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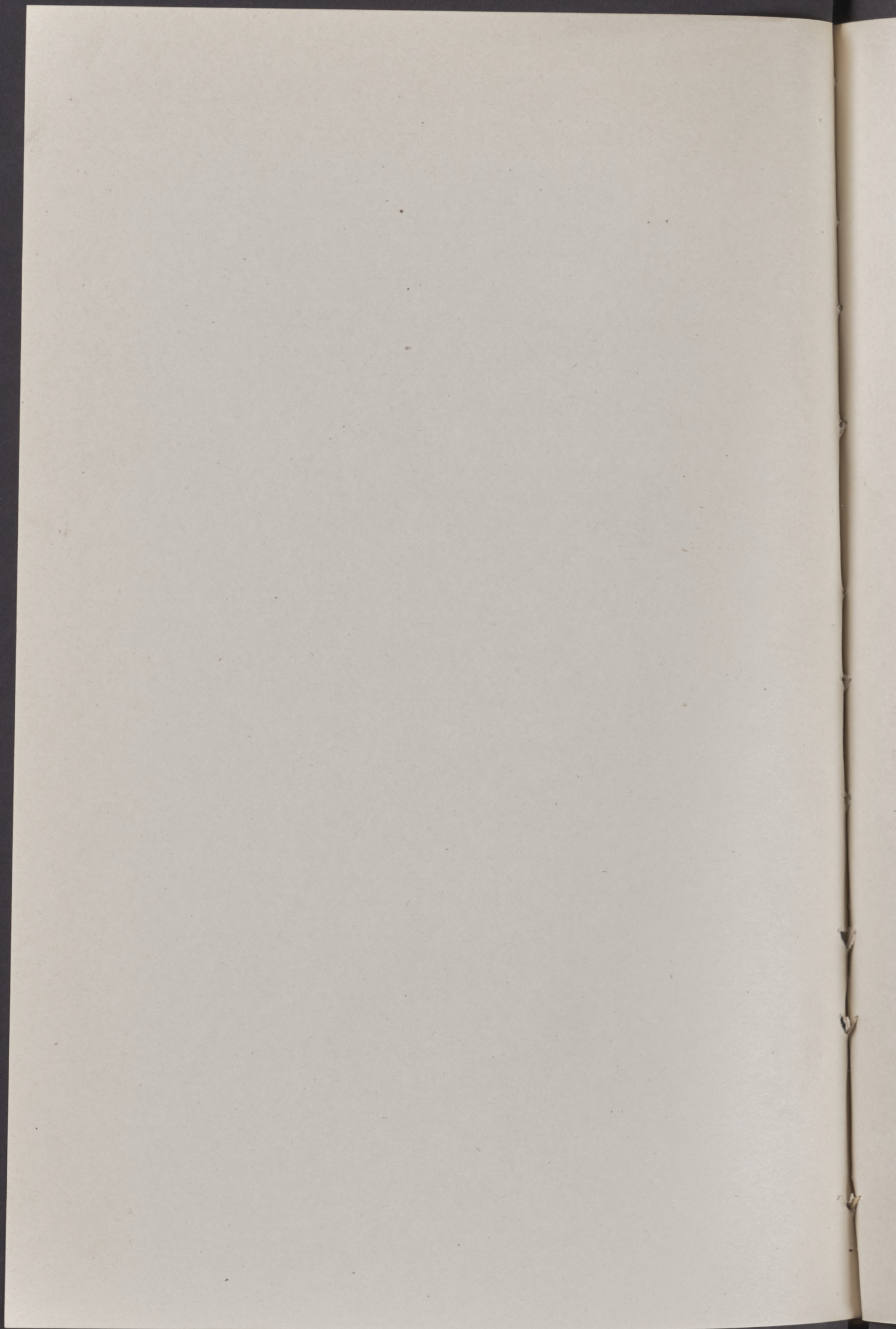
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(Filed June 18, 1917)

In Chancery of New Jersey.

Between

JACOB H. BROWN,

Complainant,

and

WILLIAM BERRY et als.,

Defendants.

On Bill, Etc.

10

Notice of Appeal.

The defendants hereby appeal from the final decree, and from the whole and every part thereof, made in this Court, in the above stated cause, to the Court of Errors and Appeals in the last resort in all causes.

Dated, June 15, 1917.

20

Hudson & Joelson,
Solicitors for Defendants.

Walter R. Hudson,
Of Counsel.

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

Hudson & Joelson,
Of Counsel with Defendants.

Service acknowledged June 21, 1917.

Howe & Davis,
Solicitors for Complainant.

30

Petition of Appeal

(Filed June 21, 1917)

NEW JERSEY COURT OF ERRORS AND
APPEALS

10	Between JACOB H. BROWN, <i>Complainant-Respondent,</i> <i>and</i> WILLIAM BERRY et als., <i>Defendants-Appellants.</i>	}	<i>On Bill, Etc.</i> <i>On Appeal from</i> <i>Final Decree of</i> <i>the Court of</i> <i>Chancery.</i>
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Petition of Appeal.

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

20 The petition of William Berry and Sarah J. Berry, his wife; Sanford E. Thompson and Mrs. Sanford E. Thompson, his wife; Anna S. Thompson and Sarah A. Thompson, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-seventh day of April, 1917, in said cause, wherein Jacob H. Brown was complainant, and your petitioners were defend-

30 ants, in this respect, to wit: That the said decree adjudges that, in respect to all the lands and premises described in the bill of complaint filed in said cause and also in said decree, so far as relates to any claim thereon by or on behalf of any of said defendants that the said defendants, or any or either of them, have no claim, right, title, interest or estate in or to the said lands and premises, or any part thereof, and further adjudges that the title of the

Petition of Appeal

complainant in and to said lands and premises and every part thereof is hereby determined, fixed, settled, and declared to be good and indefeasible in fee simple and free and clear of all encumbrances.

Your petitioners humbly appeal from the whole of said decree and from that part thereof which decrees as aforesaid, upon the ground that the same is erroneous for that: 10

(a) It is not well grounded either in law or fact.

(b) It adjudges that the defendants named therein have no claim, right, title, interest or estate in or to the lands and premises therein described, whereas it should have adjudged that the title to said lands and premises was vested in said defendants;

(c) It adjudges that the title of the complainant to the lands and premises therein described is determined, fixed, settled and declared to be good and indefeasible in fee simple and free and clear of all encumbrances, whereas it should have adjudged that the said complainant has no title whatever to the same; 20

(d) It adjudges, in effect, that complainant was in possession of the lands and premises therein mentioned, as mortgagee, for the statutory period of twenty years, whereas the evidence is that during said period he was not in possession as mortgagee; 30

(e) Under the pleadings and evidence in the case and the law applicable thereto, the court should have dismissed complainant's bill of complaint instead of granting him, by its said final decree, the relief therein sought;

(f) The finding of the court was contrary both to the evidence and the law.

Your petitioners, therefore, pray that the said

Petition of Appeal

decree of the Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Hudson & Joelson,
Solicitors for Appellants.

Hudson & Joelson,
Of Counsel with Appellants.

10

20

30

(Filed June 21, 1917)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

JACOB H. BROWN,
Complainant-Respondent,
and

WILLIAM BERRY et als.,
Defendants-Appellants.

On Bill, Etc.

10

Answer.

The answer of the above-named complainant-respondent to the petition of appeal of the above-named defendants-appellants.

20

This complainant-respondent, 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 third day of May, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this complainant-respondent prays to refer thereto when the same shall be produced. And this complainant-respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this complainant-respondent.

30

Howe & Davis,
Solicitors for and of Counsel
with Complainant-Respondent.

(Filed January 6, 1915)

IN CHANCERY OF NEW JERSEY

To His Honor, Edwin Robert Walker,

Chancellor of the State of New Jersey:

10 Complaining, show unto your Honor, your ora-
tor, Jacob H. Brown, of the town of West Orange,
County of Essex and State of New Jersey, that on
or about the nineteenth day of June, 1869, your ora-
tor had devised to him, in and by the Last Will and
Testament of his father, Henry Peter Brown, in fee
simple (which Last Will and Testament was pro-
bated in the office of the Surrogate of Passaic
County, in Book C of Wills, page 367, on June 19,
1869), the following described tract and parcel of
20 land and premises, in the Township of Pompton,
in the County of Passaic, and State of New Jersey,
and bounded and described as follows, to wit:

30 Beginning at a stake on the South side of the
public road leading from Pompton to Ringwood,
said stake standing North eight degrees West thirty-
two links from the point on the West side of a
large, white oak tree standing on the East side of
said road near Joseph Crane's house, and from
thence running (1) North twenty-two degrees East
ten chains to a corner on the West side of the rail-
road cut; thence (2) North thirteen degrees East
five chains and fifty links along the aforesaid road;
thence (3) North thirty-three degrees East four
chains and sixty-three links to a large rock on the
Easterly side of said road, a corner of Abram
Beatty's land; thence (4) still along said road North
twenty-three and one-half degrees East two chains
and sixty-five links; thence (5) North thirty-one
and one-half degrees East ten chains and nine links;

thence (6) North nine and three-quarters degrees East two chains and seventy-five links; thence (7) North eight degrees East three chains and twenty-three links; thence (8) North two degrees East two chains and thirty-two links; thence (9) North thirty-seven degrees East four chains and twenty-five links to a stone heap on the Easterly side of the road and where the line of land of Henry J. Davis crosses the said road; thence (10) along said Davis' line and fence North seventy-one degrees West eleven chains and thirty links to an old stone heap, a corner of said Davis' land; thence (11) still along said Davis' line North nine and one-half degrees West ten chains and fifty links; thence (12) North fifteen degrees West nine chains; thence (13) North twelve and one-half degrees West five chains and five links; thence (14) North thirty-eight minutes East eleven chains; thence (15) North seventy-two and one-half degrees West four chains and thirty links; thence (16) South seventy-seven and one-quarter degrees West three chains and forty links still along the line of the said Davis to the said side of the Old Freedomdale Forge Pond, where the stream runs west and along said pond; thence (17) first Westerly and thence Southerly down stream of the said pond to the sixth corner of twenty-two and forty-four hundredths (22.44) acres conveyed by E. E. Drew and wife to Henry P. Brown by deed dated April 23, 1841; thence (18) along the sixth line of the same South six degrees West sixteen chains to the seventh corner thereof; thence (19) South twenty-two degrees West six chains to the seventh corner of nineteen and eighty-nine (19.89) hundredths acres conveyed by the aforesaid Drew and wife to the said Henry P.

10 Brown same date as aforesaid; thence (20) along said seventh line of said nineteen and eighty-nine hundredths (19.89) acres South seven degrees West ten chains to the eighth corner thereof and line of land belonging to the heirs of Abram Lewis, deceased; thence (21) along the eighth line of said
19.89) hundredths acres and line of land of the said heirs, South fifty-one degrees East seven chains to the ninth corner thereof; thence (22) along the ninth line thereof and said lands of said heirs South eight degrees East seventeen chains to the Beginning.

20 Containing eighty-three acres and eighty-five hundredths of an acre, but after deducting one acre now belonging to Henry J. David and one-half an acre owned by Joseph Crane, there remains eighty-two acres and thirty-five hundredths of an acre, more or less.

30 Your orator further shows that on June 23, 1873, he and his wife, Mary E. Brown, conveyed the said premises to Eleazer Thompson and William Berry, by deed dated on that day, and recorded in Book U-4 of Deeds for Passaic County, on pages 601 etc.; and took back from the said Eleazer Thompson and William Berry a purchase money mortgage, upon the said premises, for the sum of \$3,000.00, payable in two years, with interest at seven per cent. per annum, payable (semi-)annually, and which mortgage is dated June 23, 1873, and was recorded on the same day, in Book A-2 of Mortgages for Passaic County, on pages 480 etc.

Your orator further shows that the said mortgagors defaulted in the payment of the said mortgage, and in September, 1878, surrendered the said premises to your orator, who was then and still is the hol-

der of the said mortgage, and that your orator entered into possession of the said premises, and has been in the peaceable possession of the same from the said September, 1878, down to the present time, and still is in the peaceable possession thereof, and that he acquired a good title to the said lands in fee simple and has always claimed and does now claim to own the same accordingly.

10

Your orator further shows that his title to the said lands or some part thereof is denied and disputed by William Berry and Sarah J. Berry, his wife; Sanford E. Thompson and Mrs. Sanford E. Thompson, his wife; Anna S. Thompson and Sarah A. Thompson, both single, who are the defendants in this suit; and that said defendants claim, and are claimed and reputed to own said lands or some part thereof, or some interest therein; and no suit or action of any kind whatever is pending to enforce or test the validity of such claim or title, and your orator charges that such claims so made by the said defendants are utterly without foundation, unjust and vexatious; and that by reason of such claim, your orator's property in said lands is greatly affected, and that same cannot be sold as they otherwise could.

20

Your orator further shows that he has applied to said defendants or some of them to release and relinquish their said claim or claims, or to bring in some court of law a suit which would test the validity thereof, and the said defendants refuse to do either; and your orator hoped that the said defendants would have complied with such reasonable request, as in justice and equity they ought to have done.

30

In considertion whereof, and for as much as your

orator is relievable only in a Court of Equity, where matters of this sort are properly, and according to the statutes of this State in such case made and provided, cognizable and relievable;

10 To the end, therefore, that said defendants, and every one of them, may, without oath, to the best of their respective knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid; and more particularly that they, and every of them, may, in manner aforesaid, answer and set forth specifically what title or claim to said lands, or any part thereof, or any interest therein, they or any of them, make or claim, and to what part or what interest; and further, how and by what instrument such title or claim is derived or was created; and that by the de-
20 termination and final decree of this court, the rights of all the parties to this suit in and to the lands hereinbefore set forth, and every part thereof, may be fixed and settled; and that your orator may be decreed to have a perfect title thereto, and the defendants to have no estate, interest in, or encumbrance on said lands or any part thereof; and that their claims to the same are unjust, vexatious and void; and that your orator may have such other
30 or further relief in the premises as the nature of the case may require and as he shall be entitled to, pursuant to the statutes in such case made and provided.

May it please your Honor, the premises considered, to grant to your orator a writ of subpoena, issuing out of and under the seal of this honorable Court, to be directed to the said defendants, William Berry and Sarah J. Berry, his wife; Sanford E. Thompson and Mrs. Sanford E. Thompson, his wife;

Anna S. Thompson and Sarah A. Thompson, commanding them and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honor in this honorable Court, then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide by and perform such order, direction and decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience. 10

And your orator will ever pray, etc.

Howe & Davis,
*Solicitors for and of Counsel with
Complainant.*

State of New Jersey, {
County of Essex, { ss:

Thomas A. Davis, of full age, being duly sworn, deposes and says that he is one of the Solicitors for the complainant in the above stated cause, and the person actually entrusted with the conduct and management of this suit on the part of the complainant; that the wife of Sanford E. Thompson, one of the defendants in said suit, is a proper party therein; and that notwithstanding due inquiry has been made therefor, the Christian name of such married woman cannot be ascertained, and she is herein designated as Mrs. Sanford E. Thompson. 20 30

Thomas A. Davis.

Subscribed and sworn to before me this 5th day of January, 1915.

Rose F. Albert,
Attorney-at-Law of N. J.

A true copy.

Robert H. McAdams,
Clerk.

ecuted and delivered to said Jacob H. Brown a purchase money mortgage upon said premises for the sum of three thousand dollars payable in two years with interest at seven per cent. per annum payable semi-annually, and which mortgage is dated June twenty-third, eighteen hundred and seventy-three, and was recorded in Book A-2 of Mortgages on page 480. 10

3. These defendants further answering say that in May, eighteen hundred and seventy-eight, complainant commenced foreclosure proceedings against the said William H. Berry and Eleazer Thompson, and that the defendant, William H. Berry, paid the interest then due on said mortgage and also the costs of said foreclosure proceedings amounting in all to two hundred and fifty dollars; that said premises were then vacant, and afterwards, on the second day of September, eighteen hundred and seventy-eight, the complainant entered into an agreement with William H. Berry whereby the complainant was to enter into possession of said premises and was to occupy the same and was to bear and pay the taxes levied thereon beginning with the year eighteen hundred and seventy-eight. 20

4. These defendants further answering say that under and by virtue of the agreement made between said William Berry and the said Jacob H. Brown, that the said Jacob H. Brown entered into possession of said premises on the second day of September, eighteen hundred and seventy-eight, and obligated himself to pay and satisfy all taxes levied against said premises thereafter so long as he continued to remain in possession of said premises under said agreement. 30

5. These defendants further answering say that

the said Jacob H. Brown defaulted in the payment of the taxes levied against said real estate by the Assessor of the said Township of Pompton for the years eighteen hundred and eighty-two and eighteen hundred and eighty-three and for other years prior thereto, and said taxes for years eighteen hundred and eighty-two and eighteen hundred and eighty-
10 three amounted to thirty-eight dollars and fifty-four cents, and did permit said land and premises to be sold by said Township of Pompton for a term of thirty years, for the payment and satisfaction of said taxes.

6. And these defendants further answering say that the Township Committee of the said Township of Pompton did, on the eleventh day of October, eighteen hundred and eighty-four, issue a warrant
20 directed to the Collector of Taxes of said Township commanding him to make the said taxes with interest, costs, fees, charges and expenses by selling the said lands, tenements, hereditaments and real estate or any part thereof as would be sufficient for the shortest term for which any person or persons would care to take the same and pay the said taxes, interest, costs, fees, charges and expenses, and did on the
30 twenty-seventh day of January, eighteen hundred and eighty-five, cause the said premises to be struck off and sold for the term of thirty years from the date of said sale to the Township Committee of the Township of Pompton for the benefit of the inhabitants of said Township.

7. And these defendants further answering say that afterwards, on the twenty-ninth day of April, eighteen hundred and eighty-seven, the said Township Committee of the Township of Pompton did sell, transfer and surrender the said certificate of sale to one George W. Mickens and did sell the said

farm heretofore described to the said George W. Mickens for the term of thirty years from the twenty-seventh day of January, eighteen hundred and eighty-five, to have and to hold the same to the said George W. Mickens, his executors, administrators and assigns for his and their own proper use, benefit and advantage against the owner or owners thereof, and all and every person or persons claiming under him or them and against all other estates thereon, whether legal or equitable and any and all mortgages, alienations, descents, devises, liens and encumbrances of any kind or nature, fully and completely as though there were no other estates, mortgages, alienations, devises, descents, liens or encumbrances of, in, upon or against said property or any part thereof until the said term shall be fully completed and ended and upon the further condition that the said George W. Mickens, at or before the expiration of said term, may remove any building or buildings and material of said term peaceably and quietly yield up the same to the lawful owner or owners thereof in as good state and condition as when he took possession of the same; damage resulting from the ordinary use and elements excepted, and the said George W. Mickens, his executors, administrators and assigns during the said term shall pay all taxes which shall be legally assessed against said premises.

8. And these defendants further answering say that since the second day of September, eighteen hundred and seventy-eight, to the twenty-seventh day of January, eighteen hundred and eighty-five, the complainant had possession of said premises under and by virtue of the aforesaid agreement made between the complainant and the said William H.

Berry, and from the twenty-seventh day of January, eighteen hundred and eighty-five, until the twenty-ninth day of April, eighteen hundred and eighty-seven, the Township of Pompton had possession of said premises under and by virtue of the certificate of tax sale therefor, so as aforesaid, made, executed and delivered to it by the Collector of Taxes of said Township, and that from and after the twenty-ninth day of April, eighteen hundred and eighty-five, until the twenty-seventh day of January, nineteen hundred and fifteen, the said land and premises have been in possession of George W. Mickens under and by virtue of said certificate of taxes, so as aforesaid assigned to him and of the conveyance of said land and premises to him by said Township Committee of the Township of Pompton for the said term of thirty years.

9. And these defendants further answering say that the complainant did not enter into possession of said premises by reason of any surrender of the possession thereof to him, and that the said complainant has not been in peaceable possession of the same from the said second day of September, eighteen hundred and seventy-eight down to the present time, and that he is not now in possession thereof, and that he has not acquired a good title to the said lands in fee simple and that he has not claimed and does not now claim to own the same as against these defendants.

10. And these defendants further answering say that at all times from the twenty-third day of June, eighteen hundred and seventy-three, until the death of Eleazer Thompson, some years ago, the title to said premises was vested in and the said Eleazer Thompson and William H. Berry, and they were the

owners of said land and premises and were seized thereof in fee and were at all times entitled to the possession thereof, and from and after the death of the said Eleazer Thompson the title of said land and premises was vested in the said William H. Berry, Sanford E. Thompson, Anna S. Thompson and Sarah A. Thompson, who were the owners of said land and premises, and were seized thereof in fee and were at all times entitled to the possession thereof, subject, however, to the redemption of the said tax title or term of years for which said land and premises had been sold as aforesaid. 10

11. And these defendants further answering say that the said Eleazer Thompson and William H. Berry, at the time they gave possession of said land and premises to said Jacob H. Brown, they also gave possession to the said Jacob H. Brown to two certain other tracts of land and premises, one of which is all that land formerly covered by the waters once known as Freedomdale Forge Pond, and also of a certain other tract of land lying adjacent to the premises described in complainant's bill of complaint containing sixteen acres and nineteen hundredths of an acre, and which said land and premises were conveyed to the said Eleazer Thompson and William Berry by Benjamin Roome by deed bearing date the fifteenth day of September, eighteen hundred and seventy-four, and recorded in Book C-5 of deeds for Passaic County, on page 526. 20 30

12. And these defendants, William Berry, Sarah J. Berry, Sanford E. Thompson, Mrs. Sanford E. Thompson, Anna S. Thompson and Sarah A. Thompson, say they are the owners and are seized in fee of the land and premises particularly de-

scribed in complainant's bill of complaint, and also of all that land adjacent thereto formerly covered by the waters once known as Freedomdale Forge Pond and also all that certain other tract of land and premises also lying adjacent to the land and premises described in complainant's bill of complaint and containing sixteen acres and nineteen hundredths of an acre, and which last mentioned land and premises were conveyed to the said Eleazer Thompson and William Berry by Benjamin Roome, as aforesaid.

10
13. And these defendants further answering say that the complainant has no possession of said land and premises, no right of possession of said land and premises, and no title therein or thereto; that said complainant does not own said premises or any part thereof, and that the right of possession of said
20 land and premises and the title thereto and seized thereof is in these defendants.

And these defendants pray to be hence dismissed with their reasonable costs in this matter most wrongfully sustained.

Replication

(Filed March 26, 1915.)

IN CHANCERY OF NEW JERSEY

Between

JACOB H. BROWN,

*and**Complainant,* *On Bill, Etc.*

WILLIAM BERRY,

Defendant.

10

Replication.

The Replication of Jacob H. Brown, complainant, to the answer of defendants, William Berry and Sarah J. Berry, his wife; Sanford E. Thompson and Mrs. Sanford E. Thompson, his wife; Anna S. Thompson and Sarah A. Thompson. 20

The complainant joins issue on the answer of the defendants.

Howe & Davis,
Solicitors for Complainants.

30

Order to Amend Bill

3. Strike out the word "thirty" in the fifth course, making that course "one and one-half degrees" instead of "thirty-one and one-half degrees."

4. Strike out the word "twenty" and insert the word "ninety" in the ninth course, making the distance "four chains and ninety-five links" instead of "four chains and twenty-five links."

5. Change the proper name "Davis" to "David" wherever occurring in the ninth, tenth, eleventh and sixteenth courses. 10

6. Strike out the word "west" and insert the word "east" in the twelfth course.

7. Change the date from April 23 to April 25 in the seventeenth course.

8. Correct the proper name Lewis to Lines in the twentieth course.

9. Strike out the word "and" on second line from bottom of page 2 of Bill in the twenty-first course, and insert the words "as a." 20

Respectfully advised,

E. R. Walker,

C.

Eugene Stevenson,

V. C.

 IN CHANCERY OF NEW JERSEY

10	JACOB H. BROWN, <i>Complainant,</i>	}	<i>On Bill, Etc.</i>
	<i>and</i>		
	WILLIAM BERRY et als., <i>Defendants.</i>		

Affidavit.

Thomas A. Davis, of full age, being duly sworn on his oath, deposes and says:

1. I am one of the Solicitors for the Complainant in the above stated cause and the person actually entrusted with the management and conduct of this suit on the part of the Complainant.

20 2. I have personally compared the corrections in the foregoing order with the description in the mortgage made by Thompson and Berry to Brown dated January 23, 1873, and recorded in Book A-2 of Mortgages for Passaic County, on pages 480, etc., on January 23, 1873, and that the description in the Bill of Complaint, when amended as ordered in this order, will be identical with the description in the said mortgage.

30 3. The foregoing order is made necessary by reason of the fact that in the description of the premises as contained in the Bill of Complaint there were a few slight errors which were clerical errors in copying.

Thomas A. Davis.

Subscribed and sworn to before me April 23, 1917.

Robert J. Holland,

Attorney at Law of New Jersey.

 IN CHANCERY OF NEW JERSEY

Between

JOHN H. BROWN,

*Complainant,**and*

WILLIAM BERRY et als.,

*Defendants.**On Bill, Etc.*

10

Testimony.

Jersey City, N. J.,

Wednesday, November 17th, 1915.

Before Hon. Eugene Stevenson, Vice Chancellor.

Mr. Davis (Howe & Davis) for the complainant. 20

Mr. Hudson (Hudson & Joelson) and Mr. Allen (Boston Bar) for the defendants.

The Vice Chancellor: The answer denies that the complainant is in peaceable possession. The practice in such a case, which is modified in some instances for consideration of convenience, is to decide the question of peaceable possession first. That is the ground of jurisdiction; if the complainant is not in peaceable possession, the suit cannot be entertained, and all other questions are unimportant. 30

Counsel may proceed, having in view that the first point is to make out that the complainant is in peaceable possession.

10 *Mr. Davis:* It is agreed that the premises in question, described in the bill of complaint, situate in the Town of Pompton, County of Passaic, and State of New Jersey, containing about 82.35 acres of land, were conveyed by Jacob H. Brown and Mary E. Brown, his wife, to Eleazer Thompson and William Berry by deed of warranty dated June 23rd, 1873, recorded on the same day, in Book U-4 of deeds for Passaic county, on pages 601 and so forth, for the consideration of \$6,000.

20 That on the same day a purchase money mortgage was given by Thompson and Berry to Jacob H. Brown, dated June 23rd, 1873, recorded on the same day in Book A-2 of mortgages for Passaic county, on pages 480 and so forth, to secure the sum of three thousand dollars, payable in two years from the date of the mortgage with interest at seven per cent per annum, payable annually and covering the same premises, and reciting that it is given to secure a part of the purchase money of the first-mentioned conveyance.

30 That Eleazer Thompson, one of the persons named in the deed, died about three years ago, leaving no widow and leaving Sanford E. Thompson, a son, who is married, and whose wife, who is described in the bill of complaint as Mrs. Sanford E. Thompson, is Stella C. Thompson, a daughter, Anna S. Thompson, who is single, and a daughter, Sarah A. Thompson, who is single, as his only heirs at law, all being of full age.

That William Berry is married and his wife's name is Sarah J. Berry, and those per-

sons are the only defendants in this case.

If your Honor please, these matters are stated as admissions to be made on the record by counsel on both sides.

The Vice Chancellor: Those facts are admitted on both sides.

Mr. Hudson: Yes, sir.

10

JACOB H. BROWN, the Complainant, sworn.

Direct Examination by Mr. Davis:

Q. You are Jacob H. Brown? A. Yes, sir.

Q. You are acquainted with Mr. Berry, Mr. William Berry? A. Yes, sir.

Q. And you knew Eleazer Thompson in his lifetime? A. Yes, sir.

20

Q. Are you acquainted with these eighty-two acres of land in Pompton? A. Why, yes.

Q. You owned that land at one time, did you not? A. Yes, sir.

Q. And sold it to Messrs. Berry and Thompson? A. Yes, sir.

Q. And then took back this three thousand dollar mortgage? A. Yes, sir.

Q. Referring to the time of sale by you to Berry and Thompson in 1873, where were you living with your family at the time you made the sale? A. Living on the place.

