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Notice of Appeal

(Filed May 12, 1933)

IN CHANCERY OF NEW JERSEY

Between		10
DALLAS B. PRATT,		
<i>Complainant,</i>		
and		
AARON ENGEL, CELIA ENGEL, his wife,	} 72/300	
MORRIS CURTICE, ENGEL & CURTICE,		
INC., a New Jersey corporation,		
CHARLES E. S. SIMPSON and EDNA		
B. SIMPSON, his wife,		20
<i>Defendants.</i>		
On Petition for Writ of Assistance		
against CHARLES E. S. SIMPSON.		

The petitioners, Alexander D. B. Pratt, individually, and Alexander D. B. Pratt, Walter N. Stillman and the United States Trust Company of New York, as Trustees under the Last Will and Testament and Codicils of Dallas Bache Pratt, deceased, hereby appeal from two orders made by the Chancellor on the advice of Hon. John J. Fallon, Vice-Chancellor, both dated April 24th, 1933, and from the whole and every part of said order and orders, one of which denied an application for an order for a writ of assistance directed to Charles E. S. Simpson, one of the

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Notice of Appeal

10 defendants in said suit, and the other denying and refusing an application brought on by an order to show cause, for a rehearing and a re-argument of the application for an order for said writ of assistance, to the Court of Errors and Appeals in the last resort in all causes.

Dated, May 12, 1933.

20 J. HARRY HULL,
Solicitor for and of Counsel with the Petitioners, Alexander D. B. Pratt, individually, and Alexander D. B. Pratt, Walter N. Stillman and the United States Trust Company of New York, as Trustees under the Last Will and Testament and Codicils of Dallas Bache Pratt, deceased.

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

30 J. HARRY HULL,
Of Counsel with the Petitioners.

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Petition of Appeal

(Filed May 24, 1933)

NEW JERSEY COURT OF ERRORS AND APPEALS

<p>Between</p> <p style="text-align: center;">DALLAS B. PRATT, <i>Complainant,</i> and</p> <p>AARON ENGEL, CELIA ENGEL, his wife, MORRIS CURTICE, ENGEL & CURTICE, INC., a New Jersey corporation, CHARLES E. S. SIMPSON and EDNA B. SIMPSON, his wife, <i>Defendants.</i></p> <p style="text-align: center;">—————</p> <p>On Petition for Writ of Assistance against CHARLES E. S. SIMPSON.</p> <p style="text-align: center;">—————</p> <p>ALEXANDER D. B. PRATT, individually, and ALEXANDER D. B. PRATT, WAL- TER N. STILLMAN and the UNITED STATES TRUST COMPANY OF NEW YORK, devisees and trustees under the Last Will and Testament and Codicils of DALLAS B. PRATT, de- ceased, <i>Petitioners-Appellants,</i> and CHARLES E. S. SIMPSON, <i>Defendant-Respondent.</i></p>	<p>10</p> <p>20</p> <p>On Appeal from Chancery</p> <p>30</p> <p>40</p>
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To the Honorable, the Court of Errors and Appeals, in the last resort in all causes:

Petition of Appeal

10 The petition of Alexander D. B. Pratt, individually, and Alexander D. B. Pratt, Walter N. Stillman and the United States Trust Company of New York, devisees and trustees under the Last Will and Testament and Codicils of Dallas B. Pratt, deceased, the appellants in the above stated cause, respectfully show:

20 That your petitioners find themselves aggrieved by two certain orders made in the Court of Chancery by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, advised by Hon. John J. Fallon, Vice-Chancellor, both dated April 24th, 1933, in a certain cause wherein Dallas B. Pratt was complainant and Aaron Engel, Charles E. S. Simpson, *et al.*, were defendants, and in which cause the appellants were the petitioners and Charles E. S. Simpson, the respondent, was the defendant, to wit: That

30 one of the decrees adjudged that the petitioners be and are denied and refused an order for a writ of assistance directed against the defendant, Charles E. S. Simpson; and the other order, dated the same day, denied and refused an application for a rehearing and a reargument of the application for an order for the said writ of assistance, brought on by an order to show cause, and discharged said order; and your petitioners appeal from the said decrees and from

40 each and every part thereof on the ground that the same are erroneous, for that the said Chancellor should have granted the order for the writ of assistance and should have granted a rehearing and a reargument of the application for an order for a writ of assistance; in that he neither granted the order for the said writ of

Petition of Appeal

assistance and denied a rehearing and a reargument; and also that the said Chancellor erred in deciding that the said application should be denied upon the ground that in the affidavit of service, the name of Edna B. Simpson had been stricken out; and the said Chancellor further erred in denying the application for a reargument and a rehearing, as the petitioners were given no opportunity to meet the questions raised by the decision of the court; and that the said Chancellor further erred in holding that there was no adequate proof that the testator and the purchaser at the Sheriff's sale were one and the same person, in that it appeared upon the face of the petition and the proof submitted that the purchaser at the said sale and the testator were one and the same person; and that the said Chancellor further erred in not compelling the defendant, Charles E. S. Simpson, to answer the allegations contained in the petition and affidavits upon which the order for the writ of assistance was sought, and in not compelling the said defendant, Simpson, to answer the allegations contained in the petition and affidavits for a reargument and a rehearing, though requested so to do by the solicitor for the petitioners.

Your petitioners therefore pray that said decrees of the said Chancellor may be reversed, rescinded and for nothing holden, and that your petitioners may have such further relief in the premises as shall seem meet.

J. HARRY HULL,
Solicitor for and of Counsel with
the Appellants.

Notice of Motion for Writ of Assistance

(Filed Jan. 16, 1933)

IN CHANCERY OF NEW JERSEY

10 Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,

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Defendants.

}72/300

On Petition for Writ of Assistance
against CHARLES E. S. SIMPSON.

*To Charles E. S. Simpson, one of the Defendants
in the above cause:*

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PLEASE TAKE NOTICE that I shall apply to the
Chancellor of the State of New Jersey, at the
Chancery Chambers at No. 1 Exchange Place in
the City of Jersey City, on the 3rd day of Janu-
ary, 1933, at ten o'clock in the forenoon or as
soon thereafter as counsel can be heard, for an
order for a writ of assistance and for a writ of
assistance, to cause you to quit the premises de-
scribed in the petition attached hereto, and to
deliver possession thereof unto Alexander D. B.
Pratt, individually, and Alexander D. B. Pratt,

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Petition for Writ of Assistance

Walter N. Stillman and the United States Trust Company of New York, devisees and trustees under the Last Will and Testament and Codicils of Dallas B. Pratt, deceased, the purchaser of the said premises at the Sheriff's sale under the decree in the above cause.

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Dated December 24th, 1932.

Yours, &c.,

J. HARRY HULL,
Solicitor of Petitioners.

Petition for Writ of Assistance

(Filed Jan. 16, 1933)

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IN CHANCERY OF NEW JERSEY

Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,
Defendants.

72/300

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*To his Honor, Luther A. Campbell, Chancellor
of the State of New Jersey:*

The petition of Alexander D. B. Pratt, individually, and Alexander D. B. Pratt, Walter N.

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Petition for Writ of Assistance

Stillman and the United States Trust Company of New York, as Trustees under the Last Will and Testament and Codicils of Dallas Bache Pratt, deceased, of the City, County and State of New York, respectfully shows:

10 That by virtue of the final decree made in the above cause, on the 28th day of May, 1929, a writ of *feri facias*, tested on or about the 13th day of June, 1929, issued out of this honorable court, directed to the Sheriff of the County of Bergen, commanding him to make sale of

20 ALL those certain tracts or parcels of land and premises, situate, lying and being in the Borough of Tenafly, County of Bergen and State of New Jersey.

30 FIRST TRACT.—Beginning at a point in the easterly line of Engle Street at the southwesterly corner of lands of Arthur Coppell and at the northwesterly corner of lands now or formerly of one Sarah Thacher, running thence (1) along lands now or formerly of said Sarah Thacher south 44 degrees, 57 minutes and 50 seconds East 175.02 feet; thence (2) North 45 degrees, 55 minutes East 158.97 feet to a point in the southerly line of Coppell Drive; thence (3) along the same north 45 degrees, 5 minutes West 193.54 feet to a point of curve; thence (4) along a curve deflecting to the left whose radius is 20 feet, 36.94 feet to a point on the easterly side of Engle Street; thence (5) along the same South 29 degrees, 5 minutes West 138.40 feet to the point or place of beginning.

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Petition for Writ of Assistance

BEING further known as Lot No. One (1) in Block No. One (1), on a certain map entitled, "Map of Brookwood Farms, property of Mr. Arthur Coppel, Tenafly, Bergen Co., N. J., Scale 1" equals 80' October, 1925, C. H. Eckerson, E. M. Englewood, N. J."

and other lands; and your petitioners further show, that in pursuance of said writ of *feri facias*, Harry C. Harper, then and still being sheriff of the said County of Bergen, having first, in due form of law, advertised the same premises to be sold at public vendue, the said sale to be held at the Sheriff's Office, in the City of Hackensack, in said county, on the 24th day of July, 1929, at the hour of two o'clock in the afternoon, at the said place and hour, publicly adjourned said sale until July 31st, 1929, at the same time and place; and at the time and place so last appointed, did accordingly offer and expose said "First Tract" for sale at public vendue, under and by virtue of said writ of *feri facias*; and thereupon, Dallas B. Pratt, the complainant herein, having bid for the said "First Tract" the sum of Ten Thousand (\$10,000.00) Dollars, subject to all unpaid taxes and assessments, and no other person having bid so much therefor, the said sheriff did then and there, openly and publicly, in due form of law, strike off and sell the said "First Tract" for the said sum to the complainant herein, he being then and there the highest bidder for the same.

And your petitioners further show, that afterwards, to wit, on the 23rd day of August, 1929, the said Sheriff did execute and deliver unto the complainant herein a deed of conveyance of said

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Petition for Writ of Assistance

10 "First Tract," bearing date the 23rd day of August, 1929, wherein and whereby the said Sheriff did grant, bargain, sell, assign, transfer and convey unto the said Dallas B. Pratt, his heirs and assigns, the said "First Tract" above described, with the appurtenances, to have and to hold to his own use and benefit forever, in as full, ample and beneficial a manner as by virtue of the said writ of *feri facias* the said sheriff might, could or ought to convey the same; which conveyance was afterwards duly acknowledged by the said Sheriff before J. Wallace Leyden, one of the masters of this court, and afterwards duly recorded in the Clerk's Office of the said County of Bergen, as by reference to said deed will more fully appear.

20 And your petitioners further show, that the said premises, at the time of filing the bill of complaint in said cause, were and now are in the possession and occupation of the defendant, Charles E. S. Simpson, and that he then enjoyed and now enjoys the rents, issues and profits thereof.

30 And your petitioners further show, that by the Last Will and Testament of the said complainant, and the codicils thereto, your petitioners were devised the premises herein described, and are now the owners and holders thereof.

40 And your petitioners further show, that since the sale of the said premises, the execution and delivery of the said Sheriff's Deed therefor to the complainant herein, and the probate of the Last Will and Testament of the complainant, and the codicils thereto, your petitioners have frequently applied to the said Charles E. S. Simp-

Petition for Writ of Assistance

son, and requested him to deliver up the possession of the said premises to your petitioners, but that the said Charles E. S. Simpson has hitherto refused and still does refuse to comply with such reasonable request of your petitioners; that, on the 9th day of December last, your petitioners, by their agent, William A. Oliver, called upon the said Charles E. S. Simpson and exhibited to him the said Sheriff's Deed to Dallas B. Pratt for said premises, an exemplified copy of the Last Will and Testament of Dallas B. Pratt, devisor, and of Letters Testamentary and Letters of Trusteeship upon the Estate of the said Dallas B. Pratt, devisor, and demanded possession of the said premises, but that the said Charles E. S. Simpson absolutely refused to deliver the same to your petitioners.

Your petitioners therefore pray that an order may be made by this honorable court, directing and commanding the said Charles E. S. Simpson and his confederates, or any one holding under him, forthwith to quit said premises, and to deliver the possession thereof to your petitioners, and said Charles E. S. Simpson to pay the costs of this application, and that your petitioners have such other or further relief in the premises as may be necessary and proper. And your petitioners, as in duty bound, will ever pray, &c.

