second day of March, 1927, executed the same in due form of law and did on said day, tender the same deeds so duly executed to the
 30 said Garrett D. W. Slack personally, and requested him to pay to him the balance of the consideration money agreed to be paid, but the said Garrett D. W. Slack refused to pay the balance of the consideration money due on any of such sales or to comply with the said Conditions of Sale, stating that he had, since the said sale, ascertained that the building located on the lot of land on South Broad Street, Trenton, N. J., had been condemned as unsafe, by the City of

Trenton, and that in consequence he had decided to refuse to accept a deed for the same, and as the Jackson Street property would be of no use to him without the Broad Street property, he had decided to refuse to accept a deed for that property.

Petitioner therefore prays:

That the said Garrett D. W. Slack may be compelled by the decree of this Court specifically to perform his contract of purchase of the premises described in the said decree; said Special Master being ready and willing and offering specifically to perform the said agreement on his part, and on being paid the balance of the purchase price, to deliver to the said Garrett D. W. Slack, good and sufficient deeds of conveyance. 10

And your petitioner as in duty bound will ever pray, etc. 20

Palmer & Powell,
 Sol'rs for and of counsel with petitioner.

STATE OF NEW JERSEY SS:
 COUNTY OF BURLINGTON

Mary L. Gerlach, of full age, being duly sworn according to law, on her oath deposes and says, that she is the petitioner and one of the complainants in the above entitled cause; that the matters and things contained in the above petition are true to the best
 30 of her knowledge and belief.

MARY L. GERLACH

Subscribed and sworn before
 me this 11th day of April, 1927.

FRANK A. HENDRICKSON,
 M. C. C. OF N. J.

A True Copy

Palmer & Powell, Sol'rs.

6. This defendant admits the allegations of paragraph six of said petition, except that this defendant avers that he has at all times been ready, able and willing to accept the deed for the premises known and designated as No. 135 High Street, in Mount Holly, New Jersey, in accordance with the conditions of said sale held by said Special Master, and is at this time ready, able and willing so to comply and to take and pay for said premises in Mount Holly, New Jersey, but that he has, as stated in paragraph six of said petition, been unable and unwilling to pay any part of said consideration for the premises known and designated as No. 212 S. Broad Street, Trenton, New Jersey, and also the premises known and designated as Nos. 135 and 137 Jackson Street, Trenton, New Jersey, for the reasons stated in said paragraph six of the petition, to wit, that it has been definitely ascertained since said sale, and also since the 2nd day of March, 1927, by this defendant from the office of the Building Inspector of the said City of Trenton that the building on the land designated as 212 S. Broad Street, Trenton, New Jersey, had been, previous to said sale, condemned as unsafe, and that such building and buildings could not be used for any purpose whatsoever, and that by reason thereof this defendant endeavored to effect a resale of the premises, without prejudice to his interests and in order to facilitate the matters and things before the Court in these proceedings, but that he was wholly unable to sell or dispose of said premises or his interest by virtue of said Special Master's sale for a price exceeding \$22,000., which represented a loss to this defendant of \$6,500 on the property designated as 212 S. Broad Street, independent of the fact that the Jackson Street properties to the rear of the Broad Street property was of no special value to this defendant independent of the property as aforesaid on Broad Street. And this defendant further ascer-

tained that by reason of the fact that said condemnation had been made by the said Building Inspector of the City of Trenton, he was unable by all diligent and reasonable means to borrow upon mortgage upon said properties on Broad Street and on Jackson Street, as aforesaid, combined exceeding the sum of \$19,000.

Defendant therefore prays that the unreasonableness of the petition filed in this cause may be recognized by this honorable Court, and that this defendant may be relieved of the unfairness and unreasonableness of such an agreement due to facts concerning which this defendant had no knowledge at the time of the sale, and of which he could not have had reasonably any knowledge or intimation sufficient to have placed him on his guard in bidding upon said premises.

And this defendant further prays that the petition heretofore filed in this cause may be dismissed by this honorable Court with the proper costs to this defendant.

And your defendant will ever pray, etc.

HERBERT S. KILLIE,
Solicitor for G. D. W. Slack,
Defendant.

IN CHANCERY OF NEW JERSEY.

Between MARY L. GERLACH, et als Complainants, and 10 RENA H. BALL, et als, Defendants.	}	On Bill for Partition. Petition on Special Master's Sale. On Rule, &c. Answering Affidavit.
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STATE OF NEW JERSEY, SS.
COUNTY OF BURLINGTON,

Garrett D. W. Slack, of full age, being duly sworn according to law, on his oath deposes and says:

- 20 1. I am one of the defendants in the above entitled cause, and the person mentioned and described in the petition heretofore filed in this matter.
2. The matters and things alleged in paragraph one of said petition are true.
- 30 3. Deponent did, on the 9th day of February, 1927, as alleged in paragraph two of said petition, make the high bid for the premises designated as 212 S. Broad Street, Trenton, New Jersey, for the sum of \$28,500, and the bid for Nos. 135 and 137 Jackson Street, in said City of Trenton, for the sum of \$8,700, and that said premises were accordingly struck off to deponent at such figures; and deponent further admits that he did give to the Special Master, as stated in the said petition, his check for \$3,720, stating at the time that there was not sufficient money to the credit of this deponent in the bank

upon which said check was drawn to meet the said check, but in view of the interest which deponent had in the properties so struck off and sold to deponent the check would represent ample deposit as a claim against this deponent's interests in the said premises which amounted to a two-fifths interest in the premises designated as 212 S. Broad Street, and also Nos. 135 and 137 Jackson Street, all in the City of Trenton, but deponent did not state that at the time of settlement he would make the check good 10 other than that such check would be charged against the interest of deponent as stated.