30

Q. After you made the sale did you continue to live there, or move off? A. No, I moved away.

Q. Where did you move to? A. I moved to Lincoln Park, Morris county.

Q. How long did you remain off the farm? A. Around five years.

Q. During that time did Mr. Berry or Mr. Thompson pay you some interest on your mortgage?

A. No, sir.

Q. Didn't they pay you any? A. They only paid me the first year's interest.

Q. Did you ever move back on the farm? A. I did, after Mr. Berry told me to.

10 Q. When was that? A. In 1878.

Q. In 1878 you say you moved back on the farm; did you live there alone, or did you take your family with you? A. I brought my family with me.

Q. Before you moved back on the farm, did you have any talk with Mr. Berry or Mr. Thompson?

A. Yes, I did with Berry.

Q. Where was Mr. Berry living at that time?

A. I think at Paterson or Westwood; I could not say exactly where.

20 Q. Did you see him at either Westwood or Paterson before you moved back? A. Yes, sir.

Q. What did you go to see him for? A. I told him I must have some money; I was hard up, and I wanted him to pay me, and he said, "I cannot pay you; I am poor. But," he said, "you can go back on the place."

Q. He told you to go back on the place? A. "I cannot pay you; go back on the place."

30 Q. At that time did he give you any writing at all? A. Yes, sir.

Q. Any paper? A. Yes, sir.

Q. I show you a paper dated September 2nd, 1878, with the signature of William Berry attached, is that the paper Mr. Berry gave you at that time?

A. I think that is the very one, sir.

Q. It is addressed to DeWit Ridner? A. Yes, sir.

Q. Who was DeWit Ridner? A. That is all I know about him; his name was Ridner.

Q. Where did Ridner reside at that time? A. I don't know where he lived.

Q. Was he on the farm? A. No, sir; he moved off; I asked him to give me permission to go into the house, and he said—

Q. This paper which I showed you is dated September 2nd, 1878, and signed by William Berry; is that the paper Mr. Berry gave you at that time?

A. The same one.

10

Complainant's counsel offered in evidence paper dated September 2nd, 1878, just identified by the witness, and the same is marked Exhibit C. No. 1, November 17th, 1915, H. W. K.

20

By the Vice Chancellor:

Q. How did this man get in possession? A. He told me he was Mrs. Berry's father; that is what he told me.

Q. Do you know whether it was vacant before he took possession? A. That I don't know.

Further Direct Examination:

Q. Where did you find Mr. DeWit Ridner? A. When I went up to the house? 30

Q. Yes. A. He was to the house.

By the Vice Chancellor:

Q. On the place? A. Yes, sir.

Q. Occupying it? A. Yes, sir.

Q. How long had he been there, do you know?

A. I don't think he had been there over somewhere around—he hadn't been there a year, about six months, I think.

Q. Had he done some farming there? A. Oh, no.

Q. Simply lived in the house? A. Only just lived in the house.

Q. With his family? A. Yes, sir.

Further Direct Examination:

10

Q. Did he move out when you presented this demand? A. Yes, he said he would go right out.

Q. How long after you presented this demand did he vacate the premises? A. Oh, in a day or so he got out.

Q. What did you do? A. I moved right in.

Q. That paper is dated September 2nd, 1878; with reference to that, how soon after that did you move into this house on the farm? A. In a week, anyhow.

20

By the Vice Chancellor:

Q. Where did you get that letter from Mr. Berry? A. Mr. Berry gave it to me.

Q. Where? A. I think up near the place.

Q. Did you go to see him? A. He came to see me, and I was living at my brother's house, and I saw him there.

Q. Where was your brother's house? A. Right adjoining this farm.

30

Q. This farm? A. Yes, sir.

Q. Did you send for him, or did he come himself? A. I think he happened to be on business and I saw him there.

Q. You had not had any interest for four years? A. No, sir.

Q. Had you been dunning him for the interest? A. Yes, sir.

Q. Tell us more fully the whole talk between you

and him on this day. A. I told him there must be something done, as I wanted money; he gave me good promises, but he did not fulfill them.

Q. I am speaking of the particular time when he gave you the letter? A. That is the time when he said, "I cannot pay you; you go back on the place;" that is what he told me.

Q. That was not all, Mr. Brown? A. I told him perhaps this man would not go out; I said there was a family in there; he said he would write something to get them out, so that I could go in. 10

Q. Was anything said about your mortgage? A. No, sir, nothing.

Q. Except that he could not pay? A. No, sir, not then. He said he could not pay me, yes, sir.

Q. That he could not pay you? A. No, sir.

Q. Did he say anything, or did you have any talk about his paying in the future? A. We talked a good deal over that. 20

Q. That day? A. No, sir; he told me I would have to go back, he had no money; he could not pay me.

Q. Did you try to collect money from him after that? A. No, sir.

Further Direct Examination:

Q. Of whom did your family consist then; was your wife living at the time you went back on the place in September? A. Yes, sir. 30

Q. How many children did you have? A. I think we had three then.

Q. Who were they? A. William, Bertha and Ida.

Q. What buildings were there at that time on the farm? A. There was a house and barn.

Q. How big was the house? A. Eighteen by twenty.

Q. How many rooms? A. There were only two rooms in it—one room downstairs and one room up.

Q. How big a barn was it? A. Well, it was eighteen by twenty-four.

10 Q. Were there any buildings there besides the house and barn? A. No.

Q. Your family and yourself continued to live on that farm, then, from September, 1878, down to what time? A. To the present time.

Q. You are not living there now? A. Well, my wife died seven years ago.

Q. Did she die seven years ago? A. Yes, sir.

Q. Did she die on the place? A. Yes, sir.

20 Q. From the time you moved in in September, 1878, down to the time your wife died seven years ago, did you and your family ever move off the place? A. No, sir.

Q. Did you live there continuously? A. Yes, sir.

Q. How long did you stay on the place after your wife died? A. I moved away the same spring; that is, I moved away and lived with my son.

Q. How many of your family were living with you and your wife at the time she died seven years ago? A. Only one living there then.

30 Q. Who was that? A. Annie.

Q. Is Annie married or single? A. Married.

Q. Was she married at that time? A. No, she was not.

Q. When did Annie get married? A. She got married after her mother died.

Q. Did you stay on the farm until Annie got married, or at all after that? A. She got married afterwards.

Q. When you left the farm when your wife died, did Annie go with you? A. With me?

Q. Yes. A. No.

Q. Where did she go? A. She went to Pompton.

Q. When you left the farm seven years ago, where did you go to? A. I went down to Jersey City, to my son.

10

Q. What is your son's name? A. William J. Brown.

Q. How long did you live in Jersey City? A. Three or four years.

Q. After that where did you move to? A. I moved up to Orange, West Orange.

Q. With the same son? A. Yes, sir.

Q. Are you still living with your son, William J. Brown? A. Yes, sir.

Q. Since you left the farm on the death of your wife, you have lived with your son William in Jersey City and West Orange? A. Yes, sir.

20

Q. When you left the farm on the death of your wife, or immediately thereafter—what have you done with it since; has it been vacant, or in the possession of someone? A. Rented out.

Q. To tenants? A. Yes, sir.

Q. How soon after you left, did you rent it to any tenant? A. Right away, when I went away.

Q. How long did that tenant stay there? A. Well, for some little time; I couldn't exactly say; about a year or more.

30

The Vice Chancellor: Did you collect the rent?

Witness: Yes, sir.

Q. Do you remember that tenant's name? A. I think it was DeGraw who went in there.

Q. How much a month did you get from that tenant? A. Eight dollars a month.

Q. After DeGraw moved out, did you put any other tenant in? A. Yes, sir, they kept coming in.

10 Q. Who was the next tenant after DeGraw, if you remember? A. I think it was Drew.

Q. How long did he stay? A. He stayed a year.

Q. Did you collect rent from Drew? A. Yes, sir.

Q. How much did you collect from Drew a month? A. Eight dollars.

20 Q. When Drew moved out, who moved in, if anybody? A. I can't hardly tell you who moved in next. Afterwards Drew came back for another year.

Q. Drew moved out and was out for awhile? A. Yes, sir.

Q. Did you have any tenant in there after Drew moved out? A. Yes, sir.

Q. What was his name? A. I think his name was Carrigan.

Q. How long did Carrigan stay there? A. We put him out; he didn't pay any rent.

30 Q. Did he pay any rent to you? A. No, sir.

Q. How much did you rent the place to Carrigan for? A. Eight dollars.

Q. After Carrigan moved out, you say you put Carrigan out? A. Yes, sir.

Q. When he got out did you put another tenant in? A. Yes, sir, right away.

Q. Who went in after Carrigan? A. I think it was Ridnor—I mean Drew.

Q. Did Drew come back? A. Yes, sir, he was there the second time.

Q. How long did he stay there the second time?

A. A year; his wife died there.

Q. How much rent did he pay you? A. He paid the same—I think we let him have it for \$7.50 because the place had gone down a little.

Q. Who moved in after Drew moved out? A. 10
A widow lady, I don't know what her name is.

Q. Did she have a family? A. Just herself.

Q. Did you rent the place to her? A. Yes, sir.

Q. How much rent did you get from her? A.
Eight dollars.

Q. How long did she stay there? A. I guess somewhere around a year.

Q. When she moved out, did anyone else move in? A. Yes, sir.

Q. Who? A. A man named Beam. 20

Q. How much rent did Beam pay? A. Seven dollars.

Q. How long did Beam stay there? A. He is there now.

Q. How many years has Beam been there? A. He only moved there last spring.

Q. What? A. Since last spring.

Q. Last spring he moved in? A. Yes, sir.

Q. And he has been there ever since? A. Yes, 30
sir.

By the Vice Chancellor:

Q. Who was there before him? A. Drew.

Q. How long before had Drew occupied it, for what period, how long? A. Before Drew went in?

Q. Before Beam went in. A. Oh, Drew?

Q. Yes, what was the period of Drew's occupancy? A. Not long.

Q. How long? A. Well, right away.

Q. Will you not answer my question? A. I do not understand it.

10 Q. You say Beam went into possession last spring? A. Yes, sir.

Q. And Drew was there before that? A. Yes, sir.

Q. And Drew went out when Beam went in? A. Yes, sir.

Q. How long had Drew been in possession? A. About a year.

Q. Drew was in possession last January, then, was he not? A. Yes, sir, he must have been.

Q. Paying rent? A. Yes, sir.

20 *Further Direct Examination:*

Q. Since you moved out, yourself and your family, on the death of your wife, have you or have you not had tenants continually paying you rent down to the present time? A. Continuously, yes, sir.

Q. When you moved in there did you make any addition to this house, the dwelling house? A. Yes, I had to enlarge it.

30 Q. How long were you in possession when you enlarged the house? A. Some years.

Q. What did you do? A. Put an addition on.

Q. How large was it? A. Eight by twenty, I think.

Q. A one-story addition or two stories? A. One story.

Q. What did you use that addition for after it was built? A. For a bedroom.

Q. What else did you do to the house, if anything? A. I put a couple of chimneys on.

Q. Did you put up a new chimney for the addition, too? A. Yes, sir.

Q. What about the outside of the house, what did you do, if anything? A. We had to put in new weatherboards and roofing.

Q. When did you put the weatherboards? A. It must have been four or five years after I went up there. 10

Q. How many roofs have you put on the house since you have been there? A. Two.

Q. Do you remember when they were put on? A. I could not hardly remember.

Q. The first roof was put on how soon after you moved there? A. Almost right away.

Q. How many years is it since you put the other roof on? A. It must be fifteen years ago. 20

Q. Did you ever paint the house? A. Yes, sir, I painted it.

Q. How many times did you paint the house? A. Do you mean how many coats I put on?

Q. No, on how many occasions? A. Only once.

Q. How long ago was that? A. Oh, it must be fifteen or sixteen years.

Q. With regard to the barn, did you make any additions or repairs to the barn? A. No, sir.

Q. Did you ever put a new roof on the barn? A. Yes, sir. 30

Q. When was that? A. That is about seven years ago.

Q. Did you do anything to the barn besides that? A. No, I put up a shed.

Q. I beg your pardon. A. I put up a shed to put my wagon under.

Q. Was that alongside the barn? A. No, that was by itself.

Q. How big a shed was that? A. About twelve by twelve.

Q. While you were on this property, did you farm any part of it? A. Yes, sir.

10 Q. How much of it did you farm? A. Well, I suppose twenty or thirty acres; there was some in grass, you know, what I could do myself.

Q. How much was in grass? A. Fifteen acres, I guess.

Q. Did you make hay there? A. Yes, sir.

Q. What is the character of the balance of the land? A. Well, good land; it is tillable land, but there is a good deal of mountain to it.

20 Q. From the time you went back on the place down to the present time, who paid the taxes? A. I did.

Q. There was a couple of years when your brother-in-law paid them, was there not? A. My brother-in-law?

Q. Mr. Mickens—what relation is he to you? A. He is a brother-in-law of mine.

Q. Did he pay them for a couple of years? A. Not that I know of; I always paid the taxes myself.

30 Q. From the time you went on the property down to the present time, has Mr. Berry or has Mr. Thompson, or has anyone else paid you anything on the mortgage? A. No, sir.

Mr. Hudson: I object. I do not understand there is any question about the mortgage; the allegation is he is in possession under his mortgage, and it does not seem to me it can be at all material whether there has been any payment on the mortgage.

The Vice Chancellor: I will allow it. If he received money on the mortgage, then he is mortgagee in possession. He claims that he took possession under his mortgage as a deed and that he has occupied continuously under that for nearly forty years. It would very much strengthen your case if he was paid any money. But it is proper, and I will allow it. 10

Mr. Hudson: I ask for an exception.

Q. From the time you went into possession in 1878 down to the present time, has Mr. Berry or Mr. Thompson or anyone else paid you anything on the principal or interest on that mortgage of yours? A. They have not.

By the Vice Chancellor: 20

Q. Where was Mr. Berry when you took possession in 1878? Where was he living? A. Westwood, I think—Westwood or Paterson.

Q. Did you meet him from time to time after you took possession, or didn't you see him? A. I did not see him.

Q. Did you ever see him after you took possession? A. I don't think I did. I don't remember having seen him after that. 30

Q. How about Mr. Thompson? A. I never spoke to him after I took the property.

Q. You do not know where he lived? A. No, I do not.

Cross Examination by Mr. Hudson:

Q. You are not sure whether you went to the house of Mr. Berry at the time you got the paper

Exhibit C. No. 1, or whether he came to your house?

A. I think he came to my place.

Q. You say that at that time you asked him for money? A. I didn't see him after that.

Q. At the time Mr. Berry gave you the paper Exhibit C. 1, you asked him for money? A. Yes, sir.

10 Q. What interest had Mr. Berry and Mr. Thompson paid you up to the time— A. Only paid me one year's interest; that was the first year's interest.

Q. Do you know when that payment was made with relation to the mortgage, your mortgage was given in 1873? A. Yes.

Q. How soon after you got the mortgage from Berry and Thompson was it they paid this one year's interest? A. The first year's interest.

20 Q. Did they pay the first year's interest when it became due? A. Yes, sir.

Q. They paid that when it became due? A. Yes, sir.

Q. Are you sure now that they paid no more money except that one year's interest? A. That is all they paid me in money.

Q. They made payments to you in some other way? A. Well, they drew up a few notes, but they were no good.

30 Q. When you say notes, do you mean they gave you bank notes, promissory notes? A. Mr. Berry gave me his notes.

Q. (Handing witness a paper) I ask you to look at that paper and tell me whether that bears your signature? A. That don't look much like it.

Q. I am asking you about the signature; do you say it is or it is not your signature? A. Yes, when

I look at it a little closer I think that is my signature.

Paper shown witness marked D. No. 1 for identification.

The Vice Chancellor: Are you going to offer it in evidence? 10

Mr. Hudson: Yes, I was going to.

The Vice Chancellor: Is there any objection?

Mr. Davis: No.

The Vice Chancellor: Then you can read it in evidence.

(Paper marked D. No. 1 for identification read in evidence.)

Witness: That was given in notes; he gave me no money. 20

Q. I show you another paper and ask you if that is your signature? A. Yes, I think it is.

The Vice Chancellor: Is there any objection to that paper going in evidence now?

Mr. Davis: No, sir.

(Paper last shown witness marked Exhibit D. No. 2, November 17th, 1915, H. W. K.)

Q. The name of your wife, was it Mary? A. Yes, sir, Mary E. 20

Q. Do you know her signature? A. I think I do, pretty well.

Q. (Handing witness paper) Would you say that Mary wrote that name on that paper? A. I could not say that was her writing, no.

(Paper last shown witness marked D No. 3 for identification.)

Q. Did you have a daughter named Mary? A. No.

Q. From the time that Mr. Berry and Mr. Thompson paid you the one year's interest, what, if anything, had you done about collecting your money? A. Collecting the money?

10 Q. Yes. A. I don't know as I understand that exactly; my hearing is not very good.

Q. After Berry and Thompson paid you the interest for one year, did you do anything about getting your money from them? A. No.

Q. Nothing at all? A. Not the first year, no.

By the Vice Chancellor:

Q. Counsel asked you whether afterwards— A. I did afterwards, yes.

20 Q. What did you do? A. I was going to foreclosure.

Q. You were going to foreclose? A. I commenced.

Q. Do you know when it was you started to foreclose? A. Not exactly, 1874 or 1875.

Q. Probably you can fix the time in connection with the visit of Mr. Berry to you at the time he gave you the paper, Exhibit C 1? A. (Not answered.)

30 Q. Was it before you had that paper? A. I am not sure whether it was before or after.

Q. Do you know whether it was before or after Mr. Berry gave you the order on Ridner? A. Oh, it was before.

Q. Do you know how long before? A. Two or three years

Further Cross Examination:

Q. How far did you proceed with that foreclosure? A. Well, the lawyer died, that is as far as I know.

By the Vice Chancellor:

Q. Who was the lawyer? A. Drury, of Pater- 10
son.

Q. Henry Drury? A. I think it was Henry,
yes, sir.

Further Cross Examination:

Q. During the time that foreclosure was proceeding, did you receive any money from Berry and Thompson? A. No, sir.

20

By the Court:

Q. What were the taxes every year on this property, about? A. About twenty dollars—it was not as high as that, well \$20 now.

Further Cross Examination:

Q. At the time that you had the foreclosure proceedings with regard to this property of Thompson and Berry, do you recall making a statement that you had received your interest up to the twenty- 30
third day of June, 1876? A. I never did.

Q. You never did? A. No.

Q. For how long a time did Mr. Drury have this matter in charge for you? A. I told you going on about a year.

Q. About a year? A. Yes, sir.

Q. Did he ever report to you any payments by Thompson and Berry? A. No.

Q. At the time that you got this paper, Exhibit

C. No. 1, from Mr. Berry, why didn't you have him include in that statement that you were to have the place—why didn't you have Mr. Berry write in there that you were to have the place? A. I did not think of it, I suppose.

10 Q. You thought it necessary to have this paper to give to Ridner? A. Sure.

Q. Why is it that you did not give this paper to Ridner? A. I gave it to him, and he gave it back to me.

Q. Oh, you did give it to him? A. Yes, sir.

Q. When did he give it back to you? A. Right away.

Q. And you have had it ever since? A. Yes, sir.

20 Q. Why did you keep that paper? A. I generally keep papers; there may some time some good develop; I always keep papers.

Q. Is it not a fact that Mr. Drury told you to get some kind of a paper from Mr. Berry? A. Some kind of a paper?

Q. Yes. A. He did not.

Q. You were foreclosing your mortgage at the time you got this paper from Berry, were you not? A. It was afterwards.

Q. What did you say? A. It was afterwards.

30 Q. What do you mean, what was afterwards? A. After the foreclosure, after I commenced to foreclose, after he gave me the right to go on the place.

Q. After you commenced the foreclosure? A. Yes, sir.

Q. And Henry Drury was still living at the time you got this paper from Berry? A. I think not; I think he was dead.

Q. You think he was dead? A. I know he was dead.

Q. Don't you know that, as a matter of fact, these foreclosure proceedings of yours continued for some years after; that Henry Drury lived for many years after you began this foreclosure proceeding?

A. He died; he did not get through with it; that is all I know about it. 10

Q. When Mr. Berry gave you this paper, Exhibit C. No. 1, he said, "I cannot pay you;" is that it?

A. Yes, "I cannot pay you."

Q. What had you asked him to pay you? A. I wanted money; I wanted interest on my mortgage—some money on the mortgage.

Q. What interest did you ask him for? A. Interest on the mortgage.

Q. How much did you ask him for at that time? A. I did not ask him how much I wanted, but I wanted my money, but he said he had none and could not pay me. 20

Q. Did you tell him you wanted the interest on the mortgage, or part of the interest, or what?

A. Interest or the money on the mortgage.

Q. You wanted interest or the money on the mortgage? A. Both.

Q. After you went on the place what taxes, if any, did you pay? A. What taxes?

Q. Yes. A. On the place? 30

Q. Yes. A. I didn't pay any.

Q. You didn't pay any. As a matter of fact, you never paid any taxes from the time you took possession on the place, did you? A. Yes.

Q. When did you first pay taxes? A. I paid taxes that he had not paid.

Q. I am asking you about your taxes; when did you first pay taxes? A. Oh, after it was sold.

Q. How? A. For taxes.

Q. After it was sold for taxes? A. Yes, sir.

Q. How long after you got the place was it that it was sold for taxes? A. About four years.

10 Q. Why was it that you did not pay any taxes at all after it had been sold for taxes? A. I will tell you, I was poor. I had quite a family to support, and I didn't have enough money to do it with.

Q. Were you farming it? A. Yes, sir.

Q. And that is the only reason that you were poor? A. Certainly.

Q. How soon after it was sold for taxes was it that you commenced to pay taxes? A. I commenced right away and kept it up.

Q. Do you remember the first payment that you made on the taxes? A. The first payment on the taxes?

20 Q. Yes. A. No, I don't remember.

Q. You don't know. You have receipts, have you not, for taxes? A. I think I have the receipts, the tax bills, I don't know.

Q. Have you got them here? A. That I could not say.

Q. Who bought the property for taxes? A. My brother-in-law, George Mickens, bought it in for me.

30 Q. He bought it in for you? A. Yes, sir, I did not have enough money.

Q. Are you quite clear about that—that your brother-in-law bought it? A. That is right, yes, sir.

Q. Is it not a fact that in the first instance, the property was bought in by the township? A. Yes, sir.

Q. At the time the township bought the property in, were you in the house? A. Yes, sir.

Q. You lived there? A. I lived there, yes, sir.

Q. During the time the township held the tax title, what moneys did you pay to the township?

A. What did I pay the township?

Q. Yes. A. I did not pay them anything, only the taxes.

Q. Do you remember Mr. Wheeler, who was township treasurer? A. Yes, sir. 10

Q. And Mr. Ball, who was collector— A. Yes, sir.

Q. —during the time Mr. Wheeler was township treasurer? A. Yes, sir.

Q. Do you remember making a payment of twenty-five dollars to Mr. Ball on February 9th, 1887? A. I may have, yes; it has been so long ago.

Q. Do you remember making such a payment to Mr. Ball? A. I think I did, yes. 20

The Vice Chancellor: What is the amount?

Mr. Hudson: February 9th, 1887, \$25.

The Vice Chancellor: Taxes for what year?

Mr. Hudson: It does not say in the book I have here.

Q. After you paid the twenty-five dollars Mr. Mickens, your brother-in-law, bought the tax title? A. He bought it for me, yes, sir. 30

Q. Well, he bought it, didn't he? A. He bought it.

Q. Then who paid the taxes? A. I did.

Q. During the time that the township owned the tax title, did you pay any other money to the township? A. No, I did not.

Q. Nothing, excepting twenty-five dollars? A. (Not answered.)

Q. These tenants about whom you have testified, they were tenants only in the house, were they not?

A. They had some land, too, they raised potatoes, etc.

Q. Properly speaking, they hired the house to live in? A. Yes, sir.

10 Q. And did a little gardening? A. Yes, sir.

Q. But they were not farmers? A. No, sir.

Q. You did not rent the farm to anybody? A. No, sir.

Q. You never went to Mr. Berry at any time after you got this paper, Exhibit C. No. 1, in regard to your affairs, did you? A. No, sir.

Q. You knew that Mr. Thompson lived in New York, didn't you? A. Lived in New York?

Q. Yes. A. I did not know where he lived.

20 Q. When Mr. Berry gave you this paper, Exhibit C. No. 1, did you say anything to him about Mr. Thompson? A. I did not.

Q. Did you try to communicate with Mr. Thompson in any way? A. No, I never seen the man, not much.

Q. Do you know where Mr. Berry lived at the time the place was sold for taxes? A. I think in Westwood, I don't know; Paterson or Westwood.

Q. You did not know where Thompson lived. you say? A. I think not, no.

30 Q. You remember that you got notice from the township committee that the place had been sold for taxes? A. I did.

Q. You knew the place was to be sold? A. Yes, sir.

Q. As a matter of fact, you requested that the place be sold for taxes? A. I did not.

Q. Did Mr. Mickens ever deliver his tax title to you? A. No.

Q. Did you ever pay any rent to Mr. Mickens?
A. No, sir, never, not a cent.

Q. Did you pay Mickens the money he paid for the tax title? A. I paid him, yes, sir.

Q. You paid him that? A. Yes, sir.

Q. When did you pay him that? A. Oh, I paid him ten years ago, the last of it.

Q. Ten years ago? A. The last of it off, yes, sir; I kept paying him a little whenever I could. I have got it down, and about ten years ago I paid him off.

Q. At the time that Mr. Mickens bought this tax title was there an agreement between you and he that you were to get the tax title from him? A. The tax title?

Q. From him. A. From him? Yes.

Q. There was such an agreement. Was there also an agreement as to the manner in which you were to pay Mr. Mickens for that tax title? A. He bought it in for me; I asked him if he would buy it, and he said yes, he would buy it in for me.

Q. He would buy it in for you? A. Yes, sir.

Q. Is that what he said? A. Yes, sir.

Q. So that you knew when Mr. Mickens got it that you were to get it? A. Yes, sir.

Mr. Hudson: Mr. Allen really represents Mr. Thompson; has he the right to cross examine?

The Vice Chancellor: Is there a different defense?

Mr. Hudson: Well, there might be possibly.

The Vice Chancellor: Is there any objection?

Mr. Davis: None whatever.

By Mr. Allen:

Q. I understood you to say that, besides the money which was paid for interest by Mr. Berry, which you say was one year's interest and was paid one year after the mortgage was given, you also received some notes which were paid on account of interest? A. Yes.

Q. Have you got those notes now? A. They were no good.

Q. Have you got those notes now? A. They are somewhere around, I suppose.

Mr. Davis: Here are a couple of them (handing papers to Mr. Allen.)

Q. This paper which has been marked Exhibit C. No. 1 is dated Westwood, September 2nd, 1878; I understood you at first to testify that you went to see Mr. Berry, and then afterward you said, if I understood you correctly, that you thought you saw Mr. Berry when he came over there? A. Yes, sir, that is what I thought.

Q. Looking at that paper, which was written and dated Westwood, does not that refresh your recollection that you did go to see Mr. Berry at Westwood?

A. It might be so; I thought he was up home.

Q. At that time you said you were poor? A. Yes, sir.

Q. You had used up the three thousand dollars which was paid you when the property was bought by Mr. Berry and Mr. Thompson? A. Yes, sir.

Q. Did you have any place to live at that time? A. No.

Q. Didn't you, when you went to see Mr. Berry,

tell him that you did not have any place to live?