J. HARRY HULL,
Solicitor of Petitioners.

Petition for Writ of Assistance

State of New York, }
 County of New York, } ss.:

10 ALEXANDER D. B. PRATT, of full age, being duly sworn, on his oath, saith that he is one of the petitioners named in the above petition; that the matters and things therein set forth are true, to the best of his knowledge, information and belief.

ALEXANDER D. B. PRATT.

(SEAL)

Sworn and Subscribed to, before me,
 this 22nd day of December, 1932, in
 the City, County and State of New
 York

20

ALEXANDER HOWELL

Foreign Commissioner of Deeds for
 the State of New Jersey in the State
 of New York

State of New York, }
 County of New York, } ss.:

30 WALTER N. STILLMAN, of full age, being duly sworn, on his oath, saith that he is one of the petitioners named in the foregoing petition; that the matters and things therein set forth are true, to the best of his knowledge, information and belief.

WALTER N. STILLMAN

(SEAL)

Sworn and Subscribed to, before me,
 this 22nd day of December, 1932, in
 the City, County and State of New
 York

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ALEXANDER HOWELL

Foreign Commissioner of Deeds for
 the State of New Jersey in the State
 of New York

Demand for Possession

State of New York, }
 County of New York, } ss.:

THOMAS H. WILSON, of full age, being duly sworn according to law, on his oath, saith that he is a Vice-President of the United States Trust Company of New York, one of the petitioners named in the above petition; that the matters and things therein set forth are true to the best of his knowledge, information and belief. 10

THOMAS H. WILSON.

(SEAL)

Sworn and Subscribed to, before me, this 22nd day of December, 1932, in the City, County and State of New York 20

ALEXANDER HOWELL

Foreign Commissioner of Deeds for the State of New Jersey in the State of New York

Demand for Possession

(Filed Jan. 16, 1933) 30

*To Charles E. S. Simpson and Edna B. Simpson,
 his wife.*

IMMEDIATE POSSESSION IS HEREBY DEMANDED of the following described property:

ALL those certain tracts or parcels of land and premises, situate, lying and being in the Borough of Tenafly, County of Bergen and State of New Jersey. 40

Demand for Possession

10 FIRST TRACT: Beginning at a point in the easterly line of Engle Street at the southwesterly corner of lands of Arthur Coppell and at the northwesterly corner of lands now or formerly of one Sarah Thacher, running thence (1) along lands now or formerly of said Sarah Thacher south 44 degrees, 57 minutes and 50 seconds East 175.02 feet; thence (2) North 45 degrees 55 minutes East 158.97 feet to a point in the southerly line of Coppell Drive, thence (3) along the same north 45 degrees 5 minutes West 193.54 feet to a point of curve; thence (4) along a curve deflecting to the left whose radius is 20 feet, 36.94 feet to a point on the easterly side of Engle Street; thence (5) along the same South 29 degrees 5 minutes West 138.40 feet to the point or place of beginning.

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30 BEING further known as Lot No. One (1) in Block No. One (1), on a certain map entitled, "Map of Brookwood Farms, Property of Mr. Arthur Coppell, Tenafly, Bergen Co., N. J., Scale 1" equals 80', October 1925, C. H. Eckerson, E. M. Englewood, N. J."

40 being the same premises granted and conveyed in feet to Dallas B. Pratt, now deceased, deviser of the undersigned, by Harry C. Harper, Sheriff of the County of Bergen, by deed herewith shown and dated the 23rd day of August, 1929, sold by him and purchased by Dallas B. Pratt, deviser of the undersigned, at Sheriff's

Demand for Possession

sale, by virtue of a writ of *feri facias* issued out of the Court of Chancery of this state in a suit wherein the said Dallas B. Pratt was complainant and you, Charles E. S. Simpson, and Edna B. Simpson, and others, were defendants, for the foreclosure and sale of said premises; also shown you is an exemplified copy of the Last Will and Testament of Dallas B. Pratt, devisor and of Letters Testamentary and Letters of Trusteeship upon the Estate of the said Dallas B. Pratt, devisor, duly issued; and we hereby authorize William A. Oliver, the bearer of this notice, to take and receive the possession of the said premises for us. 10

Dated, November 21st, 1932. 20

ALEXANDER S. B. PRATT.

ALEXANDER S. B. PRATT	} as Trustees under the last will and testa- ment of Dallas B. Pratt, de- ceased.
Trustee	
WALTER N. STILLMAN	
WALTER N. STILLMAN	}
Trustee	
UNITED STATES TRUST COMPANY OF NEW YORK, By T. H. WILSON Vice President.	

(SEAL)

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**Affidavit of Service of Demand for
Possession**

(Filed Jan. 16, 1933)

10 State of New Jersey, }
County of Bergen, } ss.:

WILLIAM A. OLIVER, being duly sworn, says:
That he is the agent for the above-named individuals and trustees.

20 That on the 9th day of December last, this deponent personally demanded of the defendants ~~and each of them~~, Charles E. S. Simpson ~~and Edna B. Simpson, his wife~~, the possession of the premises mentioned and referred to in the within written notice and demand and also personally served upon the said Charles E. S. Simpson ~~and Edna B. Simpson, his wife~~, a written notice and demand of possession of said premises, of which the within is a true copy; and at the time of making said demand, this deponent showed to the said Charles E. S. Simpson ~~and Edna B. Simpson, his wife~~, the deed by the Sheriff of the County of Bergen to Dallas B. Pratt, devisor of the said premises to the above-named devisees

30 under his Last Will and Testament, which said deed is referred to within; and also showed to the said defendant, Charles E. S. Simpson ~~and Edna B. Simpson, his wife~~, an exemplified copy of the Last Will and Testament of Dallas B. Pratt, devisor, and of Letters Testamentary and Letters of Trusteeship upon the Estate of the said Dallas B. Pratt, devisor; and that the said Charles E. S. Simpson ~~and Edna B. Simpson,~~

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Affidavit of Service of Demand for Possession

his wife, refused to comply with the demand for possession.

WILLIAM A. OLIVER,
Sergt. at Arms,
1st. Jud. Dis. Court,
Englewood, N. J. 10

Sworn and Subscribed to, }
before me, this 20th day }
of December, 1932. }

FRANK H. MOLONEY,
Clerk.

FRANK H. MOLONEY,
Clerk 1st District Court.

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Affidavit in Opposition

(Filed Jan. 26, 1933)

IN CHANCERY OF NEW JERSEY

10 Between

DALLAS B. PRATT,
Complainant,
andAARON ENGEL, CELIA ENGLE, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,
*Defendants.*On Petition for
Writ of Assist-
ance Against
Charles E. S.
Simpson

72/300

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State of New Jersey, }
County of Bergen, } ss.:

30 CHARLES E. S. SIMPSON, being duly sworn, deposes and saith, I am the defendant-respondent in the above stated cause; on January 20, 1933, I personally examined the Book of Foreclosure sale made by Harry C. Harper, late Sheriff of the County of Bergen, N. J. which said book is in the office of the present Sheriff of the County of Bergen, at the County Court House in the City of Hackensack; under date of July 31, 1929, I discovered the entry reciting the writ of *feri facias* issued in the above matter and the sale thereunder on July 31, 1929. The record of said sale also shows that on September 14, 1929, the sheriff's deed was delivered to Scott Watson, and the

40 receipt in said book shows that Scott Watson,

Affidavit in Opposition

Solicitor for complainant obtained the said deed on September 14, 1929.

Deponent further saith that on January 20, 1933, he communicated with Scott Watson, solicitor aforesaid at his office at Englewood, N. J. to ascertain the date of the delivery of said deed by him; the said Scott Watson informed me that he had delivered the deed to an attorney in New York and he refused to give me the name of said attorney or to disclose the date upon which he had made such delivery insisting that professional ethics prevented him from doing so.

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CHAS. E. S. SIMPSON.

Sworn to and subscribed to }
before me this 25th day }
of January, 1933. }

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HERMAN GREENSTONE
Master in Chancery of New Jersey.

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**Affidavit of Denial of Service on Edna B.
Simpson**

(Filed Feb. 18, 1933)

IN CHANCERY OF NEW JERSEY

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Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, *et als.*,
Defendants.

On Bill or Affi-
davit of Denial
of Service on
Edna B.
Simpson

72—300

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State of New Jersey, }
County of Hudson, } ss.:

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CHARLES E. S. SIMPSON, being duly sworn, de-
poseth and saith that he is one of the defendants
in the above stated cause; that on or about De-
cember 9th, 1932, deponent was served with a
copy, Demand for possession, dated November 21,
1932, and subsequently was served with a notice
of motion herein, returnable January 3, 1933; at
the time of service of such demand for possession
deponent was the only person served, no service
having been made upon the defendant Edna B.
Simpson; that such demand for possession was
served upon deponent at his office, #173 Main
Street, Hackensack, New Jersey, that no demand
was ever served upon the defendant Edna B.
Simpson, nor was a copy of the Notice of Motion
returnable January 3, 1933 ever served upon the
defendant Edna B. Simpson; that all the facts

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Conclusions

herein stated are within the personal knowledge of deponent and deponent is authorized and competent to make this affidavit.

CHAS. E. S. SIMPSON.

A true copy.

FERD GARRETSON,
Clerk.

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Subscribed and sworn to }
before me this 17th day }
of February, 1933. }

OSCAR B. SPENCER
A notary Public of New Jersey.
My Commission expires May 9th, 1935.

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Conclusions

(Filed March 3, 1933)

IN CHANCERY OF NEW JERSEY

Between

DALLAS B. PRATT,
Complainant,

and

AARON ENGEL, *et als.,*
Defendants.

On Bill to Fore-
close Mortgage,
&c.

On Petition for
Writ of Assist-
ance

72/300

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1. An application for a writ of assist-
ance must be applied for within a reason-

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Conclusions

able time after a judicial sale. It will not be issued where persons who may be entitled thereto wait three and one-half years before applying to the court therefor.

10 2. The issuance of a writ of assistance rests in the sound discretion of the court, and such writ will never be awarded in a case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser of property at a sheriff's sale in possession thereof.

Mr. J. Harry Hull, for petitioners.

20 Mr. Charles E. S. Simpson, *per se*, opposed.

FALLON, *V. C.*

This matter is before the court on an application for a writ of assistance. The proofs herein impel me to determine that the application be denied. The demand for possession, on which the application for the writ is predicated, is addressed—"To Charles E. S. Simpson and Edna B. Simpson, his wife," and is signed by the petitioners herein, who, as appears thereby, authorized one William A. Oliver to take and receive for them possession of the premises therein mentioned. The affidavit of Mr. Oliver which is attached to said demand by way of proof of service thereof, recites that on the 9th day of December last he served upon Charles E. S. Simpson a written notice and demand for possession, and at the same time exhibited to him a deed by the Sheriff of the County of Bergen to Dallas B. Pratt, and also an exemplified copy of the Last

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Conclusions

Will and Testament of Dallas B. Pratt and letters testamentary thereon, and that said Charles E. S. Simpson refused to comply with the demand. Said affidavit evinces that the name *Edna B. Simpson*, although typewritten therein, has a pen-mark drawn over same ostensibly to strike said name therefrom. The affidavit, as typewritten, evinces also that service of demand for possession was intended to have been made upon both Mr. Simpson and his wife. Why the notice and demand for possession was not served upon Mrs. Simpson has not been explained. The petition herein has attached thereto a "Notice of Motion" directed to Charles E. S. Simpson notifying him of an application to be made for an order for writ of assistance and for a writ of assistance to cause him to quit the premises described therein, to the end that the petitioners may obtain possession thereof. The petition recites *inter alia* a sale of the premises therein mentioned by the Sheriff of the County of Bergen to Dallas B. Pratt on July 31, 1929. Said purchaser died October 9, 1929. It appears from the proofs herein that the Sheriff's sale occurred more than three and one-half years ago. A court of equity will not afford relief by means of the issue of a writ of assistance unless the purchaser of premises at a judicial sale shall apply to the court therefor within a reasonable time after the sale. The application for the writ of assistance in the matter *sub judice* is not made by the purchaser at a sheriff's sale in mortgage foreclosure proceedings in the above-stated cause, but by persons who claim title to said premises as devisees under the Last Will and Testament of Dallas Bache Pratt,

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Conclusions

10 probated in the New York County Surrogate's Court. It may be that the above-named purchaser at the Sheriff's sale, and the testator aforesaid, are identical, but there is no adequate proof thereof herein. In *Barton v. Beatty*, 28 N. J. Eq. 412, it is stated—"A writ of assistance is awarded in execution of a final decree. Having decreed a sale and conveyance of land, it is necessary, in order to give the purchaser the full benefit of his purchase, to put him in possession." The acquiescence of the person or persons having legal title to the premises in question, whomsoever they may have been within the past three and one-half years, in the retention by the Simpsons of possession of said premises during such period of time, creates a doubt as to whether the Simpsons have not held possession of said premises under lawful right, or, that such person or persons may have been aware that the Simpsons' right to possession of the premises had not been divested by the mortgage foreclosure proceedings aforesaid. Whether the petitioners are entitled to assert herein as against Charles E. S. Simpson, and as against Edna B. Simpson, his wife, who has not been served with a notice or demand for possession of the premises, their alleged right to the possession of said premises as devisees under the Last Will and Testament aforesaid, is not free of doubt. The issuance of a writ of assistance rests in the sound discretion of the court, and such writ will never be awarded in a case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser of property at a sheriff's sale in possession thereof.

