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Bill of Complaint.

BILL OF COMPLAINT.

Filed July 7, 1925.

In Chancery of New Jersey

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

MICHAEL J. TANSEY, of the City of Newark,
County of Essex and State of New Jersey, com-
plains against Belleville Relief Association, a
body corporate of the State of New Jersey, with
a principal office in the Town of Belleville,
County of Essex and State of New Jersey, and
says:

1. On or about the 30th day of April, 1925,
said Belleville Relief Association was the owner 20
in fee of a tract of land in the Town of Belle-
ville, County of Essex and State of New Jersey,
described as follows:

BEGINNING in the easterly line of Wash-
ington Avenue at a point distant northerly,
four hundred and fifteen feet and seventy
one one-hundredths of a foot from the in-
tersection of the said Washington Avenue,
with Academy Street; thence north twenty 30
seven degrees, fifteen minutes east along
the easterly line of Washington Avenue sev-
enty five feet; thence south sixty two de-
grees forty five minutes east and at right
angles to Washington Avenue, one hundred
and seventy nine feet and thirteen one hun-
dredths of a foot to Isaac Street; thence
along the line of Isaac Street south twenty
six degrees fifty seven minutes west, fifty
feet and forty eight one hundredths of a 40

Bill of Complaint.

10 foot; thence south twenty-four degrees twenty five minutes west one foot and sixty-four one hundredths of a foot to the line of lands now or formerly of James T. Spear, deceased; thence along the line thereof, north seventy degrees one minute west one hundred and eighty feet and ninety one one-hundredths of a foot to Washington Avenue and place of BEGINNING. According to survey made by Marshall A. Congleton, Surveyor, dated February 25th, 1922.

and being such owner and in financial difficulties, making it necessary and desirable to sell the same, then and there, to wit, on the 30th day of April, 1925, did adopt the following resolutions:

20 "WHEREAS, BELLEVILLE RELIEF ASSOCIATION finds itself in financial difficulties in that it owes to the Peoples Bank of Belleville the sum of \$3400., and owes to the First National Bank of Belleville the sum of \$4322., and owes taxes and the balance of an insurance premium on its premises No. 258 to 262 Washington Avenue, Belleville, N. J., and is indebted in many other respects, and

30 "WHEREAS, the total indebtedness of said Association amounts to approximately \$25,000., and

"WHEREAS, many efforts have been made by said Association to dispose of said premises No. 258 to 262 Washington Avenue, Belleville, N. J.,

40 "NOW, THEREFORE, BE IT RESOLVED by said Association that the said premises known as No. 258 to 262 Washington Avenue, Belleville, N. J., consisting of a lot approximately 75 feet front and rear and 192 feet

Bill of Complaint.

deep, with stores, lodge rooms and auditorium thereon, be sold for the amount of said indebtedness, approximately \$25,000., to any person or persons, partnership or corporation, offering to take said premises for approximately said sum, and

“BE IT FURTHER RESOLVED that the proper officers of said Association be and they hereby are authorized, empowered and directed to enter into any contract for the sale of said premises for approximately said amount, as hereinabove set forth, to any such person or persons, firm, partnership or corporation, and that they be also empowered, for and on behalf of said Association, to sign and execute a proper deed therefor.”

and then and there did further adopt the resolution empowering the solicitor, one Joseph A. Connolly, to make all steps necessary to negotiate the sale thereof; said resolutions being duly entered on the minutes of said Association.

2. Thereafter in pursuance of the authority vested in said Joseph A. Connolly, aforesaid, he entered into an agreement with complainant on behalf of said Belleville Relief Association, to sell and convey to said complainant the aforesaid tract of land, for such sum, not less than \$25,000, as would provide for the payment of the debts of said Association, in connection with said property, and the liens thereon, and said complainant agreed to take and purchase said premises at the aforesaid sum as soon as the exact amount of such debts and liabilities could be ascertained, which said Joseph A. Connolly assured complainant would be within a few days, awaiting the action of the president of said

Bill of Complaint.

Belleville Relief Association, who was to furnish him with such statement.

3. Complainant had the lands inspected by a committee from a building and loan association, and a loan was granted thereon in order to carry out the terms of said agreement, and complainant was in all things ready, upon the receipt of the information from the officials of the said Association, to complete the purchase and take over the property.

4. In the meantime, some of the officers of said Belleville Relief Association entered into negotiations with other persons, and in pursuance thereof made an agreement to sell, and took a deposit from such persons for the sum of \$25,000, and up to this time have neglected and refused to make the statement for said Joseph A. Connolly, solicitor, as provided for by the aforesaid resolutions, and to carry out the arrangement made with complainant, but, on the contrary thereof, seek to turn over the said land and real estate to the last-mentioned persons, without regard to the complainant's rights, and, as complainant says, wholly unauthorized by and in contravention of the aforesaid resolutions, or any other legal authority.

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

1. That said Belleville Relief Association may answer this bill of complaint and each statement therein made.

2. That the said Belleville Relief Association may be compelled to carry out the terms of the arrangements with complainant in accordance with the aforesaid resolutions.

Bill of Complaint.

3. That said Belleville Relief Association may be enjoined and restrained from making any sale to any person or persons except to complainant, and in pursuance of the aforesaid resolutions.

4. That complainant may have such other relief as the necessity requires.

5. That a writ of subpoena may issue directed to the said defendant, directing it to appear in this Court and answer the said bill of complaint, and stand to and abide by such order or decree as this Court may make in the premises.

6. That a writ of injunction may be granted enjoining and restraining the said defendant from selling or otherwise encumbering said lands and premises, except by conveying the same to complainant, during the pendency of this suit.

MICHAEL J. TANSEY,
Solicitor and Counsel *pro se.*

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Notice of Motion.

NOTICE OF MOTION.

IN CHANCERY OF NEW JERSEY.

Between

10

MICHAEL J. TANSEY,

Complainant,

and

BELLEVILLE RELIEF ASSOCIA-
TION, a body corporation,

Defendant.

On Bill, &c.

*Notice of
Motion.*

To Michael J. Tansey, solicitor for complainant:

20 TAKE NOTICE that on Monday, August 3rd, 1925, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I will apply to the Chancellor at the Chancery Chambers, 75 Montgomery street, Jersey City, N. J., for an order dismissing the bill of complaint and vacating the lis pendens filed in this cause by you; that I will base my application on the affidavits, copies whereof are annexed hereto and made part hereof, and on the fact that no written agreement was made by the defendant for the sale of the premises in question to the complainant, that this suit cannot be maintained without such written agreement, that any agreement made between Joseph A. Connolly and the complainant, if any such agreement was ever made, was oral, and that if such an agreement was made in writing it is in nowise binding on the defendant.

30

Yours very truly,

NATHAN H. BERGER,

Of Counsel with Defendant.

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Affidavit of Martin P. Cosgrove.

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

Between

MICHAEL J. TANSEY,

Complainant,

and

BELLEVILLE RELIEF ASSOCIA-
TION, a body corporation,

Defendant.

On Bill, &c.

10

Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

MARTIN P. COSGROVE, being duly sworn on his oath, according to law, deposes and says: 20

1. I am the president of Belleville Relief Association, the defendant named in the above-entitled action, which was instituted by bill filed on or about July 6, 1925.

2. It is alleged in said bill of complaint that one Joseph A. Connolly was empowered by resolution of the board of directors of said association to sell or dispose of the premises described in the bill of complaint known as 258-262 Washington avenue, Belleville, New Jersey, and that pursuant to authority vested in said Joseph A. Connolly he entered into an agreement with complainant on behalf of said Belleville Relief Association to sell and convey complainant the aforesaid premises for such sum, not less than \$25,000, as would provide for payments of the debts of said association in connection with said property, and the liens thereon. This statement 30 40

Affidavit of Martin P. Cosgrove.

is wholly untrue. It is true that the resolution set forth in the bill of complaint was passed authorizing the proper officers of said association to enter into a contract for the sale of said premises for approximately \$25,000 and to sign and execute a proper deed therefor. Joseph A. Connolly is not an officer of said association. This took place on April 30th, 1925. At said meeting one Joseph A. Connolly, who was present, suggested that he could interest prospective buyers in this property, and he was given permission to do so and to report to said association on any buyers that he might find. The said Joseph A. Connolly was informed and he understood that said property was listed for sale with the real estate firm of Mathes and Wines, of Belleville, New Jersey, who also were endeavoring and had for some time prior to this date been endeavoring to procure a buyer for said property. The said Joseph A. Connolly was never authorized by the said Belleville Relief Association to enter into any agreement with complainant, or with anyone else on behalf of said association, for the sale of said premises. In fact, deponent is informed, and believes it to be true, that no written agreement of any kind was ever entered into by the said Joseph A. Connolly with the complainant.

3. The said Belleville Relief Association entered into a written agreement for the sale of said property with one Alfred B. Williams on May 25th, 1925, whereby it agreed to sell and said Alfred B. Williams agreed to purchase said property for \$25,000 cash, and title by the terms of said agreement was to pass on August 1st, 1925. The object of the suit of complainant appears to be to prevent the consummation of

Affidavit of James A. Mooney.

said agreement, as a lis pendens was filed in this action by the complainant against the premises in question in the office of the Register of Essex County. Said association has a number of pressing obligations which it intended to meet with the proceeds of said sale, and delay in the payment of the same will result in numerous suits against said association and will cause it irreparable injuries. 10

MARTIN P. COSGROVE.

Subscribed and sworn to before me
this 22nd day of July, 1925.

WILLIAM OSTERWEIL,
A Notary Public of New Jersey.

20

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

JAMES A. MOONEY, being duly sworn, on his oath, according to law, deposes and says:

1. I am the secretary of the Belleville Relief Association, referred to in the foregoing affidavit of Martin P. Cosgrove.