A. I was renting, yes; I was paying rent.

Q. Didn't you tell him you would like to move into the old place? A. I cannot remember whether I said that or not.

By the Vice Chancellor:

Q. You spoke of your receiving three thousand dollars; what did you sell the farm for? A. Six thousand dollars. 10

Q. You got three thousand dollars in cash, did you? A. Yes, sir.

Q. Was there any mortgage on it? A. No.

Further Cross Examination by Mr. Allen:

Q. You received \$3,000 in cash, and the other \$3,000 was this mortgage we have been speaking about? A. Yes, sir. 20

Q. After you went back to live on the property, at the time when that paper was written, if Mr. Berry told you to take the property back at that time, why didn't you pay the taxes; was there any other reason than that you were poor? A. Just poor, that was the matter.

Q. But after the property had been sold for taxes and bought by the township, you did pay the township \$25 for rent while they held it? A. I think that is the way of it; I don't know; I forget it. 30

Q. And then, after it was sold for taxes, Mr. Mickens bought it from the township? A. Yes, sir.

Q. For the balance of the term. Now, afterward, you paid him from time to time? A. Yes, sir, whenever I could.

Q. About ten years ago you said you had paid him all that was due him? A. I think it was about ten years ago.

Q. Did you ask him for any paper or any deed transferring to you— A. Ask who?

Q. Mr. Mickens? A. No, sir.

10 Q. And you never received any from him? A. No, sir.

Q. Anything transferring the title to you? A. No, sir.

Q. And he held it for the full thirty years? A. Yes, sir.

Q. Did you ask Mr. Berry, on September 2nd, 1878, when he gave you that paper, for any paper which would show that he had given the property back to you, did you ask him for any deed of the property? A. No, sir.

20 Q. Or any paper whatever to show he had released his claim on the property? A. No, sir.

Q. Why not? A. Because there was a mortgage on the place and he was very much in debt, and so many judgments against him that I didn't think it was any use; that is the truth of it.

Q. You didn't think it was any use to get such a paper? A. No, sir.

Q. Did you ask him where Mr. Thompson was? A. I never asked him.

30 Q. You knew he had a half interest in the property? A. Yes, sir.

Q. You never asked for any paper from Mr. Thompson? A. No, sir, he told me he was dead.

Q. How long ago was that? A. A good while ago.

Q. How long? A. Twenty-five years ago.

Q. Who told you that? A. Berry; I think it

was him, I am not sure; Mr. Berry told me, I think, that he was dead.

Q. If Mr. Thompson did not die until about three years ago, do you still think it was twenty-five years ago? A. I never heard anything from him.

Q. You did not think it necessary to get any paper from Mr. Thompson at all? A. I did not. 10

Q. Did you inquire of Mr. Berry about Mr. Thompson at the time you went to see him in 1878, did you inquire of Mr. Berry anything about Mr. Thompson? A. No, I did not.

Q. Your lawyer in the foreclosure proceedings was Augustus H. Drury? A. I think it was Augustus H., yes.

Q. Where did he practice law at that time? A. In Paterson. 20

Q. You went to see him to get him to foreclose? A. Yes, sir.

Q. What is the nearest you can fix that date? A. It must have been about five or six years afterwards.

Q. Five or six years after 1873, when you got the mortgage? A. Yes, sir.

Q. That makes it about 1878 or 1879? A. Somewhere around 1880; I cannot tell exactly the time.

Q. 1879 or 1880? A. It is so far back I cannot tell. 20

Q. I understood you to say it was before you went to see Mr. Berry, when this paper (Exhibit C. No. 1) was given to you; was it before or after? A. It was after Berry gave me that paper.

Q. After you started the foreclosure suit? A. Yes, sir.

Q. What did Mr. Drury tell you that he did for you? A. He said that he was getting on good with the case.

Q. When did he say that? A. The last time I saw him, I suppose, then he died; everything went down; he died, and the place was sold for taxes.

10 Q. When you went to see Mr. Drury did he tell you that he had seen Mr. Berry? A. I think he did.

Q. Did he tell you what Mr. Berry said about the interest? A. He said nothing about that to me, no.

Q. He did not tell you that Mr. Berry had offered to pay \$188 for a year's interest and pay the expenses of foreclosure? A. He did not; I never heard of such a thing.

20 Q. But, as a matter of fact, after Mr. Drury saw Mr. Berry he stopped doing anything about the foreclosure for a time, didn't he? A. He stopped it.

Q. For two or three years? A. No, I don't think it was that long.

Q. Quite a while—for two or three years, perhaps? A. I don't think it was that long.

Q. How long was it? A. I don't think it was over a year or so.

By the Vice Chancellor:

30 Q. What was over a year or so? A. When Drury commenced the foreclosure.

Q. What about the one year? A. It ran about a year, and he died—or something like that. The lawyer died.

Q. And that was the end of it? A. Yes, sir, and the place was sold for taxes.

Q. What is the place worth, about? A. I had an offer of \$5,000.

Q. Is it worth as much as \$7,000? A. I could not say about that.

Q. In your judgment, could you get \$7,000 for it? A. They are buying up land all around there, these Japs, Japanese, they are buying thousands of acres around there. I had an offer of \$5,000 for it. 10

Further Cross Examination by Mr. Allen:

Q. I show you a certified copy of the record in a chancery suit between Jacob H. Brown, Complainant, and Aleazer Thompson, William Berry et al. Defendants, filed June 29, 1878; does that refresh your recollection as to when it was you had Mr. Drury take up the matter? A. I don't see much into it now. 20

Q. You do not think it was June, 1878? A. I don't think so; I don't know.

By the Vice Chancellor:

Q. Do you know what that paper is that Mr. Allen showed you? A. No.

The Vice Chancellor: I thought not. It is not a memorandum by which the witness can refresh his recollection. You can prove steps were taken in the suit by producing a certified copy of the record and interrogate the witness concerning it. 30

Further Cross Examination by Mr. Allen:

Q. After you had the talk with Mr. Berry, the first time you talked with him about foreclosure,

then for some reason the matter was dropped for a year or two; you remember that, don't you? A. Let it stay there, yes.

The Vice Chancellor: What was that?

The Witness: It went right on for a year.

10 Q. Then in 1880 you took it up again through Mr. Drury?

The Vice Chancellor: The witness has not testified to that.

Q. In 1880, did you do anything more through Mr. Drury? A. Not that I know of.

20 *The Vice Chancellor:* You are interrogating the witness on the theory that he has said he started proceedings and let them drag for a year or two. He has not said that. Every time you put that language in his mouth, to which he apparently assents, he continues by saying the thing was in Mr. Drury's hands for a year and then Mr. Drury died and the whole thing dragged.

30 Q. After the matter was running for a while, do you remember anything else that was done, along two years afterwards, by Mr. Drury? A. No, I do not.

Q. After it ran for two or three years, what did happen?

The Vice Chancellor: The witness has not said it ran for two or three years; he has

said over and over again it ran for about a year.

Q. After it ran about a year, to the best of your recollection what was done with it then? A. I told him to let it stay there.

Q. Stay there? A. Yes, sir, the same as it was. 10

By the Vice Chancellor:

Q. Why? A. Why, the foreclosure.

Q. Why did it stay there? A. Well, I don't know whether he was slow on it, or what; he told me he had a good deal of trouble; he was very much in debt and had so many judgments against him; that is what he told me; I recollect that. 20

Further Cross Examination by Mr. Allen:

Q. How long before he died was it you talked with him about it? A. We talked first about it, but afterwards we did not have much talk; we did not see one another very much because I lived clear up there and he lived in Paterson; there was not very much doing.

Q. What was the last talk you did have about it with him? A. About how he was making out with it. 30

Q. What did he say? A. He was getting along good.

Q. Getting along all right? A. Yes, sir.

Q. How long was that after September 2nd, 1878? A. Oh, that was a year or so; I cannot exactly remember.

Q. A year or so after you had gone on the property? A. Yes, sir.

By the Vice Chancellor:

Q. What was that you testified to? A. About a year or so afterward.

Q. What was a year or so afterward? A. I asked Mr. Drury how he was making out, and he said, "I am getting along good."

10 Q. A year or so after what? A. After the foreclosure, after he commenced suit.

Further Cross Examination by Mr. Allen:

Q. My question was, how long was it after 1878 that you went back to live in the house? A. Four or five or six years; I cannot exactly tell.

Q. It was some years after? A. Yes, sir.

By the Vice Chancellor:

20

Q. I want to understand your testimony. What did you just state? A. About Drury?

Q. No, in answer to counsel; what was it you testified to, repeat it—you said something was five or six years. A. Oh, when I commenced suit?

Q. Yes. A. That was five or six years after he gave me the notice to go back on the place.

30

Q. The notice he gave you to go back on the place is dated September 2, 1878, now what do you say? A. Well, I say two years after—three or four years after I commenced suit against Berry and Thompson, through Lawyer Drury.

Q. State that again; I do not understand you yet. A. That is the time I said I commenced to foreclose on this mortgage.

Q. When did you commence? A. About four or five years after I got back on the place.

Q. You got this letter to the tenant or occu-

pants, Ridner, on September 2nd, 1878? A. Yes, sir.

Q. Did you go and take possession right away? A. Yes, sir.

Q. How long after that do you say it was you began to foreclose? A. Three or four years.

Q. Mr. Brown, I understood you to say, I think, on your direct examination, that the foreclosure suit was started— A. Yes, sir. 10

Q. —and then you made the settlement with Mr. Berry and he gave you that letter to Ridner. Did you so testify? A. He gave me this—

Q. Now, listen again. I understood you to say a while ago that you began a foreclosure suit, and that stirred up Mr. Berry, and you got hold of Berry, and Berry gave you this letter to Ridner, and you went back and took possession of the place. Did you mean to testify as to that or not? A. That is about the way of it. 20

Q. Did you begin the foreclosure suit before or after you took possession? A. After I took the place back.

Q. Three or four years after that? A. Yes, sir.

Q. Then you are mistaken if you said what I repeated to you? A. Well, perhaps I am.

Further Cross Examination by Mr. Allen: 30

Q. I understood you to say that after you went back to live on the place in 1878 you never saw Mr. Berry afterward. A. I don't think I did.

Q. Did you ever try to see him afterward? A. I think not.

Q. Why did you start to foreclose, as you say, two or three years after 1878, when you went on the property? A. I don't know why I did.

Jacob H. Brown—cross—re-direct
William J. Brown—direct

Q. Was that by advice of your attorney? A. No.

Q. Mr. Drury — you talked with Mr. Drury about it? A. Oh, about the foreclosure?

Q. Yes. A. Why, sure.

10

Redirect Examination by Mr. Davis:

Q. How old are you now? A. I will be seventy-seven in April.

Q. When you went back on the place in September, 1878, were there some taxes due on the place then? A. Yes, sir.

Q. Why did Mr. Mickens take the property over, the tax certificate over from the township, instead of your taking it over? A. I don't know; he bought it for me.

Q. Did you have the money then? A. I did not have the money, no, sir; he took it and bought it in for me.

The Vice Chancellor: He has testified to that fully.

Q. Did Mr. Mickens ever take any possession of the property at all? A. No, sir.

Q. And the money that he advanced for you, you paid back with what interest? A. Six per cent.

WILLIAM J. BROWN sworn for the complainant.

Direct Examination by Mr. Davis:

Q. Are you a son of Jacob H. Brown? A. Yes, sir.

Q. What is your business? A. Engineer; locomotive engineer on the Erie railroad.

Q. How old are you? A. Forty-three.

Q. Where are you living now? A. No. 37 Kingsley street, West Orange.

Q. How long have you been living there? A. Three years.

Q. How long did you live in Jersey City? A. I guess I lived there about eight years.

Q. Where did you live before that? A. Midvale.

Q. Was that on this farm? A. No, that is not on the farm.

Q. How long did you live at Midvale? A. I lived at Midvale seven years after I was married.

Q. Before you lived at Midvale, where did you live? A. I was away from Midvale down to Pompton Junction, Pompton and Little Falls.

Q. How long have you been married? A. I was married in 1893, I think.

Q. Then you have been married about twenty-two years? A. About that.

Q. Did you at any time live on this farm at Pompton with your father and mother? A. Yes, sir, I was born and brought up there.

Q. What is the first you remember about going to live on the farm? A. I remember going and living on the farm when I was six years old; going back there with my father.

Q. Do you remember where you lived before you went back when you were six years old? A. We moved out of my uncle's house, just alongside of my father's farm, joining my father's farm.

Q. That is in Pompton? A. That is in Midvale.

10

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30

Q. When you went back to live there with your father when you were six years old—what year were you born in? A. 1872.

Q. And that was in 1878, was it not? A. It must have been about that.

Q. Who did the family consist of at that time?

10 A. There was my father and mother, my grandmother, my father's mother; my sister Bertha and myself; I am not sure whether my sister Ida was born then yet or not.

Q. From that time, when you were six years old, down to the time when you got married, where did you live? A. I lived on the farm with my father and mother.

Q. The same place? A. Yes, sir.

Q. When you got married did you move off the farm? A. Yes, sir.

20 Q. When did your mother die? A. My mother died in February, seven years ago last February, I think it was.

Q. That would be in 1908, seven years ago last February, was it? A. I think that is about it.

Q. Up to the time your mother died, where did your mother and father live? A. They lived there on this farm.

30 Q. From the time you were six years old down to the time your mother died, did your father and mother live in any other place except on that farm? A. No, sir, they did not.

Q. How long after your mother died did your father remain there on the farm? A. How long after my mother died did my father continue to live there?

Q. Yes. A. Why, he got out just as soon as we had the sale.

Q. What did you sell? A. Furniture, cows, horses, and like that, and all the farming utensils.

Q. Then after that he went to live with you?

A. Yes, sir.

Q. And has your father lived with you ever since? A. Yes, sir.

Q. After your father moved out of the farm did anyone else occupy it? A. Right away we had a tenant, engaged the place, before we could get our furniture out of the house; he was ready to take it just as soon as we moved out. 10

Q. From the time your father moved out down to the present time, how many tenants have you had on that farm; name them if you can. A. I don't know; the first one was DeGraw; the second one was Corrigan; the third one was Conklin, and the next was Drew; the next was a lady by the name of Mrs. Moffitt. 20

Q. Was that the widow? A. That was the widow; and the one we have there at the present time, his name is Harvey Bean.

Q. What rent did they pay to you? A. I got eight dollars from the first party, and am getting seven dollars now, that is a month.

Q. Who does the actual collecting of the rent? A. I collect it for my father; my father, he gets the money.

Q. For how many years have you been collecting the rent in that way? A. Since my mother died. 20

Q. And that is since your father moved off the place? A. Yes, sir.

Q. Has the place been idle for any length of time since your father moved out? A. Only just long enough for one tenant to get out and another get in; we have always had one ready for it that wanted it.

Q. Do you remember the addition being built to the house? A. Yes, I remember that.

Q. When was that built; how soon after your father went in there? A. I cannot tell the exact year, but I remember my father building an addition to the house when I was a boy, and putting a roof on the house at the same time.

10 Q. That addition was used for what? A. For a bedroom and a kitchen.

Q. Do you remember any chimneys being built on the house? A. Yes, sir.

Q. How many? A. Two new chimneys, one on the big part of the house and one on the small part.

Q. Do you remember your father doing anything to the exterior of the house? A. He put new siding on, painted it, and put a new roof on.

20 Q. How many roofs did he put on the house? A. Two roofs; he put one on about six or seven years ago, and one on the barn also at the same time.

Q. And the one on the house was how long before that? A. Well, that was put on when I was a boy. I don't think I was over twelve years old, or something like that, when my father put a new roof on the house.

30 Q. Was anything else done to the barn besides putting a new roof on it by your father? A. Not that I know of, only once in a while nailing on a board or something like that.

Q. Do you remember a shed being put up on the premises? A. My father built a small wagon house with a granary above, and he rebuilt the well; the well caved in, and they had to dig it out and rebuild it and sink it deeper and put a curb on with a roof over it.

Q. Did you have any part in working the farm yourself? A. Yes, sir.

Q. How long—up to what time? A. I always worked on the farm until I was eighteen or nineteen years old—something like that.

Q. What use did your father make of the farm while he was on it? A. Raised potatoes, and corn, and buckwheat, and such things as that—a garden. 10

Q. Any hay? A. He cut hay, yes, sir.

By the Vice Chancellor:

Q. Did he have any cows? A. Yes, he had some cows.

Q. Any hens, chickens? A. Yes, sir, he had some chickens, and he had a horse.

Further Direct Examination Resumed. 20

Q. Did any sister of yours stay there after your mother died? A. After my mother died?

Q. Yes, when did your last sister get married, the sister your father refers to; I think he called her Ida? A. No, Annie.

Q. Yes. A. Yes, and so she went to Pompton when my father came down to live with me after my mother died, my sister Annie went to Pompton.

Q. And lived with whom? A. And boarded 30 down there until she got married; I think she got married shortly after my mother died, a year or so, or something like that.

No Cross Examination.

GEORGE W. MICKENS sworn for the defendant.

Direct Examination by Mr. Davis:

Q. Where do you reside? A. Pompton Lakes.

10 Q. How long have you lived there? A. Well, I boarded there about twelve years before I lived there, but I have been in business there for the past twenty-one years.

Q. Before you were in business there, did you live there or board there? A. I lived over at Pompton, Morris County.

Q. You are a brother of the late Mrs. Brown?
A. I am.

Q. Her name was what? A. Mary.

20 Q. Are you acquainted with this place at Pompton that was owned one time by Thompson and Berry, and which the Browns occupied afterward?
A. Yes, sir.

Q. Do you recall the time when they moved on the property after being off for a period? A. Well, I could not just give dates, but it was somewhere around 1872 or 1873, somewhere along there.

Q. Does your memory go back as far as the time when Mr. Brown sold to Mr. Berry and Mr. Thompson? A. Yes, sir, I remember his selling.

30 Q. You remember his moving off the farm at that time? A. Yes, sir, he moved over, I think to Lincoln Park.

Q. Do you recall their moving back on the place after a period of years? A. Yes, sir, I believe they came back there after five or six or seven years; something like that.

Q. You remember the circumstances of their moving back? A. I knew they moved back, yes, sir.

Q. Where were you living at the time they moved back? A. At Pompton Junction.

Q. How far was that from this farm? A. About three miles and a quarter.

Q. How frequently during that period did you go down to your sister's, or see her? A. Well, quite frequently, and they came down to us; we visited back and forth. 10

Q. Did you move, at any time after that, nearer to the farm than three miles? A. No, sir.

Q. From that time when they moved back down to the time your sister died, did Mr. Brown and his wife (your sister) live at any place except on that farm? A. No.

Q. You remember, of course, the death of your sister in—what year was it? A. Why, I think it was 1908 or 1907—somewhere along there, about seven or eight years ago. 20

Q. Then you remember that after that Mr. Brown moved away, I presume? A. Yes, sir.

Q. You, some time in the eighties, I think it was, took over the tax certificate from the township, didn't you? A. Yes, sir.

Q. At whose request did you do that? A. At the request of Mr. Brown, my brother-in-law, and my sister.

Q. Why did you take it over? A. Well, they did not have the funds to do it, and I did not want them to—to see them lose their home; they had no place to go to. 30

Q. Did they since repay you? A. Yes, sir.

Q. How long did it take them to pay you? A. Well, it took them, I should say, from sixteen to eighteen years.

By the Vice Chancellor:

Q. How much did you pay out for the tax title?

A. I cannot exactly say, but the records will show; I think there are records here in Court that will show.

10 Q. Can you recollect about what the amount was? A. Somewhere around two hundred dollars; now that is only approximate.

Further Direct Examination:

Q. For how many years was it that you paid the taxes at that time? A. That was the amount of taxes that was due. I cannot tell just how many years.

20 Q. It was for a number of years? A. For a number of years of back taxes and interest.

By the Vice Chancellor:

Q. You bought the tax title and paid taxes that had accrued subsequent to the time when the certificate was given? A. Yes, sir, up to date.

Further Direct Examination:

30 Q. During any time while you held this certificate did you go into possession of the farm at all? A. No, sir.

Mr. Hudson: I object to the form of the question.

The Vice Chancellor: Why?

Mr. Hudson: As long as the witness has answered, I will let it go.

Q. How many years is it since the last of this

money was paid to you by Mr. and Mrs. Brown?

A. I think it must be about ten years ago.

Cross Examination by Mr. Hudson:

Q. All the money was paid prior to the death of your sister, was it not? A. It was paid before her death, yes, sir.

10

Q. At the time you bought this certificate who was it asked you to do that, your sister or Mr. Brown? A. Both of them.

Q. Both of them? A. Yes, sir.

Q. You never gave Mr. Brown or Mrs. Brown any papers showing you had bought the certificate for them? A. No, sir.

Q. You have been asked for such a paper, have you not? A. No, sir.

Q. Were you not asked for such a paper by Mr. Brown after the death of his wife? A. No, sir.

20

The Vice Chancellor: Have you got the certificate, or did you destroy it?

The Witness: I have the certificate right here.

Q. You still retain the certificate? A. Yes, sir.

Q. When you bought the certificate, the purpose was to provide a home for Brown and his wife? A. Entirely.

30

Q. After you got this certificate, or at the time you got it, what was said between Brown and you as to who should occupy the place? A. Nothing at all that I know of. Of course, I bought it for them, who else would occupy it?

Q. What was the arrangement that you made? A. They agreed to pay me back what I had paid out for them.

Q. When was that agreement made? A. There was no agreement made, just a verbal agreement that they carried out.

Q. You had a talk about it? A. Yes, sir.

Q. When was that talk had with reference to the time of your buying the certificate? A. At the time I bought the certificate.

10 Q. Was it upon the very day you bought the certificate, or some time before or after? A. I do not remember that.

The Vice Chancellor: Did you buy the certificate in pursuance of this talk?

The Witness: That is right.

Q. You bought the certificate because of some talk had between your sister, Mr. Brown and yourself? A. I bought the certificate for the sole purpose of saving the home for them, yes, sir.

20 Q. After you bought the certificate, what taxes did you pay? A. I have never paid any taxes.

Q. At the time you bought the certificate, do you know the condition of title with regard to taxes? A. How is that?

Q. At the time you bought the certificate, do you know the condition of the title as to taxes? A. I know it was a tax sale certificate.

30 Q. Do you know for which years the property had been sold? A. It had been bought in by the township, I understand, for thirty years, and this was a year or two after the township had owned it that I bought it from the Township Committee.

Q. Do you know what was done about the taxes for the year in which you bought the certificate from the Township Committee? A. Everything up to

the time I bought it was included in the tax certificate.

Q. And after that? A. After that it was assumed by Mr. Brown.

Q. So you did not pay any taxes? A. No, sir.

By the Vice Chancellor:

Q. Do you mean to say that the taxes were all included in this certificate? A. All the back taxes that were owed to the Township. 10

Q. Down to the date when it was struck off? A. Yes, sir, and from the time the Township Committee had owned it up to the time I bought it, they were included also.

Q. You had to pay them? A. Yes, sir.

Q. That was not in the certificate? A. Well, it was in the amount for which I got it. 20

Q. You had to pay those taxes or else they would not give you an assignment of the certificate? A. That's what I mean, but I had no tax receipt for that; of course, it was the taxes I was paying when it comes down to that—taxes and costs.

Further Cross Examination:

Q. At the time you bought the certificate from the Township, you had knowledge of the situation existing between Berry and Brown, did you not? 30
A. Yes, sir, I knew that Berry and Thompson, or Thompson and Berry, had purchased the property from Brown some years prior, and he held a mortgage, and that the mortgage was all ready to be foreclosed, and, as I understood, the lawyer died, and then, as I understood it, from that time on—just in a verbal way, they told Brown to go back on the place, and that's all I know about it.

Q. You are engaged in the real estate business?

A. I am now, yes, sir.

Q. What business were you in in 1887 when you bought this certificate? A. I was station agent at Pompton Junction.

10 Q. And Mr. Brown and his wife came to consult you frequently about this transaction between them and Berry and Thompson? A. They did not. They did not come to consult me frequently at all.

Q. Did they consult you at all? A. They asked me to buy in this property and save their home.

Q. How, then, did you learn about the transaction between Berry and Brown? A. Well, I have always known that.

Q. You have always known it; how did you know it? A. The same as other transactions are known.

20 Q. You learned it from your sister and Mr. Brown? A. Yes, sir.

Q. So that there have been frequent talks between your sister and Mr. Brown and yourself concerning this matter? A. Not frequently.

Q. There had been some? A. Yes, sir.

Q. Sufficient for you to know all of the details? A. Sufficient for me to know they sold it to Berry and Thompson, and Thompson and Berry gave them a mortgage, which was started to be foreclosed.

30 Q. At the time you bought the tax certificate, did you know an attempt had been made to foreclose the mortgage? A. No, sir.

Q. At the time the foreclosure proceedings started, did you know that? A. No, sir, not at the time when they were first started.

Q. When did you first learn there had been some foreclosure proceedings? A. That I cannot say;

it was probably some time after the proceedings had been started. It may be as late as from the time that lawyer died; I don't just recall that.

Q. What would you say with reference to the time when Brown went back on the place; can you fix the time? A. I cannot fix the date, no, sir.

Q. At the time Brown went back on the place, did you know that there had been foreclosure proceedings commenced? A. I did not. 10

Q. After Brown went on the place, how long was it before you learned foreclosure proceedings were started? A. That I cannot say; I cannot fix the date; it may have been a year, and it may have been five years.

Q. Do you know a hotel keeper in that neighborhood named Down? A. James Down?

Q. Yes. A. He lives at Haskell; that is two miles away. 20

Q. Do you recall a conversation with him since your sister died in which you claimed to hold this tax certificate still? A. I do not recall it, no, sir.

Q. Do you say you did or did not have any such conversation? A. Not to my knowledge.

Q. Could you have had such a conversation with Mr. Down? A. Yes, sir.

Q. You could have had it? A. I could have, if he came to me and asked me anything at all about the property. 30

Q. You would have told him you held the certificate? A. Yes, sir.

Q. Would you go as far as to offer to sell out the certificate? A. No, sir.

Q. Did you make a claim on the county of Passaic for mouey due under condemnation proceedings for taking part of this property? A. No, sir.

Q. You are sure about that? A. Why, I know.

Q. Do you recall a conversation had by you with Mr. Zeiler, a contractor, who was removing part of the earth? A. I don't know him.

Q. You do know that part of this farm has been taken for a road improvement, do you not? A. I understand it has.

10 Q. Is that all you know about it? A. Yes, sir.

Q. Had you not been down to the place while the work was going on? A. I say I understand that is part of the farm where the new cut is made on the westerly side of the Greenwood Lake road.

Q. You have been there frequently? A. I have been past through there a few times since it has been completed; I have been over the place twice.

20 Q. You do not recall having any conversation with the contractor? A. No, sir; I don't know the contractor and have not talked with him.

By the Vice Chancellor:

Q. Are you acquainted with real estate values in the neighborhood where this farm is located? A. Some.

Q. You are a real estate agent, I understand? A. I am now, yes, sir.

Q. Engaged in negotiating sales and purchases of property? A. Yes, sir.

30 Q. Can you give us an idea of the value of this property, this farm, as it now stands? A. As it originally stood, I was very much surprised to know that Berry and Thompson would offer to give \$6,000 for the place originally, in those years, away back in the seventies; I believe it was done for a mineral purpose, but since that time the mineral claim has been practically nothing; they did not find what they expected, and the consequence is, it depre-

ciated; now I believe that the water shed of the Wynockie Valley is what is helping to boom real estate up through that section.

Q. When did that boom begin—how long ago?

A. Up to the last two or three years; up to that time it laid normal and dormant.

Q. Can you give us a fair idea of the value of the property before the boom, three or four years ago? A. I should say \$5,000 for it is a good price in its present condition. 10

Q. Since 1878 down to three or four years ago, in your judgment, could that property have been sold for more than \$5,000? A. I don't think it could.