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Conclusions

A fortiori petitioners who claim title and right of possession, as devisees aforesaid, are not entitled, as of right, to a writ of assistance to place them in possession of premises the possession of which is held by other persons whose right thereto cannot be regarded as free of doubt. The formalities to obtain a writ of assistance are stated in *Schenck v. Conover*, 13 N. J. Eq. 220. This court will not in a summary manner settle the rights of parties when a question of title is involved, and, as in the case *sub judice*, when the right to a writ of assistance is not clear. *Schenck v. Conover, supra; Barton v. Beatty, supra; Board of Home Missions v. Davis*, 70 N. J. Eq. 577. The petitioners will be relegated to an action at law to establish their alleged right to the possession of the premises in question. I will advise an order accordingly.

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Dated: Hoboken, N. J. March 2, 1933.

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**Rule to Show Cause Why Reargument Should
Not be Granted**

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

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Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,

72/300

Defendants.

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A petition having been filed herein by Alexander D. B. Pratt, individually, and Alexander D. B. Pratt, Walter N. Stillman and the United States Trust Company of New York, as Trustees under the Last Will and Testament and Codicils of Dallas Bache Pratt, deceased, praying for a reargument of an application heretofore made by the petitioners herein to this court, for a writ of assistance, and which application was denied;

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It is, on this 20th day of March, 1933,

ORDERED, that the defendant, Charles E. S. Simpson, show cause on the 10th day of April, 1933, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard

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*Rule to Show Cause Why Reargument Should
Not Be Granted*

before the Chancellor, at the Chancery Chambers in the City of Jersey City, why an order should not be made, permitting a reargument, and the introduction of testimony, if necessary; and it is further

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ORDERED, that true but uncertified copies of this order, petition and affidavits upon which said order is based, be served on the defendant, Charles E. S. Simpson, within five days after the date of this order; and it is further

ORDERED, that the said defendant, Charles E. S. Simpson, serve an answer to said petition and affidavits at least five days after said service.

20

Service on the said defendant shall be made by delivering the same to him personally within five days from the date hereof.

LUTHER A. CAMPBELL,
C.

Respectfully advised,

JOHN J. FALLON,
V. C.

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Petition for Reargument

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,

and

AARON ENGEL, CHARLES E. S.
SIMPSON, *et al.,*
Defendants.

} 72/300

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*To the Honorable Luther A. Campbell, Chan-
cellor of the State of New Jersey:*

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The petition of Alexander D. B. Pratt, indi-
vidually, and Alexander D. B. Pratt, Walter N.
Stillman and the United States Trust Company
of New York, as Trustees under the Last Will
and Testament and Codicils of Dallas Bache
Pratt, deceased, of the City, County and State
of New York, by their solocitor, J. Harry Hull,
Esq., respectfully shows:

On January 3rd 1933, an application was made
to this court for an order for a writ of assistance
in the above entitled suit. The application was
partially heard on said date and was continued
to January 17th, 1933, when the hearing was
completed. Thereafter, Vice-Chancellor John J.
Fallon, sitting in said cause, rendered a decision

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Petition for Reargument

denying the application for the writ, for the following reasons, among others, namely:

No explanation for the failure to serve Edna B. Simpson, the wife of the defendant, Charles E. S. Simpson, was given although service of demand for possession was intended to have been made upon Edna B. Simpson, the wife. 10

There was no adequate proof that the purchaser at the Sheriff's Sale and the testator were one and the same person.

Laches.

Upon the argument, counsel understood that if proof was needed to establish disputed questions of fact, petitioners would be permitted to offer said testimony. 20

The only question raised by the defendant, Charles E. S. Simpson, upon the application for the writ, was that of laches. He filed no answer to the petition. He did, however, on January 25th, 1933, after the matter had been submitted, file an affidavit setting up the date of sale of the premises, namely, July 31st, 1929, and the record of the delivery of the deed by the Sheriff to Scott Watson, the solicitor for the complainant in this suit. 30

Upon the argument, the defendant, Charles E. S. Simpson, raised no question regarding the failure to serve Edna B. Simpson, his wife. He did not assert any title in his wife, nor was any title or claim of right set up by him for her; nor was the question of the identity of the complainant in the suit with that of the purchaser of the sale raised; nor has he at any time al- 40

Petition for Reargument

leged any right, title or interest which would justify or attempt to justify his possession.

10 Dallas B. Pratt and Dallas Bache Pratt are one and the same person. The exemplified record of the Last Will and Testament submitted to the court, shows that fact, and it so appears from the affidavit of Alexander D. B. Pratt, decedent's son and one of the trustees under decedent's will.

Replying to the claim that the petitioners unduly delayed the application for the writ: The file in the office of the clerk of this court shows, *inter alia*, that the defendant, Charles E. S. Simpson, and Edna B. Simpson, his wife, were made parties to the suit and the bill recited:

20 "under whatsoever right, title, claim, interest or lease your complainant is unaware."

The final decree was filed on May 28th, 1929. The execution was tested on June 28th, 1929. The report of sale was filed on August 5th, 1929, and the order confirming the sale was filed on August 12th, 1929. The deed was delivered to Scott Watson, the solicitor for the complainant, by the Sheriff of Bergen County on September 14th, 1929, and was recorded on September 17th, 1929, in the office of the Clerk of the County of Bergen. The deed was then mailed by Scott Watson to Messrs. Sprague, Merle-Smith & Smart, Esqs., the New York attorneys for the complainant, on October 1st, 1929. Pratt died on October 9th of the same year.

40 The petitioners urge, that under the circumstances, as set forth in this petition and in the

Petition for Reargument

affidavits accompanying it, that they are not guilty of laches, particularly in view of the attitude and behavior that Charles E. S. Simpson has taken towards this property, and that said attitude is not such that would entitle him to come into a court of equity and urge that he be permitted to occupy these premises any longer. 10

The defendant, Charles E. S. Simpson, entered into a contract to purchase this property from the owners, Aaron Engel and Morris Curtice, several years after they had obtained title. The contract provided that Simpson was to pay \$100.00 a month until the title closed. The title never did close. Simpson not only never paid \$100.00 a month, but never paid \$1.00 to Engel and Curtice. The owners were unable to compel Simpson to close title and as a result, they could not pay the interest on the mortgage, or the taxes, and as a result, the mortgage was foreclosed and Engel and Curtice were unable to protect the property at the sale. As hereinbefore recited, the defendant, Charles E. S. Simpson, and his wife, Edna B. Simpson, were made parties to the suit and their rights were cut off. 20

Shortly after the property vested in the decedent, Simpson approached Scott Watson, the solicitor for Dallas B. Pratt, and asked him if the complainant was willing to sell the property and what would be the price. Several letters passed between Watson and the defendant, Simpson, and nothing definite came of the transaction. 30

After the discovery that the premises were occupied by Simpson, which was in the middle 40

Petition for Reargument

10 or latter part of August, 1932, George Merritt, an official of the United States Trust Company of New York, one of the trustees under the will of Dallas B. Pratt, deceased, wrote to the defendant, Simpson, requesting him to call at the office of the trust company with reference to the property. No answer was received to that letter. Thereafter, and on October 3rd, 1932, Herbert C. Nodes, a clerk in the office of the United States Trust Company of New York, called to see Mr. Simpson and inquired of him under what arrangement he was occupying the premises. The defendant, Simpson, replied that he would not discuss the matter at his residence but asked Mr. Nodes to meet him at his office in Hackensack on October 5th, 1932, at two o'clock in the afternoon. Mr. Nodes called at Mr. Simpson's office on that date and waited until five-twenty o'clock but the defendant, Simpson, did not appear.

20 On November 6th, 1932, the defendant, Simpson, at the premises in question, which he was then and is now occupying, offered to petitioners' solicitor to make a contract for the sale of the property. He stated that he thought he had a backer and he thought that he would be able to raise the money to complete the purchase. Simpson was told by either Mr. James H. Richards, a member of the Bar of the State of New York, who was with petitioners' solicitor, or by petitioners' solicitor, that the owners of the property did not wish to sell it. The defendant, Simpson, then asked either petitioners' solicitor or Mr. Richards, when they wished him to quit
40 the premises and Mr. Richards said December

Petition for Reargument

1st, 1932. Simpson stated that he was not in possession under a tax sale certificate and that he never paid a dollar for interest or taxes since he was in the property. When asked under what claim of right or title he had possession, he replied that it was for the questioner to find out.

10

The petitioners, after the efforts recited in the affidavits hereto annexed, and failing to obtain any information from the defendant, Simpson, about the middle of October, 1932, retained the present solicitor who has charge of this case, and who instituted these proceedings as promptly as possible.

WHEREFORE, your petitioners pray for an order to show cause directed to the defendant, Charles E. S. Simpson, why a reargument and a rehearing should not be heard upon the proceedings heretofore had herein and upon this petition and the affidavits annexed hereto;

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And your petitioners will ever pray.

ALEXANDER D. B. PRATT, individually; and

ALEXANDER D. B. PRATT,
WALTER N. STILLMAN, and

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UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustees under
the Last Will and Testament
and Codicils of Dallas Bache
Pratt, deceased, petitioners,

By J. HARRY HULL,
Petitioners' Solicitor.

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**Affidavit of J. Harry Hull, in Support of
Petition**

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, CHARLES E. S.
SIMPSON, *et al.,*
Defendants.

} 72/300

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State of New York }
County of New York } ss.:

J. HARRY HULL, being duly sworn, says:

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I am the solicitor for the devisees and trustees under the Last Will and Testament and Codicils of Dallas B. Pratt, deceased, the petitioners for the writ of assistance against Charles E. S. Simpson, one of the defendants herein. I was retained by them about the middle of October, 1932, and was informed that Charles E. S. Simpson was occupying the premises in Tenafly, referred to in the petition verified by them on the 22nd day of December, 1932. At that time, they did not know, nor did I, under what right or claim of right Simpson was occupying the premises, so on the 22nd day of October, 1932, I wrote him, asking him to let me know when he would vacate the premises. To this letter, no

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reply was received.

Affidavit of J. Harry Hull

Thinking that Simpson might be holding under a tenancy, I had served upon him a notice to quit the premises, which notice was served on him on the 27th day of October, 1932, by William A. Oliver, Sergeant-at-Arms of the First Judicial District Court of Bergen County; the original of which notice, with proof of service, is in my possession and will be submitted to the court as a part of these moving papers on the hearing. No reply or answer was made to that demand.