2. I read said affidavit and I know and I state the fact to be that each and every allegation therein contained is true. 30

3. I took the minutes of the meeting of Belleville Relief Association which took place on April 30, 1925, when resolutions were adopted authorizing the officers of this association to sell the property at #258-262 Washington avenue, Belleville, New Jersey. There was at no time any authority given to Joseph A. Connolly to make any agreements in behalf of said asso- 40

Affidavit of Alfred B. Williams.

10 ciation. Said Joseph A. Connolly is neither an officer, director or member of said association. He offered to look around for a buyer for this property and to advise the proper officers if he found one. An agent who had theretofore been authorized to sell said property, procured Alfred B. Williams to buy said property, and a written agreement was entered into by the proper officers of said association to sell said property to said Alfred B. Williams, who put up a substantial deposit on the agreement aforesaid.

20 4. Deponent further says that he is informed and believes it to be true that no written contract was ever entered into by Joseph A. Connolly with M. J. Tansey. Deponent further says that no written contract exists between Belleville Relief Association and the complainant for the sale of the aforesaid premises to the complainant, and that this suit cannot be maintained.

JAMES A. MOONEY.

Subscribed and sworn to before me
this 22nd day of July, 1925.

30 WILLIAM OSTERWEIL,
A Notary Public of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

ALFRED B. WILLIAMS, being duly sworn on his oath, according to law, deposes and says:

40 1. On May 25, 1925, he entered into a written agreement with Belleville Relief Association

Affidavit of Alfred B. Williams.

whereby deponent agreed to purchase of said association premises #258-262 Washington avenue, Belleville, New Jersey, for the sum of \$25,000. Immediately upon the making of said agreement, deponent employed one Romolo Bottelli, an architect of the City of Newark, to prepare plans and specifications for the remodeling of the building on said premises, that deponent has obtained said plans, and on the strength of said plans he is ready to award contracts for the remodeling of said premises, and deponent has also applied for and obtained a mortgage loan on said premises, that said agreement provides for the closing of title on August 1, 1925; that deponent employed counsel to examine title to said premises, and the examination thereof discloses that the complainant herein filed a lis pendens against said premises in the action above entitled.

2. Deponent bought said property for his own use and finds it imperative to obtain title to said premises so that he might proceed with said improvements without delay, that delay caused by said lis pendens and the consequent interference with deponent's taking title to said property will result in irreparable injury to deponent.

ALFRED B. WILLIAMS.

Subscribed and sworn to before me
this 23rd day of July, 1925.

WILLIAM OSTERWEIL,
A Notary Public of New Jersey.

Notice of Motion.

NOTICE OF MOTION.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> MICHAEL J. TANSEY, <i>Complainant,</i> <i>and</i> BELLEVILLE RELIEF ASSOCIA- TION, a body corporation, <i>Defendant.</i></p>	<p><i>On Bill, &c.</i> <i>Notice of</i> <i>Motion.</i></p>
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To Michael J. Tansey, solicitor *pro se*:

20 TAKE NOTICE, that on Monday, August 10, 1925, at ten o'clock in the forenoon, or as soon thereafter as I can be heard, I will apply to the Chancellor at the Chancery Chambers, Exchange Place, in the City of Jersey City, for an order striking out the bill of complaint on the ground that the defendant will, at said time and place, establish by the affidavits, copies of which have heretofore been served upon you, and by the testimony of witnesses who will testify at the said time and place, and by the evidence of the complainant himself, that the complainant cannot produce proofs under said bill of complaint or under an amended bill that will entitle him to the remedy that he seeks in this case, and also on the grounds stated in a notice of motion heretofore served upon you which was made returnable on August 3, 1925, the hearing of which motion was continued by an order of this Court, until August 10, 1925, a copy of which order is annexed hereto and made part hereof, and served herewith upon you.

40 Yours respectfully,
 NATHAN H. BERGER,
 Solicitor and of Counsel with Defendant.

Order.

ORDER.

IN CHANCERY OF NEW JERSEY.

Between

MICHAEL J. TANSEY,
Complainant,

and

BELLEVILLE RELIEF ASSOCIA-
TION, a body corporation,
Defendant.

On Bill, &c.
Order.

10

This matter being opened to the Court by Nathan H. Berger, of counsel with defendant, and it appearing that a notice of motion was served by counsel for defendant on the complainant for an order to dismiss the bill of complaint returnable this day, and it appearing that it is necessary to take testimony in this cause,

20

It is, on this third day of August, 1925, ORDERED, that this matter be, and it is hereby continued until August 10, 1925, at which time testimony may be taken by either side in support of or opposition to said motion.

It is further ORDERED, that a true copy, which need not be certified, be served on the complainant within two days from date of this order.

30

E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
Vice-Chancellor.

40

Testimony of Michael J. Tansey.

tion is raised by the answer it is not permissible to order such examination.

The Court: Now, that you have your objection noted, I will overrule it. The examination may proceed.

MICHAEL J. TANSEY, sworn on behalf of the defendant, testified as follows: 10

Direct examination by Mr. Berger.

Q Mr. Tansey, you are the complainant in this suit? A Yes, sir.

Q And you are a member of the Bar of the State of New Jersey? A I am.

Q And have been for how many years? A I was admitted in 1899 as attorney and 1902 as counsellor. 20

Q And you are acquainted with Joseph A. Connolly? A Yes, sir; very well.

Q And you and Mr. Connolly have offices in the same suite? A Yes.

Q And have had offices together for a number of years? A Yes, we have had; that is, we each rent from the same building owner. He pays his rent to the Lawyers' Building and so do I. 30

Q You are acquainted with the Belleville Relief Association and have been for some years past? A I represented the Belleville Relief Association when they had some difficulty in taking over the property, which I think was two or three years ago, and I succeeded in getting the property for them at, I think, \$2,000 reduction—something like that.

Q And you did this for a fee, I presume? A Absolutely. 40

Testimony of Michael J. Tansey.

Q And which was paid you? A It was.

Q When you spoke of difficulties in taking over property, you referred to the property known as 358 to 362 Washington street, Belleville? A I think that is the number; I don't know.

10 *By the Court.*

Q The same premises described in the bill in this case? A Yes.

Direct examination resumed.

Q So that you have been acquainted with the owner of the Belleville property for a couple of years past? A No, I have not; they passed out of my knowledge as soon as that work was
20 finished two or three years ago. I think it is three years ago, maybe.

Q You filed a bill of complaint in this case, in which you seek to compel the specific performance of a contract for the sale of this property you just testified to, didn't you? A The bill of complaint speaks for itself on that.

Q Referring to the bill of complaint—you prepared it, did you not, as solicitor? A Well,
30 you have produced it. I don't know whether that is the copy I furnished to you or whether you prepared it yourself.

Q The bill of complaint in this case was prepared by you as solicitor? A That's right.

Q Aren't you able to recognize the typewriting and handwriting on this bill? A (Witness examining paper handed to him.) No, that is not my handwriting.

Q Is it that of some clerk in your office? A I don't say it is. If you will tell me it is the
40 copy you got from me I will say "yes."

Testimony of Michael J. Tansey.

Q I will say it is. A Then I will say "yes."

Q Now, in the second paragraph of this bill of complaint you say that you entered into an agreement with the complainant—with the Belleville Relief Association—whereby it agreed to sell you the premises described in the bill of complaint for such sum, not less than \$25,000—
A I don't think I say that. 10

Q Provided you pay the debts? A I don't think I say that.

Q What do you say? A In paragraph two I say that Joseph A. Connolly entered into an agreement with the complainant on behalf of the Belleville Relief Association to sell and convey to said complainant the aforesaid tract of land, for such sum, not less than \$25,000, as would provide for the debts in connection with the said property and the liens thereon, the said complainant agreeing to take and purchase the said premises as soon as the exact amount of debts and liabilities could be ascertained, within a few days, awaiting the action of the person who was to furnish him with said statement— 20

Q Now, the agreement that you speak of in paragraph two of the complaint, was that in writing? A I object to that as being immaterial. 30

The Court: You mean the statute has not been raised?

A The writing hasn't been asserted, and even if it were not in writing it wouldn't have any avail on this particular question.

The Court: I overrule the objection.

A I haven't signed any written agreement. 40

Testimony of Michael J. Tansey.

Q Did Mr. Joseph A. Connolly ever sign a written agreement with you in reference to this property, either in his own name or in the name of the Belleville Relief Association? A I renew my objection to that question.

10 The Court: The same ruling.

A Mr. Connolly hasn't signed any agreement with me. And, if your Honor please, I also object to that because we do not allege that that is within Mr. Connolly's authority and I do not think it is within the scope of his authority to sign.

20 Q Did Mr. Connolly sign any memorandum or note in writing in reference to the sale of this property to you? A He submitted to me a general statement as to the amount of the debts of the association.

Q Did Mr. Connolly sign any memorandum in the nature of an agreement for the sale of this property to you? A I object to that on the same grounds, that Mr. Connolly wasn't authorized to sign any such paper.

The Court: The same ruling.

30 A Nothing, excepting the memorandum that he submitted to me of the debts of the association.

Q And the memorandum you speak of contained some figures as to the obligations of the association? A General information as to what we would expect to pay for it; and he also submitted to me a copy of the resolutions which applied to the situation.

40 Q And is that the resolution that you quoted in your bill of complaint? A That is one of them.

Testimony of Michael J. Tansey.

Q Has he submitted to you any other resolution than the one in the bill of complaint? A No, only the general purport—

By the Court.

Q Didn't he also show you the copy, authorizing the negotiation for the sale? A Yes, he showed me a memorandum of it and told me the general purport. 10

Direct examination resumed.