Q. Could it have been sold for \$6,000, possibly, do you think? A. I doubt it very much.

Q. What do you think it could be sold for now? A. Well, if they could get an offer of \$6,000 for it today, I should say "Let it go quick." That would be me. 20

Further Cross Examination:

Q. Do you know E. J. Ricker? A. I do.

Q. He owns considerable property in that vicinity, does he not? A. He owns quite considerable, but more through Haskell; I don't know if he owns any through that section. 30

Q. Have you not lately talked with him about selling this place? A. No, sir. Now, you have not got Josiah Riker mixed in with that?

Q. It may be Josiah Ricker? A. Well, now, Josiah Ricker owns more up through that section than E. J.

Q. I meant to ask about him. A. No, I have not conversed with him about selling it, either.

Q. Before your sister died, were you requested to transfer to her the tax title? A. Requested by whom?

Q. Well, by your sister? A. No.

Q. Were you requested by someone for your sister? A. No, sir.

10 Q. Were you asked if you would transfer that tax certificate to Mr. Ricker, provided he could get a deed from Mr. Berry? A. No, sir.

Q. Do you know Judge Cabell? A. Yes, sir.

Q. Do you remember having a conversation with Judge Cabell concerning the tax title on this property? A. If I remember rightly, he spoke to me once about that property, but just what that conversation led up to I could not positively say; if he is here and can refresh my memory, I am willing to be refreshed on that thing.

20 Q. You think, however, he did speak to you about it? A. I think he did.

Q. Do you remember at that time whether or not the name of Ricker was mentioned? Either Josiah or E. J.? A. Well, I cannot say; it might have been, for this reason, that Josiah has been quite active in being a promoter for different parties, like these Japanese who are coming up and buying all through there, and I understand he went ahead as advance agent.

30 Q. You think it is quite likely the proposition may have been made on his behalf? A. It could have been, but I don't just recall it.

Q. Do you recall Mr. Berry having notified your tenant of this property not to pay any rent and your saying you would have him arrested? A. My tenant?

Q. Well, the tenant on this property? A. No, I don't know anything about it.

Q. Did you make that statement, that it was your place and if Berry came there again you would have him arrested? A. Never.

Q. You did not make that statement to Mr. Down? A. No, sir.

Mr. Davis: I offer in evidence certified copy of the foreclosure proceedings in the suit between Brown and Berry and Thompson. 10

It shows a foreclosure bill filed by Jacob H. Brown against Eleazer Thompson, William Berry and others, the bill being filed November 21, 1877, Henry S. Drury, Solicitor. It shows a subpoena dated April 3rd, 1878, returnable April 18th, 1878. There are several acknowledgments of service, and also it shows service of the subpoena on William Berry on April 8th, 1878, and on other defendants, and it is returned "Not served," as to Eleazer Thompson and others. An order of publication as to Eleazer Thompson and others is dated April 23rd, 1878. It shows an affidavit of Albert A. Van Hovenberg, who described himself as a clerk in the office of Henry S. Drury, as to the residence of Eleazer Thompson and one other. There is a notice to absent defendants, the absent defendants being Eleazer Thompson and Margaret Benson, dated April 23, 1878. There is a proof of publication of the notice to absent defendants dated June 29th, 1878. The notice itself to absent defendants, one of whom is Eleazer Thompson, dated April 23, 1878. Interlocutory decree, June 29, 1878, against all of the 20

George W. Mickens—cross
Walter C. Cabell—direct

defendants, and a reference to Augustus H. Drury, one of the Masters; Master's summons to various defendants, one dated April 21, 1880, and the others on July 5, 1878. Master's report dated April 29, 1880, made by Augustus H. Drury, Master, reporting that on that date the sum of \$3,808.50 was due to the complainant, Jacob H. Brown, for principal and interest on his mortgage, bearing date June 23, 1873, the amount being made up as follows:

Principal \$3,000.00
 Interest from June 23, 1878, to
 April 29, 1880..... 808.50

Final decree dated May 24th, 1880.

Marked Exhibit C. No. 2, November 17, 1915. H. W. K.

The Vice Chancellor: Nothing appears to indicate whether any fi. fa. was issued or not.

Mr. Davis: No, sir.

The Vice Chancellor: You do not claim anything further was done in the foreclosure proceedings than is shown in the records?

Mr. Davis: That is conceded, that no fi. fa. was issued.

COMPLAINANT RESTS.

WALTER C. CABELL sworn for the defense.

Direct Examination by Mr. Hudson:

Q. Do you know William H. Berry? A. I do.

Q. And Jacob Brown? A. Yes, sir.

Q. Did you know Mary Brown in her lifetime?

A. Yes, sir.

Q. Do you recall visiting William H. Berry? A. I do.

Q. What was the purpose of your visit? A. To see if he would give Mrs. Brown a deed.

Q. When was it that you visited him?

10

Mr. Davis: I think it ought to appear whose attorney the witness was at the time of this transaction, because what he did may have been of so confidential a nature as between attorney and client, that unless he is released—

The Vice Chancellor: Do you intend to show by this witness statements made by Mr. Berry?

Mr. Hudson: No, sir.

20

The Vice Chancellor: What is the object?

Mr. Hudson: I want to show he went to Mr. Berry for a deed, and did not get it, and to ask him what he did after that.

The Vice Chancellor: How is that relevant?

Q. On whose behalf did you visit Mr. Berry? A. Mrs. Brown's.

Q. Did you have any conversation with Mr. Brown regarding this property? A. None what- 30
ever.

Q. Did you have any talk with Mr. Mickens about this matter? A. I cannot say that; I saw Mr. Mickens quite frequently, and I cannot say as to whether about that time I had any conversation with Mr. Mickens on the subject at that time.

Q. Did you know at that time that Mr. Mickens was in some way interested in this property? A. Oh, yes.

10 Q. Did you learn that in your negotiations regarding this property? A. Well, I don't know just what my negotiations were, that is difficult; I learned it from Mrs. Brown, and from a search of the records in the offices.

Q. Was it before or after your examination of the records that you went to see Mr. Berry? A. It is very difficult for me to recollect, but I must assume, from my ordinary course, it would have been after I examined the record that I went to see Mr. Berry.

Q. After you saw Mr. Berry, what, if anything, did you do? A. I did nothing.

20 Q. Why? A. Because—

Mr. Davis: Just a minute. I object.

The Vice Chancellor: How is that relevant? He said he did nothing. Now you ask him why, and he might tell us a good many things as reasons why he didn't act further for Mrs. Brown in this matter.

Mr. Hudson: I withdraw the question.

30 Q. You say the purpose of your visit to Mr. Berry was to get a deed for Mrs. Brown? A. Yes.

Q. Did you get that deed? A. No.

Q. You asked Mr. Berry for such a deed? A. I believe so. That is what I went to see him for.

Q. Do you remember when that was? A. No; I remember it was within a year of Mrs. Brown's death; that is, the whole transaction occurred not more than a year before Mrs. Brown died, but when

Walter C. Cabell—direct
William H. Berry—direct

she died, I do not recall; if I had not heard the testimony on the stand I should have said not more than five years ago.

No cross examination.

10

WILLIAM H. BERRY, one of the defendants, sworn for the defense.

Direct Examination by Mr. Hudson:

Q. Who was in your premises at Pompton Township in 1878; did you have a tenant in 1878? A. Which premises do you mean—the property there?

Q. Yes, the property. A. I had one up to the spring of 1878.

Q. Who was that tenant? A. David Drew. 20

Q. Do you know when he left the property? A. He left about the 1st of May; took a lot of my things with him.

Q. Who next occupied the place? A. Nobody until the fall, in September, Jacob Brown.

Q. In September, 1878, where did you live? A. Westwood, Bergen County.

Q. I show you this paper (Exhibit C. No. 1) and ask you where you lived when you gave that to Mr. Brown? A. At Westwood. 30

Q. You lived at Westwood? A. Yes, sir.

Q. Do you know where this paper, No. 1, C. No. 1, was delivered to Mrs. Brown? A. I think it was on the second of September.

Q. Where was it? A. At Westwood.

Q. At Westwood? A. Sure.

Q. At your home in Westwood? A. Yes, sir.

Q. What was the occasion of Mr. Brown being at your place in Westwood on September 2nd, 1878?

10 A. He came over to see me, stating that there was no tenant on the Berry-Thompson place, and he had spent all his money and had to move, and had no place to move in, and he wanted to know whether he could move in there, and I said under certain
circumstances, on account of his wife, who used to live with us, we thought a great deal of her; on her account he could move in the place, but he should pay the taxes and—well, move; move right away, but he said, “There is a man living on the place; there is a tenant living there.” “No,” I said, “there is no tenant living there.” “Oh, yes, there is, a man by the name of Ridner—” I think. “I know better; I saw the place inside of two months, and it was empty;” he said, “there is a man by the name of Widner living on the place, and I can’t
20 move in unless you can get him out.” Well, after some talk, he said, “I will have to have an order on Ridner to get on the place; I don’t want to be out in the cold.” I said, “Well, I don’t want your wife living outside at all,” and I gave him that order to go on the place.

Q. At that time, September 2, 1878, did you know of foreclosure proceedings which had been started by Brown against Thompson and you? A. I did.

30 Q. What, if anything, had been done by Thompson and you concerning those foreclosure proceedings? A. Why, the notice was served on me in April, the latter part of April, 1878, on me; I went over to see Drury the lawyer, and I told him I did not want the—I would like to stop it, and I made a proposition to him that I would pay the expenses of a foreclosure so far, if they would stop the fore-

closure. He told me to come and see him in about ten days. I went there about ten days afterward—I went there in June, and he said if I would pay a year's interest and the costs of foreclosure they would stop the proceedings, which I did; I gave him two hundred and fifty dollars.

Q. When was it you gave him two hundred and fifty dollars? A. In June; I cannot tell just exactly the date. 10

By the Vice Chancellor:

Q. Who was then in possession of the farm? A. It was vacant; the tenant we had in then—left between two days in May, the first of May.

Q. Who was the tenant? A. David Drew.

Further Direct Examination:

Q. This payment you speak of in June, was June of what year? A. June in 1878. 20

Q. After you made that payment to Drury did you know of any further proceedings in the matter of the foreclosure? A. Never; that is the last; I never heard of any; I supposed that ended it.

Q. You had made other payments to Brown, had you not? A. What did you say?

Q. You had made other payments to Brown of interest? A. Yes, sir. 30

By the Vice Chancellor:

Q. Was it before or after you had given this letter (Exhibit C. 1) addressed to Edward Widner, to Mr. Brown, that you put him on the place, or he went on the place? A. He went on the place, I suppose, delivered that order—

Q. And took possession? A. —and took possession.

Q. Had you paid the two hundred and fifty dollars to Mr. Drury at that time? A. I had; I had paid it in June.

Further Direct Examination:

10

Q. I show you a paper which is marked D. No. 1 for identification, and ask you if you made that payment to Brown of \$7.20? A. My brother made it —Wesslis Berry—he was in the butcher business there and furnished Brown with meat.

Q. I show you another paper, which is marked D. No. 2 for identification, which also contains the name of Wesslis Berry, for \$26.50? A. Yes.

20 Q. Did you pay that? A. I did; I would not have the paper if I did not, if I had not paid it.

Q. Just explain what those orders are. A. My brother was in the butcher business, the meat business, and he supplied meat around the country; Brown was owing for a butcher bill and so forth, and he got these orders on me which I paid to him.

Q. You paid Wesslis Berry? A. I paid them to Wesslis Berry, but that is a receipt that he gave —those are receipts that he got from Brown, payment on the mortgage, as you will notice.

30 Q. I am asking you about that order of your brother's? A. I paid it to him.

Q. You paid Wesslis that amount? A. Oh, sure.

Q. I show you a paper marked D. No 3 for identification. Do you know what that paper is? A. That paper is signed by Mary Brown, the wife of Jacob H. Brown.

Q. Where did you get that? A. From my brother.

Q. Do you know whether or not you paid the money that paper calls for? A. I paid it to my brother, the money it calls for.

Q. Did you have any papers, receipts, from Brown or any persons for him? A. I had receipts from Brown.

10

Q. What became of the other receipts you had? A. They were burned up.

Q. Where? A. In the big fire.

Q. Who had them at the time they were burned? A. Johnnie Harding.

Q. You mean Lawyer Harding, of Paterson? A. Yes, sir.

Q. How is it that the receipts were with Mr. Harding at the time of the fire? A. Why, Joe Ricker wanted to buy sixteen and two-thirds acres for six hundred dollars, and I sent on for Mr. Thompson to sign for his half interest in it, which he sent on—

20

Q. How was Mr. Harding interested in that? A. I had my deed made out with Mr. Harding, my wife signed it, and Joe Ricker had drawn his deed out himself, and instead of being for sixteen and two-thirds acres he had a deed covering the whole tract, and we could not sign that, and he backed out of it; it was a little sharp practice of his, that is the reason the sale was not made.

30

Q. Why were the receipts left with Mr. Harding? A. I had both deeds for the property and the receipts and everything pertaining to them together; I had two receipts for interest paid, and told my people they were to be left with Harding, and if anything happened Mr. Thompson was in-

terested in it; that is the reason I left them there.

Q. You spoke of both deeds; what do you mean by that? A. After buying the property of Jacob Brown, we found it was sixteen—

Q. You bought another piece of property, didn't you? A. Well, that sixteen and two-thirds acres were bought of Benjamin Roome.

10

Q. So you left the Brown deed and the Roome deed with Mr. Harding? A. Yes, sir.

Q. Is that what you mean by both deeds? A. Yes, sir.

Q. At the time you made this payment to Mr. Drury, did you get a receipt? A. Certainly I had a receipt.

Q. What became of that receipt? A. Right with the other papers.

20

Q. You mean that was left in Harding's office, too? A. Yes, sir, they were all together, all the papers in an envelope.

By the Vice Chancellor:

Q. Did you ever pay anything on the mortgage after September, 1878, when Mr. Brown went into possession? A. No.

Q. Did you ever collect any rent after that date? A. After he—

30

Q. Went into possession? A. I did not.

Q. Did you ever pay any taxes? A. No, I didn't pay any; I paid the taxes up to that time, until he went there.

Q. Up to 1878? A. In 1878 there were some taxes sent to me, and I sent my son up there to pay them.

Q. Do I understand you to say you paid the taxes up to 1878 when Mr. Brown went into possession? A. Yes, sir.

Further Direct Examination:

Q. At the time you gave Mr. Brown this paper, Exhibit C. No. 1, addressed to Ridner, did you say anything about giving him possession of the place other than what the paper said? A. I did not understand you.

Q. What was said by you when you gave this paper, Exhibit C. No. 1, to Mr. Brown? A. I told him there was no one on the place. 10

Q. Yes.

The Vice Chancellor: I think you brought that all out.

Witness: I told him there was no one on the place; I had been there two months before.

The Vice Chancellor: I think that has all been gone over; if there is anything else you can suggest, any new topic, you may do so. 20

Q. How long did you live in Westwood after 1878? A. Eight years.

Q. Did you have any notice of any kind that this property had been sold for taxes? A. I did not.

Q. When did you learn of that fact? A. I learned it in 1886 or 1887; I am not sure which. 30

The Vice Chancellor: Does it appear in evidence for what year or years the tax sale was made?

Mr. Hudson: It will appear; I have the transcript.

Q. How did you learn of that tax sale? Was that by reason of a notice, or in what way did you

learn of it? A. My sister-in-law came up to visit me, and she was raised up in Pompton and has a number of relatives there. "Why," she said, "you know the Brown place—" we always called it the Brown place—"has been sold for taxes?"; that after Mickens had bought it, the second time; you know
10 it was sold to the township and then to Mickens, and it was after Mickens had bought it she told me.

Q. It was Mr. Mickens owned it? A. Bought it for taxes.

Q. What did you do then; did you verify this information in any way? A. I did; I went up to the Pompton Clerk's office.

Q. What did you do? A. Got a copy of the deed; well, I did nothing.

Q. You did what? A. You asked me what I did; I did nothing.

20 Q. What did you do in order to learn whether or not this information you got was right? A. I went to see a lawyer and asked him about it, and he said, "You can do nothing until the expiration of the thirty years."

Q. You said you went to the clerk's office—what for? A. I wanted to—I got a copy of the tax deed to Mickens.

Q. You learned there, did you, that it had been transferred to Mickens? A. Yes.

30 Q. What did you do in the Clerk's office?

Mr. Davis: Does that make any difference?

Witness: I learned—

The Vice Chancellor: I do not see that makes any difference.

By the Vice Chancellor:

Q. Were you ever served with notice of the tax sale? A. No, sir.

Q. Were you served with notice that the property had been struck off and the township had bought it in? A. I was not.

Q. Did you receive any notice from Mr. Mickens that he held the tax title, and that you must come forward and pay it? A. No, sir. 10

Q. Nothing? A. No, sir.

Q. When did you first learn the property had been sold for taxes? A. After it had been transferred to Mickens.

Q. How long after? A. Probably a year.

Q. Did you make any effort to redeem it? A. I did not.

Q. Why not? A. For the reason I was told I could not redeem for thirty years, so I paid no attention to it. 20

Q. Do you mean to say that you had no right to redeem until you got notice? A. They told me that Mickens, he had the deed from the township for the expiration of the thirty years.

Q. From the time the township owned it, you have had considerable dealings in real estate—during your life? A. Not a great deal; I have owned quite some. 30

Q. And paid taxes, have you not? A. Yes, sir.

Q. And you know about tax sales? A. This is the first time I ever knew about tax sales; I never had any tax sales.

Q. Didn't you know that you could not sell a man's property and give title for thirty years to anybody without giving the owner notice? A. I never had any notice.

Q. You knew you had to have notice, or else you could redeem, didn't you? A. No, sir, I did not know that.

Further Direct Examination:

10 Q. Did you know, in September, 1878, that the foreclosure proceedings were going on? A. No, I did not; I supposed it was ended after I paid Drury—that that stopped it; I never knew anything about any other goings on; I supposed it was stopped; I paid for it.

Q. What did you do, if anything, about this farm when the tax title was about to expire, and when did you do it? A. What did I do?

Q. When did you do anything about the farm? A. I never did anything until I found the county was taking a slice off of it.

20 Q. When was it the county was doing that? A. That was a year ago—it will be a year in December, I went up there and the contractors were at work carting the dirt, filling up the fill there; they had been taking dirt right off the corner of the farm, and I forbid them taking it off; I said, "Don't you go any further," and in the meantime I told the tenant who was on there to pay—they were paying rent; I forget who it was; it was a man and his wife; they were paying rent to Brown or Mickens; 30 that on the 27th of January, when the title expired, I was going to claim the property.

By the Vice Chancellor:

Q. What about the mortgage; did you expect to pay that? A. What?

Q. What about the mortgage; you say you expected to claim title; what about the mortgage? A. I didn't say anything about the mortgage.

Q. Did you expect to pay that? A. Well, I was told, and Brown said his mortgage was good for nothing.

Q. Then you expected to take possession of the property after the thirty years and not pay the mortgage, is that right? A. Well, that thing never come into my head or mind.

10

Further Direct Examination:

Q. You say you consulted a lawyer with regard to your position when you learned Mickens had this tax title? What lawyer was that? A. Johnnie Harding.

Cross Examination by Mr. Davis:

Q. Is Mr. Harding living or dead? A. Mr. Harding?

20

Q. Yes. A. He is living.

Q. In Paterson? A. Yes, sir.

Q. When you and Mr. Thompson bought this property in 1873, he bought it with the idea that there was ore on it, didn't he? A. He did.

Q. And you sunk several shafts there? A. We did.

Q. How long were you engaged in sinking them? A. I don't know; two or three years.

Q. You did not strike ore in the quantities you expected? A. We did not strike as much as we expected.

30

Q. And you and Mr. Thompson got to the end of your money, didn't you? A. Not then.

Q. How many years after 1873 was it that you and Mr. Thompson got to the end of your money, being spent on that farm? A. I don't know about Thompson, but I had not got to the end of mine.

Q. Three or four years after you got this property from Mr. Brown, did not judgments begin to pile up against you? A. They had some judgments.

10 Q. And on December 26th, 1876, William Barnes, as the executor of Orson Barnes, recovered a judgment against you in the New Jersey Supreme Court for \$305, didn't he? A. William Barnes?

Q. Yes, as executor of Orson Barnes, recover a judgment against you, William Berry, for \$305? A. I know there was some judgments against me, but I paid the most of them.

Q. Do you remember a man named Barnes recovering a judgment against you?

By the Vice Chancellor:

20 Q. A judgment for a doctor's bill, do you remember that—was Dr. Orson Barnes your family physician? A. No, sir.

Q. You recollect he was a physician in Paterson? A. Yes, I never owed him a cent.

Q. You don't know what this judgment is recovered by his executor against a man named William Berry? A. I never owed Dr. Barnes a cent.

Further Cross Examination:

30 Q. Did you know William Barnes, his executor? A. No, sir.

Q. Did you know Henry A. Page, receiver of James McLane and others? A. I did.

Q. Did he and the other receiver in March 1877 recover a judgment against you in the Supreme Court? A. They did.

The Vice Chancellor: How much?

Mr. Davis: \$445.60, including costs.

Witness: I dare not explain to you what that was for.

Q. No, but the judgment was recovered? A. Yes, it was recovered.

Q. Under that judgment, in 1877, the Sheriff advertised this very property for sale at Sheriff's sale, didn't he? A. I did not know anything about; I was over in Bergen County at that time, and I knew nothing about it.

Q. Did you know Philander Stevens? A. Yes, sir.

Q. Did he, in September, 1877, recover a judgment against you for \$376 or thereabouts in the Supreme Court of New Jersey—that is true, is it not?

A. That is a friend of Mr. Thompson's.

Q. Do you know Simon W. Hoyt? A. Yes, and that judgment is paid.

Q. Did Simon W. Hoyt, in May, 1876, recover a judgment against you in the Passaic Circuit for \$105.23 damages and \$31.76 costs? A. Yes, sir. That is paid.

Q. That judgment was recovered, was it not? A. Yes, sir, it was recovered, but it is paid.

Q. Do you know Francis Eakins? A. Yes, sir.

Q. Did he, in 1876 in the Passaic Circuit, recover a judgment against you for \$115.35 damages and \$38.26 costs, in March, 1877? A. Yes, sir. That was paid to Lawyer Rodgers.

Q. Do you know Christopher Benson and Margaret Benson? A. Sure.

Q. Did they, in June, 1877, recover a judgment against you in the Passaic County Circuit Court for \$314.62 damages and \$29.61 costs? A. Yes, sir.

Q. Did you also, Mr. Berry, make and execute to these Bensons, on July 27th, 1876, a mortgage on this property for \$284.98? A. Yes, sir.

By the Vice Chancellor:

10 Q. Was that mortgage ever paid? A. It was not.

Q. It is still outstanding, is it? A. Yes, sir.

Further Cross Examination:

Q. Was the Page judgment paid? A. It was not paid, but I never owed it.

Q. Was the judgment of Philander Stevens ever paid? A. No, sir.

Q. Was the judgment of Hoyt ever paid? A. Yes, sir.

20 Q. When? A. Paid to the Sheriff.

Q. When? A. It was paid to Blundell, the Sheriff.

Q. When was it paid? A. I just can't remember.

Q. That is the Hoyt judgment? A. Yes, sir.

30 Q. Now, I show you a notice of Sheriff's sale by Blundell, Sheriff, advertising this property for sale under the Hoyt judgment and the Page judgment; can you see that? A. The Page judgment is not paid, but the Hoyt judgment is paid.

Q. Did you pay the Francis Eakins judgment? A. Oh, yes.

Q. When was that paid? A. That was paid—it was paid, never ought to have been recorded; I paid it to Lawyer Rodgers.

Q. Did you pay it before the judgment was recovered? A. Since the judgment was recovered; he told me, and I paid it.

Q. Did you pay the judgment of Benson? A. No, sir.

Q. Nor the mortgage of Benson? A. No, sir.

Q. Was the mortgage of Benson and the judgment of Benson for the same debt, or were they separate? A. For the same thing.

Q. How much interest did you pay from 1873 down to 1878 on the mortgage of Mr. Brown? A. There was certainly three years paid and these orders. 10

Q. So that the report of the Master in Chancery to the effect that interest was paid up to June, 1876, from June, 1873, is about correct, according to your information, is it not—that is, three years? A. Well, there was three years besides the money I paid to Mr. Drury.

Q. Then you say that with these judgments against you and with the Benson money and the Benson mortgage recorded against the property, you went to Drury and paid him \$250? A. I did. 20

Q. You have nothing to show for that at all? A. I had his receipt for it.

Q. But have you got it now? A. Why, they were among the deeds and other papers; they were all together, and they were—I left them with Harding for keeping in his safe.

Q. Just when was it that you went to Mr. Drury and paid him the \$250? A. In June, as they started foreclosure in April, I paid him in June. 30

Q. At that time, there was nobody on the farm at all, was there? A. In June?

Q. Yes. A. No.

Q. And the farm had been advertised to be sold at Sheriff's sale, under the Hoyt and Page judgments at that time, had it not? A.

Mr. Allen: He says he never knew that—the facts speak for themselves, I think.

Q. Didn't you know that previous to that the farm had been advertised for sale under the Hoyt and Page judgments? A. I did not.

10 *By the Vice Chancellor:*

Q. Let me understand one thing. In answer to a question of counsel a few moments ago, you said, referring to some particular time, that the farm was then vacant; what time do you refer to? A. It was vacant from May, 1878, to the time I gave Brown the order, that was in September.

Q. September of 1878? A. Yes, sir.

Q. And the foreclosure suit was commenced
20 when? A. In April.

Q. Of what year? A. 1878.

Further Cross Examination:

Q. And the judgments were recovered against you before the foreclosure suit was begun, were they not? A. Some of them, yes.

Q. At the time you say you paid Mr. Drury the \$250 you knew that Benson had a judgment, and that the judgment was unpaid, didn't you? A.
30 Yes.

Q. And you knew that Page had a judgment and the judgment was unpaid? A. I suppose I did.

Mr. Davis: I offer in evidence Sheriff's advertisement of the sale of these premises under the Hoyt and Page judgments.

The Vice Chancellor: If there is no objection, it will be received.

William H. Berry—cross

Frank Harris—direct

Mr. Hudson: We object.

The Vice Chancellor: How is it competent?

Mr. Davis: As impeaching the testimony of the witness.

The Vice Chancellor: I am not speaking of the relevancy of the fact that this property was advertised for sale, but the competency of this paper, which appears to be a newspaper cutting. 10

Mr. Davis: Still as rebuttal—

The Vice Chancellor: You are not proving the advertising?

Mr. Davis: No.

The Vice Chancellor: Very often such matters are received without objection, but if objection is made you must produce the fi. fa. and so forth, to show a sale was made under the judgment. 20

Mr. Davis: Well, I cannot do that.

FRANK HARRIS SWORN for the defense.

Direct Examination by Mr. Hudson:

Q. You are Clerk of the Township of Pompton?

A. Yes, sir. 30

Q. Have you the custody of the records of that township? A. Some of them.

Q. You have the records of the proceedings of the township committee for the year 1887? A. I have.

Q. Turn to page 210; do you find a report there by G. A. Wheeler as treasurer? A. I do.

Q. Does that report show any item in reference

to the Berry and Thompson farm? A. Yes, sir—rent of Berry and Thompson farm, \$25 received.

Q. What date is that? A. February 9th, 1887.

10 Q. Look at page 216; is there a further record concerning the Berry and Thompson farm? A. The certificate of sale, transferring to George W. Mickens from Pompton Township by the committee of Pompton Township on the 29th day of April, 1887, for the sum of \$118.04 for the property of Berry and Thompson, was surrendered to the Township Committee, and after proof being made that the said property had been redeemed according to law a deed for the said property was made and delivered by the Committee of Pompton Township of the first part and George W. Mickens of the said Township of the second part, dated April 30th, 1887.