10

On Sunday, November 6th, 1932, with James H. Richards, a member of the Bar of the State of New York, associated with the firm of Stewart & Shearer, the New York attorneys for the representatives of the Estate of Dallas B. Pratt, deceased, I drove to the premises in question. We were admitted by Simpson himself, who took us into the living room where he, Mr. Richards and myself had a conversation. I asked him if he would quit the premises. He asked me when we wished him to quit and Mr. Richards said December 1st, 1932. Simpson then said that he would like to buy the property and offered to make a contract for its purchase. We asked him how he was going to pay for it. He said that he had backing and he thought that he would be able to raise the money to complete its purchase. Either Mr. Richards or I told him that our clients wanted the property and they did not wish to sell it. He told us that he was not in possession under a tax sale certificate and that he had not paid a dollar of rent since he was in the property. Mr. Richards then asked him under what title he held or claimed to hold the prop-

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Affidavit of J. Harry Hull

erty. Simpson replied that it was for him (meaning Mr. Richards) to find out. After some further discussion, the defendant, Simpson, said that he did not intend to discuss the matter any further. He left the room and went to the rear of the house, through the hall. Mr. Richards and I then left.

10 On the same day that I called upon Simpson, namely, November 6th, 1932, I made inquiries at a real estate office regarding Simpson and whether any of the occupants of the office knew under what tenancy Simpson occupied the premises and I was informed that the property had been formerly owned by Aaron Engel and Morris Curtice, who had lost the property. I then
20 called on Aaron Engel, who now runs a roadside eating stand at Sylvan Avenue and Englewood Place, Englewood, and he told me that Simpson had gone in under a contract of purchase made in 1927 or 1928. The contract called for the payment of \$100.00 a month until the title could be closed. Engel said that he had never been paid a dollar by Simpson; that no taxes had ever been paid by Simpson and that
30 the property was foreclosed by the owner of the mortgage. By reason of Simpson's failure to pay him a cent or make any efforts to close the title, he was unable to carry the property and lost it. This was the first knowledge that I had of the situation.

I then had the records of the foreclosure proceeding looked up in the office of the clerk of this court, and learned that Charles E. S. Simpson and Edna B. Simpson, his wife, had been
40 made parties defendant, the bill stating that the complainant was unaware under what interest

Affidavit of J. Harry Hull

the defendant, Simpson, and his wife, claimed to occupy the premises. I received the abstract of the proceedings in the foreclosure suit on November 12th or 14th, 1932. After some further investigation and looking up of the authorities, I prepared a notice of demand for the possession of the property and mailed it to William A. Oliver for service on November 22nd, 1932. He made numerous efforts to serve Mrs. Simpson, who deponent has since learned was an unnecessary party to this proceeding, but was unable to serve her. On December 9th, 1932, the demand for possession was finally served upon Simpson. 10

Shortly thereafter, the petition for the writ of assistance was prepared by me and delivered to my New York correspondents for verification by my clients. 20

From the proceedings in the Chancery Office, the original deed, the record in the office of the Sheriff of Bergen County, the affidavit of Charles E. S. Simpson, verified the 25th day of January, 1933, and the petition of Alexander D. B. Pratt, the son of Dallas B. Pratt, also known as Dallas Bache Pratt, deceased, the following dates appear: 30

May 28th, 1929.....	Decree of Foreclosure	
July 31st, 1929.....	Sale	
August 23rd, 1929.....	Deed dated and executed	
September 14th, 1929....	Sheriff delivered deed to	
	Scott Watson, solicitor	
	for the complainant	
September 17th, 1929....	Deed recorded	
October 9th, 1929.....	Dallas B. Pratt died in	
	New York City	40

Affidavit of J. Harry Hull

10 I therefore ask, on behalf of my clients, for an order to show cause why this matter should not be reopened; that the defendant, Charles E. S. Simpson, be required to serve an answer and replying affidavits to the original petition and to the facts set up in the petition and affidavits submitted herewith; and that petitioners be permitted to introduce oral evidence upon any questions of fact about which the court is in doubt.

J. HARRY HULL.

20 Sworn and Subscribed to, before me,
the undersigned, a notary public
authorized to take affidavits and
acknowledgments in the City,
County and State of New York,
in said City, County and State
aforesaid, this 17th day of March,
1933.

ETHEL FLAUM
(SEAL) Notary Public, Kings County
Certificate filed in New York County

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**Affidavit of James H. Richards, in Support
of Petition**

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

<p>Between</p> <p style="text-align: center;">DALLAS B. PRATT, <i>Complainant,</i></p> <p style="text-align: center;">and</p> <p>AARON ENGEL, CELIA ENGEL, his wife, MORRIS CURTICE, ENGEL & CURTICE, INC., a New Jersey corporation, CHARLES E. S. SIMPSON and EDNA B. SIMPSON, his wife, <i>Defendants.</i></p>	}	10
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State of New York, }
County of New York, } ss.:

JAMES H. RICHARDS, being duly sworn, says:

I am a member of the Bar of the State of New York and am associated with Stewart & Shearer, Esqs., the attorneys for the representatives of the Estate of Dallas B. Pratt, deceased.

I have read the affidavit of J. Harry Hull, Esq., counsel for the devisees and trustees under the Last Will and Testament of Dallas B. Pratt, deceased. I was present with Mr. Hull on Sunday, November 16th, 1932, at the premises in question, occupied by Mr. Simpson, and the facts relating to what occurred on that date with Mr.

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Affidavit of James H. Richards

Simpson, as set forth in Mr. Hull's affidavit, are correct.

JAMES H. RICHARDS.

10 Subscribed and sworn to before me }
 this 18th day of March, 1933 at }
 the Borough of Manhattan, City, }
 County and State of New York. }

ALEXANDER HOWELL

Foreign Commissioner of Deeds
 (SEAL) for the State of New Jer-
 sey in the State of New York.

A true copy.

20 J. HARRY HULL
 Pet's Sol.

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**Affidavit of Alexander D. B. Pratt, in
Support of Petition**

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,
Defendants.

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State of New York, }
County of New York, } ss.:

ALEXANDER D. B. PRATT, being duly sworn,
says:

I am a son of Dallas B. Pratt, late of the City,
County and State of New York, and an executor
of and trustee under his will and reside at No.
19 West 54th Street in the Borough of Manhat-
tan, City, County and State of New York.

30

That the full name of said Dallas B. Pratt is
Dallas Bache Pratt. That said Dallas Bache
Pratt died on October 9, 1929 in the Borough of
Manhattan, City, County and State of New
York, leaving a will and codicil thereto which
were duly admitted to probate by the Surro-

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Affidavit of Alexander D. B. Pratt

gate's Court of the County and State of New York on the 23rd day of October, 1929, and that letters testamentary thereon were duly granted by said court to deponent and to Mary Gordon Pratt, executors named therein. A copy of said will and codicil is hereto annexed.

10

That in and by the codicil to the will of said decedent he authorized the trustees of the trust created by his will to appoint at any time the United States Trust Company of New York or the Farmers Loan & Trust Company, or such other trust company as they might select, to act as co-trustee under said will.

20

That the said Mary Gordon Pratt renounced her appointment as such trustee and deponent and Walter N. Stillman duly appointed United States Trust Company of New York as co-trustee under said will. That deponent and the said Walter N. Stillman and United States Trust Company of New York duly qualified as such trustees and that letters of trusteeship were duly granted by said Surrogate's Court to the said deponent and Walter N. Stillman on October 30, 1929, and to said United States Trust Company of New York on December 31, 1929.

30

An exemplified copy of the will of Dallas B. Pratt together with all proceedings connected with the probate thereof including the decree admitting the same to probate, letters testamentary and letters of trusteeship granted thereon was duly filed in the office of the Surrogate of the County of Bergen on January 14, 1933.

40

I had no knowledge or information that the said premises were occupied by Charles E. S.

Affidavit of Alexander D. B. Pratt

Simpson or by any other person at the time of my said father's death, or at any time thereafter until the month of October, 1932.

ALEXANDER D. B. PRATT.

Subscribed and sworn to before me this 17th day of March, 1933 at the Borough of Manhattan, City, County and State of New York.	}	10
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ALEXANDER HOWELL

Foreign Commissioner of Deeds
(SEAL) for the State of New Jersey
in the State of New York.

A true copy J. HARRY HULL Pet's Sol.	20
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**Affidavit of Walter N. Stillman, in Support
of Petition**

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,
and

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AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,
Defendants.

State of New York, }
County of New York, } ss.:

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WALTER N. STILLMAN, being duly sworn, says that he is one of the trustees under the will of Dallas Bache Pratt, deceased; that deponent had no knowledge or information that the premises formerly owned by said Dallas Bache Pratt, deceased, situated at Tenafly, New Jersey, and known as lot number 1 in block number 1 on map entitled "Map of Brookwood Farms property of Mr. Arthur Coppel, Tenafly, Bergen County, N. J. Scale 1" equals 80' October, 1925, C. H. Eckerson, E. M. Englewood, N. J." were occupied by Charles E. S. Simpson, or by any other person at the time of the death of said Dallas B.

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Affidavit of Walter N. Stillman

Pratt or any time thereafter until in or about the month of October, 1932 when he was informed by United States Trust Company of New York that the said premises were then occupied by said Simpson.

WALTER N. STILLMAN. 10

Subscribed and sworn to before me }
 this 17th day of March, 1933, at the }
 Borough of Manhattan, City, }
 County and State of New York. }

ALEXANDER HOWELL
 Foreign Commissioner of Deeds
 (SEAL) for the State of New Jersey
 in the State of New York.

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A true copy

J. HARRY HULL
 Pet's Sol.

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**Affidavit of George Merritt, in Support of
Petition**

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,
and

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AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,
Defendants.

State of New York, }
County of New York, } ss.:

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GEORGE MERRITT, being duly sworn, says that he is an Assistant Secretary of United States Trust Company of New York, one of the trustees under the will of Dallas Bache Pratt, deceased, and is in charge of the Real Estate Department of said trust company.

40

Deponent was first informed that the premises situated at Tenafly, New Jersey, formerly owned by said Dallas Bache Pratt and known as "lot number 1 in block number 1 on map entitled 'Map of Brookwood Farms property of Mr. Arthur Coppel, Tenafly, Bergen County, N. J. Scale 1" equals 80' October, 1925, C. H. Eckerson, E. M. Englewood, N. J.'" were occu-

Affidavit of George Merritt

pied by Charles E. S. Simpson in the latter part
 of August, 1932, and that deponent on the 23rd
 day of September, 1932 wrote to said Simpson
 requesting him to call at the office of said United
 States Trust Company of New York with refer-
 ence to said property. That said Simpson did
 not respond to said letter or call as requested
 and deponent then sent Norbert C. Nodes, one
 of the Clerks in the Bond and Mortgage Depart-
 ment of said company to said premises to inves-
 tigate the occupancy thereof by said Simpson.

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GEORGE MERRITT.

Subscribed and sworn to before me }
 this 17th day of March, 1933, at the }
 Borough of Manhattan, City, }
 County and State of New York. }

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ALEXANDER HOWELL
 Foreign Commissioner of Deeds
 (SEAL) for the State of New Jersey
 in the State of New York.

A true copy

J. HARRY HULL
 Pet's Sol.

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**Affidavit of Norbert C. Nodes, in Support of
Petition**

(Filed March 20, 1933)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,
and

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AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,
Defendants.

State of New York, }
County of New York, } ss.:

30

NORBERT C. NODES, being duly sworn, says that he is a clerk in the Bond and Mortgage Department of United States Trust Company of New York. That on October 3, 1932, deponent called at the premises known as lot number 1 in block number 1 on map entitled "Map of Brookwood Farms property of Mr. Arthur Coppel, Tenafly, Bergen County, N. J. scale 1" equals 80' October, 1925, C. H. Eckerson, E. M. Englewood, N. J.," and there saw Mr. Charles E. S. Simpson and inquired of him under what arrangement he was occupying said premises. Mr. Simpson replied that he did not wish to discuss the matter at his residence but would see deponent

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Affidavit of Norbert C. Nodes

at his office in Hackensack, New Jersey, on October 5, 1932, at two o'clock in the afternoon. Deponent called at the office of said Simpson on said last mentioned date at two o'clock in the afternoon and waited until 5.20 P. M. but the said Simpson did not appear.

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NORBERT C. NODES.