Q And have you that here? A No, I have not.

Q It was never delivered to you? A Oh, yes.

Q What became of it? A It is in the papers, I presume, or at my office. 20

Q Did you ever pay any money to the Belleville Relief Association on account of this property? A I object to that, if your Honor please, as immaterial to the allegations of the bill.

The Court: What difference does that make, Mr. Berger?

Mr. Berger: I want to show that there was no performance in any way, part or otherwise. 30

The Court: I don't understand that payment of deposit is ever considered a part performance. That isn't such part performance as will take it out of the rule.

Q There was never any definite amount fixed as the price of this property, was there? A Yes, Mr. Connolly said to me the price would be at least \$25,000 and as much more as would 40

Testimony of Michael J. Tansey.

represent the debts of the association. He said Mr. Cosgrove was going to submit a statement in a few days.

Q Twenty-five thousand dollars was the minimum price? A Yes.

Q But the maximum price was never fixed?
 10 A Might be a few thousand more. He hadn't got his figures from Mr. Cosgrove. He told me the last time Mr. Cosgrove refused to act.

Q Did any other person than Mr. Connolly ever sign a written agreement on behalf of the Belleville Relief Association, to sell you that property? A I object to that, because there is no such statement as that made in the bill and has no bearing upon the case.

Mr. Berger: I might say to your Honor
 20 that the reason I ask the question is that Mr. Tansey argued that question and I am trying to meet his argument on that question.

The Court: It seems to me that, under his bill, he has got to stand or fall by his negotiations with Mr. Connolly.

Mr. Berger: It is my purpose, and I think it is my right, to show that there is
 30 no written contract in existence signed by Mr. Connolly or anyone else—no memorandum written by anyone, signed, that was authorized, and that is the purpose of the question.

The Court: But I cannot take the argument that somebody else than Mr. Connolly has signed some memorandum. That would take this case out of the Statute of Frauds. He has said that his negotiations were with Mr. Connolly. (The Court examines papers.)
 40 No, I am wrong, Mr. Tansey.

Testimony of Michael J. Tansey.

A I say in my bill that my negotiations were with Mr. Connolly in pursuance of the authority of that resolution. Now he is asking me the question whether or not I had somebody else sign the agreement. I don't allege that.

Q I will change the question: In your negotiations with Mr. Connolly, just what did Mr. Connolly say to you regarding this property and his authority to negotiate with you in the sale of it? A Mr. Connolly says, "I am now fully authorized to treat with you or any other purchaser for the sale of the property, and a resolution was passed last night, empowering me to sell the property to you at such a price, not less than \$25,000 and such sum as will meet the liens and encumbrances on the property," and Mr. Cosgrove will furnish me in the next few days a memorandum--

Q I only asked you what he said. A Well, that is what he said.

Q Now, did you on that occasion ask Mr. Connolly whether he would have to report back to the association the fact that you were willing to buy the property? A Mr. Connolly said he had reported back to Mr. Cosgrove and Mr. Cosgrove would submit a statement of the debts the next day.

Q Who was to sign an agreement with you?

A I am telling you what Mr. Connolly told me.

Q You as a lawyer at that time knew that you had to have an agreement for the sale of the property to you? A I object to that as immaterial what I knew. There is no use bragging about what I knew.

Q Isn't it a fact, Mr. Tansey, that you arranged for a written agreement to be made to you by the officers of this association? A I

Testimony of Michael J. Tansey.

spoke to Mr. Connolly as to getting the exact price of it, and I was waiting for that when this other situation intervened.

10 Q Didn't you at any time speak to Mr. Connolly about getting a written agreement signed by the officers of the association for the sale of this property to you? A I don't recall the extent of our conversation, but the substance of it was what I told you, and every day or two I would ask Mr. Connolly if he had written the statement yet, and he finally told me that Mr. Cosgrove was going to call a meeting of the association and would let him know when the meeting was to be held in order to ratify the action.

Q To ratify the sale to you? A Yes.

Q And to get authority to make a deed to you? A No, he didn't say that.

20 Q Didn't he tell you that that was a part of the arrangement with him? A He told me that a meeting was called by Mr. Cosgrove and he would let him know when it was called.

Q And he said it was necessary to get a resolution? A He didn't say it was necessary to get a resolution; he said he had reported it back to Mr. Cosgrove.

30 Q You understood that the meeting was to be called to ratify the sale to you? A Yes.

Q And that meeting was to be with the members of the association? A Board of directors. I understood that they were delighted with the fact that they were to have a meeting of ratification.

Q Can you fix the date when you had this talk with Mr. Connolly? A Sometime in the latter part of May.

40 Q Is that the best you can do for us on the question of the date? A I can get you the

Complainant's Exhibit 1.

exact date, probably, by referring to the date that I made the arrangement for the building loan. I think it was on May ninth.

Q Was there any date fixed when a formal agreement was to be drawn? A No.

Q Was there any date fixed for the passing of title of this property? A I object to that, if your Honor please. 10

Q That is all.

COMPLAINANT'S EXHIBIT 1.**RESOLUTION**

WHEREAS, BELLEVILLE RELIEF ASSOCIATION finds itself in financial difficulties in that it owes to the Peoples Bank of Belleville the sum of \$3400.00, and owes to the First National Bank of Belleville the sum of \$4322, and owes taxes and the balance of an insurance premium on its premises No. 258 to 262 Washington Avenue, Belleville, N. J., and is indebted in many other respects, and 20

WHEREAS, the total indebtedness of said Association amounts to approximately \$25,000., and

WHEREAS, many efforts have been made by said Association to dispose of said premises No. 258 to 262 Washington Avenue, Belleville, N. J., 30

Now, THEREFORE, BE IT RESOLVED by said Association that the said premises known as No. 258 to 262 Washington Avenue, Belleville, N. J., consisting of a lot approximately 75 feet front and rear and 192 feet deep, with stores, lodge rooms and auditorium thereon, be sold for the amount of said indebtedness, approximately 40

Complainant's Exhibit 2.

\$25,000., to any person or persons, partnership or corporation, offering to take said premises for approximately said sum, and

10 BE IT FURTHER RESOLVED that the proper officers of said Association be and they hereby are authorized, empowered and directed to enter into any contract for the sale of said premises for approximately said amount, as hereinabove set forth, to any such person or persons, firm, partnership or corporation, and that they be also empowered, for and on behalf of said Association, to sign and execute a proper deed therefor.

COMPLAINANT'S EXHIBIT 2.

20

MINUTE

Minute of Meeting of the Board of Directors of the Belleville Relief Association held in the Cloak Room of the Building of the organization early in May, 1925, All Directors being present besides Mr. Joseph A. Connolly.

30 Moved by Mr. Edward Mathes, seconded by Mr. Patrick J. O'Brien and unanimously adopted:

BE IT RESOLVED that our Attorney Mr. Joseph A. Connolly, be and he hereby is authorized and empowered to procure a purchaser for and negotiate the sale of the property of this Association, on Washington Ave., Belleville, for the amount of the debts thereon, approximately \$25,000.

40

Complainant's Exhibit 3.

COMPLAINANT'S EXHIBIT 3.

IN CHANCERY OF NEW JERSEY.

Between

MICHAEL J. TANSEY,

Complainant,

and

BELLEVILLE RELIEF ASSOCIATION, a body corporate,

Defendant.

On Bill, &c.

Affidavit.

10

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

JOSEPH A. CONNOLLY, of full age, being duly sworn according to law on his oath, deposes and says:

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1. I am an attorney at law of the State of New Jersey, with offices at #164 Market Street, in the City of Newark, County of Essex and State of New Jersey.

2. In the month of May, 1923, I was retained by a number of gentlemen to incorporate themselves into an association to be known as Belleville Relief Association. I prepared the certificate of incorporation, and generally served as their legal attorney from that time to the present, in the course of which services I attended necessary conferences relating to the business affairs of said association and attended the various meetings of said association, which were held generally on Thursday night at the club-rooms in its building, Nos. 258 to 262 Washington Avenue, Belleville, N. J.

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Complainant's Exhibit 3.

3. During the period of time said Association was in existence, financial difficulties arose, and said Association found itself becoming more and more involved financially, and as its attorney I was appealed to on a number of occasions to advise some way out of the difficulties. Finally, I advised said Association that it ought to make a special effort to dispose of its property, known and designated as Nos. 258 to 262 Washington Avenue, Belleville, New Jersey, for the amount of its debts already thereon, which they had been attempting to do, through the office of Wines & Mathes, for a year or more previous.

4. During the month of April, 1925, at the request of said Association, I prepared a resolution for said Association, authorizing the sale of its said property for the amount of its debts, which approximated \$25,000. Said resolution, as to amounts, was left blank, to be filled in by the president when said amounts were actually ascertained.

5. After the passing of said resolution, I made efforts to induce Michael J. Tansey, the plaintiff in this suit, to acquire the title, according to the resolution, but that said Michael J. Tansey insisted that I should be empowered by a further action of said Association to enable me to deal with him in said matter.

6. In the early part of May, 1925, a meeting was held in the cloakroom, under the auditorium, on said premises, and attending said meeting were the following: Martin P. Cosgrove, President of said Association; Edward E. Mathes, Treasurer of said Association, James A. Mooney, Acting-Secretary of said Association; Patrick

Complainant's Exhibit 3.