20 Q. Is there anything more about that property on that page? A. By a majority vote of the regular annual meeting of the legal voters of the Township it was resolved that the Township Committee dispose of the above named property of Berry and Thompson as they thought best and for the best interests of the township, therefore the above disposal.

Q. As Township Clerk, you also have the book called "Record of Taxes"? A. Yes, sir.

30 Q. I show you that book and ask you if that is the record of tax sales of the Township of Pompton? A. Yes, sir.

Q. Does that book contain any reference to the sale of the property of Berry and Thompson? A. Yes. That is on page 3. The property of Berry and Thompson was sold to the inhabitants of Pompton Township for taxes due in 1884; it was sold July 31st, 1885, for the term of thirty years; in 1886 or 1887 the committee sold the above property to

Frank J. Harris—direct
Edward J. Brown—direct

George W. Mickens for the balance of the term. The amount of taxes for 1884 was \$40.96, interest \$2.80, costs \$0.98, making \$44.74; in 1885 the taxes were \$47.58, and in 1886 \$55.72; the above paid by George W. Mickens, April 30th, 1887, and the deed made and delivered.

10

Mr. Hudson: I offer the record on pages 210 and 216, and the record of tax sales, page 3.

EDWARD J. BROWN, sworn on the part of the defendants.

Direct Examination by Mr. Hudson:

Q. Were you Clerk of the Township of Pompton in 1887? A. I presume so. I have been for a number of years before that date and after that date.

20

Q. Do you know whether or not you were Clerk of the Township of Pompton at the time the deed was delivered by the Township Committee of the Township of Pompton to George W. Mickens for the Berry and Thompson farm? A. Yes, sir.

Q. That deed bears date the 3rd day of April, 1887? A. I do not remember the date, but I was Clerk of the Township at the time and wrote the deed of sale.

30

Q. At the time this property of Berry and Thompson was sold by the Township for taxes, did you have any talk with Jacob H. Brown concerning it? A. Not to my recollection.

Q. At the time Mr. Mickens bought the certifi-

cate did you have any talk with Mr. Brown about this property? A. Not to my recollection. Mr. Mickens came before the township committee and asked what was to be done with the property of Berry and Thompson that we had bought for taxes, that the township had bought for taxes; we told Mr. Mickens we were holding it for taxes, and Mr. Mickens asked if there was any way in which he could get hold of the property, in order to relieve his sister and his brother-in-law, and the committee told him, "Yes, you pay up these two or three years' taxes on the house, you pay up all interest and you pay up all costs; then we will deed you the property for the balance of the term." The township then, I presume, had held the property for about two years in order to give the owner a chance to redeem the property; after the expiration of two years then the owner could not redeem the property unless the township allowed him to. The two years had passed. So Mr. Mickens was to be deeded the property for the balance of the term. The Township bought it, I think, for thirty years and held it two and possibly three years, and then I gave Mr. Mickens a deed for twenty-seven years, and I remember Mr. Mickens saying, "Now, I don't want this property; I don't want anything to do with it, excepting that I want my brother-in-law and my sister, if I put them in possession now, I want them to pay me back the money that I put up for getting them this property."

Q. Did he say all that at the township meeting?

A. Sir?

Q. Did he say that at the township meeting?

A. Yes, sir.

Q. He said he wanted his sister and brother-in-

law to pay him back? A. Yes, sir; he wanted them to pay up all that he had to pay; he figured it up on the margin so much that they must pay, and then we gave him the deed.

Q. Did Mr. Mickens at that time state to the Township Committee how he wanted this deed drawn, whether to himself or to Brown? A. No, I don't remember his saying anything about that. We just gave what we called a certificate of sale for the balance of the term, a certificate of sale.

10

Q. You gave him a regular deed, the township gave Mr. Mickens a regular deed? A. Well, you might call it a regular deed; it was a regular deed to himself, his heirs and assigns, if you call it a deed; it was for about twenty-seven years, a certificate of sale.

Q. But the paper Mr. Mickens got was made out on the day he appeared before your committee?

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A. It may not have been completed on that day.

Q. You were the Township Clerk, were you not?

A. Yes, sir.

Q. Did Mr. Mickens at that Township Committee meeting state to whom the deed was to be made or the papers to be made? A. No, he could not say that; the statute tells how to dispose of the property, after it belongs to the township.

Q. Your name appears on that deed as a subscribing witness, do you know that? A. It appears there as the Clerk of the Township, does it not?

30

Q. As the Clerk of the Township, did you prepare that paper that Mickens got? A. I think so, if that is the one; let me see it and I will tell you whether I did or not.

Q. (Paper shown witness.)

A. Yes, that is my signature and my acknowledgement before the Commissioner of Deeds.

Q. I ask you if you prepared that deed? A. Yes, sir.

Q. You did prepare it? A. I did.

10 *Mr. Hudson:* I offer in evidence a tax sale deed from the Township Committee of Pompton Township to George W. Mickens, recorded in Book R. 8 of Deeds for Passaic County, page 207, and dated April 30th, 1887. Marked Exhibit D. No. 4, Nov. 17th, 1915. H. W. K.

By the Vice Chancellor:

20 Q. Was that a tax sale under the general township law as it stood then? A. Yes, sir.

Q. Did I understand you to say it was too late for redemption? A. It is two years after the sale.

Q. Don't you have to give notice? A. Advertise the sale.

30 Q. That was all at that time? A. Yes, sir; the owner has the right to redeem the property inside of two years from the date of sale, and you cannot dispose of the property inside of two years; after two years the township committee can dispose of the property to an outside party who will pay up all the taxes, costs and interest for the balance of the term; this was three years afterwards, and the deed was made for twenty-seven years.

Mr. Hudson: I desire to offer certificate of sale of real estate from Edward E. Hall, Collector of Taxes for the Township of

Edward J. Brown—direct

Pompton, to the Township of Pompton, dated January 27th, 1885, and recorded in Book Y. 7 of Deeds, on page 11, Passaic County, and it recites that the sale is for the years 1882 and 1883, being a sale for the term of thirty years.

Marked Exhibit D. No. 5, November 17th, 1915, H. W. K.

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Mr. Hudson: I also offer certified copy of the record of notice to redeem given to Jacob H. Brown by Peter J. Brown, John F. Cisco and D. A. Willet, committee of the Township of Pompton, being a notice that on July 31st, 1885, at a tax sale the Township did buy the lands and tenements of Berry and Thompson, with the certificate of the Township Clerk that he served this notice on Jacob H. Brown on the 30th day of October, 1885. Recorded in Book B. 3 of Mortgages for Passaic County, page 46.

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The Vice Chancellor: If there is no objection it will be admitted.

Mr. Davis: That is under the Act of 1879?

The Court: Is it received by consent?

Mr. Davis: I have no objection.

Marked Exhibit D. No. 6, November 17th, 1915. H. W. K.

Mr. Hudson: I offer in evidence a deed from Jacob H. Brown and wife to Eleazer Thompson and William Berry, dated the 21st day of June, 1873, recorded in Book U. 4 of Deeds for Passaic County, on page 601.

30

Marked Exhibit D. No. 7, November 17th, 1915. H. W. K.

The Vice Chancellor: We have the deed now in evidence, but we have not the mort-

gage; we have an admission which is very meagre.

Mr. Davis: I will put the mortgage in evidence.

DEFENDANTS REST.

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Mr. Davis: I offer in evidence a certified copy of the mortgage that has been referred to, made by Thompson and Berry to Jacob H. Brown, dated the 23rd day of June, 1873, and recorded in Book 82 of Mortgages for Passaic County, on page 480.

Marked Exhibit C. No. 3, November 17th, 1915, H. W. K.

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The Vice Chancellor: Why do you not put in the original?

Mr. Davis: We cannot find it.

The Vice Chancellor: As I understand it, the act under which this document is receivable in evidence shows one possible technical question that might arise. I do not know whether it is covered by the admission that was made or not. This record does not show on its face directly, though perhaps it does inferentially, that this mortgage was an instrument under seal.

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Mr. Davis: I do not think that is covered by the admission, but I think that deficiency if it exists is supplied by the certified copy of the Chancery record, which states the full and complete contents of the mortgage.

The Vice Chancellor: Well, you are satisfied to rest with that.

Mr. Davis: It is all I can do, I am afraid.

The Vice Chancellor: You can prove the loss of the instrument and its character.

Mr. Davis: Yes, I might do that. I offer in evidence a certified statement under the law of the Clerk of Passaic County of a judgment recovered in that county against William Berry, the gentleman to which I referred on my examination of Mr. Berry.

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The Vice Chancellor: Is it in the Circuit or the Supreme Court?

Mr. Davis: The Circuit. I have a search from the Supreme Court as to the other three, but this is from Passaic County only.

Mr. Allen: May I ask why that is offered?

Mr. Davis: As evidence of the reasonableness of Mr. Berry giving up the farm to the complainant and as corroborating the complainant's testimony that Mr. Berry stated that he could do nothing in the way of payments, and Brown should go back on the farm.

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Mr. Allen: So far as that particular aspect of the case is concerned with one exception, which was the case of the doctor, the defendant has testified that some of these judgments at least were paid.

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The Vice Chancellor: The paper will be admitted.

Marked Exhibit C. No. 8, November 17th, 1915, H. W. K.

Mr. Davis: I offer in evidence Supreme Court Search dated November, 1915, as to three judgments, one of which is the Barnes judgment, concerning which Mr. Berry testified.

Edward J. Brown—direct

Marked Exhibit C. No. 9, November 17th,
1915, H. W. K.

It is admitted that the mortgage is in the
form described in the Bill of Complaint, with
a *habendum* in fee to the mortgagee and his
heirs.

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TESTIMONY CLOSED.

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Exhibits.

EXHIBIT C-1.

Westwood, Sept. 2, 1878.

DeWitt Ridener,

Dear Sir:

I understand this day from Jacob H. Brown that you have taken possession and occupy the premises formerly owned by him and now owned by Mr. Thompson and myself. I hereby order you to vacate the same immediately under penalty of the law. Deliver the keys to Jacob H. Brown.

Truly yours,

(Signed)

Wm. Berry.

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EXHIBIT C-2.

(Filed November 21, 1877.)

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To the Honorable the Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor your orator Jacob H. Brown, of the Township of Pompton, in the County of Passaic, and State of New Jersey, that on or about the twentieth day of June, in the year one thousand eight hundred and seventy-three, Eleazer Thompson, of the City of Brooklyn, in the State of New York, and William Berry, of the City of Paterson, in the County of Passaic, and State of New Jersey, became and were justly indebted unto Jacob H. Brown in the sum of three thousand dollars, and being so indebted, the said Eleazer Thompson and William Berry, in order to secure the payment of the said sum of money, with interest, did make and execute, under their hands and seals and deliver unto the said Jacob H. Brown

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10 A certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of six thousand dollars, lawful money of the United States, with a condition thereunder written, that if the said Eleazer Thompson and William Berry, their heirs, executors or administrators should well and truly pay, or caused to be paid, unto the said Jacob H. Brown, his executors, administrators or assigns, the just and full sum of Three Thousand Dollars lawful money aforesaid in two years from the date thereof, with interest for the same at the rate of seven per cent per annum, payable annually,

20 Then the said obligation should be void, otherwise to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear. And your orator further shows that the said Eleazer Thompson and William Berry, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto Jacob H. Brown

30 a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Eleazer Thompson and William Berry of the first part, and Jacob H. Brown the second part, in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto Jacob H. Brown, said party of the second part, his heirs and assigns, all the following described tract or parcel of land and premises, situate, lying

and being in the Township of Pompton, in the County of Passaic, and State of New Jersey:

At Winokey—Beginning at a stake on the East side of the public road leading from Pompton to Ringwood, said stake standing north eight degrees West thirty-two links from the center on the West side of a large white oak tree standing on the East side of said road near Joseph Crane's house, and from thence running (1) North twenty-two degrees East ten chains to a corner West side of the Railroad cut (2) North thirteen degrees East five chains and fifty links along the aforesaid road (3) North thirty-three degrees East four chains and sixty-three links to a large rock on the east side of said road a corner of Abraham Beatty's land (4) still along said road North twenty-three and a half degrees East two chains and sixty-five links (5) North thirty-one and a half degrees East ten chains and nine links (6) North nine and three quarters degrees East two chains and seventy-five links (7) North eight degrees East three chains and twenty-three links (8) North two degrees East two chains and thirty-two links (9) North thirty-seven degrees East four chains and ninety-five links to a stone heap East side of the road and where the line of the land of Henry J. David crosses said road (10) along said David's line and a fence north seventy-one degrees West eleven chains and thirty links to an old stone heap a corner of the said David's lands (11) Then still along said David's lines North nine and a half degrees West ten chains and fifty links (12) North fifteen degrees East nine chains (13) North twelve and a half degrees West five chains and five links (14) North thirty-eight degrees East eleven chains (15) North seventy-two and a half

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degrees West four chains and thirty links (16) South seventy-seven and a quarter degrees West three chains and forty links still along the line of the said David's to the south side of the old Freedomdale forge pond, where the stream runs westward along said pond (17) First Westerly and then southerly down stream of said pond to the 6th corner of 22.44-100 acres conveyed by E. E. Drew and wife to Henry P. Brown by Deed dated April 23rd, 1841 (18) along 6th line of same south six degrees West sixteen chains to the 7th corner thereof, (19) South twenty-two degrees West six chains to the 7th corner of 19.89-100 acres conveyed by the aforesaid Drew and wife to the said H. P. Brown, same date as aforesaid (20) along said 7th line of said 19.89-100 acres south seven degrees West ten chains to the 8th corner thereof and line of lands belonging to the heirs of Abram Lines, deceased (21) along 8th line of said 19.89-100 acres and line of land of said heirs south fifty-one degrees East seven chains to 9th corner thereof, (22) along 9th line of same and said land of said heirs south eight degrees East seventeen chains to the beginning—Containing Eighty three 85-100 acres, but after deducting one acre now belonging to Henry J. David and one-half an acre owned by Joseph Crane, there remains Eighty two 35-100 acres, be the same more or less, being the same land bequeathed by Henry P. Brown to the said Jacob H. Brown by will recorded in Passaic County in book C of Wills, page 367, etc. Being the same premises conveyed by the said Jacob H. Brown and wife to the parties of the first part by deed bearing even date herewith, and this Indenture of Mortgage being given to secure part payment of the purchase money of said conveyance,

together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; And also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold, the therein above granted and described premises, with the appurtenances unto Jacob H. Brown, the said party of the second part, his heirs, and assigns to his and their own proper use, benefit and behoof forever; Provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Eleazer Thompson and William Berry, parties of the first part to the said indenture of mortgage, their heirs, executors or administrators should well and truly pay, or cause to be paid, unto the said Jacob H. Brown, his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void. And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Eleazer Thompson and William Berry before Benjamin Roome, a Master in Chancery, of New Jersey, and duly recorded

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in the office of the Clerk in and for the said County of Passaic, in Book A 2 of Mortgages, page 480, on the twenty-fifth day of June, in the year One Thousand Eight Hundred and Seventy-three; as by the certificate of the Clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator for greater certainty
10 begs leave to refer, if it be necessary so to do.

And your orator further shows that on or about the twenty-seventh day of July, A. D. eighteen hundred and seventy-six, the said William Berry and Sarah J., his wife, executed a mortgage on the same premises to Christopher and Margaret Benson, to secure the sum of two hundred and eighty-four dollars and ninety-eight cents, by virtue of which said mortgage the said Christopher and Margaret Benson claim to have some lien upon the said premises, but your orator charges that the said last-mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof—and if an encumbrance at all upon the said premises, is subsequent to the mortgage of your orator.
20

And your orator further shows that, on or about the twenty-second day of November, A. D. eighteen hundred and fifty-eight, as your orator has been informed, and believes to be true, Robert Allen and Andrew W. Rose recovered a judgment against the said William Berry, in the Passaic Circuit Court, of the State of New Jersey, for the sum of three hundred and thirty-two dollars and eighty-two cents, or some other sum, by virtue of which said judgment the said Robert Allan and Andrew W. Rose claim to have a lien upon the said premises.
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And your orator further shows that on or about the thirty-first day of July, in the year eighteen

hundred and seventy-six, as your orator has been informed and believes to be true, one Salmon W. Hoyt recovered a judgment against the said William Berry, in the Passaic Circuit Court of the State of New Jersey, for the sum of one hundred and ninety-six dollars and ninety-nine cents, or some other sum, by virtue of which said judgment the said Salmon W. Hoyt claims to have some lien upon the said premises, but your orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage and with full notice thereof, and if a lien at all upon said premises, is subsequent to the encumbrance of your orator's said mortgage. 10

And your orator further shows that on or about the first day of June, A. D. eighteen hundred and seventy seven, as your orator has been informed and believes to be true, Christopher Benson and Margaret Benson recovered a judgment against the said William Berry, in the Passaic Circuit Court of the State of New Jersey, for the sum of three hundred and fifty two dollars and thirty one cents, or some other sum, by virtue of which said judgment the said Christopher and Margaret Benson claim to have some lien upon the said premises, but your orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises is subsequent to the incumbrance of your orator's said mortgage. 20

And your orator further shows that on or about the nineteenth day of March, A. D. eighteen hundred and seventy seven, as your orator has been informed and believes to be true, one Francis E. Kings recovered a judgment against the said William Berry and Garret Van Wagoner, Jr., in the

Passaic Circuit Court, of the State of New Jersey, for the sum of one hundred and fifty-four dollars and eleven cents, or some other sum, by virtue of which said judgment the said Francis E. Kings claims to have some lien upon the said premises, but your orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the incumbrance of your orator's said mortgage.

And your orator further shows, that on or about the twenty sixth day of December, A. D. eighteen hundred and seventy six, as your orator has been informed, and believes to be true, one William Barnes, Executor of Orson Barnes, deceased, recovered a judgment against the said William Berry, in the Supreme Court of New Jersey, for the sum of three hundred and five dollars and ninety-four cents, or some other sum, by virtue of which said judgment the said William Barnes, Executor of Orson Barnes, deceased, claims to have some lien upon the said premises, but your orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage.

And your orator further shows that on or about the second day of March, A. D. eighteen hundred and seventy-seven, as your orator has been informed and believes to be true, Henry A. Page, William Turnbull, Auguste Richard, Receiver, etc., of James McLean et al., late partners, recovered a judgment against the said William Berry in the

Supreme Court of New Jersey, for the sum of four hundred and forty five dollars and sixty cents, or some other sum, by virtue of which said judgment the said Henry A. Page, William Turnbull and Auguste Richard, Receiver, etc., of James McLean et al., late partners, claim to have some lien upon the said premises, but your orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage. 10

And your orator further shows, that on or about the first day of September, A. D. eighteen hundred and seventy-seven, as your orator has been informed and believes to be true, one Philander Stevens recovered a judgment against the said William Berry, in the Supreme Court of New Jersey, for the sum of three hundred and seventy-six dollars and seventy nine cents, or some other sum, by virtue of which said judgment the said Philander Stevens claims to have some lien upon the said premises, but your orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage. 20

And your orator further shows that the whole principal money mentioned in the said bond or obligation and secured thereby and by the said Deed of Mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to your orator, so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several 30

premises the said Deed of Mortgage, and the estate thereby mortgaged as aforesaid, have become absolute in your orator and his heirs.

10 And your orator further shows that the said Eleazer Thompson and William Berry, since the execution of your orator's said mortgage, have possessed and enjoyed, and that they do still possess and enjoy, the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive, the rents, issues, and profits thereof. And your orator further shows and expressly charges that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid. And that he or some other person or persons, for him, have frequently and in a friendly manner applied to said Eleazer Thompson and William Berry, or one of them, and requested them or one of them to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and Deed of Mortgage hereinbefore mentioned and set forth; and your orator well hoped that they would have complied with such reasonable request of your orator, and would have paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and Deed of Mortgage, as in equity and good conscience they ought to have done. But now so it is, may it please your Honor, that the said Eleazer Thompson, William Berry, Christopher and Margaret Benson, Robert Allan, Andrew W. Rose, Salmon W. Hoyt, and Francis E. Kings, William Barnes, Executor, etc., of Orson Barnes, deceased, Henry A. Page, William Turnbull, Auguste Richard, Receiver, etc., of James McLean et

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al., late partners, and Philander Stevens, combining and confederating together, and to and with divers other persons at present unknown to your orator, but whose names, when discovered, he prays may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve your orator in the premises, and to defraud him of the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and Deed of Mortgage hereinbefore mentioned, sometimes give out and pretend that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other encumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover: Whereas, your orator charges and insists that if any such pretended encumbrances do exist they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud to injure and aggrieve your orator, and ought to be delivered up to be canceled, or declared to be of no effect against your orator, who had no notice of any such pretended encumbrances. All which actings and doings of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator.

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In tender consideration whereof, and for as much

as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and Deed of Mortgage without the aid and decree of this honorable Court.

To the end, therefore, that the said Eleazer Thompson, William Berry, Christopher and Margaret Benson, Robert Allan, Andrew W. Rose, Salmon W. Hoyt and Francis E. Kings, William Barnes, Executor, etc., of Orson Barnes, deceased; Henry A. Paige, William Turnbull, Auguste Richard, Receiver, etc., of James McLean et al., late partners, and Philander Stevens, and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, and belief; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum so due to him on the said bond or obligation and Deed of Mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable Court; and in default thereof that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them,

may be foreclosed of and from all equity or redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver unto your orator all deeds, demises, and writing whatever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this honorable Court, be sold, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and Deed of Mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained; And that if the proceeds of such sale shall not be sufficient to pay the full amount of the said bond and mortgage of the complainant, that the said bondsmen, Eleazer Thompson and William Berry, may be decreed to pay the deficiency; And that your orator may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience; may it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpoena, issuing out, and under the seal, of this honorable Court, to be directed to the said Eleazer Thompson, William Berry, Christopher and Margaret Benson, Robert Allan, Andrew W. Rose, Salmon W. Hoyt and Francis E. Kings, William Barnes, Executor, etc., of Orson Barnes, deceased; Henry A. Paige, William Turnbull, Auguste Richard, Receiver, etc., of James McLean et al., late partners, and Philander Stevens, therein and thereby commanding them, and each of them, on a certain day

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and under a certain penalty, therein to be inserted, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

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

Henry S. Drury,

Solicitor for and of Counsel with
Complainant.

New Jersey,
Passaic County,

} ss:

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James Blundell, Sheriff of said County, being duly sworn according to law, on his oath says that he has inquired for Eleazer Thompson, Christopher Benson and Margaret Benson, three of the defendants named in the annexed process, for the purpose of serving them therewith, and has not been able to find them in his County, and this deponent is credibly informed and verily believes that the said above named defendants cannot be found in this County, and that Eleazer Thompson resides in Columbus, in the State of Ohio, and that Christopher Benson resides in New Providence, County of Union, in the State of New Jersey, and that Margaret Benson resides in the City of New York, in the State of New York.

30

James Blundell.

Sworn and subscribed this tenth day
of April, 1878, before me,

Z. E. Townsend,
Notary Public.

Exhibit C-2.

New Jersey, to wit: The State of New Jersey to
 Eleazer Thompson and
 William Berry, Christopher
 Benson, Margaret Benson,
 Robert Allan, Andrew W.
 Rose, Salmon W. Hoyt,
 Francis E. Kings, William
 Barnes, Ex'r., etc., of Orson 10
 Barnes, dec'd., Henry A.
 Page, William Turnbull
 and Auguste Richard, Re-
 ceiver, etc., of James Mc-
 Lean et al., late partners,
 and Philander Stevens—

Greeting: We command you, that you personally
 appear before our Chancellor in our Court of Chan- 20
 cery, on the eighteenth day of April instant, at Tren-
 ton, to answer to a bill of complaint exhibited against
 you in our said Court by Jacob H. Brown, and to
 do, further, and receive what our said Court shall
 have considered in that behalf; and this you are not
 to omit, under the penalty of five hundred dollars.

Witness, his Honor, Theodore Runyon, Chan-
 cellor of our said State, at Trenton, the third
 day of April in the year of our Lord one thousand
 eight hundred and seventy-eight.

Henry S. Drury, Sol'r. H. S. Little, Clerk. 30

Notice.—The defendant is not required to appear
 at Trenton *in person*, at the return day, but if he
 intends to make a defense it is only necessary for
 him to answer, plead or demur to the bill within the
 time required by law.

8/431

D.

IN CHANCERY OF
NEW JERSEY

Between

Jacob H. Brown,
Complainant,
and

Eleazer Thompson and
William Berry et al.,
Defendants.

Sub. and Resp.

Ret'ble April 13th, A. D.
1878

Henry S. Drury,
Solicitor.

10 Due and legal service of
the within subpoena and
tickets acknowledged for
William Turnbull, Au-
guste Richards and
Henry A. Page
April 6 1878

G. A. Hobart,
Sol for above

April 8 1878 served on
William Berry and
Francis E. Kings

20 Like service acknowl-
edged for Philander Ste-
vens
April 8, 1878

Jos. G. Creamer
Solr for Stevens

Service acknowledged
for Robert Allan, An-
drew W. Rose, Salmon
W. Hoyt, William
Barnes, Henry A. Page,
William Turnbull, Au-
guste Richard and Phi-
lander Stevens

Like service acknowl-
edged for Robert Allan
and Andrew W. Rose
April 8 1878

S. Tuttle Sol.

30

Like service acknowl-
edged for Samuel W.
Hoyt and William
Barnes.

April 9 1878

Geo. W. Savage Jr
Solr

and not served on
Eleazer Thompson,
Christopher Benson and
Margaret Benson, as will
appear by Affidavit An-
nexed.

James Blundell
Sheriff

fees 6.20

(Filed April 23, 1878)

IN CHANCERY OF NEW JERSEY

Between

Jacob H. Brown,

Complainant,

and

Eleazer Thompson and

William Berry et al.,

Defendants.

On Bill, Etc.,
Order for Publica-
tion.

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The Complainant, having filed their bill in the above cause, and process of subpoena having been issued and returned according to law,

And it being made to appear, by affidavit, that the Defendants, Eleazer Thompson and Margaret Benson, reside out of the State of New Jersey, and that process could not be served upon them,

20

It is, on this Twenty-third day of April, One Thousand Eight Hundred and Seventy-eight, on motion of Henry S. Drury, Solicitor of the Complainant, Ordered, that the said absent defendants do appear, plead, demur, or answer to the Complainant's bill, on or before the Twenty-fourth day of June next, or that in default thereof, such decree be made against them as the Chancellor shall think equitable and just.

30

And it is further Ordered, that the notice of this order prescribed by the rules of this Court, shall, within twenty days hereafter, be served on the said absent Defendants by actual service upon said Defendants, personally; or in default of such service, that said notice be published within the said twenty days in the Daily Press, a newspaper printed at Pat-

erson, in this State, and continued therein for six weeks, successively, at least once in every week, and that a copy thereof be also mailed, within the same time, to the said absent Defendants, directed to their postoffice address, if the same can be ascertained.

Theodore Runyon, C.

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IN CHANCERY OF NEW JERSEY

Between

Jacob H. Brown,

Compl't,

and

Eleazer Thompson and

William Berry et al.,

Def'ts.

} On Bill to fore-
close, etc.

20

Sir:

You are made a party defendant, and subpoenaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you and Margaret Benson recovered a judgment against William Berry, one of the owners of said mortgaged premises, and also hold a mortgage which covers the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises.

30

Dated, April 23d, 1878.

Your Ob't Serv't,

To Christopher Benson, Esq. Henry S. Drury,
Sol'r for Complainant.

Served May 2, 1878.

P. A. Freeman, Sheriff.

Joseph Leonard.