Subscribed and sworn to before me }
 this 17th day of March, 1933, at the }
 Borough of Manhattan, City, }
 County and State of New York. }

ALEXANDER HOWELL

Foreign Commissioner of Deeds
 (SEAL) for the State of New Jersey
 in the State of New York.

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A true copy

J. HARRY HULL
 Pet's Sol.

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**Affidavit of Scott Watson, in Support of
Petition**

(Filed March 20, 1933.)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, CHARLES E. S.
SIMPSON, *et al.,*
Defendants.

20

State of New Jersey, }
County of Bergen, } ss.:

SCOTT WATSON, being duly sworn, says:

I was the solicitor in charge of the above entitled action and conducted it until its conclusion. As appears by the proceedings on file in the office of the Clerk of this Court, Charles E. S. Simpson and Edna B. Simpson, his wife, were made parties defendant in the suit and the bill recited:

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“under whatsoever right, title, claim, interest or lease your complainant is unaware.”

Attached to this affidavit and made a part hereof, are a series of letters from the defendant, Charles E. S. Simpson, to me, and replies by me to him, from March 19th, 1929, to October 1st

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Affidavit of Scott Watson

of the same year, and a copy of a letter addressed to Sprague, Merle, Smith & Smart, Esqs. It will be seen by these letters that Charles E. S. Simpson obtained from me a copy of the bill of complaint; acknowledged its receipt, and later returned it to me. He was also informed by me that the decree *pro confesso* was filed on May 1st 1929. Between that time and October 1st, 1929, Simpson requested me to give him the purchase price of the property, encumbrances, etc., and asked me what the complainant was willing to sell the property for. On October 1st, 1929, as appears by my letter to him, I gave him the information he asked for. I never heard definitely from him regarding the property, nor did he reply to my letter of October 1st, 1929.

Mr. Simpson never, at any time, raised any question as to the regularity of the proceedings which resulted in the decree *pro confesso* against him, nor did he make at any time, any further claim to the property.

The final decree in the suit was filed on May 28th, 1929. The execution was issued on June 13th, 1929. The deed was dated and executed by the Sheriff on August 23rd, 1929 and was delivered to me on September 14th, 1929. I recorded the deed on September 17th, 1929 and received the deed from the County Clerk's Office on or about October 1st, 1929. On October 1st, 1929, I mailed the deed to Messrs. Sprague, Merle, Smith & Smart, the New York attorneys for Mr. Dallas B. Pratt, the complainant, and at

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Affidavit of Scott Watson

the same time, I enclosed to them a copy of my letter to Mr. Simpson of that date.

SCOTT WATSON.

10 Sworn and Subscribed to }
before me, this 17 day }
of March, 1933. }

E. J. WESCOTT
Notary Public of New Jersey
My Commission expires March 27, 1936

A true copy

J. HARRY HULL
Pet's Sol.

20

30

40

Letters Filed in Support of Petition

(Filed March 20, 1933.)

(COPY)

CHAS. E. S. SIMPSON
Counsellor at Law 10
173 Main Street
Hackensack, N. J.

—
Phone 7720 Hackensack

March 19th, 1929.

Pratt vs. Engel, et als.

Scott Watson, Esq.,
Counsellor-at-Law, 20
39 East Palisade Avenue,
Englewood, N. J.

Dear Sir:

Referring to the above matter, will you be
kind enough to loan me your office copy of the
bill of complaint in the above matter, in order
that a copy may be made. I assure you it will
be returned to you in the course of a day or two. 30

Thanking you, I am

Very truly yours,

CHAS. E. S. SIMPSON

A true copy

J. HARRY HULL
Pet's Sol.

40

Letters in Support of Petition

(COPY)

March,
 Twentieth,
 Nineteen,
 Twenty-nine.

10 CHARLES E. S. SIMPSON, Esq.
 173 Main Street,
 Hackensack, New Jersey.

Pratt vs Aaron Engel, et als.

Dear Sir:

20 As requested in your letter of March, 19th,
 I am enclosing herewith copy of Bill in the above
 entitled matter.

Kindly return the same to me when it has
 served your purpose.

Very truly yours,

(SCOTT WATSON)
 Solicitor of Complainant.

SW.S
 Encl.

30 A true copy
 J. HARRY HULL
 Pet's Sol.

40

Letters in Support of Petition

(COPY)

CHAS. E. S. SIMPSON
 Counsellor at Law
 173 Main Street
 Hackensack, N. J.

10

—
 Phone 7720 Hackensack

March 22nd, 1929.

Pratt vs. Engel, et als.

Scott Watson, Esq.,
 Counsellor-at-Law,
 39 East Palisade Avenue,
 Englewood, N. J.

20

Dear Sir:

Enclosed herewith, please find your office copy of Bill of Complaint in the above matter. I think you very much for the use of the same, and trust an opportunity may present itself at some future time to enable me to return the compliment. Regarding the suit itself I may stop in and see you in relation to it, and wish you would let me know when you are about to enter your decree *pro confesso*.

30

Again thanking you, I am,

Very truly yours,

CHAS. E. S. SIMPSON

A true copy

J. HARRY HULL
 Pet's Sol.

40

Letters in Support of Petition

(COPY)

May
Fourth,
Nineteen
Twenty-nine.

10 CHARLES E. S. SIMPSON, Esq.,
173 Main Street,
Hackensack, New Jersey.

Pratt vs Engel, et als.

Dear Sir:

20 In going over the correspondence in this
matter, I notice your letter of March 22nd, 1929,
in which you request that I advise you when
Decree Pro Confesso is filed. The Decree was
filed May 1st, 1929.

Very truly yours,

(SCOTT WATSON)

SW.S

A true copy

30 J. HARRY HULL
Pet's Sol.

40

Letters in Support of Petition

(COPY)

October
 First,
 Nineteen
 Twenty-nine.

CHARLES E. S. SIMPSON, Esq.
 173 Main Street
 Hackensack, New Jersey.

10

Dear Sir:—

Replying to your recent request for the purchase price of property deeded by the Sheriff to Dallas B. Pratt, known as Lot One, Block One, on Map of Brookwood Farms etc., I would advise you that Mr. Pratt's New York attornies have informed me that he is willing to sell the property for the same price that it was sold for in 1925, to wit: \$20,000.00. This sale to be subject to the second half of 1928 taxes, 1929 taxes, assessments; and restrictions of record.

20

Mr. Pratt, is agreeable to take 60% of the purchase price on first mortgage, to run for three years with interest at the rate of six (6%) per cent per annum, payable quarterly.

The attornies desire me to say that Mr. Pratt reserves the right to withdraw this offer at any time, and that it is made subject of course, to prior sale.

30

Very truly yours,

(SCOTT WATSON)

SW.S

A true copy

40

J. HARRY HULL
 Pet's Sol.

Letters in Support of Petition

October
First,
Nineteen
Twenty-nine.

10 SPRAGUE, MERLE, SMITH & SMART,
57 William Street,
New York City

ATT: P. H. Smart, Esq.

Dear Sir:—

20 Replying to your letter of the 30th in re Tena-
fly property of Dallas B. Pratt, I am enclosing
herewith a carbon copies of a letter which I have
this day addressed to Charles E. S. Simpson,
the present occupant of the house, and to Mar-
vel S. Platoff, the attorney for Miles Gordon,
who purchased the second tract of the premises
which we foreclosed.

I am also enclosing herewith Sheriff's Deed
duly recorded, made to Mr. Pratt and filed in the
Bergen County Clerk's Office in Book 1673 of
Deeds at page 277.

30 Should I receive any offer for the property, I
will advise you.

Very truly yours,

(SCOTT WATSON)

SW.S
Encl.

40 A true copy
J. HARRY HULL
Pet's Sol.

Will of Dallas B. Pratt

(Filed March 20, 1933)

I, DALLAS BACHE PRATT, of the Borough of Manhattan, in the City and State of New York, make, publish and declare the following as my last will and testament, and hereby revoke all wills heretofore made by me. 10

First. I give to my wife, Mary Gordon Pratt, the sum of One thousand dollars (\$1,000.) and all my furniture, plate, jewelry, books, pictures, clothing, carriages, horses, harness, stable equipments and other articles of personal and domestic use and ornament. If my wife should not survive me, I give such articles in equal shares to my surviving children to be delivered to them upon their joint receipt. 20

Second. The foregoing provision for my wife, which at her own request has not been made larger, is in lieu of her dower and other interest in my estate.

Third. I direct my executors to divide all the rest, residue and remainder of my estate, both real and personal, into as many shares as there shall be children of mine who survive me and daughters who shall then be dead leaving issue who survive me. 30

One of said shares I give, devise and bequeath to my son, Alexander D. B. Pratt, if then living, absolutely.

I give, devise and bequeath the remaining shares, or if my said son shall predecease me all of said shares, to my wife, Mary Gordon 40

Will of Dallas B. Pratt

10 Pratt, my son, Alexander D. B. Pratt, and my son-in-law, Walter N. Stillman, and to the survivors and survivor of them, IN TRUST, however, to collect the rents, issues and profits thereof and to apply the net income of one of said shares to the use of each of my daughters who survive me during her life and to subdivide one of said shares into as many parts as there may be children then living of each of my daughters who may have died before me and to apply the net income of each subdivision to the use of each child of such deceased daughter during her life; upon the death after me of each of my said daughters or grandchildren, I give, devise and bequeath the share or the subdivision held for 20 such daughter or grandchild to such of his or her issue and in such shares and manner as he or she may by will appoint and in default of such appointment then to such issue in equal shares *per stirpes*, but if the daughter or grandchild so dying should leave no issue, then I give, devise and bequeath the said share or subdivision in equal shares to my other daughters then living and to the then living issue of any deceased daughter *per stirpes*.

30 Fourth. I have made no provision for the issue of my son, Alexander D. B. Pratt, who may survive me for the reason that such issue will be otherwise adequately provided for.

40 Fifth. In addition to the general powers vested by law in executors and testamentary trustees, I specially authorize and empower the executors hereof and the trustees hereunder and such of them as shall act and their survivors

Will of Dallas B. Pratt

and survivor and any successors or successor to them in their, his or its discretion, and as often as may be necessary, as follows:

1. To compromise and settle all claims in favor of or against me or my estate; to consent to the reorganization or consolidation of or other change in any corporation whose stocks or obligations may be held or acquired by said executors or trustees; to consent to any readjustment, conversion or sale of any such stocks and obligations, and to take all steps, deposit and transfer all stocks and obligations, and execute all agreements, deeds, releases, assignments and other papers necessary and proper in connection therewith. 10
20

2. To continue to hold any of my property, real or personal in the form and manner of investment in which it shall be at the time of my death.

3. To divide and sub-divide my residuary estate for any purpose and upon any contingency hereinbefore declared; to appraise any part of my real or personal estate at such value as in the judgment of said executors or trustees seems fair, and to exercise untrammelled discretion in the selection of the property and securities of which each share or subdivision shall be composed. The value so ascertained and the selection so made shall for the purposes of division, distribution and withdrawal, be conclusive as to all persons interested in my estate, and each of 30
40

Will of Dallas B. Pratt

said shares or sub-divisions shall be constituted accordingly.

10 4. To invest and from time to time to reinvest any portion of my estate and the proceeds thereof in improved real estate situated in the State of New York, and in the bonds, debentures or stocks, common or preferred, of any corporation, whether formed under the laws of the State of New York or of the United States, or of any one of the United States, and whether such investments may be of a nature then sanctioned by courts of equity or statute in the State of New York for the investment of trust funds or not.

20 5. To lease, grant, bargain, sell, partition, convey and mortgage any real estate of which I may die seized, as well as any real estate acquired pursuant to the provisions of this will, and to execute and deliver all leases, agreements, grants, deeds of partition and conveyance, bonds and mortgages necessary or proper in connection therewith. Any sales made under
30 this power may be effected either by public auction or by private contract.

40 Sixth. I authorize the trustees or the surviving trustee of any one of the trusts hereinbefore created at any time to appoint the Bank of America to act as co-trustee of such trust and if at any time there should be no trustee of any one of such trusts, I hereby appoint the Bank of America trustee thereof, with all the powers hereby given to the trustees above named.