O'Brien, and some Italian gentleman whose name is unknown to deponent; and deponent. The question of authorizing deponent to dispose of said property came up before the meeting, and a motion was made and passed authorizing the attorney for said Association to procure a purchaser for said property for the amount of the debts thereon, which approximated \$25,000. 10

7. The day following said meeting, I again took up the purchase of said property with said Michael J. Tansey, and then and there informed him that I was authorized by said Association on the evening previous to procure a purchaser for said property for the amount of said debts, and I informed him that the amount of said debts approximated \$25,000., but that in my opinion the debts would be several hundred dollars more. He then expressed his willingness to take over the property, and insisted that I should obtain for him a list of the debts. Said Michael J. Tansey thereupon in my presence made application to a building and loan for a loan upon the said premises, and drew his check for the committee fee for the inspection thereof. 20

8. On Tuesday evening, May 19, 1925, said Martin P. Cosgrove called at my residence in relation to a personal matter, at which time I informed him of a proposed purchaser whom I had induced to take title to the premises aforesaid. He then informed me that some person or committee had been investigating the property during that day, and thereupon I ascertained that it was a building and loan committee acting upon Mr. Tansey's application. I then disclosed the name of the purchaser, namely, Michael J. Tansey. 30

Complainant's Exhibit 3.

9. About one-half hour after said Cosgrove left my residence, Gustavus S. Wines called me on the telephone and advised me that he had a purchaser for said premises in the sum of \$23,500., and that he had received a deposit therefor in the sum of \$500. thereon. I thereupon informed him that the purchaser whom I had in view had agreed to take said premises for the amount of approximately \$25,000., and as I expressed it, a little more added thereto, but said Wines stated that he did not think his client would make an offer of \$25,000., and I then stated that \$25,000. was not sufficient according to the way I figured out the amount of the debts, and he then disputed the amount being over \$25,000.

10. The following morning I was called on the telephone by said Cosgrove and informed by him that he had obtained an offer of \$25,000., and that a check of \$500. was paid as a deposit thereon.

11. After having received said message from said Cosgrove I endeavored on a number of occasions to obtain from him a list of the debts for Mr. Tansey. On each occasion I was informed by said Cosgrove that he would mail the list to me. On one occasion, in the presence of several gentlemen, he informed me that he had mailed the list to me on that particular morning, but I have never received the same.

12. I had a conference with said Cosgrove several days prior to the signing of the contract with one Williams, for the purchase of said property, he being the person whom the said Wines had obtained to purchase the same, at which time I advised said Cosgrove to call a

Complainant's Exhibit 3.

meeting of said Association, and place the entire matter before them. This he promised to do, but not having heard from him, I made inquiry some time later and was informed by him that he had spoken to several of the members and that he then declined to call the meeting.

13. On a number of occasions I inquired of the said James A. Mooney whether or not he had the minutes of the meeting in which I, as attorney for said Association, was empowered to procure a purchaser, and he then informed me that he had the motion entered in the minutes in addition to the resolution authorizing the proper officers to sell the property. On one occasion, in the presence of several other, I asked him if he remembered the contents of the minutes of the meeting which we held in the cloakroom on the night that I was empowered, as the attorney of the Association, to procure a purchaser for said premises, and he stated, "Yes", and repeated what the motion was, to the following effect: That our attorney, Joseph A. Connolly, be empowered to procure a purchaser for our premises on Washington Avenue for the amount of the debts against the same, being approximately \$25,000. I have not seen the minutes of said meeting referred to, because the said Mooney has always given an excuse for not showing it to me when I asked him concerning the same. However, I am sure that that motion was made and passed, either in those or in similar words and in my presence.

14. I have never been able to furnish said Michael J. Tansey with the list of the debts of said Association, because of my inability to obtain same from said Cosgrove, who had prom-

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Complainant's Exhibit 3.

ised to give me a list of the debts against the Association as soon as it could be compiled, as he had charge of all the bills.

15. I was duly authorized to make sale of the premises and did make such sale to said Michael J. Tansey, and duly reported the same
10 to the President of said Association, before any sale was made or agreement entered into with said Williams.

16. Said Michael J. Tansey informs me that he is ready, willing and able to take the title to the premises.

JOSEPH A. CONNOLLY.

Sworn to and subscribed before me
20 this 1st day of August, 1925.

JOSEPH F. FOERST,
An Attorney at Law of New Jersey.

Opinion of Vice-Chancellor.

OPINION.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>MICHAEL J. TANSEY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BELLEVILLE RELIEF ASSOCIA- TION, <i>Defendant.</i></p>	}	<p><i>On Bill, &c.</i></p> <p><i>Opinion.</i></p>	<p>10</p>
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This memorandum is not to be published in the official or unofficial reports.

November 2, 1925. 20

Michael J. Tansey, Esq., *pro se.*

Nathan H. Berger, Esq., for the defendant.

MEMORANDUM OF OPINION.

BENTLEY, *V.-C.*

This is a motion to strike a bill of complaint, upon the ground that the bill and sworn testimony of the complainant conclusively show that the pleading will not lie.

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The pertinent allegations of the bill are, that the defendant adopted a resolution authorizing the sale of the land in question, and passed a second resolution authorizing an agent to negotiate the sale thereof; that the agent entered into an agreement to convey the land to the complainant for such a sum of money as would liquidate the defendant's debts, to be, however, not less than \$25,000. It is then said that the complainant undertook the usual and necessary steps to prepare for taking title, but that the

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Opinion of Vice-Chancellor.

defendant entered into an agreement with some other person to convey the property. The prayer is for specific performance of the complainant's contract with the agent of the defendant.

10 Pursuant to an order, the complainant presented himself and was cross examined by the defendant, from which it appears that the contract which he seeks to have enforced was not in writing, and that there was no memorandum thereof in writing signed by the defendant, or "some other person thereunto by him or her lawfully authorized," as required by the fourth subdivision of section five of "An Act for the Prevention of Frauds and Perjuries" (2 C. S., 2612). There was no memorandum, letter, note, or other documentary evidence of the alleged contract produced or proved and, therefore, it is clear, of course, that none exists or can be proved upon a final hearing if the cause were permitted to proceed thereto. This brings the motion within the authority of *Strauss v. Rabe* (3 N. J. Adv. R., 84, affirmed 3 *Id.* 1689, not yet officially reported). In that case it was said:

20
30 From these cases it is argued, and I think with soundness, that where a bill upon its face appears to set forth a valid cause of action but it is otherwise made to appear by the complainant's own proofs, such as the verifying affidavits or schedules annexed to his bill, or otherwise, that in all truth and honesty the bill does not exhibit the true state of facts, and that the latter preclude all possibility of his success, there is inherent power in the Chancellor to dismiss the bill.

40 It is true that the pleading in question does not mis-state the facts, but there is an ambiguity

Opinion of Vice-Chancellor.

which the examination of the complainant clears up and, for that reason, I feel that the defendant's motion should be granted.

In the brief presented on behalf of the complainant, the argument would indicate that he has mistaken the theory and purpose underlying the application of the defendant. He cites a wealth of authorities, to prove that the agent of the defendant with whom he treated was lawfully empowered to bind the defendant by a valid contract, but there is not one word to show that such action was ever taken by the agent or by his principal. This motion would never have been undertaken had the agent ever entered into a contract, as required by the statute. Of course, it is elementary that if the principal cannot be held on an oral promise to sell or convey made by himself, it is equally clear that he cannot be compelled to convey on the basis of such a promise made by his agent, irrespective of how firmly the authority of the agent is established.

I will advise an order striking out the bill.

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Notice of Motion.

NOTICE OF MOTION.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}	
10	MICHAEL J. TANSEY, <i>Complainant,</i>		<i>On Bill, &c.</i>
	<i>and</i>		<i>Notice of</i>
	BELLEVILLE RELIEF ASSOCIA- TION, <i>Defendant.</i>		<i>Motion.</i>

To Michael J. Tansey, solicitor of complainant:

20 TAKE NOTICE, that on Monday, November 30, 1925, at ten o'clock in the forenoon, or as soon thereafter as I can be heard, I shall apply to the Honorable John Bentley, one of the Vice-Chancellors of this Court, at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, for the settlement of the decree in the above-entitled matter, in accordance with the opinion of the Court; that at the same time and place I will apply for a counsel fee for the defendant, to be paid by the complainant.

30 Annexed hereto is a copy of the proposed decree which I will submit to the Court at said time and place.

Yours very truly,

NATHAN H. BERGER,
Solicitor for Defendant.

Decree of Dismissal.

DECREE OF DISMISSAL.

IN CHANCERY OF NEW JERSEY.

Between

MICHAEL J. TANSEY,
Complainant,

and

BELLEVILLE RELIEF ASSOCIA-
TION,

Defendant.

On Bill, &c. 10

*Decree of
Dismissal.*

This matter being opened to the Court by Nathan H. Berger, of counsel with the defendant, and in the presence of the complainant, as solicitor *pro se*, and it appearing that the complainant filed a bill of complaint herein for the specific performance of an agreement to convey lands alleged to have been entered into by the defendant with the complainant, which lands and premises are particularly described in the bill of complaint herein, and it appearing that pursuant to an order, the complainant over his objection presented himself and was cross examined by the defendant, before this Court, and that from this examination it appears that the contract which the complainant seeks to have enforced was not in writing, and that there was no memorandum thereof in writing signed by the defendant or some other person thereunto by the defendant lawfully authorized, as required by subdivision 4, sec. 5 of the Statute of Frauds (2 C. S. 2612), and that there was no memorandum, letter, note, or other documentary evidence of the alleged contract produced or proved, and that none exists or can be proved

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Decree of Dismissal.

upon a final hearing, if the cause were permitted to proceed thereto, it is, thereupon, on this 30th day of November, 1925, on motion of Nathan H. Berger.

10 ORDERED, ADJUDGED and DECREED that the bill of complaint herein be, and the same is hereby dismissed with costs to the defendant. It is further ORDERED, ADJUDGED and DECREED that the complainant pay to the defendant a counsel fee of \$100, to be taxed as part of the costs of this suit.