NEW JERSEY, to wit: The State of New Jersey
 (L. S.) Christopher Benson

Greeting: We command you, that you personally appear before our Chancellor in our Court of Chancery, on the thirteenth day of May next at Trenton, to answer to a bill of complaint exhibited against you in our said Court by Jacob H. Brown, and to do, further, and receive what our said Court shall have considered in that behalf; and this you are not to omit, under the penalty of five hundred dollars. 10

Witness, his Honor, Theodore Runyon, Chancellor of our said State, at Trenton, the twenty-third day of April in the year of our Lord one thousand eight hundred and seventy-eight.

Henry S. Drury, Sol'r. H. S. Little, Clerk. 20

Notice.—The defendant is not required to appear at Trenton *in person*, at the return day, but if he intends to make a defense it is only necessary for him to answer, plead or demur to the bill within the time required by law.

I hereby deputize and appoint Joseph Leonard my Special Deputy to execute the within Writ for me and in my stead.

Witness my hand and seal this second day of 30
 May, A. D 1878. P. A. Freeman, Sheriff (L. S.)

 IN CHANCERY OF NEW JERSEY

	Between	}	
	Jacob H. Brown,		
	Complainant,		
10	and		
	Eleazer Thompson and		On Bill, Etc.
	William Berry et al.,	Affidavit.	
	Defendants.		

New Jersey, ss:

Alfred A. Van Hovenberg, being duly sworn on his oath saith, that he is a clerk in the office of Henry S. Drury, the person actually entrusted with the management and conduct of this suit on the part of the Complainant; that he has in good faith made diligent inquiry for the residence and postoffice address of Eleazer Thompson and Margaret Benson, two of the defendants; and that he is credibly informed in such manner that he believes it to be true, that the said Eleazer Thompson resides in the city of Columbus, Ohio, and that his postoffice address is 40 North High Street, Columbus, Ohio; and that the said Margaret Benson resides in the City of New York, N. Y., and that her postoffice address is New York City, N. Y., and that this deponent did on the 13th day of May, A. D. 1878, place in the postoffice at the City of Paterson a letter directed to "Eleazer Thompson, Esq., 40 North High Street, Columbus, Ohio," with the postage prepaid, containing a copy of the notice hereto annexed; and this deponent did also, on the said 13th

day of May, A. D. 1878, place in the postoffice of the said City of Paterson, a letter directed to the said "Margaret Benson, New York City, N. Y.," with the postage prepaid, containing a copy of the notice hereto annexed.

Alfred A. Van Hovenberg.

Sworn to and subscribed this 24th
day of June, A. D. 1878, before me.

10

Augustus H. Drury,
Master in Chancery of N. J.

NOTICE TO ABSENT DEFENDANTS

In Chancery of New Jersey:—To Eleazer Thompson and Margaret Benson:

By virtue of an order of the Court of Chancery of New Jersey, made on the day of the date hereof, in a cause wherein Jacob H. Brown is complainant, and you and others are defendants, you are required to appear, plead, answer or demur, to the bill of said complainant, on or before the twenty-fourth day of June next, or in default thereof, the said bill will be taken as confessed against you.

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The said bill is filed to foreclose a mortgage given by Eleazer Thompson and William Berry to Jacob H. Brown on lands in the township of Pompton, County of Passaic, and State of New Jersey, dated June 20th, 1873, and you, Eleazer Thompson, are made a defendant because you are one of the owners of said lands; and also, because the bill prays a decree against you and another for any deficiency there may be of the proceeds of said lands to pay the mortgage debt; and you, Margaret Benson, are

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made a defendant because you hold incumbrances
on said lands.

Dated, April 23d, 1878.

Henry S. Drury,
Solicitor of Complainant,
209 Main Street,
Paterson, N. J.
pt's fees \$6.30

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State of New Jersey, }
Passaic County, } ss:

Cornelius H. Stagg, being by me duly sworn ac-
cording to law, on his oath, saith, that the Notice,
of which the annexed is a copy, was published in
the "Paterson Daily Press," a newspaper printed
and published at Paterson, in said County, on the
eleventh day of May, A. D. 1878, and was continued
therein for six weeks successively, at least once each
week. Cornelius H. Stagg.

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Sworn and subscribed this 29th day
of June, 1878, at Paterson, before me.

George S. Chiswell,
Justice of the Peace.

NOTICE TO ABSENT DEFENDANTS

30 *In Chancery of New Jersey:*—To Eleazer Thomp-
son and Margaret Benson:

By virtue of an order of the Court of Chancery
of New Jersey, made on the day of the date hereof,
in a cause wherein Jacob H. Brown is complainant,
and you and others are defendants, you are required
to appear, plead, answer or demur, to the bill of
said complainant, on or before the twenty-fourth

day of June next, or in default thereof, the said bill will be taken as confessed against you.

The said bill is filed to foreclose a mortgage given by Eleazer Thompson and William Berry to Jacob H. Brown on lands in the township of Pompton, County of Passaic, and State of New Jersey, dated June 20th, 1873, and you, Eleazer Thompson, are made a defendant because you are one of the owners of said lands; and also, because the bill prays a decree against you and another for any deficiency there may be of the proceeds of said lands to pay the mortgage debt; and you, Margaret Benson, are made a defendant because you hold incumbrances on said lands.

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Dated, April 23d, 1878.

Henry S. Drury,
Solicitor of Complainant,
209 Main Street,
Paterson, N. J.

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pt's fees \$6.30

IN CHANCERY OF NEW JERSEY

Between

Jacob H. Brown,
Complainant,

and

Eleazer Thompson and
William Berry et al.,
Defendants.

On Bill to Fore-
close, Etc.
Interlocutory
Decree.

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This cause being opened to the Court by Henry S. Drury, of counsel with the Complainant, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued and

10 returned served upon William Berry, Christopher Benson, Robert Allan, Andrew W. Rose, Salmon W. Hoyt, Francis E. Kings, William Barnes, Ex'r., Etc., of Orson Barnes, deceased; Henry A. Paige, William Turnbull, and Auguste Richard, Receiver, Etc., of James McLean et al., late partners, and Philander Stevens, and that due notice of the order of this Court, made on the twenty-third day of April last past, directing Eleazer Thompson and Margaret Benson, two of the said defendants, to appear, plead, demur or answer the complainant's bill, on or before the twenty-fourth day of June, then next, has been duly published and also mailed to said defendants in the manner, and as in the said order directed and prescribed, and that the said defendants have not filed any plea, demurrer or answer to said bill within the time limited by law and 20 said order, but have wholly failed and neglected so to do,

30 It is, thereupon, on this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and seventy-eight, ordered, adjudged, and decreed that the said bill be taken as confessed as against all of the said defendants and that it be referred to Augustus H. Drury, esquire, one of the Masters of this Court, to ascertain and report the amount due to the said Complainant, for principal and interest upon the mortgage held by him upon the premises mentioned and described in the said bill of complaint, and also the amount due, if anything, to the said Christopher and Margaret Benson, Robert Allan, Andrew W. Rose, Salmon W. Hoyt, Francis E. Kings, William Barnes, Executor, Etc., of Orson Barnes, deceased; Henry A. Paige, William Turnbull, and Auguste Richard, Receiver, Etc., of James

McLean et al., late partners, and Philander Stevens, upon their respective mortgages and judgments, and to report accordingly; and also to ascertain and report the order and priority of the said several mortgages and judgments, respectively, and whether they all embrace the same premises; and whether the said mortgaged premises should be sold together or in parcels, and if in parcels, in what order, and that the said Master do make his report thereon with convenient speed. 10

And all further equity is reserved until the coming in of the said report.

Theodore Runyon, C.

IN CHANCERY OF NEW JERSEY

Between
Jacob H. Brown,
Complainant,
and
Eleazer Thompson, William
Berry and Others,
Defendants.)
Master's Report,
April 29, 1880. 20

In pursuance of an order of this Court, entered in the above cause, bearing date the twenty-ninth day of June in the year of Our Lord one thousand eight hundred and seventy-eight, I have been attended by the solicitor of the Complainant, no person attending for any of the defendants, although duly summoned, as will appear by the returns hereunto annexed, and in the presence of the solicitor attending me, I have considered of the matters thereby referred to me. And the solicitor of the Complainant produced before me the mortgage in their bill mentioned, bearing date the twenty-third day 30

of June, eighteen hundred and seventy-three, and made and executed by Eleazer Thompson and William Berry to the said Jacob H. Brown, and which said mortgage was duly acknowledged according to law by the said Eleazer Thompson and William Berry, and recorded as in the bill mentioned, as appears by endorsements thereon; And the said Complainant's solicitor also produced to me the Bond intended to be secured by the said mortgage. And which said bond and mortgage are marked Exhibits "A" and "B" on the part of the Complainant; And I find there is due Complainant on his said mortgage, for principal and interest on this day, the sum of three thousand eight hundred and eight dollars and fifty cents (\$3,808.50); and I do certify and report that the schedule hereunto annexed, marked No. 1, and making part of this my report, contains a statement and account of the principal and interest money due to the Complainant on his said mortgage, and to which, for greater certainty, I refer.

And I do further report that the solicitor of the Complainant produced before me two certain searches of the premises contained in said Complainant's mortgage, one, a Supreme Court Clerk's search, with fees amounting to four dollars and forty-five cents, marked thereon, and the other a search in the office of the County Clerk of the County of Passaic with the searcher's certificate attached thereto, that the legal fees for the amount to the sum of twenty-one dollars and seventy-four cents, making a total amount of fees on both searches of twenty-six dollars and nineteen cents, and which said searches are marked Exhibits "C" and "D" on the part of the Complainant. And I do certify and report that in my opinion said

Exhibit C-2.

searches were advisable and necessary for the proper foreclosure of Complainant's mortgage, and that said fees for the same should be allowed in the taxed bill of costs. And I do further report that in my opinion it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due to the Complainant, together with the costs of this suit. 10

All of which is respectfully submitted.

Augustus H. Drury,
Master in Chancery.

SCHEDULE NO. 1.

Bond, bearing date the twenty-third day of June in the year of our Lord one thousand eight hundred and seventy-three, in the penal sum of six thousand dollars (6000.00) conditioned for the payment of three thousand dollars in two years from the date thereof, with interest at the rate of seven per cent per annum, secured by the mortgage in the complainant's bill mentioned...	\$3000.00	20
Interest thereon from the twenty-third day of June, eighteen hundred and seventy-six, to the twenty-ninth day of April, eighteen hundred and eighty, being three years, ten months and six days.....	808.50	30
Amount due complainant this twenty-ninth day of April, eighteen hundred and eighty	\$3808.50	

Augustus H. Drury,
Master in Chancery.

 IN CHANCERY OF NEW JERSEY

	Between	}	On Bill, Etc. <u>Final Decree.</u>
	Jacob H. Brown,		
	Complainant,		
	and		
10	Eleazer Thompson and	}	
	William Berry et al.,		
	Defendants.		

This cause coming on to be heard in the presence
 of Henry S. Drury, solicitor and of counsel with the
 complainant, the complainant's bill having been
 heretofore taken as confessed against all of the de-
 fendants; whereupon, and upon reading a report
 upon file, made by Augustus H. Drury, Esquire,
 20 one of the Masters of this Court, bearing date on the
 twenty-ninth day of April in the year of our Lord
 one thousand eight hundred and eighty, from all
 of which it appears that there was due to the com-
 plainant on the day of the making of the said re-
 port, for principal and interest on his mortgage,
 the sum of Three Thousand Eight Hundred and
 Eight Dollars and Fifty Cents, and that it is neces-
 sary and advisable that the whole of the mortgaged
 premises should be sold to raise and pay the money
 so due as aforesaid; and no cause being shown or
 30 appearing to the contrary—

It is thereupon, on this twenty-fourth day of May
 in the year of our Lord one thousand eight hun-
 dred and eighty, by Theodore Runyon, Chancellor
 of the State of New Jersey, ordered, adjudged and
 decreed, and the said Chancellor doth, by virtue of
 the power and authority of this Court, hereby order,
 adjudge and decree that the said report, and all
 the matters and things therein contained, do stand.

ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant; that is to say, the sum of Three Thousand Eight Hundred and Eight Dollars and Fifty Cents, together with lawful interest thereon, to be computed from the twenty-ninth day of April in the year of our Lord one thousand eight hundred and eighty, being the date of the Master's report, with the complainant's costs in this cause to be taxed; including a counsel fee of ten dollars, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Passaic, commanding him to make sale, according to law, of the said mortgaged premises, and that, out of the money arising from such sale, he pay to the complainant or to his solicitor, his said debt, interest, and costs; and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

And it is further ordered, adjudged, and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

Theodore Runyon, C.

EXHIBIT C-3.

Eleazer Thompson M O R T G A G E, given by
 William Berry Eleazer Thompson, of the
 to City of Brooklyn, in the
 Jacob H. Brown. State of New York, and Wil-

10 Note: "Notice of tax sale under Act of March 14, 1879, & 12, recorded November 14, 1885, Book of Mortgages, page—"

 Wm. M. Smith, twenty-third day of June,
 Clk. eighteen hundred and sev-
 20 enty-three, Acknowledged before Benjamin Roome, Master in Chancery, the twenty-third day of June, A. D. 1873, to secure the payment of a certain bond given by said Thompson and Berry to the said Brown, and conditioned to pay the sum of three thousand dollars in two years from the date hereof, with interest at seven per cent per annum, payable annually according to the condition of said bond.

30 All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Pompton, in the County of Passaic and State of New Jersey, at Winokey. Beginning at a stake in the east side of the public road leading from Pompton to Ringwood, said stake standing north eight degrees, west thirty-two links from the center on the west side of a large white oak tree standing on the east side of said road near Joseph Crane's house, and from thence running (1) north twenty-two degrees east ten chains to a corner west side of the railroad cut (2)

Exhibit C-3.

north thirteen degrees east five chains and fifty links along the aforesaid road (3) north thirty-three degrees east four chains and sixty-three links to a large rock on the east side of said road, a corner of Abraham Beatty's land (4) still along said road north twenty-three and a half degrees east two chains and sixty-five links, (5) north one and a half degrees east ten chains and nine links (6) north nine and three quarter degrees east two chains and seventy-five links (7) north eight degrees east three chains and twenty-three links (8) north two degrees east two chains and thirty-two links (9) north thirty-seven degrees east four chains and ninety-five links to a stone heap east side of the road and where the line of the land of Henry I. David crosses said road (10) along said David's line and a fence north, seventy-one degrees west eleven chains and thirty links to an old stone heap, a corner of the said David's land; (11) then still along said David's lines north nine and a half degrees west ten chains and fifty links (12) north fifteen degrees east nine chains (13) north twelve and a half degrees west five chains and five links (14) north thirty-eight degrees east eleven chains (15) north seventy-two and a half degrees west four chains and thirty links (16) south seventy-seven and a quarter degrees west three chains and forty links, still along the line of the said David's to the south side of the old Freedomda'e forge pond where the stream runs westward along said pond (17) first westerly and then southerly down stream of said pond to the 6th corner of 22.44-100 acres conveyed by E. E. Drew and wife to Henry P. Brown by deed dated April 25, 1841, (18) along 6th line of same south six degrees west sixteen chains to the 7th corner thereof (19) south twenty-two degrees west six chains to the 7th

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10 corner of 19.88-100 acres conveyed by the aforesaid Drew and wife to the said H. P. Brown, same date as aforesaid (20) along said 7th line of said 19.89-100 acres south seven degrees west ten chains to the 8th corner thereof and line of lands belonging to the heirs of Abram Lines, deceased (21) along 8th line of said 19.89-100 acres and line of land of said heirs south fifty-one degrees east seven chains to 9th corner thereof (22) along 9th line of same and said land of said heirs south eight degrees east seventeen chains to the beginning. Containing three 85-100 acres, but after deducting one acre now belonging to Henry I. David, and one half an acre owned by Joseph Crane, there remains eighty two 35-100 acres, be the same more or less.

20 Being the same land bequeathed by Henry P. Brown to the said Jacob H. Brown by will recorded in Passaic County in Book C of Wills, page 367, etc.

Being the same premises conveyed by the said Jacob H. Brown and wife to the parties of first part by deed bearing even date herewith, and this Indenture of Mortgage being given to secure part payment of the purchase money of said conveyance.

Received and Recorded June 23rd, A. D. 1873, at 3 P . M.

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J. H. Blauvelt,
Clerk.

EXHIBIT C-8.

Pleas before Passaic Circuit Court of the seventeenth day of June in the year of our Lord one thousand eight hundred and seventy six.

Passaic County, ss. William Berry, the defendant in this suit, was summoned to answer Salmon W. Hoyt, the plaintiff therein, of a plea of trespass on the case upon promises, and thereupon the plaintiff by Woodruff & Savage, his Attorney, complains: For that whereas the defendant heretofore, to wit, on the first day of June in the year of our Lord one thousand eight hundred and seventy six, at Paterson, in the County of Passaic, was indebted to the plaintiff in the sum of three hundred dollars, for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendant at his request; And in three hundred dollars for work and labor before that time done and performed and materials furnished by the plaintiff for the defendant at his request; And in three hundred dollars for so much money by the plaintiff before that time lent and advanced to the defendant at his request; And in three hundred dollars for so much money by the plaintiff before that time paid for the use of the defendant at his request; And in three hundred dollars for so much money by the defendant before that time had and received for the use of the plaintiff; And in three hundred dollars for interest upon, and for the forbearance by the plaintiff to the defendant at his request of divers large sums of money before that time due and owing from the defendant to the plaintiff; And in three hundred dollars for so much money then and there

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found to be due from the defendant to the plaintiff on an account stated between them; And being so indebted, the defendant in consideration thereof then and there promised the plaintiff to pay him the said several sums of money on request; Yet the defendant has disregarded his said several promises and has not paid the said several sums of money, nor any of them, or any part thereof, although often requested so to do, but to do so has hitherto wholly refused, and still does refuse, to the damage of the plaintiff three hundred dollars, and therefore he brings his suit, etc.

Woodruff & Savage, Attorneys of Plaintiff.

Notice is hereby given that this action is brought to recover the amount due on a promissory note of which the following is a true copy:

\$162.75 Paterson, N. J., April 8, 1876.

One month after date I promise to pay to the order of S. W. Hoyt, at the First National Bank, One Hundred and sixty two & 75/100 dollars.

Value received. No. — Due — Wm. Berry.

Note dated April 8, 1876, due May 11, 1876, \$162.75

Judgment will be claimed for the sum of One Hundred and sixty two dollars and seventy five cents, with interest thereon from the eleventh day of May, A. D. eighteen hundred and sixty six until entry of Judgment final.

And now at this day to wit the thirty first day of July in the year of our Lord one thousand eight hundred and seventy six, until which day the said defendant had leave to the declaration aforesaid to imparole and then to make answer thereto, comes the said plaintiff by his attorney aforesaid, but the said defendant, although solemnly demanded, comes not nor anything saith in bar or preclusion

of the action aforesaid; Wherefore the said plaintiff remains therein wholly undefended against the said defendant; Wherefore the said plaintiff ought to recover against the said defendant his said damages, and therefore he prays Judgment. And it being suggested and shown and it manifestly appearing to the Court here that the said plaintiff has sustained damages by reason of the promises in his said declaration mentioned in the sum of One hundred and sixty five dollars and twenty three cents over and above his costs and charges by him about his suit in this behalf expended. 10

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages and also the sum of Thirty one dollars and seventy six cents for his costs and charges by him about his suit in this behalf expended, now here taxed and by the Court here adjudged to him with his assent; Which said damages, costs and charges in the whole amount to the sum of One hundred and ninety six dollars and ninety nine cents. 20

And the defendant in mercy, &c.

Damages \$165.23

Costs 31.76

Judgment signed July 31, 1876. 30

Jonathan Dixon,
Judge.

Pleas before Passaic Circuit
Court of the eleventh day of
September in the year of our
Lord one thousand eight hun-
dred and seventy six.

Passaic County, ss. William Berry and Garret

Van Wagoner, Jr., the defendants in this suit, were summoned to answer Francis Eking, the plaintiff therein, of a plea of trespass on the case upon Promises, and thereupon the plaintiff, by James H. Rogers, his attorney, complains: For that whereas the defendants heretofore, to wit, on the first day of September in the year of our Lord one thousand eight hundred and seventy six, at Paterson, in the County of Passaic, indebted to the plaintiff in the sum of two hundred and twenty five dollars, for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendants at their request; And in two hundred and twenty five dollars for work and labor before that time done and performed and materials furnished by the plaintiff for the defendants at their request. And in two hundred and twenty five dollars for so much money by the plaintiff before that time lent and advanced to the defendants at their request; And in two hundred and twenty five dollars for so much money by the plaintiff before that time paid for the use of the defendants at their request; And in two hundred and twenty five dollars for so much money by the defendant before that time had and received for the use of the plaintiff; And in two hundred and twenty five dollars for interest upon, and for the forbearance by the plaintiff to the defendants at their request, of divers large sums of money before that time due and owing from the defendants to the plaintiff; And in two hundred and twenty five dollars for so much money then and there found to be due from the defendants to the plaintiff on an account stated between them; And being so indebted, the defendant, in consideration thereof, then and there promised the plaintiff

to pay to him the said several sums of money on request; Yet the defendants have disregarded their said several promises, and have not paid the said several sums of money nor any of them, or any part thereof, although often requested so to do, but to do so have hitherto wholly refused, and still do refuse, to the damage of the plaintiff two hundred and twenty five dollars, and therefore he brings his suit, &c. 10

James H. Rogers,
Attorney of Plaintiff

Notice is hereby given that this action is brought to recover the amount due on a certain promissory note, of which the following is a true copy:

\$112.50 Paterson, N. J., May 22, 1876.

Three months after date I promise to pay to the order of G. Van Wagoner, Jr., at the First National Bank, One Hundred & twelve & 50/100 dollars value received. 20

Endorsement, G. Van Wagoner, Jr.

Wm. Berry.

The plaintiff will claim Judgment for the amount of the principal of said note with interest thereon from the date of maturity thereof, with costs of protests (\$1.54), besides costs of this suit to be taxed.

And the said defendants by John Hopper & Son, their attorneys, come and defend the wrong and injury when, &c., and say that they did not undertake and promise in manner and form as the plaintiff hath above thereof complained against them, and of this they put themselves upon the Country, &c. 30

Therefore let a jury thereupon come before the Court here on the first Tuesday after the first day of

January next, by whom, &c., who neither, &c., to recognize, &c., because as well as, &c., and the same day is given to the parties aforesaid at the same place.

10 At which day before the Court aforesaid come the parties aforesaid by their respective attorneys and the said defendants by their attorney now retract and relinquish the plea by them heretofore pleaded and say that they did undertake, &c., as the said plaintiff has above thereof complained against them; Wherefore the said plaintiff remains therein wholly undefended against the said defendants and he therefore prays Judgment against them; And the matter being fully understood by the Court here, and it appearing that the said plaintiff has sustained damages by reason of the promises in his said declaration mentioned, to the sum
20 of One hundred and fifteen dollars and thirty five cents, besides his costs and charges in this behalf.

Therefore it is considered that the said plaintiff do recover against the said defendants his said damages and also the sum of Thirty eight dollars and seventy six cents for his costs and charges by him about his suit in that behalf expended, now here taxed and by the court here adjudged to him and with his assent. Which said damages, costs
30 and charges in the whole amount to the sum of One hundred and fifty four dollars and eleven cents. And the defendants in mercy, &c.

Damages	\$115.35
Costs	38.76

Judgment signed March 19, 1877.

Jonathan Dixon,
Judge.

Pleas before Passaic County
Circuit Court of the eighth
day of February in the year
of our Lord one thousand
eight hundred and seventy
seven.

Passaic County, ss. William Berry, the defendant
in this suit, was summoned to answer unto Chris-
topher Benson and Margaret Benson, the plaintiffs
therein, of a plea that he render unto them the
sum of Three hundred and fourteen dollars and
sixty two cents, which to them he owes and from
them unjustly detains, and thereupon the said
plaintiffs, by Robert E. Chitwood, their attorney,
complain. For that whereas the said plaintiffs here-
tofore, to wit, on the seventeenth day of January
in the year of our Lord one thousand eight hundred
and seventy seven, in the Marine Court in the City
of New York, in the County and State of New York,
by the consideration and judgment of the said court,
recovered against the said defendant the sum of
Three hundred and fourteen dollars and sixty two
cents, above demanded, which in and by the said
court were then and there adjudged to the said
plaintiffs for their damages which they had sus-
tained as well by reason of the nonperformance by
the said defendant of certain promises and under-
takings then lately made by the said defendant to
the said plaintiffs as for their costs and charges by
them about their suit in that behalf expended,
whereof the said defendant was convicted, as by
the record and proceedings thereof remaining in the
said Marine Court of the City of New York, in the
County and State of New York more fully appears,
which said judgment still remains in full force and

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effect not reversed, satisfied or otherwise vacated. And the said plaintiffs have not obtained any execution or satisfaction of or upon the said Judgment so recovered as aforesaid, whereby an action has accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of
10 Three hundred and fourteen dollars and sixty two cents, above demanded, &c. Yet the said defendant, although often requested so to do, has not as yet paid the said sum of Three hundred and fourteen dollars and sixty two cents, above demanded, or any part thereof to the said plaintiffs, but to do so has hitherto wholly refused and still does refuse, to the damage of the said plaintiffs of Five hundred dollars, and therefore they bring their suit, &c.

Robt. E. Chitwood,

Attorney of Plaintiffs.

20 And now, at this day, to wit the first day of June in the year of our Lord one thousand eight hundred and seventy seven, until which day the said defendant had leave to the declaration aforesaid to imparole and then to make answer thereto, come the said plaintiffs by their attorney aforesaid, but the said defendant, although solemnly demanded, comes not, nor anything saith in bar or preclusion of the action aforesaid; Wherefore the said plaintiffs remain therein wholly undefended against the said
30 defendant; Wherefore the said plaintiffs ought to recover against the said defendant their said damages, and therefore they pray Judgment. And it being suggested and shown and it manifestly appearing to the court here that the said plaintiffs have sustained damages by reason of the premises in their said declaration mentioned in the sum of Eight dollars and eight cents; and, Three hundred and fourteen dollars and sixty two cents debt, over

and above their costs and charges by them about their suit in this behalf expended.

Therefore it is considered that the said plaintiffs do recover against the said defendant their said damages and also the sum of Twenty nine dollars and sixty one cents for their costs and charges by them about their suit in this behalf expended, now here taxed and by the court here adjudged to them with their assent. Which said debt, damages, costs and charges in the whole amount to the sum of Three hundred and fifty two dollars and thirty one cents. 10

And the defendant in mercy, &c.

Debt \$314.62

Damages 8.08

Costs 29.61 20

Judgment signed June 1, 1887.

Jonathan Dixon,
Judge.

State of New Jersey, { ss:
County of Passaic, {

I. John J. Slater, Clerk of said County and also Clerk of the County Courts thereof, do hereby certify that I have searched the records of Judgments, in my office in the names of William Berry and Eleazer Thompson, from June first, A. D. Eighteen Hundred and Seventy-three, to January first, A. D. Eighteen Hundred and Eighty, inclusive; and that I do not find any Judgment made up and of record against them or either of them, except as hereinbefore set forth. 30

(Seal) In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Sixteenth day of November, A. D. Nineteen Hundred and Fifteen.

10 John J. Slater,
Clerk.

Fees: Five Dollars and Fifteen Cents.

John J. Slater, Paterson, N. J., Nov. 16, 1915.

EXHIBIT C-9.

NEW JERSEY SUPREME COURT

20	William Barnes, Executor, &c., of Orson Barnes, deceased, vs. William Berry.	In Case. By Default. Woodruff & Savage, Attorneys. Entered December 26, 1876. Damages \$265.62 Costs 40.32 \$305.94 305 Dollars 94 cents Date, December 26, 1876.
30	Henry A. Page, William Turnbull, Auguste Reichard, Receivers, &c., of Jas. McLean, & al., late parts., vs. William Berry.	In Case. By Default. G. A. Hobart, Attorney. Entered March 2, 1877 Damages \$409.72 Costs 35.88 \$445.60 445 Dollars 60 cents. Date, March 2, 1877.