Will of Dallas B. Pratt

Seventh. I appoint the said Mary Gordon Pratt and Alexander Dallas Pratt executors of this will and direct that no bond shall be required of them as such executors or of any one of the trustees hereunder.

IN WITNESS WHEREOF, I have subscribed and sealed these presents and do publish, acknowledge and declare the same as my last will and testament in the presence of the witnesses attesting the same at my request this 15th day of April, One thousand nine hundred and twenty.

DALLAS BACHE PRATT

(Seal)

Subscribed, sealed, published, acknowledged and declared by the said testator, DALLAS BACHE PRATT, as and for his last will and testament in our presence, who at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses, the final clause of the will having been read aloud to us by the testator immediately after he had subscribed the will and this clause being thereupon read aloud in his and our presence and hearing this 15th day of April, 1920.

Fredk. H. Amerman, 98 Midland Ave Montclair N.J.

Thos. T. Richards Cranford, N. J.

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Codicil to Will of Dallas B. Pratt

(Filed March 20, 1933)

10 I, DALLAS B. PRATT, of the Borough of
Manhattan, City and State of New York, make,
publish and declare the following to be a first
codicil to my last will and testament which is
dated the 15th day of April, one thousand nine
hundred and twenty.

First. I hereby revoke Paragraph Sixth of
my said will.

20 Second. I authorize the trustees or the sur-
viving trustee of any one of the trusts created
by my said will to appoint at any time the United
States Trust Company of New York or the Far-
mers Loan and Trust Company or such other
Trust Company as they or he may select to act
as co-trustee of such trusts and if at any time
there should be no trustee of any one of such
trusts I hereby appoint the United States Trust
Company of New York trustee thereof with all
the powers given to the trustees named in my
said will and with the same effect as if it had
been originally named as trustee therein.

30 Third. In all other respects I confirm and re-
publish my said will dated the 15th day of April,
one thousand nine hundred and twenty.

IN WITNESS WHEREOF I have hereunto set my
hand and seal and I do publish this instrument
and declare the same to be a Codicil to my last
will and testament and do now request the wit-

Second Codicil to Will of Dallas B. Pratt

nesses to attest the same this ninth day of March, 1926.

DALLAS B. PRATT
DALLAS BACHE PRATT

Subscribed, sealed, published, acknowledged and declared by the said DALLAS B. PRATT as a codicil to his last will and testament in our presence, who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses, the final clause of the codicil having been read aloud to us by the testator immediately after he had subscribed the codicil and this clause being thereupon read aloud in his and our presence and hearing the day and year last above written. 10

Fredk H Amerman Montclair N.J.
Thos. T. Richards 9 East 12st. N.Y.City 20

Second Codicil to Will of Dallas B. Pratt

(Filed March 20, 1933)

I, DALLAS B. PRATT, of the Borough of Manhattan, City and State of New York, make, publish and declare the following to be a second codicil to my last will and testament which is dated the 15th day of April, 1920. 30

First. I give and bequeath to my son Alexander D. B. Pratt my share of stock in the Okeetee Club of Switzerland, South Carolina, to hold the same during his life or until he shall sell the 40

Second Codicil to Will of Dallas B. Pratt

10 same or the Club shall be liquidated during his lifetime. In the event of the sale of the said share by my son or of the liquidation of the Club his life interest therein shall cease and the proceeds thereof be divided equally among my then living issue per stirpes; and in the event of the death of my son before the said share is sold or liquidated his executors shall sell the same at such time as they deem wise and the proceeds shall be divided equally among my issue surviving my son *per stirpes*. My son shall have the power to transfer this share of stock to his own name and during his life to exercise all the rights of absolute ownership.

20 Second. In all other respects I confirm and republish my said will dated the 15th day of April, 1920, as the same was modified by the first codicil thereto dated the 9th day of March, 1926, and also the said first codicil to my said will.

30 IN WITNESS WHEREOF, I have hereunto set my hand and seal and I do publish this instrument and declare the same to be a second codicil to my last will and testament and do now request

Second Codicil to Will of Dallas B. Pratt

the witnesses to attest the same this 28th day
of December, 1928.

DALLAS B. PRATT
(Seal)

Subscribed, sealed, published, ac-
knowledged and declared by the said
DALLAS B. PRATT as a second codicil
to his last will and testament in our
presence, who at his request, in his
presence, and in the presence of
each other have hereunto sub-
scribed our names as witnesses, the
final clause of the codicil having
been read aloud to us by the testa-
tor immediately after he had sub-
scribed the codicil and this clause
being thereupon read aloud in his
and our presence and hearing the
day and year last above written.

Fredk. H. Amerman
98 Midland Avenue
Montclair N.J.
Jos S Dale
168 Cottage Avenue
Mt. Vernon, N.Y.

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Answer to Petition for Reargument

(Filed April 17, 1933)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,

and

AARON ENGEL, CHARLES E. S.
SIMPSON, *et als.,*
Defendants.

On Bill, &c.

On Petition for
Order for Writ
of Assistance, &c.

20

The answer of Charles E. S. Simpson, defendant above named, to the Petition of Alexander D. B. Pratt, individually &c., and others for an Order for a Writ of Assistance. This defendant admits that on January 3, 1933 and on January 17, 1933, application was made by the Petitioner therein named for an Order for a Writ of Assistance. That a decision was rendered by Hon. John J. Fallon, Vice-Chancellor, upon said application under and by which the application for such Order was denied; but the signing of the formal Order thereupon was temporarily suspended. It is true the final decree was filed herein May 28, 1929. It is true the deed to the property, executed by the Sheriff of Bergen County was delivered to Scott Watson, Solicitor, by said Sheriff on September 14, 1929 and was recorded September 17th, 1929, but said deed was not delivered to Dallas B. Pratt by said Scott Watson, but on the contrary,

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was mailed by Scott Watson on October 1, 1929

Answer to Petition for Reargument

to Messrs. Sprague, Merle, Smith & Smart, Attorneys, of 57 William Street, New York City. No application was made for the purpose of obtaining a Writ of Assistance and no effort made in the direction noted until about December 9th, 1932, when a demand for possession was served on defendant, and on no other person. This defendant has no knowledge of any contract to pay Engel and Curtice \$100 per month until any title was closed and leaves the petitioner to produce and prove such contract, which affecting real property, must have been in writing.

10

This defendant admits that on Sunday, November 20th, 1932, he was called upon by Mr. Hull, who was accompanied (as this defendant has since learned from the affidavits filed herein) by Mr. Richards, but states the truth to be that upon being insulted by a remark made by Mr. Richards, this defendant asked to be excused from any further participation in the conference and left the room.

20

As to the allegations regarding Engel and Curtice this defendant has no knowledge.

The affidavits and petition for a reargument does not contain sufficient information to induce or persuade the Court to consider the motion, and particularly is it true that none of the papers or affidavits contain an allegation that the Sheriff's deed ever come into the possession of Dallas Bache Pratt or was delivered to him in his lifetime. Dallas Bache Pratt, being admittedly dead long prior to the institution of the present proceedings, the applicants are not in a position to prosecute the proceedings under the name of Dallas Bache Pratt, a deceased person. The application for the order for a Writ of Assist-

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Answer to Petition for Reargument

ance has been unduly delayed, the delay has amounted to laches and under the authorities the Court was justified in the denial of the motion to grant the order for a Writ of Assistance.

10 The copy demand for possession served on this defendant on December 9th, 1932, by William A. Oliver, and which was not served upon Edna B. Simpson, contained the two names, that is, the name of this defendant "and Edna B. Simpson, his wife."

20 This defendant was unaware that the words and name "and Edna B. Simpson, his wife," had been crossed out by pen and ink on the original demand for possession and his defendant was only apprised of the fact by the submission of the original Demand upon the argument heretofore.

The remainder of the alleged statements contained in the petition herein constitute nothing but argumentative material, and as stated therein cannot be answered as a material allegation.

This defendant asks that the Order to Show Cause granted herein on March 20th, 1933 be discharged, and the motion for a reargument denied.

30

CHAS. E. S. SIMPSON,
Defendant *pro se*,
400-38th Street,
Dispatch Building,
Union City, N. J.

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**Oral Conclusions Denying Application for
Rehearing**

IN CHANCERY OF NEW JERSEY

72/300

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Between

DALLAS B. PRATT,
Complainant,

and

AARON ENGEL, *et als.,*
Defendants.

On Bill, &c.

On Petition for
Writ of Assist-
ance. On appli-
cation for
Re-hearing

ORAL
CONCLUSIONS

(Not for publica-
tion in any
report)

20

Before—HON. JOHN J. FALLON, *Vice Chancellor.*

Chancery Chambers, Jersey City, April 17, 1933

Mr. J. HARRY HULL, for Petitioner.

Mr. CHARLES E. S. SIMPSON, *pro se*, opposed.

30

The Court (after oral argument of counsel for petitioner): I will deny the application for rehearing. There is nothing set out in the papers that are presented to me on such application that could not with diligence have been presented on the original application. I adhere to the ruling that I made as expressed in the opinion which I rendered that inasmuch as a writ of assistance is an extra-ordinary writ, and a discretionary writ, application therefor should be made promptly by the person who purchased the property at the judicial sale and who claims

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a right of possession thereto. The application

Oral Conclusions

in this cause is not by a person who purchased the property at the judicial sale; it is by persons who claim they are executors and trustees of that person, and by virtue thereof are entitled to the writ of assistance. The application for the writ was made several years after the judicial sale. 10
It has long been a rule in the law courts that when an application is made to such court for relief by means of extraordinary writs, discretionary writs, whether they be quo warranto, certiorari, mandamus or the like, the court will not grant such relief unless the application therefor is made within a reasonable time after the alleged right thereto arose. I recall a Bayonne case in which Justice Swayze rendered an opinion in a case in which an application was made 20
for a writ of mandamus or quo warranto, I do not recall what at this moment, several years after a municipal officer was dismissed, and he denied the writ upon the ground that it was not applied for timely. I cannot understand why the parties who now seek the writ of assistance in this case did not diligently apply therefor, that is, within what might be regarded as a reasonable time, if they considered themselves entitled to apply therefor. Not only did the purchaser at the sheriff's sale not make application to the court for a writ of assistance, but those who now claim as his privities waited two years or more after his death before applying to the court for such a writ. A court of equity ought not to countenance such unreasonable delay upon the part of persons considering themselves entitled to such an extraordinary process as a writ of assistance, in applying therefor. The parties have an adequate remedy at law to obtain possession of the premises. 30
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**Order Denying Motion for Order for Writ
of Assistance**

(Filed April 24, 1933)

IN CHANCERY OF NEW JERSEY

10

Between

DALLAS B. PRATT,
Complainant,

and

AARON ENGEL, CHARLES E. S.
SIMPSON, *et al.*,
Defendants.

On Petition for
Writ of
Assistance

72/300

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This matter being opened to the court by J. Harry Hull, Esq., of counsel for the petitioners, in the presence of Charles E. S. Simpson, defendant *pro se*, upon a motion for an order for a writ of assistance, and the court having read the petition for the said order and the affidavits submitted in support of and in opposition to the said motion; and having heard the arguments of counsel, and having considered the matter;

30 it is, on this 24th day of April, 1933, on motion of Charles E. S. Simpson, of counsel *pro se*,

ORDERED, that the said motion to obtain an order for a writ of assistance in the above entitled cause, be and the same is hereby, in all things denied.

LUTHER A. CAMPBELL,
C.

40

Respectfully advised,

JOHN J. FALLON,
V. C.