4. This deponent admits that on February 11th, 1927, he was the high bidder for premises No. 135 High Street, Mount Holly, New Jersey, on his bid of of \$5,100, and that the premises were accordingly struck off and sold to him for said price; that accordingly deponent signed the conditions of sale and gave to the Special Master his check for \$510, being 20 10% of the purchase price, which said check was sufficiently covered by funds in bank to the credit of this deponent.

5. At the time appointed for the said sale, and before the same was put up, said Special Master publicly read the conditions of sale providing that the highest bidder for the properties should be the purchaser, who should sign the proper undertaking of his purchase annexed to the conditions of sale, and 30 should pay to the Master 10% of the purchase money; that the sale would be reported to the Chancellor, and if confirmed by him, proper deed would be delivered to the purchaser or purchasers at the office of the Master in Trenton, as aforesaid, on Wednesday, February 23rd, 1927, at 10 o'clock in the forenoon, when and where the purchaser must attend, receive his deed and pay the balance of the

purchase money. Before said undertaking or condition of sale was signed by this deponent, however, this deponent said to the Special Master that he would arrange for the payment in cash or certified check of the amount due from him to cover the respective shares of the other defendants in said partition proceedings, and including other chargeable items of costs, etc., which said arrangement was thoroughly satisfactory to said Special Master. No
10 copy of such conditions of sale or undertaking was at any time delivered to this deponent, nor has the same at any time been served upon this deponent, nor has he received any notice thereof other than what was explained to him following the sale by the said Special Master.

6. Immediately following the said 11th day of February, 1927, this deponent, not being in ready cash, immediately arranged through William H.
20 Fetter, General Manager of Trenton Trust Company Building, Trenton, New Jersey, for a mortgage loan upon said Trenton properties for an amount between \$20,000 and \$25,000, by means of which this deponent would have sufficient available cash to pay to said Special Master the full amount of the respective interests of the complainants and the other defendants in the partition proceedings filed in this cause, together with his proportion of the costs and other expenses and chargeable items to be paid by
30 this deponent, and in addition thereto arranged with The Farmers' Trust Company, of Mount Holly, N. J., for a loan of \$2,500 upon the premises designated as No. 135 High Street, Mount Holly, N. J., wherewith to furnish this deponent additional funds that might be required to cover items of taxes and other charges which might not be covered by the Trenton loan.

Due to the fact that negotiations for the mortgages had not been fully completed and could not be completed by Wednesday, February 23, 1927, the time fixed for said settlement, this deponent requested of the Special Master a continuance of the final settlement for a period of one week, to wit, until Wednesday, March 2nd, 1927, as stated in the petition hereto, which consent of the Special Master was obtained. But this deponent did not, as is alleged by said petition, state that he would pay the whole
10 amount of the purchase money for the reason that other satisfactory arrangements had been made as aforesaid between this deponent and the Special Master for the payment only of the amount of the purchase money less the deductible interest of this deponent, to wit, a two-fifths interest as to the Trenton properties and a three-fifths interest as to the Mount Holly property.

7. Immediately following such request of this de-
20 ponent to the Special Master for continuance of the matter for a period of one week, this deponent was informed by F. L. Kinney, a real estate agent of the City of Trenton whom this deponent had engaged to locally represent this deponent for the collection of rents, etc., as regards the Trenton properties, that he, the said F. L. Kinney, had been advised that the premises designated as 212 S. Broad Street, Trenton, New Jersey, were previously condemned by the Building Inspector of the said City of Trenton, but
30 for what causes the real estate agent was unable to state. And this deponent was further advised by said Kinney that by reason of such record of condemnation of the buildings at said No. 212 S. Broad Street, the said Kinney as real estate agent for deponent was unable by operation of the laws and ordinances of the said City of Trenton to rent the said buildings, and that further he could not secure an

offer of private sale for the said premises for an amount exceeding \$22,000, or \$6,500 less than the amount which had been in good faith bid by this deponent for the premises without the knowledge on the part of this deponent of said condemnation.

And this deponent further says that he had been in active management and control of the said Trenton properties for and in behalf of the various parties in interest for some years last past, to wit, five
10 years or more, renting said property, collecting the rents therefrom, paying taxes thereon, and attending to necessary repairs, but that at no time had he, nor to his knowledge had any other party in interest in said real estate, at any time received any notice or had any knowledge that any proceedings or notice had even been instituted or given by the Building Inspector of the said City of Trenton, or by any other person or persons, of the condemnation of said lands and buildings. Wherefore, immedi-
20 ately upon receipt of the information as aforesaid by this deponent from the said Kinney, this deponent, together with his solicitor, Herbert S. Killie, did, on the 2nd day of March, 1927, go to the said City of Trenton and to the office of said Special Master, as near to the time appointed as could reasonably, under the circumstances, be done, to wit, prior to 2.30 o'clock in the afternoon of said day, and did then and there explain to the said Special Master the circumstances of the condemnation as reported to this
30 deponent, and then and there offered to make settlement in accordance with the plans, arrangements and agreements theretofore made between this deponent and the Special Matser for and as relating to the premises designated as 135 and 137 Jackson Street, in said City of Trenton, and for and as relating to the premises designated as 135 High Street, Mount Holly, N. J., but said that he did not desire and could not make settlement as to the premises

No. 212 S. Broad Street, Trenton, N. J., until he had definitely ascertained the truth and effect and force of the reported condemnation of the buildings at said latter address, and that accordingly he had arranged a conference for that same day with the Building Inspector of the said City of Trenton to ascertain the force and effect of the said condemnation which had resulted in the prevention of the letting of said premises and also had resulted in a depreciation of the value of the premises prior to the taking
10 over of the same by this deponent to an amount of at least \$6,500.