Philander Stevens,
vs.
William Berry.

In Case. By Default.
Joseph G. Creamer, At-
torney.

Entered September 1,
1877.

Damages \$344.19

Costs 32.60

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\$376.79

376 Dollars 79 cents.

Date September 1, 1877

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, hereby certify that I have searched the records of said Court, and do not find made up of records or docketed therein any Judgment, Attachment, Decree from Chancery, or other lien against William Berry from June 1, 1873, to January 1, 1880; Eleazer Thompson from June 1, 1873, to January 1, 1880.

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Except as above stated.

(Seal)

In testimony whereof, I have here-
unto set my hand and the seal of
said Court, this sixteenth day of
November, nineteen hundred and fif-
teen, 9 A. M.

Wm. C. Gebhardt,

Clerk.

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Fees \$1.13.

Countersigned Woodruff

EXHIBIT D-1.

Beavertown, N. J.

April 22nd, 1876.

Recd from Wessels Berry the sum of Seven Dollars
and Twenty cents on Acct of Interest from Thomp-
son & Berry.

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\$7.20

Jacob H. Brown.

Receipt

J. H. Brown

EXHIBIT D-2.

\$26.50/100

Beavertown, N. J., May 1st, 1876.

Mr. William Berry, please pay to the order of
Wessels Berry the sum of Twenty-six Dollars and
Fifty one Hundredths.

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Jacob H. Brown.

Order

J. H. Brown

EXHIBIT D-3.

\$40.00

Beavertown, N. J.

Received from Wessels Berry the sum of Forty
Dollars on the amt due for Interest from Thompson
& Berry.

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Jacob H. Brown Mary

Receipt

J. H. Brown

EXHIBIT D-4.

The Township Committee of the Township of Pompton to George W. Mickins. This Indenture, made the thirtieth day of April in the year of our Lord One thousand eight hundred eighty seven, Between The Township Committee of the Tunship of Pompton, in the County of Passaic and State of New Jersey, party of the first part, and George W. Mickins of Pompton, party of the second part, Witnesseth, that Whereas the Assessor of the said Township of Pompton did between the twentieth day of May and the third Monday of August, in the year of 1882, and also in the year 1883, duly and lawfully assess upon a certain farm, situate in said Township of Pompton, the sum of Sixteen dollars and fourteen hundredths for the year Eighteen hundred eighty two, and twenty two dollars and forty hundredths for the year 1883, making a total of Thirty eight dollars and fifty four cents, and did in the duplicate of assessments for taxes for said years designated Berry & Thompson as the owners of said farm, and did describe the said farm in the said duplicate of assessments for taxes as follows, to wit: Farm on West side of Road leading from Midvale to Boardville eighty acres; adjoining lands of William Whritneour, Albert Worth, William Caywood and John Willis.

And whereas, the said taxes so assessed on the said farm, the interest thereon, and the costs, fees, charges and expenses connected therewith were not paid nor any part thereof for the space of six months from and after the nineteenth day of December, A. D. 1882, and 1883 respectively, when the said taxes were due and payable.

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10 And whereas, the *Tunship Comitee* of the said Township of Pompton did on the eleventh day of October, A. D. 1884, issue their Warrant directed to the Collector of taxes for said Township, commanding him to make the said taxes with the interest cost, fees, charges and expenses aforesaid, by
selling the lands, tenements, hereditaments and real estate hereinbefore described or any part thereof as would be sufficient for the shorest term for which any person or persons would agree to take the same, and pay the said taxes, interst, cost, fees, charges and expenses.

20 And whereas, the said Collector of taxes did give public notice of his intention to Collect the said taxes by sale of the said farm or lands, tenements, hereditaments and real estate hereinbefore described, which notice did embrace the name of
the owner of said lands, tenements, hereditaments and real estate the description relating to the location and extent thereof and the amount of taxes unpaid thereon and did designate the Twenty seventh day of January, A. D. 1885, between the hours of ten o'clock A. M. and five o'clock P. M., at the house of Theodore D. Brown, in said Township of Pompton, as the time and place of sale, and was
30 signed by the said Collector of taxes and was advertised in the Paterson Weekly Press, a newspaper printed and published in the County of Passaic, once in each week for four weeks sucessively next before the time appointed for such sale, and was posted in five of the most public places in said Township for the same period, one of which was at or near the premises so to be sold.

And whereas, there being no other bidders present, the Township Committee (for the benefit

of the inhabitants of said Township) did then and there bid and agree that they would take the farm for the term of Thirty years from date of said Sale, and pay said taxes, interest, fees, cost, charges and expenses; and said Collector of taxes did strike off and sell said farm to the Township *Comittee* (for the benefit of the inhabitants of said Township) for the term of thirty years and the Township *Comittee* for the inhabitants of said Township did fulfill the conditions of said sale and did pay the sum of Thirty Eight Dollars and fifty four cents, being the amount of said taxes and costs. 10

And whereas, a certificate of sale for said farm was issued and delivered to said Township *Comittee* on the 27th day of January, A. D. 1885, by the said Collector of taxes,

And whereas, the said *Comettee* did sell, transfer and surrender the said Certificate of sale to George W. Mickins of said Township for the sum of one hundred eighteen dollars and four cents, on the twenty ninth day of April, A. D. 1887, 20

And whereas, the said George W. Mickins has surrendered the said Certificate of sale to the Township *Committee* of the said Township of Pompton,

And whereas, proof has been made to the Township *Comittee* of the said Township of Pompton by the affidavits of the said D. A. Wheeler, Treasurer of said Township, and George W. Mickins of Township aforesaid, made the thirtieth day of April, A. D. 1887, that the said farm has not at any time since the said sale been redeemed by any person, as provided by law, and the time limited by law for such redemption has expired, 30

Now therefore, for and in consideration of

the premises therefore said, and by virtue of the authority of the act of the Legislature of the State of New Jersey, entitled "A further act concerning taxes, making the same a first lien on real estate and to authorize sales for the payment of the same, approved March 14, A. D. 1879, and other Statutes in such case made and provided, the Township Committee of the said Tunship of Pompton have sold the said farm hereinbefore described and do hereby sell, demise and convey the same to the said George W. Mickins, his executors, administrators and assigns for the term of thirty years from the 27th day of January, A. D. 1885. To Have and to Hold, the same to the said George W. Mickins, his executors, administrators, and assigns for his and their own proper use, benefit and advantage, against the owner or owners thereof, and all and every person or persons claiming under him, her or them and against all other estates therein, *wether* legal or equitable, and any and all mortgages, alienations, devices, descents, liens and encumbrances of every kind and nature as fully and completely as though there were no other estates, mortgages, alienations, devices, descents, liens or encumbrances of, in, upon or against said property or any part thereof until said term shall be fully completed "and" ended, and the said George W. Mickins may at or before the expiration of said term remove any building or buildings and any materials erected and placed by him thereon, and shall at the expiration of said term peaceably and quietly yeild up the same to the lawful owner or owners thereof in as good state and condition as when he took possession of the same. Damages resulting from the ordinary use and the elements excepted. And the said George W. Mickins, his executors, administrators and assigns

shall during the said term pay all taxes which shall be legally assessed upon the said premises.

In witness whereof, we have hereto set the Common seal of the Township of Pompton and caused the hand of our Chairman to be hereto affixed and the same to be attested by the Township Clerk on the day and year first above written.

(L. S.)

Peter J. Brown,

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Attest:

Chairman.

E. J. Brown,

Township Clerk.

State of New Jersey, } ss:
Passaic County, }

Be it remembered, that on the thirtieth day of April, A. D. 1887, and before the subscriber, a *Comissioner* of Deeds, personally appeared E. J. Brown, Township Clerk, who being duly sworn according to law, saith that he is the Township Clerk of the Township of Pompton, that he knows the Common seal of said Township, and that the above is the said Common Seal; that Peter J. Brown, who is Chairman of the Township *Comittee* of said Township, did by order of the said Township *Comittee* sign, seal and deliver the foregoing instrument as their voluntary act and deed, in the presence of said deponent, and that the said deponent then and there, by order of said Township *Comittee* affixed his name as Township Clerk, to attest the execution of the said instrument.

E. J. Brown,

Township Clerk.

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Sworn and subscribed before me this 30th day of April, A. D. 1887.
(L. S.)

John H. Brown,
Commissioner of Deeds.

10 Received and Recorded May 5th, 1887.
Wm. M. Smith, Clerk.

State of New Jersey, }
County of Passaic, }ss:

20 I, John R. Morris, Register of Deeds and Mortgages in and for said County and State, do hereby certify that the foregoing is a true copy of the record of a deed given by The Township Committee to George W. Mickins, as the same is taken from and compared with the original entry thereof recorded in Book R-8 of Deeds, pages 207 &c., for said County and now remaining of record in my office.

(Seal) In testimony whereof, I have hereunto set my hand and affixed the official seal of said County at Paterson, this Eleventh day of November, A. D. 1915.

30 John R. Morris,
Register.

Fees: Two dollar and forty cents.
Revenue Stamp, ten cents.
J. R. M. 11-11-15.

67/100 dollars, which amount is made up of the tax on the said farm, being the sum of \$38.54 of the interest thereon, being the sum of \$3.83 and of costs, fees, charges and other expences as follows, to wit:

	Tax due	38.54
	Interest	3.83
10	Printers' fees	4.08
	Justice fees	.36
	Adjournment	.40
	Collector's fees	2.00
	<i>Assess & Collect</i>	.48
	Collector	.68

And I do hereby certify that the right of the owner or owners, mortgagee, occupant or any other person or persons having either a legal or equitable interest in the said lot to redeem the same will expire on the 27th day of January, one thousand eight hundred and eighty seven.

In Witness Whereof, I have hereto set my hand and seal this 27th day of January, 1885.

Edward E. Ball (L. S.)
Coll.

State of New Jersey, }
County of Passaic, } ss:

30 Be it remembered, that on this, the 27th day of January, in the year of our Lord One thousand eight hundred and eighty five, before me, a Commissioner of Deeds, personally appeared Edward E. Ball, Collector of Taxes in the Township *in the Township* of Pompton, in the County of Passaic, and I having first made known to him the contents of the foregoing certificate of Sale, he did therefor acknowledge the same as his voluntary act and deed for the uses and purposes therein expressed.

Martin Drew,
Commissioner of Deeds.

Received and Recorded February 12th, 1885.

Wm. M. Smith, Clk.

State of New Jersey, }
Passaic County, } ss:

I, John R. Morris, Register of Deeds and Mortgages in and for said County and State, do hereby certify that the foregoing is a true copy of the record of a deed given by Edward E. Ball to the Township of Pompton, as the same is taken from and compared with the original entry thereof recorded in Book Y-7 of Deeds, pages 11 &c., for said County and now remaining of record in my office. 10

In testimony whereof, I have hereunto set my hand and affixed the official seal of said County at Paterson, this Eleventh day of November, A. D. 1915. 20

John R. Morris,
Register.

Fees: One dollar and ten cents.

Revenue Stamp, ten cents.

J. R. M. 11-11-15

EXHIBIT D-6.

Notice to Mortgagee of Tax Sale 30

Jacob H. Brown

Sir: You are hereby notified that on the Thirty first day of July, Eighteen hundred and eighty five, at a tax sale of real estate by E. E. Ball, Collector of Taxes for the Township of Pompton, that in the absence of any purchaser the Township Committee did buy for the benefit of the Inhabitants of

said Township, for the sum of Forty dollars and ninety six cents and costs, the lands and tenements assessed to Berry & Thompson for the year Eighteen hundred and eighty four and described as follows, viz:

10 Joins lands of Wm. Whritenour and lying on the west side of the road leading from Midvale to Boardville. The same being bought for the term of Thirty years. Limit of redemption of said lands and tenements will expire on the Thirty first day of July, Eighteen hundred and eighty seven. The above sale was made under Act of Eighteen hundred and seventy nine as per Public Laws, 349, Page 12.

Peter J. Brown,
John F. Sisco,
D. A. Wheeler,

Committee of Township of Pompton.

20 I do certify that I served a copy of the above Notice on Jacob H. Brown, the *Morgager* of the above described premises, on the Thirtieth day of October, 1885.

Wm. G. Colfax,
Town Clerk.

Received & Recorded Nov. 14th, A. D. 1885.

Wm. M. Smith, Clerk.

30 *State of New Jersey,* {ss:
Passaic County,

I, John R. Morris, Register of Deeds and Mortgages in and for said County and State, do hereby certify that the foregoing is a true copy of the record of a Notice to Mortgagee of Tax Sale given by the Committee of Township of Pompton to Jacob H. Brown, as the same is taken from and compared with the original entry thereof recorded

Exhibit D-6—D-7

in Book B3 of Mortgages, page 46, &c., for said County and now remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said County at Paterson, this fifteenth day of November, A. D. 1915

(Seal)

10

John R. Morris,
Register.

Fees: Sixty Cents.

Revenue Stamp, Ten Cents.

J. R. M. 11-11-15

EXHIBIT D-7.

Jacob H. Brown & Wife This Indenture, made
to the twenty third day 20
Eleazer Thompson et al. of June, in the year of
our Lord one thousand eight hundred and seventy
three, Between Jacob H. Brown, and Mary E., his
wife, of the Township of Pompton, in the County of
Passaic and State of New Jersey, of the first part,
And Eleazer Thompson of the City of Brooklyn and
State of New York, and William Berry of the City
of Paterson, in the County of Passaic and State of
New Jersey, of the second part, Witnesseth, that
the said party of the first part, for in and considera- 30
tion of the sum of Six thousand dollars, lawful
money of the United States of America, to them in
hand well and truly paid by the said party of the
second part, at or before the sealing and delivery
of these presents, the receipt whereof is hereby ac-
knowledged, and the said party of the first part,
therewith fully satisfied, contented and paid, hath
given, granted, bargained, sold, aliened, released,

10 enfeoffed, conveyed and confirmed and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part and to their heirs and assigns forever. All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Pompton, in the County of Passaic and State of New Jersey. At Winokey.

20 Beginning at a stake on the east side of the public road leading from Pompton to Ringwood, said stake standing north eight degrees west thirty two links from the centre on the west side of a large white oak tree standing on the east side of said road, near Joseph Crane's house, and from thence running (1) north twenty two degrees east ten chains to a corner west side of Railroad cut (2) north thirteen degrees east five chains and fifty links along the aforesaid road (3) north thirty three degrees east five chains and sixty three links to a large rock on the east side of said road, a corner of Abram Beatty's land, (4) still along said road north twenty three and a half degrees east two chains and sixty five links (5) north thirty one and a half degrees east ten chains and nine links, (6) north nine and three quarters degrees east two chains and seventy five links (7) north eight degrees east *east* three chains and twenty three links (8) north two degrees east two chains and thirty two links (9) north 30 thirty seven degrees east four chains and ninety five links to a stone heap east side of the road and where the line of the land of Henry J. David crosses the said road, (10) along said David's line and a fence north seventy one degrees west eleven chains and thirty links to an old stone heap a corner of said David's land (11) then still along said David's lines north nine and a half degrees west ten chains

and fifty links (12) north fifteen degrees east nine chains (13) north twelve and a half degrees west five chains and five links (14) north thirty eight degrees east eleven chains (15) north seventy two and a half degrees west four chains and thirty links (16) south seventy seven and a quarter degrees west three chains and forty links still along the line of the said David's to the south side of the old Freedomdale forge pond where the stream runs westward along said pond (17) first westerly and then southerly down stream of said pond to the 6th corner of 22 44/100 acres conveyed by E. E. Drew and wife to Henry P. Brown by deed dated April 23d, 1841, (18) along 6th line of same south six degrees west sixteen chains to the seventh corner thereof (19) south twenty two degrees west six chains to the seventh corner of 19.89/100 acres conveyed by the aforesaid Drew and wife to the said H. P. Brown, same date as aforesaid (20) along said 7th line of said 19.89/100 acres south seven degrees west ten chains to the 8th corner thereof and line of lands belonging to the heirs of Abram Lines, deceased (21) along 8th line of said 19.89/100 *as* and line of land of said Heirs south fifty one degrees east seven chains to 9th corner thereof (22) along 9th line of same and said lands of said heirs south eight degrees east seventeen chains to the Beginning. Containing eighty three acres and eighty five hundredths of an acre, but after deducting an acre now belonging to Henry J. David and one half an acre now owned by Joseph Crane there remains eighty two acres and 35/100 acres be the same more or less, being the same land bequeathed by Henry P. Brown to the said Jacob H. Brown by Will recorded in Passaic County in Book C of Wills,

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page 367, &c., part of Homestead lying west of aforesaid road.

10 Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining. Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same and of, in and to every part and parcel thereof.

20 To have and to hold all and singular the above described land and premises with the appurtenances unto the said party of the second part, their heirs and assigns to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever; and the said Jacob H. Brown doth for himself, his heirs, executors, and administrators covenant and grant to and with the said party of the second part, their heirs and assigns, that he the said Jacob H. Brown is the true and lawful and right owner of all and singular the above described land and premises and of every part and parcel thereof with the appurtenances thereunto belonging, and that the said land and premises or any part thereof at the time of the sealing and delivery of these presents are not encumbered by any mortgage, judgment or limitation or by any encumbrance whatsoever, by which the title of the said party of the second part hereby made or intended to be made for the above described land and premises can or may be changed, charged, altered or defeated in any way whatsoever. And also that the said party of the first part now hath good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid. And also, that he the said Jacob H.

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Exhibit D-7

Brown will warrant, secure and forever defend the said land and premises unto the said Eleazer Thompson and William Berry, their heirs and assigns forever, against the lawful claims and demands of all and every person or persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

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In Witness Whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

Jacob H. Brown (L. S.)

Mary E. Brown (L. S.)

Signed, sealed and delivered in the presence of

Benj. Roome.

20

State of New Jersey, }
County of Morris, } ss:

Be it remembered, that on this twenty third day of June in the year of our Lord one thousand eight hundred and seventy three, before me, Benjamin Roome, Master in Chancery for the State of New Jersey, personally appeared Jacob H. Brown, and Mary E., his wife, who I am satisfied are the grantors in the within Deed of Conveyance named, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. And the said Mary E., his wife, being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her volun-

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tary act and deed, freely, without any fear, threats or compulsion of her said husband.

Benj. Roome,

Master in Chancery.

Received and Recorded June 23d, 1873.

J. H. Blauvelt, Clerk.

10 *State of New Jersey,* } ss:
Passaic County,

I, John R. Morris, Register of Deeds and Mortgages in and for said County and State, do hereby certify that the foregoing is a true copy of the record of a deed given by Jacob H. Brown *et ux.* to Eleazer Thompson, as the same is taken from and compared with the original entry thereof recorded in Book U-4 of Deeds, pages 601 &c., for said County and now remaining of record in my office.

20

(Seal) In testimony whereof, I have hereunto set my hand and affixed the official seal of said County at Paterson, this Eleventh day of November, A. D. 1915.

John R. Morris,

Register.

Fees: Two dollars and five cents.

Revenue Stamp, ten cents.

30 J. R. M. 11-11-15

Memorandum of Conclusions

(February 28th, 1917)

IN CHANCERY OF NEW JERSEY

Between

JACOB H. BROWN,

*Complainant,**and*

WILLIAM H. BERRY, et als.,

Defendants.

10

Memorandum of Conclusions.

On bill, answer and proofs taken in open court.

Mr. Thomas A. Davis for complainant.

Mr. Walter R. Hudson and Mr. Allen (of New York) for defendant. 20

STEVENSON, V. C.

This memorandum will not undertake to discuss this case in all its aspects. While the evidence and arguments of counsel are fresh in my mind, I shall rest my decision of the cause in favor of the complainant upon the consideration of certain facts which are for the most part admitted, or which I think have been clearly proved.

The bill is filed under "The Act to compel the determination of claims to real estate in certain cases, and to quiet the title to the same," commonly and somewhat misleadingly called the "Act to Quiet Titles." The complainant conveyed the land in question, a farm of eighty-two acres, to the defendant, William Berry and one Eleazer Thompson, now deceased, whose heirs or devisees are co-defendants with Berry. The price was \$6,000, for 30

Memorandum of Conclusions

10 one-half of which (\$3,000) the complainant took back a purchase money mortgage dated June 23rd, 1873, and payable in two years with interest at seven per cent. The price paid seems to have been large, but Mr. Berry testified that the purchase was made with the idea that there was a deposit of ore on the land, and that he and his co-speculator sunk several shafts during two or three years after the purchase and were disappointed in their expectations.

20 In the year 1878 the interest was in arrear. There was a small house on the land which rented for seven or eight dollars a month. A portion of the land also was tillable, but a large part seems to have been mountain land. It does not appear that any substantial rent could be obtained for the land beyond the seven or eight dollars per month for which the house and accompanying curtilage could be let.

20 In 1878 the tenant of Messrs. Thompson and Berry had vacated, and a "squatter" named Rideour had taken possession. Mr. Brown, who had received the land by devise from his father and had lived on it in former years, desired to have his claim settled in some way, and no doubt was willing to take possession. He was temporarily residing or staying on the adjacent farm with his brother. An interview then took place which Mr. Brown thinks was near his brother's farm, but which Mr. Berry says was at his (Berry's) place at Westwood, Bergen County, New Jersey, a place quite remote from the farm. The indications are that Mr. Berry is right. It is important to know precisely what took place at this interview, and fortunately there is very little dispute between the only witnesses who can

Memorandum of Conclusions

testify in regard to it. Mr. Brown had been dunning Mr. Berry for interest on his mortgage for some time, and none had been paid. At least none had been received by Mr. Brown for several years. According to Mr. Brown, he told Mr. Berry that something must be done, as he wanted money, and that Mr. Berry said, "I can't pay you. You go back on the place." Mr. Brown then referred to the occupant, Mr. Ridenour, and according to Mr. Berry there was a dispute as to whether there was any such person on the place. The result of the talk was that Berry gave Brown a letter addressed to the occupant, which reads as follows:

Westwood, Sept. 2, 1878.

DeWitt Ridenour, Esq.:

Dear Sir:

I understand this day from Jacob Brown that you have taken possession and occupy the premis, formerly owned by him and now owned by Mr. Thompson and myself. I hereby order you to vacate the same immediately under penalty of the law deliver the key to Jacob Brown.

truly yours

Wm. Berry.

Mr. Brown, who presumably would not be recognized by the occupant Ridenour as the owner of the property, delivered the letter to Ridenour, and the latter forthwith vacated the premises and Mr. Brown and his family took possession.

I find nothing in the testimony of Mr. Berry which essentially modifies the transaction between himself and Mr. Brown on September 2nd, 1878, as that transaction is described in Mr. Brown's deposition. I may say that Mr. Berry's manner of testifying and the air of superiority and control which

Memorandum of Conclusions

he assumed did not add to the credibility of his testimony. I think, however, while he added a little deceptive color, he did not testify to anything which alters the character of the transaction as a surrender of mortgaged premises by a mortgagor who was behind-hand in his interest to the mortgagee. In a somewhat lofty manner Mr. Berry says that Mr. Brown came to him stating that he had "spent all his money and had to move and had no place to move in, and wanted to know whether he could move in there." Berry adds: "I said, Under certain circumstances, on account of his wife, who used to live with us and we thought a great deal of her. On her account he could move in the place, but he should pay the taxes, and—well, move right away," and then follows the account of the talk about Ridenour's occupation, ending with the letter to Ridenour.

It was argued by one of the counsel for defendants that Berry and Brown made a contract by which Brown was to take possession, and the use of the property should keep down the interest. I find absolutely nothing even in Mr. Berry's testimony to suggest such a contract. It may be observed that the interest on Mr. Brown's mortgage was \$210 per annum, while the rent of the house was seven or eight dollars per month, say one hundred dollars a year, to which perhaps a small additional amount might be charged against Mr. Brown on account of such portion of the farm as he intended to cultivate. Mr. Berry may well have expressly charged upon Mr. Brown, the mortgagee whom he was suffering to take possession with the performance of his (Brown's) duty as mortgagee in possession, to pay the annual taxes, which were

Memorandum of Conclusions

less than the rental value, but such an understanding or agreement would not affect the character of Mr. Brown's possession.

I see no reason to doubt that in this case the transaction between Berry and Brown was of the usual character where the mortgage is overdue, the interest in default, and the only resident mortgagor is insolvent. The mortgagee in such cases often takes possession with the consent of the mortgagor. 10

From the time Brown took possession of the farm in 1878 until the commencement of this suit in 1915, a period of thirty-seven years, it is proved and not contested that neither Berry nor Thompson, nor any successor to Thompson, has made the slightest effort to interfere with the mortgagee's possession or to do any act which in any way affects the character of that possession. During that period no interest has been paid on the mortgage by anyone. Mr. Brown testifies that he does not remember having seen Mr. Berry after the interview of 1878, and that he never spoke to Mr. Thompson after that time. Mr. Brown remained in personal possession and occupation of the farm with his family as a resident from 1878 until the death of his wife in 1908, a period of thirty years, and since that time he has rented the place to tenants from whom he has collected the rent. 20

In January, 1885, the farm was sold for taxes and bought in by the Township Committee of Pompton Township for a term of thirty years. The complainant Brown testifies that his poverty caused his default in the payment of taxes, and the circumstances indicate that he did not suffer this default in order to injure the owners of the equity of redemption or anyone else. It appears that after this 30

Memorandum of Conclusions

sale was made the township held this farm for about two years and made no effort to dispossess Mr. Brown. In February, 1887, Brown paid the township twenty-five dollars, which the township clerk says was entered on the township books as rent for the farm, and Mr. Brown seems to assent to that idea.

10 On April 29th, 1887, the Township Committee transferred their certificate of sale to George W. Mickens, Mr. Brown's brother-in-law. Mr. Mickens testified that he bought the term merely to save the home of his sister and her husband; that he made no effort to collect any rent, and that the understanding between himself and his brother-in-law was that he would hold the assigned term merely as security for the repayment to him of the amount which he paid the Township Committee.

20 Mr. Brown and Mr. Mickens testify, and there is no other testimony on the subject, that in the course of a long period of years Brown paid back to Mickens the exact amount which Mickens had paid the Township Committee, with interest, and that all claims of Mr. Mickens under the assignment of the term thereupon were discharged.

30 When Mr. Berry heard of the sale for taxes he consulted counsel, he says, and learned that he could do nothing, and thereupon apparently conceived the idea that he could await the expiration of the term, take possession of the land as owner while the mortgage would be met with the absolute bar of the Statute of Limitations. There is some conflict in regard to this matter between counsel for Berry and counsel for the Thompson heirs. Counsel for the Thompson heirs, in arguing that Berry and Brown in 1878 agreed that the occupation by Brown

Memorandum of Conclusions

should discharge the interest on the mortgage, seems to point to the conclusion that the mortgage now stands with the interest paid from year to year in full, and that the decree in this cause in fixing and settling "the rights of the parties in said lands" should find that the defendants were the owners of the equity of redemption and that Brown is in possession under his mortgage upon which the principal only is now due. 10

Neither Berry nor Thompson nor any heir or devisee of Thompson made inquiry in regard to the status of this tax title. If they had made inquiry of Mr. Mickens they would have learned that he was not claiming to hold the tax title in any other way than as a mortgage.