EDWIN ROBERT WALKER,
Chancellor.

Respectfully advised,

20 JOHN BENTLEY,
V.-C.

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Notice.

NOTICE.

IN CHANCERY OF NEW JERSEY.

Between

MICHAEL J. TANSEY,

Complainant,

and

BELLEVILLE RELIEF ASSOCIA-
TION,

Defendant.

On Bill, &c.
Notice.

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To Belleville Relief Association:

YOU ARE HEREBY NOTIFIED that it is the inten-
tion of the above-named complainant to imme-
diately appeal to the Court of Errors and Ap-
peals from the decision of Vice-Chancellor Bent-
ley, granting the motion of defendant to strike
out complainant's bill; and you are hereby
warned not to make any conveyance in the mean-
time or take any steps which will in any way
prejudice the questions to be litigated.

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MICHAEL J. TANSEY,
Complainant, Solicitor *pro se.*

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Dated, November 13, 1925.

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Affidavit of Service.

AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>MICHAEL J. TANSEY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BELLEVILLE RELIEF ASSOCIA- TION, <i>Defendant.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Affidavit of</i></p> <p><i>Service of</i></p> <p><i>Notice.</i></p>
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STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

20 I, Philip A. Donnelly, of full age, being duly sworn according to law, on my oath depose and say that I served a notice of appeal in above-entitled cause on Mr. Cosgrove, as president of the Belleville Relief Association, by leaving a copy thereof with him Friday, November 13th, 1925, at the Moose Hall, Belleville, N. J.

PHILIP A. DONNELLY.

30 Sworn to and subscribed before me
this 14th day of November, 1925.

ELLA TANSEY,
Notary Public of New Jersey.

Notice of Appeal.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>MICHAEL J. TANSEY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BELLEVILLE RELIEF ASSOCIA- TION, a body corporate, <i>Defendant.</i></p>	}	<p><i>On Bill, &c.</i> 10</p> <p><i>Notice of Appeal.</i></p>
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The complainant in the above-stated cause hereby appeals from the Court of Chancery to the New Jersey Court of Errors and Appeals from the order of the Chancellor made in said cause dismissing the bill of complaint therein. 20

MICHAEL J. TANSEY,
Solicitor *pro se.*

Service hereof acknowledged November 30,
1925.

NATHAN H. BERGER,
Solicitor for Defendant. 30

Petition of Appeal.

PETITION OF APPEAL.

Filed December 22, 1925.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between

MICHAEL J. TANSEY,

Appellant,

and

BELLEVILLE RELIEF ASSN.,

Respondent.

On Bill, &c.
Appeal.

Petition of
Appeal.

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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

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The humble petition of Michael J. Tansey, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final order made, in the Court of Chancery, by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the thirtieth day of November, in the year one thousand nine hundred and twenty-five, in a cause wherein the said Michael J. Tansey was complainant and the said Belleville Relief Assn. was the defendant, in this respect, to wit: that the said order adjudges that from a cross examination of complainant (over objection), it appeared that the contract which the complainant seeks to have enforced was not in writing, and that there was no memorandum, letter, note or documentary evidence of said contract produced or proved, and that none exists or can be proved, on final

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Petition of Appeal.

thereto and that the bill should be and was there-
 by dismissed with costs and a counsel fee to
 defendant. And your petitioner humbly appeals
 from that part of the order of the Chancellor
 which orders as aforesaid, upon the ground that
 the same is erroneous, for that the said order
 should have adjudged that there was a sufficient
 note or memorandum of said agreement signed
 and executed by said complainant or some per- 10
 son thereunto lawfully authorized and other
 documentary evidence sufficient to comply with
 the statute in such case made and provided, and
 which could be produced and proved upon final
 hearing, if the cause were permitted to proceed
 and that the bill of complaint be sustained. Your
 petitioner therefore prays that the said order
 of the said Chancellor may be, in the particulars 20
 aforesaid, reversed, set aside and for nothing
 holden and said bill sustained with costs and
 counsel fee to complainant. And that your peti-
 tioner may have such relief in the premises as
 to this Honorable Court shall seem meet.

MICHAEL J. TANSEY,
 Solicitor for and of Counsel *pro se*.

Service of the within petition of appeal hereby
 acknowledged this 17th day of December, 1925. 30

NATHAN BERGER,
 Sol'r. for Respondent.

Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

	<i>Between</i>	
10	MICHAEL J. TANSEY, <i>Complainant-Appellant,</i> <i>and</i> BELLEVILLE RELIEF ASSOCIA- TION, a body corporation, <i>Defendant-Appellee.</i>	}
		<i>On Bill, &c.</i> <i>On Appeal.</i> <i>Answer to</i> <i>Petition of</i> <i>Appeal.</i>

The answer of the above-named appellee to the petition of the above-named appellant.

20 This appellee, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 30th day of November, 1925, made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof this appellee prays to refer thereto when the same shall be produced. And this
30 appellee is advised and believes that the said decree is agreeable to equity and it prays that the same may be affirmed with costs to be adjudged to this appellee.

NATHAN H. BERGER,
Solicitor for and of Counsel
with the Defendant-Appellee.

Service acknowledged December 24, 1925.

40

MICHAEL J. TANSEY

Notice of Argument.

NOTICE OF ARGUMENT.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MICHAEL J. TANSEY,
Complainant-Appellant,
and
BELLEVILLE RELIEF ASSOCIA-
TION, a body corporation,
Defendant-Appellee.

On Appeal.
Notice of
Argument.

10

SIR:

Please take notice of the argument of the ap-
peal in the above-stated cause, on Tuesday, Feb-
ruary 2, 1926, in the Court of Errors and Ap-
peals, State House, Trenton, New Jersey, at ten-
thirty o'clock in the forenoon, or as soon there-
after as the matter can be heard.

20

MICHAEL J. TANSEY,
Solicitor and Counsel *pro se.*

To Nathan H. Berger, Esq., solicitor for defend-
ant-appellee, or whom it may concern.

Dated, December 30, 1925.

30

Service of the within notice of argument here-
of acknowledged this 30th day of December, 1925.

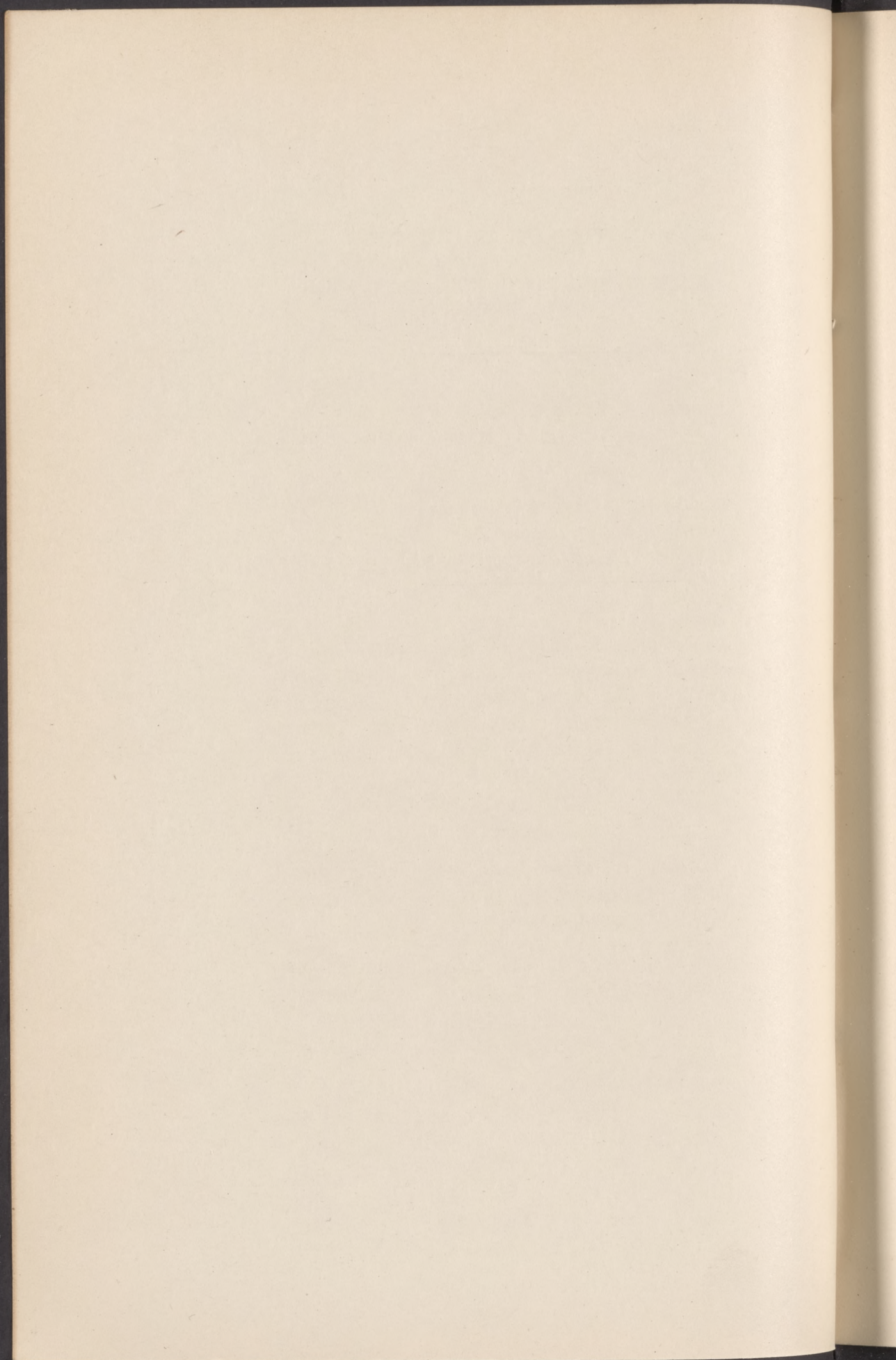
NATHAN H. BERGER,
Solicitor for Defendant-Appellee.