This deponent went with his solicitor and the said Special Master to the private office of said Special Master, in the American Mechanics' Building, Trenton, New Jersey, at said time on said 2nd day of March, 1927, seated himself at a desk and proceeded to produce a proper payment for the purchase price of the premises so sold to him, excluding premises No. 212 S. Broad Street, Trenton, N. J. But then and
20 there the said Special Master emphatically announced that he would receive no part of the consideration, nor deliver any deed, unless the premises No. 212 S. Broad Street, Trenton, N. J., were also included, and the check or checks from deponent covering the full purchase price, less the deductible interests of deponent, be paid over to the Special Master, to wit, an amount as stated by said Special Master approximating \$19,000. Thereupon this deponent requested the said Special Master to postpone settle-
30 ment further until this deponent had had full and ample opportunity to investigate said condemnation rumors pertaining to the S. Broad Street property.

This was agreed upon and deponent and his solicitor immediately and directly went to the office of said Building Inspector of the City of Trenton, in the City Hall on East State Street, Trenton, New Jersey, and was there informed that some time previous to

the sale of said premises the buildings on the premises designated as No. 212 S. Broad Street, Trenton, New Jersey, had been condemned by him as said City Building Inspector for the reason that said buildings were deemed by said Inspector as unsafe for occupancy. In answer to a direct question placed by deponent to the Deputy Building Inspector, who was at the time in charge of the office, deponent was informed that a letter form of notice had been addressed by the Building Inspector's Department of the City of Trenton to deponent some time previous, which said letter notice had been addressed to deponent at an address on Garden Street, in Mount Holly, New Jersey, where deponent had not resided for a period of approximately two years previous thereto. Deponent thereupon and here affirms that no such letter or notice of any kind of such condemnation was at any time received by him, or that he at any time had any notice directly or indirectly of any such condemnation, and was informed by the Department of Building Inspection of said City of Trenton that they had no record of any acknowledgment of the receipt of the notice from this deponent or from any other person interested in the said premises directly or indirectly, and that they had not taken any further action towards service of notice upon the parties in interest until such Building Inspector had learned of the sale of the premises by said Special Master, whereupon they had immediately again informed the real estate agent as aforesaid.

Deponent therefore notified the said Special Master and also the solicitors of the complainants that by virtue of the conditions of the sale of the said premises, which were to be sold free and clear of all encumbrances, except the payment of taxes, which were to be assumed by the purchaser thereof, that he should not be obliged to assume the obliga-

tions dependent upon such condemnation or to absorb a visible loss of an amount of not less than \$6,500, by reason of such condemnation unknown to this deponent at the time of his bona fide bid for said premises, and that this deponent was ready, able and willing to make settlement in accordance with the agreement between this deponent and the said Special Master for the premises known and designated as 135 and 137 Jackson Street, in the City of Trenton, and the premises known and designated as No. 135 High Street, Mount Holly, N. J., but that a resale of the premises 212 S. Broad Street should be made by the Special Master under decree of this Court or otherwise, as the Special Master and this Court should deem expedient and just, without recourse or liability upon this deponent for such resale by virtue of the facts herein set forth; but that such suggestion and recommendation upon the part of this deponent was not received by said Special Master or by the solicitors of the complainants, who have at all times maintained and insisted upon this deponent paying to said Special Master the whole amount of said purchase money, without any deductions therefrom either as to the premises or amount, and also without the deduction of the interests in the premises of this deponent as was previously agreed between this deponent and said Special Master.

8. This deponent further says that he is and at all times has been ready, willing and able to make settlement for the full amount of the purchase price of the premises 135 High Street, Mount Holly, New Jersey, and 135 and 137 Jackson Street, Trenton, New Jersey, less the deductible interests of this deponent, or by satisfactory and reasonable arrangements made for the deduction of this deponent's respective interests of two-fifths as to the Trenton

properties and three-fifths as to the Mount Holly property, but that he is unable, and by right and conscience should not be compelled to proceed with the completion of any agreement by virtue of said sale of the premises 212 S. Broad Street, Trenton, New Jersey, under and by reason of the cloud upon the title, or defect or lien, as the case may be, of the condemnation of the Inspector of the said City of Trenton, which was totally unknown to this deponent at the time of his bona fide bid for said premises, and which has, as aforesaid, definitely and largely worked as a detriment and prejudice and loss to this deponent.

9. Deponent further says that he at no time has been able to secure from the Special Master any definite information as to the amount required to cover the interests of the respective parties to said partition, less the interest of this deponent, except an approximate figure of \$19,000; but that, on the other hand, the Special Master has on two separate occasions demanded an amount of \$4,950, for the premises in Mount Holly, N. J., whereas this deponent owes as the full balance of consideration on such premises \$5,100, the price bid, less a credit of \$510 paid on account.

This deponent therefore prays that this honorable Court may deal with the situation which has been presented and concerning which this deponent is entirely innocent, and in a manner usual to said Court and according to good conscience.

GARRETT D. W. SLACK.

Sworn and subscribed before
me this 18th day of April,
1927.

Mary E. Allen,
Notary Public, of N. J.

IN CHANCERY OF NEW JERSEY.

Between,		
MARY L. GERLACH, et als,	}	On Petition to
Complainants,		Complete Sale.
and		
RENA H. BALL, et als,	}	Order of
Defendants.		Continuance. 10

It is, on this 26th day of April, nineteen hundred and twenty-seven, on motion of Palmer & Powell, solicitors of complainants, and for good cause shown, ordered that the rule to show cause heretofore allowed on the 12th day of April, 1927, returnable on the 19th day of April, 1927, why Garrett D. W. Slack should not be compelled to specifically perform his contract of purchase of the premises described in the bill in this cause, be, and the same is hereby continued until the 26th day of April, nineteen hundred and twenty-seven.

E. R. WALKER, C.

Respectfully advised.

M. G. Buchanan, V. C.

IN CHANCERY OF NEW JERSEY.