**Order Denying Application for Reargument
of Motion for Order for Writ of
Assistance**

(Filed April 24, 1933)

IN CHANCERY OF NEW JERSEY

<p>Between</p> <p style="text-align: center;">DALLAS B. PRATT, <i>Complainant,</i></p> <p style="text-align: center;">and</p> <p style="text-align: center;">AARON ENGEL, CHARLES E. S. SIMPSON, <i>et als.,</i> <i>Defendants.</i></p>	}	<p>On Petition for Writ of Assistance, &c.</p>
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		20

An order to Show Cause having been issued in the above stated cause on March 20th, 1933, returnable April 10th, 1933, at Chambers in Jersey City, directing the defendant Charles E. S. Simpson to show cause why an order should not be made, permitting a reargument of the motion heretofore made for an order directing the issuance of a writ of assistance in the above matter, and the matter having been continued to this day; now, upon hearing J. Harry Hull, Esq., of counsel with the applicant for said order for such reargument, in support of said application, and Charles E. S. Simpson, of counsel *pro se*, in opposition thereto, and the court having considered the matter, and having read and filed the affidavits in support thereof and in opposition thereto, it is on this 24th day of April, nineteen

30

40

Order Denying Application for Reargument

hundred and thirty-three, on motion of Charles E. S. Simpson, of counsel *pro se* as aforesaid,

ORDERED, that the Order to Show Cause issued herein on March 20th, 1933, returnable April 10th, 1933, be and the same is hereby discharged.

10

LUTHER A. CAMPBELL,
C.

JNO. J. FALLON,
V. C.

20

30

40

New Jersey Court of Errors and Appeals

Between

DALLAS B. PRATT,
Complainant,

and

AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey Corporation, CHARLES
E. S. SIMPSON and EDNA B. SIMPSON, his
wife,
Defendants.

On Petition for Writ of Assistance against
CHARLES E. S. SIMPSON.

ON APPEAL FROM
CHANCERY

ALEXANDER D. B. PRATT, individually, and
ALEXANDER D. B. PRATT, WALTER N.
STILLMAN and THE UNITED STATES
TRUST COMPANY OF NEW YORK, de-
visees and trustees under the Last Will and Tes-
tament and Codicils of DALLAS B. PRATT,
deceased,

Petitioners-Appellants,

and

CHARLES E. S. SIMPSON,
Defendant-Respondent.

BRIEF ON BEHALF OF PETITIONERS- APPELLANTS

Statement of Facts

This is an appeal from two orders made by the Court of Chancery advised by the Hon. JOHN J. FALLON, Vice-Chancellor, both dated April 24, 1933, one being an order denying an application for a writ of assistance directed against the defendant, Charles E. S. Simpson; and the other

brought on by an order to show cause denying an application for a reargument.

The defendant-respondent in this case has been in possession of the premises under foreclosure ever since 1927 or 1928. He went in under a contract to purchase made with the defendants, Aaron Engel and Morris Curtice, the owners of the property. They purchased it from Dallas B. Pratt and gave back to him a purchase money mortgage. This mortgage was foreclosed in this suit. The contract under which Simpson took possession of the premises called for payments of \$100 per month until the contract closed. It never did close. Simpson never paid a dollar to the sellers, nor a dollar for taxes. In fact, he never paid a cent (S. C. p. 36, ll. 30-31). By reason of this, the defendants, Aaron Engel and Morris Curtice, lost the property.

Since the decision in this case was handed down, the property was sold for taxes for the year 1931, amounting to \$770.55, and for a street assessment, amounting to \$740, plus \$190.77 interest and \$2.50 costs, making a total of \$1,703.82.

Simpson has consistently refused to state under what title he holds the property.

This short summary is more particularly set out later in this statement of fact.

It appears from the state of the case that a final decree was entered in the above entitled cause on the 28th day of May, 1929, in which action a decree *pro confesso* was entered on the 1st day of May, 1929 (S. C. p. 56) against the defendant Charles E. S. Simpson and Edna B. Simpson, his wife.

Petitioners' counsel was retained in this action about the middle of October, 1932 (S. C. p. 4).

Counsel for the petitioners, not knowing under what tenancy the defendant, Simpson, held, served a notice to quit upon Simpson upon the 25th day of October, 1932 (S. C. p. 35). Counsel for the petitioners learned some time thereafter (S. C. p. 36) and on November 6, 1932, that Simpson had gone into possession of these premises under a contract of purchase made in 1927 or 1928.

The decree *pro confesso* in this case was filed on May 1, 1929 (S. C. p. 56). Simpson received a copy of the bill of complaint in this suit (S. C. p. 54); on March 20, 1929, or a day or so thereafter, acknowledged the receipt of it (S. C. p. 55) two days thereafter; on March 22, 1929, he asked for the price at which the purchaser at the foreclosure sale, Dallas B. Pratt, would sell, and the information was given to him by a letter dated October 1, 1929 (S. C. p. 57).

The decree in this case was filed May 1, 1929 (S. C. p. 37). The decree of foreclosure May 28, 1929.

Sale, July 31, 1929.

Deed dated and executed August 23, 1929.

Sheriff delivered deed to Scott Watson, solicitor for the complainant, September 14, 1929.

Deed recorded September 17, 1929.

Deed mailed by Scott Watson to the attorneys for Dallas B. Pratt, October 1, 1929.

Dallas B. Pratt died in New York City, October 9, 1929.

The solicitor for the complainant in the foreclosure suit, in alleging the occupancy of Charles E. S. Simpson and Edna B. Simpson, his wife, recited in his bill:

“under whatever right, title, claim, interest or lease your complainant is unaware:”

In the interview held on November 6, 1932, between James H. Richards, a member of the Bar of the State of New York; petitioners' counsel, Mr. Hull; and Simpson, in the living room at the premises in question, Simpson said that he was not in possession under a tax sale certificate and that he had not paid a dollar of rent since he was in the property. Mr. Richards then asked him under what title he held or claimed to hold the property. Simpson replied that it was for Richards to find out, and refused to discuss the matter any further.

He refused also (S. C. p. 46) to answer a letter of George Merritt, an assistant secretary of the United States Trust Company, which letter asked Simpson to call at the office of the United States Trust Company with reference to the property.

In a conversation (S. C. p. 48) with one Norbert C. Nodes, a clerk in the bond and mortgage department of the United States Trust Company, Simpson told Nodes at the house that he did not wish to discuss the matter, but would see the deponent at his office in Hackensack on October 5, 1932, at 2:30 (S. C. p. 49). Nodes went to the office at 2:00 and waited until 5:20 and Simpson did not appear.

It will be seen from the facts in the petition for the writ, application for reargument, the affidavits of Mr. Hull, Mr. Richards, Mr. Merritt, Mr. Nodes and Mr. Watson that when the petitioners learned of the occupancy of this house by Simpson, every effort was made to learn under what title he had possession and to obtain possession of the property.

It also appears that Alexander D. B. Pratt, a devisee and one of the trustees under the will of Dallas B. Pratt, and Walter N. Stillman, a

trustee, did not learn that any person was occupying these premises until the early part of the month of October, 1932 (S. C. 42, l. 40; p. 43, ll. 1-3; p. 44, ll. 39-40, p. 45).

In addition to the dates hereinbefore set out, counsel thinks that the following may be helpful:

Oct. 15, 1932 (or thereabouts)—Counsel was retained by the petitioners-appellants (S. C. p. 32).

Oct. 27, 1932—Notice to quit the premises was served on Simpson (S. C. p. 35).

Nov. 6, 1932—Counsel called on Simpson with Mr. Richards and asked Simpson when he would quit the premises (S. C. p. 35, ll. 22-29).

Nov. 12 or
14, 1932—Counsel received an abstract of the proceedings in this suit (S. C. p. 27).

Nov. 22, 1932—Mailed notice of demand for possession to William A. Oliver for service on Simpson.

Dec. 9, 1932—Demand for possession served on Simpson.

Jan. 3, 1933—Motion for writ of assistance returnable this day. Adjourned to

Jan. 16, 1933—Motion argued.

Mar. 3, 1933—Decision by the Vice-Chancellor denying application filed.

Mar. 20, 1933—Order to show cause why reargument should not be granted, signed.

Apr. 17, 1933—Motion argued. Oral decision from the bench denying application for reargument.

Apr. 24, 1933—Both orders appealed from filed.

MEMORANDA OF LAW**POINT ONE**

A. The court erred in refusing the order for a writ of assistance.

B. The court erred in denying the application for a reargument and discharging the rule to show cause.

The facts set out in the petition entitled the petitioners to the order for the writ. No facts appeared in this petition which justified the court in the doubt which it expressed, and which caused him to deny the application. All the essential facts were before the court. The petition alleged (S. C. p. 8) that a final decree was entered in this cause on the 28th day of May, 1929, in which Charles E. S. Simpson and Edna B. Simpson were defendants. A writ of *feri facias* tested on or about the 13th day of June, 1929, issued out of this court, directed to the Sheriff of the County of Bergen, commanding him to make sale of the premises described in the complaint. The sale was held and the premises were bought in by Dallas B. Pratt, now deceased.

It further shows (S. C. pp. 10-11) that the petitioners applied to Charles E. S. Simpson, asking him to vacate the premises. A demand for the possession of the premises was made on him on the 9th day of December, 1932, petitioners' agent exhibiting to Simpson an exemplified copy of the Last Will and Testament of Dallas B. Pratt, deviser, and letters of trusteeship upon

the estate of Dallas B. Pratt and the deed from the Sheriff of Bergen County to Dallas B. Pratt (S. C. pp. 14, 15 and 16). Simpson refused to deliver possession and continues so to do.

Submitted with the petition was an exemplified record of the Last Will and Testament of Dallas B. Pratt and the first and second codicils thereto (S. C. pp. 59-67 inc.).

In the official opinion of the Vice-Chancellor (S. C. p. 23), he recites that the application for the writ was made not by the purchaser but by persons who *claimed* title as devisees under the Last Will and Testament of Dallas B. Pratt. He further states that there was no proof that the testator aforesaid and Dallas B. Pratt are identical. He says:

“It may be that the above-named purchaser at the Sheriff’s sale and the testator are identical.”

The Vice-Chancellor evidently did not read the proof submitted to him.

The Last Will and Testament, dated April 15th, 1920, in its opening, recites that “I, Dallas Bache Pratt,” etc. (S. C. p. 59) and he signed the will “Dallas Bache Pratt.” The first codicil, dated March 9th, 1926, recites “I, Dallas B. Pratt” and he signed “Dallas B. Pratt, Dallas Bache Pratt.” The second codicil, dated December 28th, 1928, opens “I, Dallas B. Pratt” and he signed “Dallas B. Pratt.” The first codicil confirms and republishes his will dated April 15th, 1920. The second codicil, paragraph second (S. C. p. 66) confirms and republishes his will, dated April 15th, 1920, as the will was modified by the first codicil, dated March 9th, 1926.

The will and the first codicil were witnessed by the same persons, Fredk. H. Amerman and Thomas T. Richards. The second codicil was witnessed by Fredk. H. Amerman, one of the witnesses to the will and first codicil, and by Joseph S. Dale.

How was it possible for the Vice-Chancellor to feel that there was any doubt as to the identity of the purchaser at the Sheriff's sale, and the testator? It is work of supererogation to cite to this Court any authority that the devisee of the property stands in the shoes of the testator. One case will be enough. *McVoy v. Baumann*, 95 Eq. 335.

In that case, the Court of Errors and Appeals affirmed the decision of Vice-Chancellor BUCHANAN below.

In the reported opinion in the instant case, 112 Eq. 453, the Vice-Chancellor sitting, says (S. C. p. 24, l. 26):

“Whether the petitioners are entitled to assert herein as against Charles E. S. Simpson, and as against Edna B. Simpson, his wife, who has not been served with a notice or demand for possession of the premises, their alleged right to the possession of said premises as devisees under the Last Will and Testament aforesaid, is not free of doubt.”

Counsel has always understood that “free of doubt” meant a question as to the validity of the title between a petitioner and a defendant.

The following cases:

Blauvelt v. Smith, 22 Eq. 31;

Barton v. Beatty, 28 Eq. 412;

Chadwick v. The Island Beach Co., 43 Eq. 616;

Board of Home Missions v. Davis, 70
Eq. 577;
*New Jersey Building Loan & Investment
Co. v. Schatzkin*, 72 Eq. 175;
Loomer v. Kliegman, 82 Eq. 124,

all refer to a reasonable doubt, but in every one of them, the deciding point in the case was whether the defendant had a right under some claim, apparently valid, which was debatable. In every case, also, as counsel recollects, the question of reasonable doubt was a question as to the right of the parties as raised by pleadings and affidavits, and in some cases, upon taking testimony.