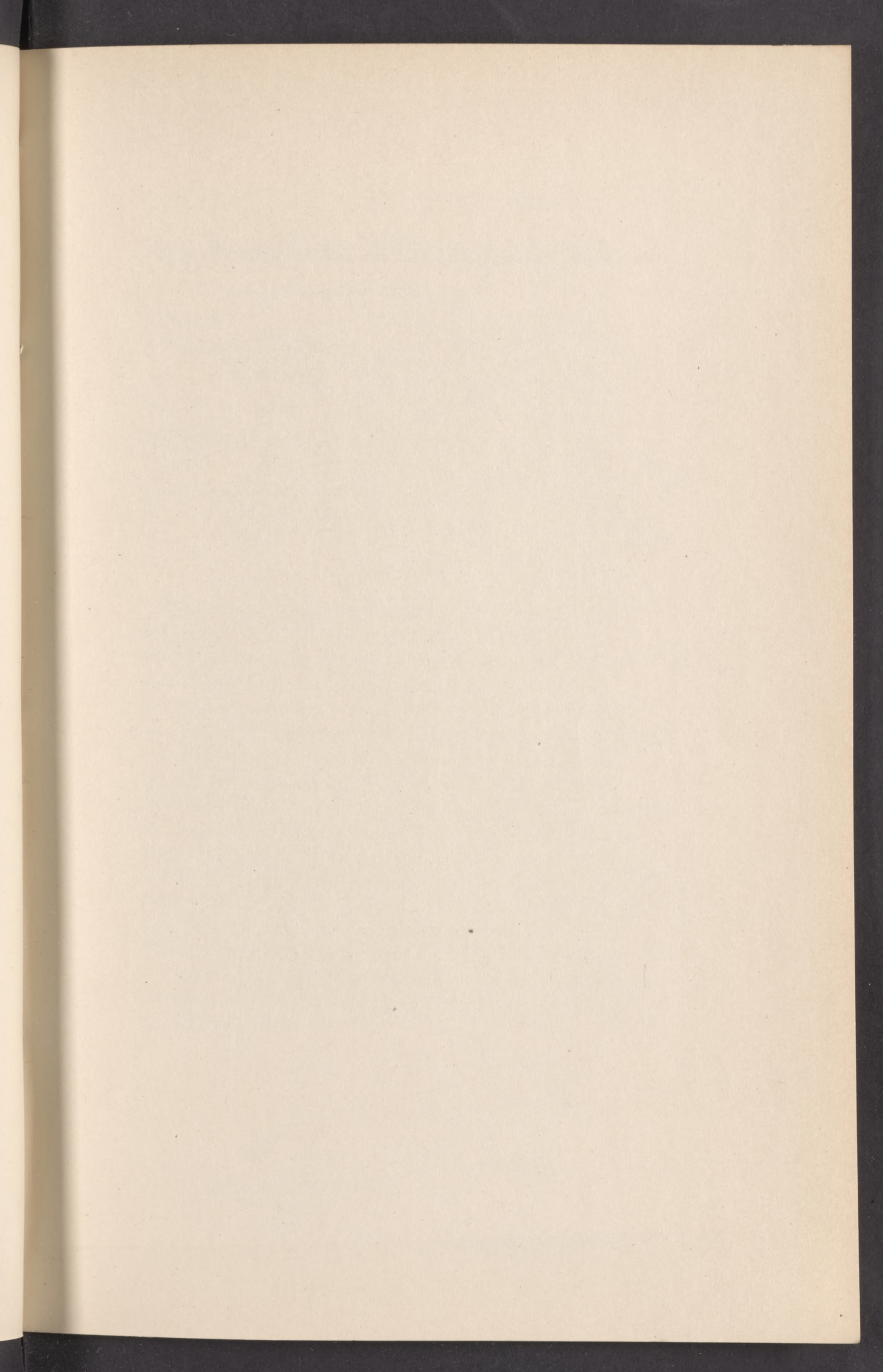
Sat below: *Walker, C.; Bentley, V.-C.*

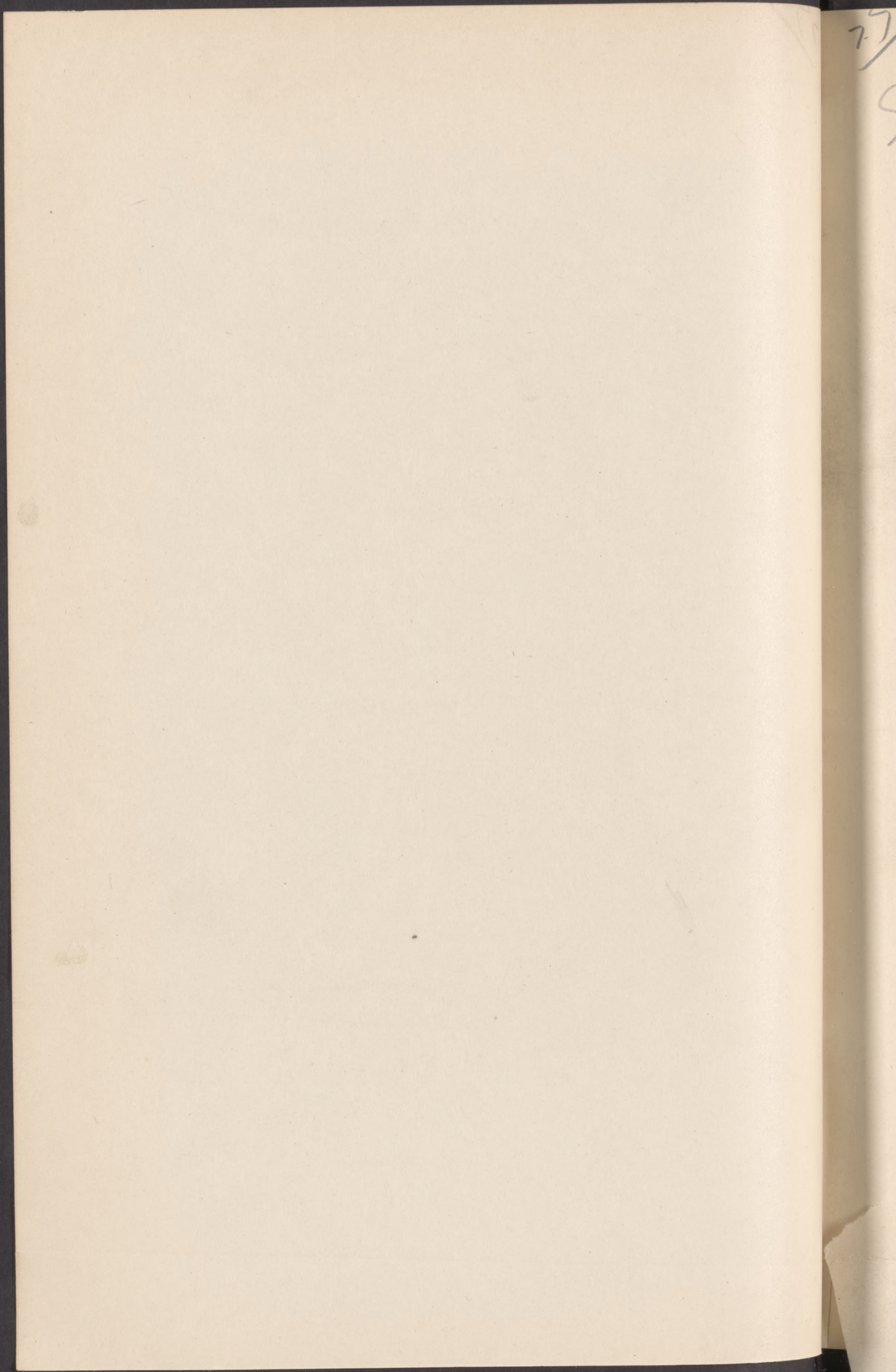
Service of within notice hereby ratified this
12th day of Jan., 1926.

NATHAN H. BERGER,
Atty. for Def't.

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77 FEB. 1. 1926

File Clerk's Office

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

MICHAEL J. TANSEY,
Complainant-Appellant,

vs.

BELLEVILLE RELIEF ASSOCIATION,
Defendant-Appellee.

On Bill, &c.

On Appeal.

APPELLANT'S BRIEF.

Facts.

The complainant files his bill for specific performance of a contract which is alleged in the bill to have been made by the complainant with one Joseph A. Connolly, the attorney for the defendant, and who had been duly authorized to sell and dispose of, by written resolutions of the defendant company, entered on their minutes, premises Nos. 258-262 Washington avenue, Belleville, N. J., and more particularly described in the state of the case, pages 1 and 2, for such sum not less than \$25,000 as would provide for the payment of the debts of the defendant association in connection with said property, and the lien thereon, and the complainant agreed to take and purchase said premises at the aforesaid sum as soon as the exact amount of such debts and liabilities could be ascertained, which said Joseph A. Connolly was to have obtained within a few days thereafter, from the president of the defendant company, said Joseph A. Connolly notified complainant of the action of the company authorizing the sale and presented him a copy of the resolutions in the body of one of which were some figures relating to the debts of the associa-

Received 3 copies of printed
Brief February 5, 1926

Matthew G. Perry
attorney for defendant
appellee -

tion and thereafter presented him with the substance of a subsequent resolution of said company specifically authorizing said Joseph A. Connolly as attorney of the organization, to make sale of the premises. Complainant regarding these resolutions as a proposal on the part of the company accepted the same and notified the company through Mr. Connolly of his acceptance. He also thereupon applied for and was granted a loan upon the premises by a Building and Loan Association to help turn the deal. After the company was notified of complainant's acceptance, it did not take necessary steps to complete the conveyance in conformity with the proposal, but made an agreement for sale with another party at a less price and accepted a deposit from him thereon. Complainant thereupon filed his bill for specific performance and the subsequent purchaser claiming to represent defendant company, made his motion to strike out the bill, which after testimony taken was so ordered by Vice-Chancellor Bentley, on the ground among other things that there was not sufficient written memorandum to bind defendant company and satisfy the Statute of Frauds.