Between, MARY L. GERLACH, et als, Complainants, and 10 RENA H. BALL, et als, Defendants.	}	On Bill For Partition. On Petition to Compel Perform- ance of Contract. Order.
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This matter coming on to be heard in the presence of Palmer & Powell, solicitors for the complainants, and Herbert S. Killie, solicitor for Garrett D. W. Slack, upon the return of a rule to show cause heretofore granted in this cause, the hearing of which was adjourned to this date upon the verified petition of Mary L. Gerlach, one of the complainants in this cause, why Garrett D. W. Slack, the purchaser of properties at 212 S. Broad Street, and 135 and 137 Jackson Street, in the City of Trenton, County of Mercer and State of New Jersey, and property at Mount Holly, in the County of Burlington and State of New Jersey, all of which properties were sold by and under the direction of William J. Backes, one of the special masters of this Court, should not be compelled to specifically perform his contract of purchase of said premises; and the Court having considered the said petition and the answer thereto and the affidavit of the said Garrett D. W. Slack and the agreements of the respective parties and being of the opinion that the petitioner is entitled to the relief prayed for:—

It is thereupon, on this 26th day of April, nineteen hundred and twenty-seven, on motion of Palmer & Powell, solicitors for the petitioner, ordered, ad-

judged and decreed that the said Garrett D. W. Slack specifically perform his contract for the purchase of properties at 212 S. Broad Street and 135 and 137 Jackson Street, in the City of Trenton, County of Mercer and State of New Jersey, and property at Mount Holly, in the County of Burlington and State of New Jersey, heretofore sold to the said Garrett D. W. Slack by William J. Backes, one of the special masters of this Court by virtue of an order of this Court, bearing date the 21st day of December, 1926, by paying to the said Special Master in exchange for the proper deeds of conveyance the purchase price of said properties, or whatever balance may be due thereon, on or before the 10th day of May, 1927, together with the costs of this application.

E. R. WALKER, C.

Respectfully advised.

M. G. Buchanan, V. C.

A true copy.

Thomas Barton, Clerk. 20

IN CHANCERY OF NEW JERSEY.

Between,
 MARY L. GERLACH, et als,
 Complainants,
 and
 10 RENA H. BALL, et als,
 Defendants. }
 On Bill for
 Partition.
 On Petition to
 Compel Perform-
 ance of Contract.
 Notice of Appeal.

The defendant, Garrett D. W. Slack, appeals from the order and decree made in this cause in this Court, dated the 26th day of April, A. D. nineteen hundred and twenty-seven, and that part thereof which orders, adjudges and decrees that the said Garrett D. W. Slack specifically perform his contract for the purchase of the properties, and for the purchase price as enumerated in the petition and in said order, on or before the 10th day of May, A. D. nineteen hundred and twenty-seven, together with the costs of the application therefor, to the Court of Errors and Appeals in the last resort in all causes.

HERBERT S. KILLIE,
 Solicitor of Defendant G. D. W. Slack and Appellant.

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

JONATHAN H. KELSEY,
 Of Counsel with Defendant G. D. W. Slack and Appellant.

We hereby acknowledge service of the within Notice of Appeal this sixth day of May, A. D. 1927.

PALMER & POWELL,
 Solicitor for and of Counsel with Complainants.

IN CHANCERY OF NEW JERSEY.

Between,
 MARY L. GERLACH, et als,
 Complainants,
 and
 RENA H. BALL, et als,
 Defendants. }
 On Bill for
 Partition.
 On Petition to
 Compel Perform-
 ance of Contract.
 Notice of Appeal. 10
 (Amended.)

The defendant, Garrett D. W. Slack, appeals from the order and decree made in this cause in this Court, dated the 26th day of April, A. D. 1927, made by the Chancellor on the advice of Vice Chancellor Malcolm G. Buchanan, and that part thereof which orders, adjudges and decrees that the said Garrett D. W. Slack specifically perform his contract for the purchase of the properties, and for the purchase price as enumerated in the petition and in said order, on or before the 10th day of May, A. D. 1927, together with the costs of the application therefor, to the Court of Errors and Appeals in the last resort in all causes.

HERBERT S. KILLIE,
 Solicitor of Defendant G. D. W. Slack and Appellant.

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

JONATHAN H. KELSEY,
 Of Counsel with Defendant G. D. W. Slack and Appellant.

We hereby acknowledge service of the within Notice of Appeal this 13th day of May, A. D. 1927

PALMER & POWELL,
 Solicitors for and of Counsel with Complainants.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

MARY L. GERLACH, et als, Complainants & Respondents, vs. RENA H. BALL AND 10 GARRETT D. W. SLACK, et als, Defendants & Appellants.	}	On Appeal from Chancery. Petition of Appeal.
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To the Honorable Court of Errors and Appeals
in the last resort in all causes:

The petition of Garrett D. W. Slack, defendant
and the appellant in the above stated cause, respect-
fully shows that your petitioner finds himself ag-
grieved by a final decree made in the Court of Chan-
cery by his Honor, Edwin Robert Walker, Chancel-
20 lor of the State of New Jersey, by Hon. M. G. Bu-
chanan, V. C., bearing date the twenty-sixth day of
April, nineteen hundred and twenty-seven, wherein
the said Garrett D. W. Slack was defendant and the
said Mary L. Gerlach, et als, were complainants,
in this respect:

That said decree orders, adjudges and decrees
that the said Garrett D. W. Slack specifically per-
form his contract for the purchase of the proper-
ties at 212 South Broad Street and 135 and 137 Jack-
30 son Street, in the City of Trenton, County of Mercer
and State of New Jersey, and property at Mount
Holly, in the County of Burlington and State of New
Jersey, heretofore sold to the said Garrett D. W.
Slack by William J. Backes, one of the Special Mas-
ters of this Court, by virtue of an order of this
Court, bearing date the twenty-first day of Decem-
ber, A. D. nineteen hundred and twenty-six, by pay-
ing to the said Special Master in exchange for prop-

er deeds of conveyance the purchase price of said
properties, or whatever balance may be due thereon,
on or before the tenth day of May, nineteen hundred
and twenty-seven, together with the costs of this
application.