I cannot adopt the views set forth in the answer or urged in the argument in regard to the character of Mr. Brown's possession during the twenty-eight years between the time when Mr. Mickens radically changed the character of the outstanding tax title in 1887 and the commencement of this suit in 1915. We have seen that Brown entered into possession in 1878 as mortgagee. He was bound to pay the taxes. He could not acquire a tax title or have one acquired for his benefit which he could hold in hostility to the mortgagors. I do not consider that it is necessary to enter upon an elaborate discussion of the status of the parties concerned during the brief interval in which the township held this term of thirty years. The defendants still held the equity of redemption in the fee, and Mr. Brown still held his mortgage on the fee, and Mr. Brown remained in possession, having originally taken possession as mortgagee. Many interesting questions relating to this mortgage arise out of the default of 20 30

Memorandum of Conclusions

Mr. Brown with respect to his duty to pay taxes, but I do not deem it necessary to discuss them. As between himself and Berry and Thompson, he was still in possession during the period when this tax title was outstanding as mortgagee and not otherwise, while as between himself and the township he might have been regarded as a tenant.

10 However this may be, I think that the correct legal conclusion is that when Mr. Mickens took an assignment of the tax title as a mere security for repayment to him of the amount of the tax lien, there can be no doubt that Mr. Brown's possession became again, if it had not been continuously from the start, the possession of a mortgagee under his mortgage. He had no other title. He was not Mr. Mickens' tenant. When he had repaid the taxes to
20 Mr. Mickens he had only performed the duty which he owed to the mortgagors, and the situation was precisely the same as it would have been if Mr. Brown had made no default and there had been no tax title.

It is unnecessary to cite the authorities which hold that where a mortgagee takes possession under his mortgage, and holds possession for twenty years with no payment of interest and no agreement modifying the transaction, the equity of redemption is
30 extinguished. Sometimes this title which the mortgagee in possession acquires has been confused with a title by adverse possession. It is not the adverse possession which ripens into an absolute title in the case of a mortgagee. The mortgagee is in possession under a conveyance of the fee. Anciently the mortgagor lost all title in case the condition was not performed by him within the time stated—*i. e.*, in case the money was not paid according to the

Memorandum of Conclusions

condition of the mortgage. Our law now allows the mortgagor to redeem within twenty years, and limits him to that period. On the other hand, our modern law limits the right of the mortgagee to foreclose for the same period of twenty years. At any time during a period of twenty years either from 1878, or from 1887 when Mr. Mickens bought the tax title—I have not considered it important to determine which would be the correct date—the defendants could have filed a bill to redeem, and it is hardly necessary to point out that Mr. Brown could not have set up the tax title in any way against them. 10

In rendering his account as mortgagee in possession Mr. Brown would have been credited with the interest upon his mortgage, and the amount of the taxes paid by him, and would have been charged with the rental value of the farm. On the other hand, Mr. Brown might have filed his bill to foreclose, and he would have been obliged to render precisely the same account. After the expiration of twenty years from the correct date, whichever of the two before mentioned might be taken, the defendants lost their right to redeem, and the complainant lost his right to foreclose, and the complainant, in my judgment, plainly is in possession under his mortgage deed, and under that deed holds an absolute title in fee, the equity of redemption formerly in the defendants having expired. 20 30

I have not referred to the improvements which Mr. Brown has made, the extension of the residence, etc., because I do not understand that there is any evidence going to show that Mr. Berry or any of the defendants had notice of such improvements.

A decree will be advised for the complainant according to §6 of the Statute. (4 Compt. St. page 5402, §6).

Decree to Quiet Title Under the Statute

(Filed May 3, 1917)

IN CHANCERY OF NEW JERSEY

Between
 JACOB H. BROWN,
 Complainant,
 10 and
 WILLIAM BERRY et als.,
 Defendants.

} *On Bill, Etc.*

Decree to Quiet Title under the Statute.

This cause coming on to be heard in the presence of Messrs. Howe & Davis, Solicitors and of Counsel with the complainant, and Messrs. Hudson & Joel-
 20 son, Solicitors and of Counsel with the defendants, William Berry and Sarah J. Berry, his wife; Sanford E. Thompson and Mrs. Sanford E. Thompson, his wife; Anna S. Thompson and Sarah A. Thompson, being all of the said defendants, with whom as Counsel was associated J. Weston Allen, Esq., of the Massachusetts Bar, and the bill, answer, replication, proofs and exhibits having been read and considered, and the arguments of the respective Counsel having been heard, and the Chancellor having con-
 30 sidered the same; and it appearing to his satisfaction that the claim of the said defendants to the whole or any part of the said lands and premises which they have claimed and insisted upon as aforesaid, is not valid, and that they have not nor have any or either of them any such estate or interest therein, as was by them claimed or set up in this cause, and no further claim being set up by the answers of said defendants, or otherwise, or now appearing, and the

Decree to Quiet Title Under the Statute

complainant appearing to be entitled to the relief prayed in his bill:

It is thereupon on this twenty-seventh day of April, 1917, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power of authority of this Court does hereby order, adjudge and decree that in respect to all of the said lands and premises described in the said bill of complaint, and hereinafter described, so far as relates to any claim thereon by or on behalf of any of the hereinbefore mentioned defendants, that the said defendants or any or either of them have no claim, right, title, interest or estate in or to the said lands and premises or any part thereof; and that the title of the complainant in and to the same and every part thereof is hereby determined, fixed and settled and declared to be good and indefeasible in fee simple and free and clear of all encumbrances, as to all of the following described tract and premises in the Township of Pompton, in the County of Passaic and State of New Jersey, and bounded and described as follows, to wit:

Beginning at a stake on the east side of the public road leading from Pompton to Ringwood, said stake standing north eight degrees west thirty-two links from center on the west side of a large white oak tree standing on the east side of said road near Joseph Crane's house, and from thence running (1) north twenty-two degrees east ten chains to a corner on the west side of the Railroad cut; thence (2) north thirteen degrees east five chains and fifty links along the aforesaid road; thence (3) north thirty-three degrees east four chains and sixty-three links to a large rock on the easterly side

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Decree to Quiet Title Under the Statute

of said road, a corner of Abram Beatty's land; thence (4) still along said road north twenty-three and one-half degrees east two chains and sixty-five links; thence (5) north one and one-half degrees east ten chains and nine links; thence (6) north nine and three-quarters degrees east two chains and
10 seventy-five links; thence (7) north eight degrees east three chains and twenty-three links; thence (8) north two degrees east two chains and thirty-two links; thence (9) north thirty-seven degrees east four chains and ninety-five links to a stone heap on the easterly side of the road and where the line of land of Henry I. David crosses the said road; thence
20 (10) along said David's line and fence north seventy-one degrees west eleven chains and thirty links to an old stone heap, a corner of said David's land; thence (11) still along said David's line north nine and one-half degrees west ten chains and fifty links; thence (12) north fifteen degrees east nine chains; thence (13) north twelve and one-half degrees west five chains and five links; thence (14) north thirty-eight degrees east eleven chains; thence
30 (15) north seventy-two and one-half degrees west four chains and thirty links; thence (16) south seventy-seven and one-quarter degrees west three chains and forty links still along the line of the said David to the south side of the Old Freedomdale Forge Pond, where the stream runs westward along said pond; thence (17) first westerly and thence southerly down stream of the said pond to the sixth corner of twenty-two and forty-four hundredths acres conveyed by E. E. Drew and wife to Henry P. Brown by deed dated April 25, 1841; thence (18) along the sixth line of the same south six degrees west sixteen chains to the seventh corner thereof;

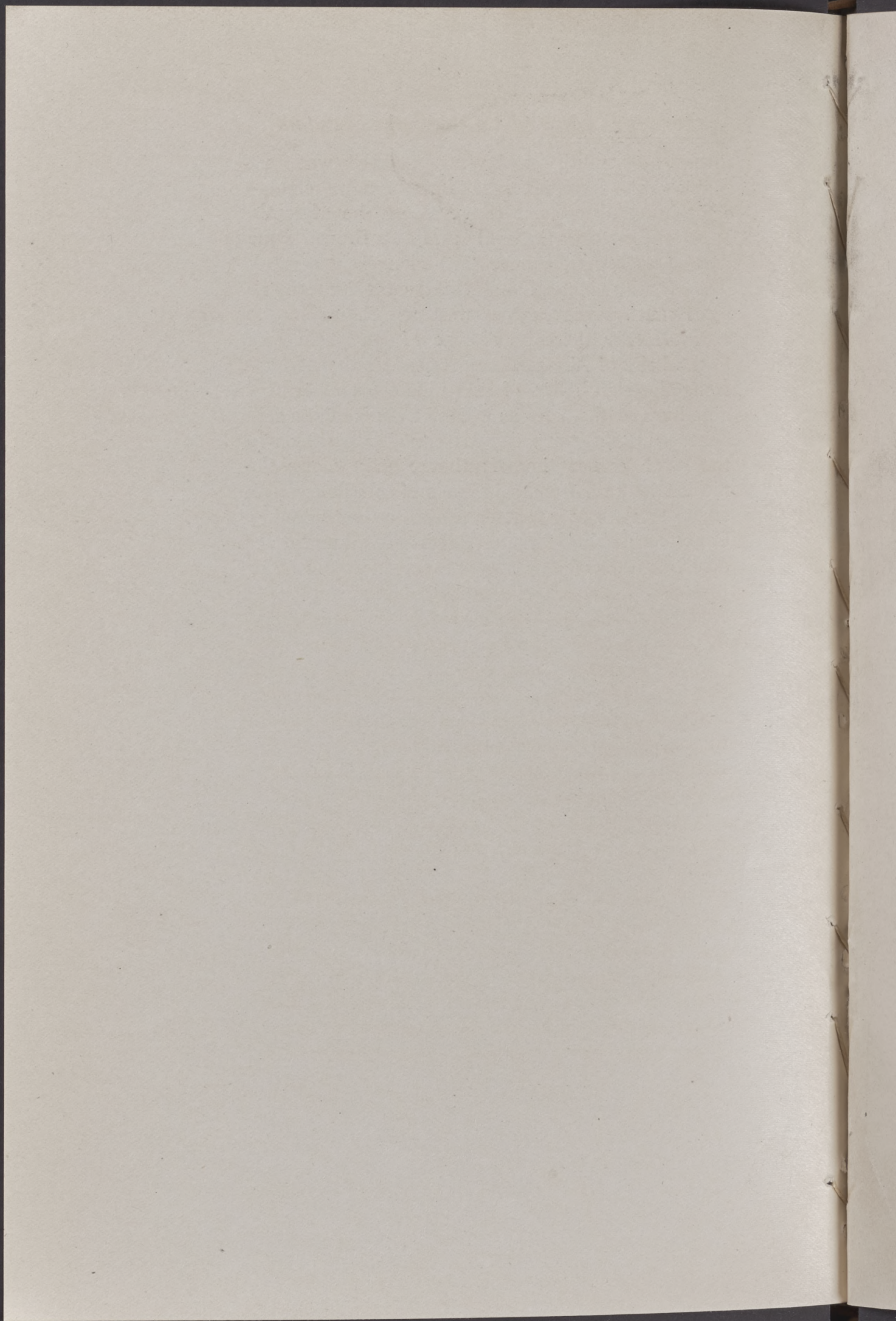
Decree to Quiet Title Under the Statute

thence (19) south twenty-two degrees west six chains to the seventh corner of nineteen and eighty-eight hundredths acres conveyed by the aforesaid Drew and wife to the said Henry P. Brown, same date as aforesaid; thence (20) along said seventh line of said nineteen and eighty-nine hundredths acres south seven degrees west ten chains to the eighth corner thereof and line of land belonging to the heirs of Abram Lines, deceased; thence (21) along the eighth line of said nineteen and eighty-nine hundredths acres as a line of lands of the said heirs, south fifty-one degrees east seven chains to the ninth corner thereof; thence (22) along the ninth line thereof and said lands of said heirs south eight degrees east seventeen chains to the beginning. Containing eighty-three and eighty-five hundredths acres, but after deducting one acre now belonging to Henry I. David and one-half an acre owned by Joseph Crane, there remains eighty-two and thirty-five hundredths acres more or less.

And it is further ordered that the defendants do pay to the complainant his costs of suit to be taxed, and that he have execution therefor according to the rules and practice of this Court.

Respectfully advised, E. R. WALKER, C.

EUGENE STEVENSON, V. C.



New Jersey Court of Errors and Appeals

Between

JACOB H. BROWN,

Complainant-Respondent,

and

WILLIAM H. BERRY et als.,

Defendants-Appellants.

*On Appeal
from Chancery.*

BRIEF FOR DEFENDANTS-APPELLANTS.

ABSTRACT OF CASE.

This is an appeal from a final decree of the Court of Chancery made in favor of the complainant and against the defendants in a suit instituted under "The Act to compel the determination of claims to real estate in certain cases and to quiet the title to the same." The final decree adjudges and decrees that in the lands and premises described in the bill of complaint filed in said cause the defendants have no right, title, interest or estate whatever, and that the title to the complainant therein is thereby determined, fixed and settled and declared to be good and indefeasible in fee simple, free and clear of all encumbrances.

In advising the final decree Vice Chancellor Stevenson seems to have rested his conclusion in the matter on the theory that the complainant had been in possession as mortgagee, and not otherwise, for a period of over twenty years. Defendants insist that complainant was not in possession as mortgagee for such statutory period but was in possession part of

the time as tenant of the Township of Pompton under a tax certificate for thirty years held by said Township, and afterwards in possession under a tax deed given by said Township of Pompton to one Mickins for the same period.

The tax deed was given by the said Township to Mickins for the term of thirty years, expiring on January 27th, 1915 (Case, page 152), and complainant filed his bill of complaint on January 6th, 1915, twenty-one days before the term of years under the tax deed had expired.

At the trial after producing testimony that the complainant was in peaceful possession of the premises he rested his case, and defendants then showed their title to the same through a deed given by complainant to the defendant, William H. Berry and to the ancestor of the other defendants (Case, page 159). There was also introduced in evidence a purchase money mortgage given by said Berry and the ancestor of the other defendants to complainant for three thousand dollars, dated June 23rd, 1873 (Case, page 134). Complainant's contention was that he had entered into possession of the premises under that mortgage as mortgagee, on or about September 2nd, 1878, and had continued in such possession down to the filing of the bill (Case, page 27, line 10 etc.).

The testimony also shows that while the Township was the holder of the tax certificate and before it gave a tax deed to said Mickins, complainant paid rent to the Township for the use and occupation of the premises (Case, page 49, line 30, also page 96, lines 1 and 2); that at that time complainant was in very poor circumstances and said Mickins obtained a deed from the Township for the term of years mentioned in said tax certificate in order that com-

plainant, whose wife was Mickins' sister, might be relieved of paying rent periodically to the Township.

The main question involved in the suit is whether the complainant has been in possession of the mortgaged premises, as mortgagee under his mortgage, for the statutory period.

SPECIFICATION OF GROUNDS OF APPEAL.

We rely upon the following grounds for reversal:

I.

That said final decree is not well grounded either in law or in fact.

II.

That said final decree adjudges that the defendants named therein have no claim, right, title, interest or estate in or to the lands and premises therein described, whereas it should have adjudged that the title to said lands and premises was vested in said defendants.

III.

That said final decree adjudges that the title of the complainant to the lands and premises therein described is determined, fixed, settled and declared to be good and indefeasible in fee simple and free and clear of all encumbrances, whereas it should have adjudged that the said complainant has no title whatever to the same.

IV.

That said final decree adjudges, in effect, that complainant was in possession of the lands and premises therein mentioned, as mortgagee, for the statutory period of twenty years, whereas the evidence is that during said period he was not in possession as mortgagee.

V.

Under the pleadings and evidence in the case and the law applicable thereto, the court should have dismissed complainant's bill of complaint instead of granting him, by its said final decree, the relief therein sought.

VI.

The finding of the court was contrary both to the evidence and the law.

These several grounds of appeal center in a single point: If the complainant, in law and in fact, was in possession of the mortgaged premises *as mortgagee* for twenty years under his mortgage, they all fall; if he was not so in possession, they stand. In fact the Vice Chancellor in advising the final decree granted complainant the relief sought in his bill solely on this ground. They will all be embraced therefore, under one argument.

ARGUMENT.

WE CONTEND IN LAW AND IN FACT, THAT THE COMPLAINANT, AS MORTGAGEE, WAS NOT IN POSSESSION OF THE PREMISES IN QUESTION FOR THE STATUTORY PERIOD; THAT HE CONSEQUENTLY DERIVES NO AID FROM SECTION 18 OF THE STATUTE RELATING TO LIMITATION OF ACTIONS; AND THAT UPON THE DEFENDANTS SHOWING UNDER THEIR DEED FROM THE COMPLAINANT A PRIMA FACIE ADVERSE TITLE IN THEMSELVES, COMPLAINANT WAS UNABLE TO ESTABLISH HIS TITLE TO THE PREMISES IN QUESTION AND THE DECREE SHOULD HAVE BEEN AGAINST HIM.

(A) Where, in the absence of a statute limiting the mortgagor's right to redeem, the mortgagee relies upon his own long continued possession of the premises as a bar, it is always held that his possession must be a possession *under his mortgage*.

In 27 Cyc., page 1821, 5. *Bar by adverse possession of mortgagee*, the rule is declared in the following language:

“Where a mortgagee holds the actual, adverse and uninterrupted possession of the mortgaged premises for a period of time equal to that prescribed by the statute of limitations as a bar to actions for the recovery of real property, a court of equity will by analogy to the statute, refuse to permit the mortgagor to redeem. *But the possession of the mortgagee must be actual and not merely constructive; it must be founded on the mortgage or on his character as a mortgagee.*”

(B) The possession contemplated by our Statute is likewise *a possession commenced and continued by the mortgagee as such.*

This view of it has not only been repeatedly expressed, but consistently held, by our courts.

In the case of *Bates vs. Conrow*, 3 Stockton, 137, Chancellor Williamson said (page 139):

“There is no dispute but that the complainant has held the uninterrupted possession of the premises for more than twenty years prior to the commencement of the suit at law, and that when he entered all the mortgage money was due. This being the case, if he entered *and held under the mortgages* then, by virtue of the statute (Nix. Dig., 436, No. 12) the right or equity of redemption of the mortgagor was barred.”

In *Chapin vs. Wright*, 14 Stewart, 438, Vice Chancellor Van Fleet declared in reference to this statute:

“There can be no doubt that this statute binds this court, and that this court must take it as it finds it, and give effect to it according to its plain words, adding nothing to it and taking nothing from it. The statute is an old one, having been passed in 1799, and stands today in the very words in which it was originally enacted. Paterson Laws 354. Its meaning is so plain that its construction has never, so far as I can discover, been the subject of doubt or discus-

sion. It says, as plainly as language can speak, *that twenty years' possession by a mortgagee, under his mortgage*, after the mortgagor has made default, shall bar the mortgagor's equity of redemption, and that when his equity is once extinguished in this way, it shall remain extinguished forever."

Again (Page 446) he declares:

"—by the peremptory mandate of this statute a mortgagor whose mortgagee has for twenty years, been in possession of the mortgaged premises, *under his mortgage*, has no equity."

At the November Term, 1915, the Court of Errors and Appeals, in the case of Cohn vs. Plass, et al., (95 Atl., 1013) said that they had no reason for doubting the construction put upon this statute by Vice Chancellor Van Fleet in the case last cited.

Furthermore the statute itself is so phrased as to leave no room for question as to the correctness of this construction of it. It declares:

"That if the *mortgagee and those under him*, be in possession of the lands— contained in the mortgage— for twenty years after default of payment by the mortgagor, then the right or equity of redemption of the mortgagor therein shall be forever barred."

It manifestly embraces, under words "those under him," the heirs, devisees and assigns of the mort-

gegee. It includes all in possession *as holders of the mortgage*, whether as original mortgagee, or as owner of the mortgage by the act of the mortgagee or by operation of law. But it reaches no one, whose right of possession is traceable to any other source than that of the mortgage.

Under the facts of this case, the complainant *has not been in possession, under his mortgage, of the lands contained therein for any twenty years after default of payment by the mortgagor.*

The facts are: (1) that he went back on the farm in September, 1878, because at that time there was no tenant on the place and complainant had spent all his money and had to move and had no place to move to, and defendant, Berry, let him move on the place on account of his (Brown's) wife, whom he, Berry, thought a great deal of (Case, page 80); that (2) on January 27, 1885, while complainant was still in the occupancy of the premises, the same were sold to the Township of Pompton, for unpaid taxes for the years 1882 and 1883 (Case, page 44, line 3, etc., page 96, lines 33, etc.); that (3) a certificate of sale was made in due form and recorded within the time prescribed by the statute (Case, page 155); that (4) complainant never redeemed (Case, page 45, lines 34, etc.); that (5) for his occupancy of the premises for the two years succeeding said tax sale he paid rent to the Township on February 9, 1887 (Case, page 96, lines 1 and 2, page 49, lines 27, etc.); that (6) on April 29, 1887, the Township assigned the tax certificate to a George W. Mickins and on the following day conveyed the farm to him by deed, for the balance of said thirty year term for which the Township had bought it in at the sale in January, 1885 (Case, page 96, bottom, 97; 149; 96, lines 4, etc.),

for which assignment and deed Mickins paid about two hundred dollars (Case, page 66, line 10); and that (7) complainant thereafter continued to occupy the premises up to January, 1915, (when he filed the bill in this cause), during the whole of which period the right to the use and possession of said premises was in said Mickins under his said deed from the said Township Committee.

These undisputed facts establish that from the year 1887, when complainant paid rent to the Township for his occupancy of the farm under said Township as holder of the tax sale certificate, until January, 1915, his possession was not, either in fact, or in law, a possession *under his mortgage or as mortgagee*.

That this was distinctly understood by complainant himself is shown by Mickins' testimony. Mickins testifies (Case, page 65, lines 30, etc.), in effect, that he took over the tax certificate from the Township Committee at the request of his sister (wife of complainant) and complainant, because he "did not want to see them lose their home; they had no place to go to." And also page 68, lines 20, etc.

"Q. You bought the certificate because of some talk had between your sister, Mr. Brown and yourself?

"A. I bought the certificate for the sole purpose of saving the home for them, yes, sir."

Furthermore, Edward J. Brown, (Clerk of the Township at the time), in describing the circumstances of the assignment of the tax certificate and execution of the deed to Mickins, testified in part (Case, page 98, lines 25, etc.):

“—and I remember Mr. Mickins saying, ‘Now, I don’t want this property, I don’t want anything to do with it, excepting that I want my brother-in-law and my sister, *if I put them in possession now*, I want them to pay me back the money that I put up for getting them this property.’

“Q. Did he say all that at the Township meeting? A. Sir?

“Q. Did he say that at the Township meeting? A. Yes, sir.”

That from the year 1887, when complainant paid rent to the Township until January, 1915, when the thirty years expired for which the property had been sold, complainant held possession of said premises first under the Township and then under Mickins, is not only well established in fact, but also in law. Under the Tax Act of 1879, P. L. 1879, page 340, Section 8 reads:

“That the purchaser shall cause such certificate of sale to be recorded in the County Clerk’s office within the County where the lands are situate, within twenty days from the receipt thereof, and that thereupon he shall be entitled to the *immediate possession of the property described in said certificate*, and to all the rents, issues and profits arising therefrom on and after the date of such certificate—”

The evidence discloses that a tax certificate for the unpaid taxes was in due form and in conformity with the statute recorded in the County Clerk’s office (Exhibit D, No. 5, page 155 of Case.)

Under Section 9 of said Act "the owner or owners, mortgagee, occupant or any other person having a legal or equitable interest in any lands, tenements, hereditaments or real estate sold for taxes as aforesaid, may redeem the same at any time within two years from the date of said sale," in the manner provided in said Section.

This was not done.

Section 10 provides in part:

"That in case such lands, tenements, hereditaments or real estate so sold shall not be redeemed within the time provided by this Act, then and in that case, the Township Committee, upon due proof being made by affidavit that such redemption has not been made, and the surrender of such certificate, shall execute and deliver to the purchaser, his legal representatives or assigns, at his or their expense, a deed for the same under the common seal of the Township, signed by the Chairman of such Committee and attested by the Township Clerk, and acknowledged according to law, which deed shall contain a description of the property, the year of the tax assessment, the fact of advertisement and sale, the date of sale and the period for which the premises were sold, and which deed shall be recorded in the Clerk's office of the County where the lands are situate within ten days after date thereof.....and that such purchaser or purchasers and his and

their legal representatives, upon complying with the provisions of this act shall, by virtue thereof, lawfully hold and enjoy said lands, tenements, hereditaments or real estate, for and during the term for which he, she or they shall have purchased the same for his, her or their own proper use, benefit and advantage, against the owner or owners thereof, and all and every person or persons claiming under him, her or them, and against any and all other estates therein, whether legal or equitable and any and all mortgages, alienations, devises, descents, liens and encumbrances of every kind and nature, as fully and completely as though there were no other estates, mortgages, alienations, devises, descents, liens or encumbrances of, in, upon or against the said property, or any part thereof, until said term shall be fully completed and ended, and the purchaser shall be at liberty at or before the expiration of said term, to remove any building or buildings and materials erected and placed by him, her or them thereon, and when said term shall have ended shall peaceably and quietly yield up the same to the lawful owner or owners thereof——.”

A deed was given in full conformity with this Act (Ex. D. No. 4, See Case, page 149.)

Not only was this deed not attacked at the hearing of this cause, but it could not have been attacked there. By virtue of Section 15 of the General Act relative to sales of lands under statute or judi-

cial proceedings (Compiled Statutes, Volume 4, page 4679),

“the proceedings upon which such deeds, declarations of sale and conveyances (i. e., of deeds, declarations of sale and conveyances, made by or by authority on any public or municipal authority, authorized or empowered by any law of the State to make and execute the same) founded *shall not be subject to be questioned collaterally*, but may be at any time reviewed by certiorari or other proper proceeding in the Supreme or Circuit Courts.”

In the case of Woodbridge vs. State, Allen, Pros. 14 Vroom, 262, 266, the Court of Errors, in construing the above cited Section, said:

“If the deed, declaration of sale or conveyance is proper in form, and purports to have been made pursuant to public or municipal authority competent to order or make a sale of lands for that purpose generally, and the deed, declaration of sale or conveyance has been executed with proper formalities, *it is conclusive evidence in such an action, of the title it purports to convey*. This, I think is clearly the legal construction of this section, and it is a construction promotive of the policy which induced this legislation. It was found, in practice, difficult to sustain tax titles, by reason of the technical rules by which such titles were tried; and if a title was set aside in ejectment, the result involved a loss to the public of the tax for which the property was

sold. The Legislature, therefore, provided a remedy for illegalities and informalities in the proceedings on which the sale was founded, by certiorari. A proceeding on which the sale, if irregular or illegal, may be set aside——.”

In this case, therefore, the putting of tax deed in evidence concluded the complainant from questioning, *in this proceeding, the title it purports to convey.*

Under the tax sale and the proceedings thereunder, first the Township and then Mickins acquired the sole right to the possession of this farm for the thirty year term. This right was not only well founded in law, but was admitted by the conduct of the complainant, both by his payment of rent in 1887 to the Township of Pompton and by his re-payment to Mickins (through a long series of years, and concluded as late as ten years or less before the filing of his bill of complaint in this cause) of the amount paid by the latter for his tax sale certificate and deed. (Case, page 47, lines 8-14.)

Furthermore, as shown by the tax law, applicable to the sale of lands for unpaid taxes above set forth it is specifically provided in sections 9 and 10 that a person properly procuring a deed thereunder from the Township shall by virtue thereof lawfully hold and enjoy the lands and tenements thereby conveyed for and during the term for which he, she or they, shall have purchased the same for his, her or their own proper use, benefit or advantage *against the owner or owners thereof* and all and every person or persons claiming under him, her or them.

Mickins, the brother of complainant's wife, had such a tax deed and under it allowed no one to have possession of the premises or exercise any control thereof, save complainant and his wife. The defendants were helpless, and under the statute so remained until the thirty year term ran out. They had meanwhile no right of redemption. Defendant, Berry, swears that he was so advised (Case, page 87, lines 14-25, page 89, lines 10-15); and if so advised he was soundly advised.

For the reasons above urged, the decree, we think, should be reversed.

Respectfully submitted,

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Of Counsel.