Complainant appeals from this decision.

ARGUMENT.

On the motion to strike out, the defendant admits all the material allegations of the bill, among which are that the authorization of Mr. Connolly to make all steps necessary to negotiate the sale of the lands in question was by resolution duly entered in the minutes of the defendant association, and that in pursuance of the authority he entered into an agreement with complainant to sell and convey to complainant on behalf

of said Belleville Relief Association, the land for such sum not less than \$25,000.00, as would provide for the payment of the debts of said Association in connection with said property and the liens thereon, and said complainant agreed to take and purchase said premises at the aforesaid sum as soon as the exact amount of such debts could be ascertained. Doing this it is plain that they cannot prevail on this motion for the authority of the agent to sell is apparent and binds the principal within the scope of that authority. This is familiar law, and would bind the principal even if the agent's authority were by parol.

Milne v. Kleb, 44 Eq. 378.

But his authority is express and entered in the corporation's minutes in the way a corporation generally proceeds.

His action in pursuance of this authority binds the corporation, and the fact that they have not executed a formal contract is immaterial.

Strauss v. Rabe, 127 Atl. 188.

In the U. S. Supreme Court Case of *Bank of Columbia v. Paterson*, 7 Cranch 298, where the question of agent's authority to bind the corporation was raised and it was said in argument that a corporation aggregate could only bind itself by an undertaking under seal. The Court held:

“At length it seems to have been established that though they (the corporation) could not contract directly except under their corporate seal, yet they might by mere vote or other corporate act, not under their corporate seal, appoint an agent whose acts and contracts within the scope of his authority would be binding on the corporation, and Courts of Equity seeming to follow the law, have decreed a specific performance of an agreement made by a major

part of a corporation and entered in the corporate books although not under the corporate seal. The sole ground upon which such an agreement can be enforced must be the capacity of the corporation to make an unsealed contract.

It is conceded in the present case that the committee was fully authorized to make agreements, there could then be no doubt that a contract made by them in the name of the corporation and not in their own names would have been binding on the corporation. As, however, the committee did not so contract, if the principles of law on this subject stopped here, there would be no remedy for the plaintiff except against the committee.

The technical doctrine that a corporation could not contract, except under its seal, or in other words, could not make a promise, if it never had been fully settled, must have been productive of great mischiefs. Indeed as soon as the doctrine was established, that its regularly appointed agent could contract in its name without seal, it was impossible to support it, for otherwise the party who trusted such contract would be without remedy against the corporation.

Accordingly, it would seem to be a sound rule of law that wherever a corporation is acting within the scope of the legitimate purposes of its institution, all parol contracts made by its authorized agents are express promises of the corporation; and all duties imposed on them by law and all benefits conferred at their request raise implied promises for the enforcement of which an action may well lie. And it seems to the Court that adjudged cases fully support the position."

The plaintiff in that case was allowed to recover on an implied promise to pay for extra work in building a house for defendant corporation, the original contracts for which were made

in the name of a committee authorized by defendant corporation to construct the building, which contract did not provide for extra work.

There is no doubt therefore that the acts of a duly authorized agent bind the corporation, even though no specific authority is given except that in the corporate minutes.

See also *Chesapeake Canal Co. v. Knapp*, 9 Peters (U. S.) 541-563 at 565.

The authority to an agent to make a contract to convey land need not be in writing: it binds the principal even though the authority was by parol.

Long v. Hartwell, 5 Vr. (34 L.) 116-121.

The agent's powers under the resolutions in question were certainly ample to bind the corporation by his agreement, so that it would be obliged to execute the necessary contract in writing to carry out the agent's agreement; otherwise his authorization would be futile.

A formal written contract is not necessary under the Statute of Frauds; the contract to satisfy the statute may be gathered from correspondence passing between the parties, as an offer made and accepted.

Gable v. English, 93 Eq. 172.

and cases therein cited.

A plain proposal appears in this case by resolution of the corporation, communicated to complainant in writing by Mr. Connolly, as agent of the corporation, and accepted by the complainant in the words of the resolution.

The Court's question as to whether the complainant could insist on holding defendant where he himself was not bound is answered in cases

which hold that a unilateral agreement is made mutual by filing a bill to enforce.

South Jersey Furniture Co. v. Dorsey, 95 Eq. 530-535.

Green v. Richards, 23 Eq. 536.

It is expressly held in the case of *Joslin v. N. J. Car Spring Co.*, 7 Vr. (36 L.) 144-146, that a resolution entered on the corporate minutes is sufficient writing as a promise to pay the debt of another to support an action by a third person, to satisfy the Statute of Frauds; and this case makes complainant's position secure, that the corporate resolution in the case at bar was a sufficient binder to hold the defendant. Also the case of *Mayor v. Harrison*, 71 L. 69, at 71, expressly holds that a resolution passed by a municipal legislative body communicated to the other party and accepted by him constitutes an irrevocable contract. The transactions of private persons are on the same basis and governed by the same rules. (See case.)

The resolutions were duly passed, communicated to complainant and accepted by him. The Statute of Frauds is thereby satisfied. It was not necessary, as intimated in the Court's opinion (case, page 33), that Mr. Connolly should do anything more than receive and communicate complainant's acceptance.

The case of *Mayor v. Harrison*, 71 L. 69-71, holds that a resolution passed and communicated to the other contracting party, by direction of the party adopting the resolution and accepted by him takes the case out of the Statute of Frauds and becomes an irrevocable contract.

Complainant accepted and then acted upon the contract by applying for and obtaining a loan from a building and loan association on mort-

gage to put the deal through. The Belleville Relief Association could not disregard the rights of complainant to have conveyance according to the contract.

The acceptance consummates the bargain, provided the offer is standing at the time of acceptance.

Water Commissioners of Jersey City v. Brown, 3 Vr. 504-509; *Empire Rubber Co. v. Morris*, 73 Law 603; *Hallock v. Insurance Co.*, 26 Law 268; *Granite Co. v. West*, 65 Law 46; *Murphy v. Stultz*, Chancery Decree, July, 1832, Saxt. 566.

It must be remembered that the Belleville Relief Association was in this instance the proposer. Complainant accepted the proposal without any variations as fully as made, and communicated his acceptance. The contract thereby became complete and irrevocable.

I think it is unnecessary to cite other cases to show that *Strauss v. Rabe* is no authority to strike out the bill here, upon the theory therein stated, that, "the true state of facts precludes all possibility of complainant's success."

An agent's authority to bind his principal in the sale of lands is fully discussed in *Kindley v. Keim*, Err. & App., 54 Eq. 418, at 422.

On appeal from 30 Alt. 1063.

It is not necessary to allege in the bill of complaint that the promise was in writing.

Wilkinson-Gaddis Co. v. Van Riper, 63 Law 394.

Wheeler v. Casualty Co., 73 Law 677.

A demurrer on that account would not be sustained. A motion to strike out, is in the nature of a demurrer to the bill and will carry the same

ruling. *Strauss v. Rabe* only affects a case where the statements of the bill are untruthful. The true state of facts does not preclude all possibility of complainant's success on final hearing, and the motion therefore should not have prevailed.

Respectfully submitted,

MICHAEL J. TANSEY.
KRAEMER & SIEGLER,
Counsel.

New Jersey Court of Errors and Appeals

Between

MICHAEL J. TANSEY,
Complainant-Appellant,

and

BELLEVILLE RELIEF ASSOCIA-
TION, a corporation,
Defendant-Respondent.

On Bill, &c.

Appeal from

Decree

in Chancery.

BRIEF OF DEFENDANT.

Statement of Facts.

THE PLEADINGS.

1. Complainant-appellant filed a bill in the Court of Chancery, in which he alleges that defendant-respondent owned premises at 258-262 Washington avenue, Belleville, New Jersey, that by a resolution, adopted by the defendant, it authorized its proper officers to contract for the sale of said premises for approximately \$25,000.00, and to sign and execute the proper deed therefor; that defendant adopted a resolution empowering Joseph A. Connolly, a lawyer, to negotiate the sale of said premises; that the latter agreed with complainant to sell and complainant agreed to purchase said premises; that in the meantime officers of defendant made an agreement to sell this property to another purchaser for the sum of \$25,000.00, received a deposit from the said purchaser, and neglected and refused to carry out the arrangement made by Joseph A. Connolly with complainant. The bill seeks the specific performance of an alleged contract between the complainant and Joseph A. Connolly in behalf of the defendant.

PROCEEDINGS AFTER THE FILING
OF THE BILL.

Defendant-respondent moved to strike said bill, on the ground that complainant cannot produce proofs under the said bill, or under an amended bill, that would entitle him to the remedy he seeks in this case (State of Case, p. 12).

Pursuant to an order made by Vice-Chancellor Bentley, complainant was examined in open court, and he gave the following testimony:

“Q Did Mr. Joseph A. Connolly ever sign a written agreement with you in reference to this property, either in his own name or in the name of the Belleville Relief Association? A Mr. Connolly hasn't signed any agreement with me. And, if your Honor please, I also object to that because we do not allege that that is within Mr. Connolly's authority and I do not think it is within the scope of his authority to sign.