Your petitioner respectfully shows that the said
Court of Chancery had no jurisdiction to have en-
tered a final order and decree in this cause with-
out having afforded to the defendant, your petition-
er and appellant herein, an opportunity to present 10
before the Court witnesses in his behalf, and that
such final order and decree could not have been en-
tered as was done upon the affidavits alone filed
upon the rule to show cause.

Your petitioner further shows that even though
the said Court of Chancery had full power, authority
and jurisdiction to so have rendered any final order
and decree, as aforesaid, that such final order and
decree is not sustained by the affidavits and plead-
ings therein filed, nor the law, rules and statutes in 20
such case made and provided.

Your petitioner therefore prays that the said de-
cree of the said Chancellor may be, in the partic-
ulars aforesaid, reversed, set aside and for nothing
holden.

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

HERBERT S. KILLIE,
Solicitor of Appellant. 30
JONATHAN H. KELSEY,
Of Counsel with Appellant.

We hereby acknowledge service of the within and
above Petition of Appeal this thirteenth day of May,
1927.

PALMER & POWELL.
Solicitors for and of Counsel
with Complainants-Respondents.

NEW JERSEY
COURT OF ERRORS AND APPEALS

Between,	}	ON APPEAL.	10
MARY L. GERLACH, et als,			
Complainants and Respondents			
and			
RENA H. BALL, G. D. W. SLACK,			
et als,			
Defendants and Appellants.			

APPELLANT'S BRIEF

There is no question presented to this Court relative to the proceedings to partition the parcels of real estate mentioned and described in the bill of complaint for partition, as filed in the Court of Chancery of New Jersey; a final decree for partition was 20 entered. Neither is there any controversy over any of the proceedings, including the decree appointing a Special Master and for the sale of the premises involved. All of the proceedings in the Court of Chancery, together with the allegations as contained in the pleadings, have been admitted for the purposes of this appeal up to and including the decree appointing the Special Master and for the sale of the premises.

Following such decree for sale, the Special Master, 30 in the first instance, did not properly comply with the law and the rules of the Court as to posting the notices of sale of the properties in the City of Trenton. No technical objection, however, was taken as to this fact because the sale was later confirmed by his Honor the Chancellor.

This entire difference arose regarding premises designated as 212 and 212½ South Broad Street,

Trenton, New Jersey, which, according to the conditions of sale prepared and read by the Special Master on the day and at the place advertised by the Special Master for the sale, were to be sold free and clear of all liens and encumbrances, (State of Case, p. 16, l. 32) except local taxes assessed and due upon the premises. There is no controversy at any point regarding this particular condition of the sale, and for this reason, this fact and allegation being admitted, it has not been deemed necessary to attach a copy of the conditions of sale to the state of the case in this appeal. Attention is, however, at this time directed to the fact that on the rule to show cause, the applicant for the rule stated that she had attached a copy of such conditions of sale to her petition, (State of Case, p. 3, l. 30) whereas the original on file in these proceedings discloses that no such copy of the conditions of sale was ever attached to the original or served upon the appellant herein.

20 The main cause of the appeal affecting the premises 212 and 212½ South Broad Street, Trenton, N. J., arose from the fact, which is also undisputed, that following the successful bid of Garrett D. W. Slack, one of the defendants in the partition proceedings and the main appellant in this proceeding, and the signing by him of the conditions of sale and delivery of check for 10% of the purchase price to the Special Master, through a satisfactory agreement entered into between the said Slack and the Special Master, it was, about 10 days after the date of the sale, firmly 30 impressed upon the mind of the appellant Slack that the premises on Broad Street, in Trenton, which he had purchased had, prior to the date of the sale and unknown to this appellant, been condemned by the Building Inspector of the said City of Trenton, who stated that the buildings erected on such land must forthwith be demolished. (State of Case, p. 13, l. 32, etc., and p. 16.)

Appellant Slack thereupon immediately requested the Special Master to continue the time of settlement until he had had opportunity to investigate such reported condemnation; whereupon said Slack went to the office of the Building Inspector in the City of Trenton, confirmed such condemnation and then reported back to the Special Master that in view of such situation, wholly unknown to said Slack at the time of his successful bidding in of the premises, that he desired further time in order to attempt to 10 work out a satisfactory solution of the unexpected turn of events. Appellant Slack then immediately placed the property in the hands of a Trenton real estate broker, requesting him to endeavor to effect a sale of the premises, or otherwise secure satisfactory tenant, all subject to the order of condemnation on the part of the City of Trenton, but found that he was unable to secure any tenant for the premises and that he could not secure any offer of sale of the premises for more than a sum equal to 20 \$6,500 less than his bid at the time of the sale, although at the time of the sale the bidding on this same property had been very competitive and closely contested up until the final bid was accepted, due to the fact that the competing bidders also knew nothing of the condemnation proceedings. (State of Case, p. 13 and 14)

Appellant Slack, realizing the injustice of the situation, endeavored to secure from the Special Master a resale of the premises under and by virtue of the 30 decree of the Court of Chancery, to which request the Special Master would not accede; whereupon appellant Slack refused to make settlement for the premises designated as 212 and 212½ South Broad Street, Trenton, N. J., although he presented himself as ready, able and willing to make settlement as to all the other properties which he had bid in, and mentioned in the bill of partition. Following appel-

lant Slack's refusal to make settlement for the premises in question, the complainant, Mary Gerlach, presented a petition to the Court of Chancery for a rule to show cause why the said Slack should not be ordered by said Court of Chancery to perform the conditions of sale affecting said premises. This rule was returnable before his Honor, Vice Chancellor Buchanan, where the matter was presented upon depositions and argument of counsel, and over the objection of appellant Slack the Court did enter an order requiring the said Slack to perform his conditions of sale within 10 days from the date thereof, and without affording the said Slack an opportunity to present any witnesses or testimony affecting the condemnation or other matters pertinent to the issue; whereupon this appeal was taken from such order of said Court of Chancery, as advised by his Honor, Vice Chancellor Malcolm G. Buchanan.

No answer has at any time been filed by the respondents to the petition of appeal served and filed in this cause.

JURISDICTION OF THE COURT

It is conceded that the Courts of New Jersey, and in some few other jurisdictions, have on some rare occasions decreed specific performance under the procedure of rule to show cause, or otherwise in the manner and form of injunction proceedings, but in each and every instance where the Court has adopted such drastic and rapid moves the situation has been clear and practically indisputable from the standpoint of law and equity, and in all cases where doubt has arisen the Courts have invariably refused such procedure or remedy.

And this procedure of refusal to grant a preliminary injunction was followed in the case of *Swift, et al, vs The Delaware, Lackawanna & Western Rail-*

road Co., et al, 66 N. J. Eq. 34, in which Vice Chancellor Emery in discussing that particular question stated: "The present hearing being on application for preliminary injunction before answer, and not on final hearing, there is, of course, the further question whether the complainants' case, as now presented, is such as to satisfy the Court that they may be able, at final hearing, to make out a case for relief, and if so, whether a preliminary injunction is necessary in order to ensure ultimate relief in case of final decree in their favor (top of page 45). In the case above cited the principle of equity "to doubt is to deny" is made paramount, and the Court in conclusion, on page 51, says "generally no preliminary injunction is granted if the right is doubtful."

Hinchman vs Paterson Horse Railway Co., 2 C. E. Gr. 75.

Halsey vs Rapid Transit Street Railway Co., 2 Dick. Ch. Rep. 380.

Again in *Campbell vs Hough*, 73 N. J. Eq., pages 611 and 612, his Honor E. R. Walker, then Vice Chancellor, said: "Upon the argument on the order to show cause I was strenuously urged to make the order absolute and thus preserve the subject matter of the suit until the final hearing. This I am unable to do. Where an injunction is sought in aid of specific performance the writ will be refused where it appears that the contract sought to be enforced is so incomplete or uncertain as to be unenforceable. Even if the terms of the contract are complete and certain, in my opinion a preliminary injunction should also be refused, if the agreement were made by an agent who clearly lacked authority to bind his principals or if, for other substantive reasons, the agreement is palpably unenforceable."

NECESSARY PARTIES

It is the appellant's contention, based upon certain decisions already entered by the Court of Chancery of this State, that any proceedings to attempt to compel specific performance in this matter should have been instituted by the Special Master rather than by one of the parties complainant to the original bill of partition, but this point is interjected incidentally
 10 only in order that in an opinion handed down the Court may, if it sees necessary, definitely determine and clarify the subject.

SPECIFIC PERFORMANCE

The principal argument of the appellant in taking this appeal is that the Court of Chancery is a court of equity and a court of justice, and that this appellant has been grievously injured by the decree which was
 20 entered in the Court of Chancery, by which decree the appellant herein would be required to perform the conditions of an agreement to which he never assented.

1. It has at no time been denied by any of the parties in interest that this appellant was at the time of the Special Master's sale in entire ignorance of any steps, notices or proceedings which had been taken by the Building Inspector of the said City of Trenton
 30 toward the condemnation of the buildings upon the land which this appellant purchased at such Master's sale.

2. It is a fact, and incontrovertible and uncontroverted, or otherwise not proved, that no notices of such condemnation had ever been received by this appellant, or had any such notices been posted upon the premises or in any manner brought to this ap-

pellant's attention, directly or indirectly, until a period approximating 10 days after this appellant had signed the conditions of sale.

3. It is uncontradicted, and in fact admitted, that the conditions of sale specified that the purchaser was to buy the premises free and clear of all liens and encumbrances, excepting unpaid municipal or local taxes assessed against the premises.

4. It is uncontroverted, although clearly shown by
 10 this appellant, that by reason of such condemnation proceedings he was damaged to an extent of \$6,500, or more, and that by his failure to comply with the requirements of the condemnation upon his accepting title to the property, he would become involved in litigation unless he took a further monetary loss and removed the condemned buildings entirely from the land.

One of the first general principles of equity in de-
 20 creeing specific performance is that the contract itself must not be induced by fraud, actual or constructive, by misrepresentation or mistake; it must not be unfair, and the remedy must not be harsh in its operation upon defendant and others.

36 CYC, 544.

The rule also maintains that "the vendor, when plaintiff, must be able to convey a title to the vendee which will not expose the latter to litigation in its
 30 defense."

36 CYC, 544.

The Court may, of its own motion, raise the question of the legality of the contract.

Kreamer vs Earl, 91 Cal., 112, 27 Pac. 735.

Where the ground of defense is the unfairness of the contract or the hardship of the remedy of specific performance, the Court frequently exercises discretion in the truest sense, since the great variety in the forms of unfairness and of hardship which have arisen for the consideration of the Courts has prevented the establishment of many special rules or lines of precedent.

Friend vs Lamb, 152 Pa. St. 529; 25 Atl. 577.

10 Sherman vs Wright, 49 N. Y. 227.

That the contract was procured by the false representation of a material fact is a defense to specific performance at the suit of the party who made the representation. In general a less flagrant case of fraud is required to prevent specific performance than to recover damages or to obtain rescission.

36 CYC, 600, IV A.

20 That the person making the false representation had no knowledge of its untruth, or honestly believed it to be true, is immaterial, when the misrepresentation is set up as a defense to specific performance.

Hess vs Evans (Ch. 1888) (N. J.), 15 Atl. 310.