Q Did Mr. Connolly sign any memorandum or note in writing in reference to the sale of this property to you? A He submitted to me a general statement as to the amount of the debts of the association.

Q Did Mr. Connolly sign any memorandum in the nature of an agreement for the sale of this property to you? A Nothing, excepting the memorandum that he submitted to me of the debts of the association.

Q And the memorandum you speak of contained some figures as to the obligations of the association? A General information as to what we would expect to pay for it; and he also submitted to me a copy of the resolutions which applied to the situation.” (State of Case, p. 18.)

“Q Isn't it a fact, Mr. Tansey, that you arranged for a written agreement to be made to you by the officers of this association? A I spoke to Mr. Connolly as to getting the

exact price of it, and I was waiting for that when this other situation intervened.

Q Didn't you at any time speak to Mr. Connolly about getting a written agreement signed by the officers of the association for the sale of this property to you? A I don't recall the extent of our conversation, but the substance of it was what I told you, and every day or two I would ask Mr. Connolly if he had written the statement yet, and he finally told me that Mr. Cosgrove was going to call a meeting of the association and would let him know when the meeting was to be held in order to ratify the action.

Q To ratify the sale to you? A Yes."

(State of Case, p. 21, folio 38, and p. 22, to folio 18.)

This testimony of the complainant shows beyond doubt that there was no agreement or any memorandum thereof, in writing, signed by the defendant, or some person thereunto by him or her lawfully authorized, as required by the fourth subdivision of section five of "An Act for the Prevention of Fraud and Perjuries" (2 C. S. 2612). There was no memorandum, letter, note or other evidence of the alleged contract, and it is quite clear that none exists or can be proved upon a final hearing, if the cause were permitted to proceed thereto (opinion of Vice-Chancellor Bentley, State of Case, p. 32).

In accordance with the Court's findings, it struck the bill.

ARGUMENT.**I.****The action of complainant is barred by the Statute of Frauds.**

Complainant brings this action upon a contract, covering the sale of lands. The fourth subdivision of Section 5 of "An Act for the Prevention of Frauds and Perjuries" (2 C. S. 2612) provides that: "No action shall be brought upon any contract or sale of lands, tenements or hereditaments unless the agreement on which said action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or some other person thereunto, by him or her lawfully authorized."

The entire case of complainant is predicated on two resolutions (State of Case, pp. 23 and 24), one authorizing the officers of the association to sell the property and the other authorizing Joseph A. Connolly to procure a purchaser for and negotiate the sale of the property. Complainant claims a verbal understanding with said Joseph A. Connolly, to buy this property, and to pay for it an amount not less than \$25,000, which was still to be determined, the transaction to be ratified at a meeting of the directors of the defendant corporation; that owing to the neglect of the president of defendant to prepare a list of the debts of the defendant and to call this meeting, the arrangement between Connolly and the complainant never took place. That there was no written agreement or memorandum as required by the Statute of Frauds, is thoroughly established, and is so found by the learned Vice-Chancellor, in his opinion, the complainant speaks of a memorandum which was submitted to him of

the debts of the association, containing "general information as to what we would expect to pay for it" (State of Case, p. 18). This was not signed by anybody and is of no value to satisfy the requirements of the statute.

In the case of *Johnson & Miller v. Buck* (35 N. J. Equity 338), on page 343, Justice Depue discussed the requirements of a memorandum to satisfy the Statute of Frauds. He holds that the memorandum must contain the full terms of the contract, the names of the buyer and seller, the subject of the sale, the price and terms of credit and the conditions of the sale, if any, citing *Story on Sales*, paragraph 467; *McLean v. Nicoll*, 7 H. & N. 1024; *Fitzmaurice v. Bailey*, 9 H. of L., Cas. 78.

The Court goes on as follows: "To supplement this memorandum, or supply the omission of any of the essential parts of the contract, parol testimony cannot be received. The policy of the statute is to exclude testimony of that uncertain character with respect to transactions within its provisions. It therefore requires the substantive parts of the contract to appear in writing. To admit parol evidence of any of the terms of the contract with respect to which the memorandum is silent, would open the door to the very mischief the statute was intended to suppress."

In the case of *Schenck v. Spring Lake Beach Improvement Co.* (47 N. J. Equity 44, 19 Atlantic Reporter 881), the Court, in dismissing a bill for specific performance on motion, holds that the agreement is within the Statute of Frauds; that no action can be maintained on a contract, which an agent for a corporation makes, unless its essential terms are put in writing. "The doctrine

is settled that a writing, to be entitled to be held to be a compliance with the requirements of the Statute of Frauds, whether it be an agreement or a memorandum or note, must contain all the essential terms of the bargain, expressed with such certainty that they may be ascertained from the writing itself, without the aid of oral evidence. Nothing can be added or supplied by parol proof, for the introduction of evidence of that kind, would let in, at once, a lot of evils which the statute was designed to suppress. 2 Kent. Comm. 511, Brown St. Frauds, paragraph 371.

II.

Decree of Dismissal was Properly Entered.

Complainant could not have prevailed at final hearing, and the decree of dismissal would have been inevitable. The making of this decree after examination of complainant is supported by the authority of *Straus v. Rabe* (127 A. 188). In that case the bill was dismissed after examination of complainant in open court, before final hearing. This examination disclosed the fact that, if the case were to go to final hearing, it would result in a dismissal at that time, because complainant could not, on his own evidence, prevail.

The Court of Chancery may, of its own motion, dismiss a bill for specific performance of a contract. The jurisdiction of a Court of Equity to decree the specific performance of a contract is not a matter of right to be demanded but applications invoking this power of the Court are addressed to its sound and reasonable discretion, and are granted or rejected, according to the circumstances of each case. (See 36 Cyc. 548, *Smith v. McVeigh*, 11 N. J. E. 239.)

In *Plummer v. Keppler*, 26 N. J. E. 481, Chancellor Runyon holds that the remedy by specific performance is discretionary. The question is not what must the Court do, but what, in view of the circumstances of the case should it do to further justice, where the enforcement of the contract will be attended with great hardship or manifest injustice, the Court will refuse its aid. See also *Hummer v. Buerk*, 106 A. 143, and *Bullis v. Pitman*, 105 A. 591.

In the case of *Rutherford v. Alyea*, 34 Atl. 1078, Justice Dixon holds that the Court of Chancery may, of its own motion, stop proceedings on a bill of complainant at the early stage of a case.

To the same effect *Cutting v. Dana*, 25 N. J. E. 265, at page 273, and *Tansey v. Suckoneck*, 130 Atl. 528.

The case at bar was a proper case in which the Court of Chancery could, of its own motion, dismiss the bill, in view of the facts disclosed by the bill and the testimony of complainant. Defendant made a sale of its property to a buyer other than complainant and received a deposit on this sale; complainant did not put up a dollar; he has nothing to risk except a bill of costs.

There was no agreement that had any binding effect on complainant, giving defendant a reciprocal right against complainant to compel complainant to take title to this property.

The case of *Milne v. Kleb*, 44 N. J. E. 378, (cited in complainant's brief) does not deal with the question as to the kind of agreement necessary to be signed by the agent (assuming that the agent had the authority to sign such an agreement) to comply with the requirements of the statute of frauds. The same is true of the case of *Long v. Hartwell*, 34 N. J. L. 116.

The case of *Water Commissioners v. Brown*, 32 N. J. L. 504 (cited by complainant), has a direct application to the case at bar, because that case holds that a contract does not become complete and binding unless reduced to writing and signed, if it appears that such was the intent of the parties. Until the contract is complete, either party may withdraw his consent and end the negotiation. The complainant, in his testimony, above quoted, admitted that the negotiations which he had with Joseph A. Connolly, the agent of the defendant, were to bring about an agreement to be signed by the defendant after the ratification of the transaction at a meeting of the directors of the defendant corporation. There is absolutely no force whatever in the argument of complainant that the resolution authorizing Joseph A. Connolly to negotiate the sale of the property, constituted a written offer, as it was not an offer to anybody and did not embody the price of the property in question or terms of sale, and the complainant did not accept the same, if it were an offer, by anything that he claims he did, beyond asking Joseph A. Connolly to obtain the figures with the aid of which the price could be arrived at, according to the complainant's own contention.

There is the elementary proposition of the necessity of a meeting of the minds of the parties to a contract, to give it any force or effect. In the case at bar, there was nothing definite as to price or terms on which there could have been a meeting of the minds.

The complainant cites the case of *Keim v. Lindley*, 54 N. J. E. 418 (30 A. R., 1063). In that case, it is held that a mere employment of a real estate broker to find land at a stated price does not constitute authority to execute a con-

tract binding upon his principal. In that case there was no objection on the ground of the Statute of Frauds, because there was a written agreement forming the basis of the litigation.

The case of *Gable v. English*, 93 N. J. E. 172 (115 A. R., 374, cited in complainant's brief), supports the contention of the defendant, as it alleges that the offer to sell, with the terms thereof, must be unconditionally accepted and, furthermore, in that case there was correspondence between the contracting parties. In that case it was held that there was no unequivocal acceptance by complainant of defendant's offer and the bill was dismissed.

Appellant cites the cases of *Richards v. Green*, 23 N. J. E. 536, and *South Jersey Furniture Co. v. Dorsey*, 95 N. J. E. 530, in support of the proposition that the objection to a unilateral contract ceases upon the filing of the bill for specific performance. These cases have no application to the case at bar. There was no unilateral contract in the case at bar of the kind required by the Statute of Frauds, at the time of the filing of the bill in this case.

It is respectfully urged that the decree of the Court of Chancery should be affirmed.

NATHAN H. BERGER,
Of Counsel with Defendant-Respondent.