Mistake about the same matter common to both parties is a ground for reformation or rescission of the contract, and is therefore defense to a suit for specific performance. The mistake may occur in reducing the agreement to writing so that the written instrument does not express the real agreement of the parties, or it may consist in erroneous belief or assumption as to the existence or non-existence of a material fact, as, for example, in the case of a mutual mistake as to the amount or quantity of the lands or other subject matter of the contract.

30

McCormick vs Stephany, 33 N. J. Eq. 257, 41 Atl. 840.

People's Saving Bank vs Alexander, 2 Pa. Cas. 287, 3 Atl. 821.

Planer vs Equitable Life Assurance Soc. (Ch. 1897) (N. J.), 37 Atl. 668.

In a suit by the vendor to enforce performance of contract for the sale of land, the vendee will not be compelled to accept the title unless it is a marketable one; that is, one which will not expose him to litigation. To force upon the vendee a title which he may be compelled to defend in the courts is to impose upon him a hard bargain; and this a court of equity, in the exercise of its discretion, will refuse to do, irrespective of the question whether the title is actually good or bad.

36 CYC, 632 F. and cases cited.

The title must be such that a purchaser will not have difficulty in reselling the land.

Nicol vs Carr, 35 Pa. St. 381.

The doubt, to avail as a defense, must be a reasonable one, and rest upon some debatable ground.

A vendee who has a right to a good title cannot be compelled to accept a title which is defective because of outstanding, valid encumbrances, or which may expose him to litigation because clouded with encumbrances whose validity is a matter of dispute.

30 Dyker Meadow Land & Co. vs Cook, 159 N. Y. 6.

Mitchell vs Steinmetz, 97 Pa. St. 251.

Wesley vs Eells, 177 U. S. 370.

A vendee who has a right to a good title cannot be forced to take the property when it is subject to covenants or conditions restricting its use.

Newbold vs Peabody Heights Co., 70 Md. 493, 17 Atl. 372.

Altman vs McMillan, 115 N. Y. App. Div. 234.

In *Burke vs Dorfan*, V-N. J. Adv. Rep. No. 27, on page 1007, the Court of Chancery dealing with the question of the marketability of a title said: "The vendee is not to be called upon to offer himself as a victim of litigation by compelling him to make the
10 purchase, or a sacrifice, if later judicial view shall not accord with the vendor's contention. It is the vendor's duty to sweep the house. Where the question of the marketability of a title, sought to be imposed upon a vendee, is reasonably disputable, in a court of justice, in point of law or fact, specific performance will be denied. *Smith vs Reidy*, 92 N. J. Eq. 586."

OTHER ADEQUATE REMEDY

20

The proper course of action in this matter would have been for the Special Master to readvertise the premises under and by virtue of the decree, in which event, if the premises had brought more than this appellant's offer, the parties to this suit would have been benefited; or, on the contrary, if the property brought less on resale, then a law court had adequate jurisdiction to determine whether, in view of the circumstances, this appellant could be held under the
30 terms and conditions of sale for any lesser price bid for the property.

It would seem that under all the facts and circumstances presented in this case, that there is no reason why a Court should decree specific performance, but that there is every reason why the Courts should refuse specific performance, and your appellant so contends, to the end that the previous sale as to premises 212 and 212½ South Broad Street, Trenton,

N. J., may be declared void, and a resale decreed without recourse to this appellant.

HERBERT S. KILLIE,
JONATHAN H. KELSEY,
Solicitors for and of Counsel
with Appellant.

130
130 OCT. 1. 1927

**NEW JERSEY
COURT OF ERRORS AND APPEALS**

Between,
MARY L. GERLACH, et als,
Complainants and Appellees,
and
RENA H. BALL, G. D. W. SLACK,
et als,
Defendants and Appellants.

ON APPEAL

**SUPPLEMENT TO
STATE OF THE CASE**

Sat Below

WALKER, C.
BUCHANAN, V. C.

HERBERT S. KILLIE,
Attorney for Appellants.

PALMER & POWELL,
Attorneys for Respondents.

In the first place there is no competent evidence that there was any condemnation of the building. The allegation of the answer (unverified generally) is only that respondent "learned from the office of the Building Inspector" that the building had been condemned, and could not be used for any purpose whatever. His affidavit says only (in one place) that he was told by a real estate agent named Kinney that he, Kinney, had been told that the building had been
10 condemned, and (in another place) that respondent "was informed at the office of the Building Inspector" that the building had been condemned as unsafe, and was informed by the Deputy Building Inspector that "a notice" had been mailed to him previously by the Department.

All this is obviously mere hearsay, and incompetent. There is no other proof.

In the second place it does not appear that respondent was not fully aware of the condition of the
20 building: rather does the contrary appear. Respondent in his affidavit admits that he owned a 2-5 share of the property; that for five years previously he had attended to the renting, collecting of rent, payment of taxes and making repairs. He must therefore have known—and he in no wise asserts the contrary—that the building was in such poor condition as to render it likely to be condemned. If we assume that it was condemned as unsafe, we must also assume that it was properly so condemned;
30 there is no intimation to the contrary, and the action must be presumed to have been properly taken.

In the third place there is neither proof nor even allegation that respondent would not have bid the price he did, if he had known of the alleged condemnation.

In the fourth place there is no proof that the property is not fully worth all that he bid. The answer says only that he was not able to effect a resale

for more than \$22,000.00; the affidavit shows that his effort in that behalf was only through a single real estate agent, and during a period of less than a week. This—and there is nothing else—is in no wise proof that the property, even though condemned as to building, is not fully worth the \$28,500.00, contract price.

Admittedly no other party knew anything of the alleged condemnation.

One thing more: Respondent says in his affidavit
10 that "immediately following" respondent's request to the Special Master for a week's extension, he learned from the agent, Kinney, of the condemnation, and its effect, and that he could not resell for more than \$22,000.00. The petition alleges, and the answer admits, that this request was on or about February 15th. (The sale was on February 9th or 11th, and this shows that the effort to resell was only during that week). The decree of confirmation was not made till March 1st. During this period of near-
20 ly two weeks he had all this notice and information, but took no step to be relieved of his bid, or prevent confirmation.

Complainant-petitioners are entitled to decree for specific performance, with costs.

Copy received November 5, 1927.

New Jersey Court of Errors and Appeals

Between, MARY L. GERLACH, et als, Complainants & Respondents, and RENA H. BALL, et als, Defendants and Appellants.	}	On Appeal.	10
		Brief for Respondents.	

FACTS

On December 1, 1926, a decree for sale was made in the above entitled cause, directed to William J. 20 Backes, one of the Special Masters, directing him to sell at public vendue certain premises described in said decree. (S-C, 1, 20.) The sale of said premises was held on February 9, 1927, at the Court House, in the City of Trenton. (S-C, 1, 30.) At that sale Garrett D. W. Slack became the purchaser of property known as 212 S. Broad Street, Trenton, New Jersey, for the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500). (S-C, 2, 5.) He also became the purchaser of property known as Nos. 135-137 30 Jackson Street, in the City of Trenton, New Jersey, for the sum of Eight Thousand Seven Hundred Dollars (\$8,700). (S-C, 2, 10.) He also became the purchaser of property located in Mount Holly, New Jersey, for the sum of Five Thousand One Hundred Dollars (\$5,100). (S-C, 3, 4.) He also signed an acknowledgment of said purchase and the conditions of sale. (S-C, 3, 12.)

At the time of the signing of the acknowledgment of purchase, the said Garrett D. W. Slack gave to the Special Master a check for Three Thousand Seven Hundred Twenty Dollars (\$3,720) drawn to The Farmers' Trust Company of Mount Holly, New Jersey, as a ten per cent payment on account of the purchase price, which check was not good. (S-C, 2, 25.) The conditions of sale provided for the payment of the balance of the purchase price on February 23, 10 1927, at the office of the Special Master in the City of Trenton; the day for settlement was continued until March 2, 1927, at the request of the purchaser, because he did not have the funds available for the payment of the property. (S-C, 3, 33.)

Upon the adjourned day for settlement, the purchaser informed the Special Master that he would not accept said properties because he had learned that the property known as 212 S. Broad Street had been condemned for some unstated cause, by the 20 Building Inspector of the City of Trenton.

Thereupon, petition in this cause was filed and a rule to show cause obtained why the purchaser should not be compelled to comply with the conditions of sale and his acknowledgment of the purchase. This matter came on to be heard before Vice-Chancellor Buchanan upon the petition and answer and affidavit of the purchaser. (S-C, 6, 7, and 10.) The Vice-Chancellor made an order requiring the purchaser to comply with the conditions of sale on 30 or before May 10, 1927. (S-C, 20 and 21.) This appeal was thereupon taken from that order and the matters before this court in the same form that it was before the Court of Chancery; namely, upon the petition, answer and answering affidavit.

The Vice-Chancellor in considering the matter and in his oral utterance at the time, stated that there was no reason why the purchaser should not comply with the conditions of sale; that the only reason

alleged was a so-called condemnation of one property by the Building Inspector of the City of Trenton, and upon this point there was no competent proof before the Court; that the only evidence of such a fact before the Court was the hearsay testimony of the said Garrett D. W. Slack. The opinion of the Vice-Chancellor does not seem to be printed in the State of the Case.

ARGUMENT

10

The first point to be discussed is the power of the Court of Chancery to compel a purchaser at a Master's Sale to comply with the conditions of sale and his acknowledgment of the purchase, and to pay the money for the property that he has purchased. This matter has been before the courts in a number of decisions, and it seems to be well settled that the Court of Chancery has, in a summary way, on petition and answer, the power to compel the performance of its decrees, and to require a purchaser at a sale to comply with the conditions of sale and accept title to the property, and pay the balance of the purchase price. 20

Silver vs. Campbell, 25 N. J. Equity, p. 465.

Case vs. Arnett, 26 N. J. Equity, p. 459.

McCarter vs. Finch, 55 N. J. Equity, p. 245.

In the last mentioned case Vice-Chancellor Pitney reviewed all the decisions governing this matter that had ever been determined by the court, and reached 30 the conclusion that the rule is as above stated.

The only other point for consideration is whether or not the purchaser, Garrett D. W. Slack, can justify his refusal to complete his purchase, based upon the hearsay statement that the Building Inspector of the City of Trenton had condemned one of the four properties sold. There is no evidence that any such condemnation has even taken place. The purchaser

in his affidavit, stated that he was advised that such was the fact by one Kinney, who purported to be a real estate agent (S-C, 13, 27); that on or about the 2nd day of March, 1927, the purchaser had an interview with some person in the office of the Building Inspector of the City of Trenton, with reference to whether or not any notice of any condemnation of this property had ever been sent to the said Garrett D. W. Slack. (S-C, 16, 20.) Those two statements
10 are the only ones that appear in the record to show that any condemnation of this property had ever taken place. The purchaser's affidavit was, of course, hearsay and he produced no one from the Building Inspector's Department of the City of Trenton, nor did he produce any record of any such condemnation. So that as the matter stood before the Court of Chancery and as it stands here, no reason whatsoever is presented why the purchaser should not be compelled to complete his purchase.

20 I desire to call particularly to the Court's attention the long delay that has resulted by reason of this appeal. This property was sold last February, was to have been settled for in March, and the order requiring the completion of the sale and settlement was as of May 10, 1927. During all this time title to the property is in question and no one is in control of it, nor authorized to deal with it. This is working a great hardship to the parties in interest, particularly the complainants, who are entitled to receive
30 their money upon the sale of this property.

It is therefore respectfully urged that this matter be disposed of as speedily as this Court can conveniently do.

Respectfully submitted,

PALMER & POWELL, Sol'rs.
For and of Counsel with
Complainants and Respondents.