The Chancellor, in the case of *Schenck v. Conover*, 13 Eq. 220, writes a long decision dealing with the method of procedure to be followed in applying for a writ of assistance, holding that the court had the power to make the order applied for. In explaining when a writ should or should not be granted, he says, at page 227

“‘It’ (referring to the writ or order) may be made not only as against the defendant, but against any party in possession under him, or by title not superior to his.”

He then goes on to say:

“It is scarcely necessary to add that the exercise of the power rests in the sound discretion of the court. It will never be exercised in a case of doubt, nor under color of its exercise will a question of legal title be tried or decided.”

That brings counsel to another question. The failure of the court to compel Simpson to set up in his answer his claim of right. That will be discussed later.

This question of discretion and doubt appears to be raised for the first time in this case, *Schenck v. Conover, supra*. It has been quoted time after time by the courts when it had absolutely nothing whatever to do with the case under discussion. It was so in the case of *Blauvelt v. Smith, supra*. In that case, the Chancellor says, at page 32:

“This summary process is only used when the right is clear and when there is no equity, or appearance of equity, in the defendant, and where the sale and proceedings under the decree are beyond suspicion.”

The writ was denied upon the ground that the tenant claimed to hold legal title to the premises. That, of course, was a question to be tried in the courts of law.

In *Barton v. Beatty, supra*, quoting *Schenck v. Conover, supra*, the court said, at page 413:

“In this case the person in opposition puts in evidence certain facts tending to show the creation of a tenancy at will, subsequent to the sale; the petitioner attempts to meet the case thus made by showing that no tenancy of any kind was created; perhaps the evidence of each, standing alone, is sufficient to make out a *prima facie* case. It is obvious at a glance that the question thus raised is one not proper to be tried in this court.”

In *Board of Home Missions v. Davis, supra*, the affidavit in opposition to the petition was treated as an answer, but the petitioner admitted that he could offer no testimony to combat the defense set up in the affidavit. The question of doubt was referred to by the Vice-Chancellor but it had nothing to do with the case under discussion.

In all these cases just quoted, any reference to doubt was *obiter dicta* because substantial questions of title arose and of course, such questions could not be determined in an application for this writ.

POINT TWO

The court erred in not compelling the respondent to answer the petition and take testimony or receive affidavits raising an issue.

Blauvelt v. Smith, supra;
Barton v. Beatty, supra;
Chadwick v. The Island Beach Co., supra;
Board of Home Missions v. Davis, supra;
New Jersey Building Loan & Investment Co. v. Schatzkin, supra;
Loomer v. Kliegman, supra;
McVoy v. Baumann, 95 Eq. 335.

An inspection of some of the cases quoted above will show that an issue was raised between the petitioners and the defendant. In others, the pleadings disclosed the issue, and the court decided the question upon the pleadings. In others, testimony was taken and the decision was made upon the pleadings and testimony.

Petitioners' counsel, on the argument, asked the court to compel the respondent to file an answer, so that the petitioners might meet it. The court stated twice that he would comply with counsel's request but it was never done, nor did the court comply with the prayer in the petition for a reargument (S. C. p. 38) and also that the defendant Simpson be compelled to serve an an-

swer and replying affidavits. In his opinion denying this application, the Vice-Chancellor made no reference at all to counsel's request.

In *Blauvelt v. Smith, supra*, it appeared from the pleadings that one of the tenants claimed to hold legal title to the premises and was in possession before the suit began. The writ was denied.

In *Bartin v. Beatty, supra*, the defendant put in evidence certain facts tending to show the creation of a tenancy at will subsequent to the sale. This petitioner controverted, so the issue was clearly raised by the pleadings.

In *Chadwick v. The Island Beach Co., supra*, testimony was taken on motion.

In *Board of Home Missions v. Davis, supra*, admission was made by the petitioner that he could not disprove the testimony offered by the defendant.

In *New Jersey Building Loan & Investment Co. v. Schatzkin, supra*, the proceedings were decided on a verified petition and a verified answer.

In *Loomer v. Kliegman, supra*, the defendant offered testimony.

In support of his decision, particularly the one not reported, in which he denied the motion for a reargument, the court below fortifies his decision by referring to the fact that a writ of assistance is an extraordinary writ. Chief Justice MERCER BEASLEY says in *Beatty v. De Forest*, 27 Eq. 482, at page 483:

“In the case of *Blauvelt v. Smith* (22 Eq. 331) the writ of assistance is stated to be an ‘extraordinary relief.’ But I see no reason to so regard it.”

The petition for the writ was regular in form, and set up all the essential allegations necessary to show title to petitioners. It required, according to the rules of the game, an answer or affidavits alleging defendant's claim (see the cases already cited). The respondent filed none, nor was he required by the court so to do. Without complying with the petitioners' request, the court seized upon the delay in asking for the writ; emphasized the possibility that Dallas B. Pratt and Dallas Bache Pratt were not one and the same person; that the *application* (italicized by the court) was not by the purchaser but by persons who *claimed* (italicized by counsel) title to said premises, as devisees under the last will and testament of Dallas Bache Pratt; and the erasure of the name of the defendant, Edna B. Simpson, from the affidavit of service. His doubts arose from these circumstances. Had he compelled the defendant to plead and permitted the petitioners to reply to the defendant's claim, if defendant had any, all of his doubt would have been dispelled and his decision would have been different.

In his opinion denying the request for a rehearing, he justifies his refusal by saying (S. C. p. 72):

“There is nothing set out in the papers that are presented to me on such application that could not with diligence have been presented on the original application.”

It was not the petitioners' duty to do more than allege their own title. That they did. The

court cited a decision of Judge SWAYZE on a *quo warranto* application or for a writ of mandamus, as authority for his ruling. What analogy can be found between an application in a common law proceeding and a petition addressed to the Court of Chancery by a suitor, to enforce a decree in his favor?

The second decision again refers to the fact that the application is not made by the purchaser at a judicial sale; it is by the persons who *claimed* that they are executors and trustees of that person. They were and still are executors and trustees of Dallas Bache Pratt, the purchaser. The successors in title at such sale have the same right to ask the assistance of the court as did their devisor. *McVoy v. Baumann, supra*. It made no difference, according to the authorities, whether the application was made by the purchaser or his successors in interest.

The delay caused by the testator's death was evidently not considered at all by the court. Had the court followed the proper procedure, he would have compelled the defendant to file an answer and if necessary, to take testimony. The defendant has never yet made the claim (he makes no claim to anything except that he is sitting pretty) that he acquired any right by reason of the delay of petitioners in asking the court to enforce its mandate. The defendant paid no taxes. He paid no rent. He paid no interest. He certainly was not prejudiced by petitioners' delay. It may be said with some show of truth that he was benefited. A house to live in without payment of rent, taxes or interest is, particularly in these times, a God-send.

POINT THREE

No title or shadow of title was shown by the defendant-respondent.

McVoy v. Baumann, supra.

The respondent simply says "I am here and I intend to stay." So far, the court has justified his attitude.

In *McVoy v. Baumann, supra*, the defendant, Naugle, contended that he had title to the premises and since there was a claim of title, the court could not determine it but must leave it to a court of law, and that the order of possession and writ of assistance must be denied. Vice-Chancellor BUCHANAN makes short shrift with that argument and says, at page 336:

"I am unable to agree. It is of course not enough for respondents merely to *say* (italized by court) they claim title—they must show that there is a real claim or dispute of title—that there is some reason why this court should not complete the relief awarded by its decree. This they fail to do. They attempt so to do by showing in their answering affidavits that they are in possession under a deed to themselves executed by the defendant Cooley, on or about September 30th, 1922, and they attempt to argue some sort of a waiver or estoppel against complainant because complainant did not record the copy of the chancery decree until May or June of this year, 1923—or because the present application was not made earlier."

In the instant case, the court did not even require the defendant to put in any answering affi-

davits, unless the affidavits on pages 18, 19 and 20 of the State of Case can be called such. The one on page 18 simply recites the record and states that the solicitor conducting the foreclosure suit refused to give to Simpson a date which he asked for; the other, on page 20, denies that the demand for possession was served on his wife; neither of which have any relevancy to the facts set up in the petition. By that it would seem that he admitted the title of the petitioners. He did not deny, nor could he, that he and his wife were parties defendant in the foreclosure suit because a decree *pro confesso* was taken against both, as appears by the record and also by a letter from Scott Watson addressed to Mr. Simpson (S. C. p. 56).

POINT FOUR

The court's decision was evidently based upon what he considered the unexplained delay in making the application for the writ.

In the second decision (S. C. pp. 72-73) the court makes no comment upon his error in not seeing that Dallas Bache Pratt and Dallas B. Pratt were one and the same person. He still urges that there might be some doubt which would justify his previous decision because he still refers to the fact that the writ was not applied for by the purchaser but by others, who claimed to be executors and trustees of the purchaser, now deceased. Then he again (S. C. p. 73, l. 30) states that the persons, as his privities, waited two years before applying to the court for such a writ. This delay is the

ground of his refusal to consider the facts set up in the affidavits for a reargument. It appears that Pratt was a resident of New York. He died in New York City on October 9th, 1929; and the deed was recorded on September 17th of the same year (S. C. p. 37, ll. 39-40). It is natural that under such circumstances, there would be a delay in settling up an estate.

The petitioners, as appears by their affidavit, had no knowledge whatever that anybody was in the house. They had a right to suppose that no one would walk in a house and stay there. The question therefore reduces itself to this: Does the mere fact that no attempt was made to take possession of the house until two years had elapsed, justify the court in refusing to give to the purchaser, or his successors in title, property awarded to him by a decree of the court, particularly when the person in possession refuses to give any information as to how he acquired his interest, or whether he has any at all?

POINT FIVE

The conduct of the defendant is not such as would entitle him to any consideration by this court.

Barton v. Beatty, supra, at page 338;
Strong v. Smith, 68 Eq. 650;
Blauvelt v. Smith, supra;
Chadwick v. The Island Beach Co., supra, at page 625.

It appears from the affidavit of Scott Watson, Esq., the solicitor who conducted the foreclosure

suit, that he was ignorant of Simpson's claim of right to possession because the complaint alleges the following:

“under whatsoever right, title, claim, interest or lease, your complainant is unaware.”

The court will take judicial notice of the fact that every solicitor endeavors to determine the right of an occupant of a house which he has been retained to foreclose. The inference to be drawn from that allegation of the bill of complaint is that Mr. Watson was unable to obtain any information regarding Simpson's claim. The affidavit of the solicitor for the petitioners sets up his ignorance of the claim that Simpson had (S. C. pp. 34-35) and that he did not learn the circumstances under which Simpson took possession and held it until he was informed by Aaron Engel, one of the former owners of the property (S. C. p. 36) the circumstances under which Simpson held—that he was in under a contract of sale which Engel gave him and which called for a

“payment of \$100.00 a month until the title could be closed.”

(S. C. 36, l. 26) and that in spite of the foreclosure, he was still in the house; that he (Engel) had never been paid a dollar by Simpson; that no taxes had ever been paid by the defendant-respondent, and that the property was foreclosed by the owner of the mortgage, Dallas B. Pratt.

Mr. Hull's affidavit further shows that on a visit to the defendant, Simpson, with Mr. Richards, a member of the Bar of the State of New York, on November 6th, 1932, he saw Simpson, who said that he would like to buy the property.

Simpson told Mr. Hull and Mr. Richards (S. C. p. 35, ll. 35-40; S. C. p. 36, ll. 1-2) that he was not in possession under a tax sale certificate and that he had never paid a dollar since he was in the property. Mr. Richards then asked him under what title he held or claimed to hold the property. Simpson replied that it was for him (meaning Mr. Richards) to find out.

Is there anything in this record that would induce a court of equity to aid this defendant? It is apparent that he refused from prior to the date of the filing of the bill in foreclosure down to November 6th, 1932, to disclose to anybody what his interest in the property is or was. In addition to that, he admitted that he never paid a cent of rent; and that he was not in possession under a tax sale certificate.

POINT SIX

Both decrees are appealable to this court.

Terhune v. Colton, 12 Eq. 312;

Read v. Patterson, 44 Eq. 211;

Mayor, etc., of Jersey City v. Jersey City Water Supply Co., 90 Eq. 14, affd. *id.* 603.

Vice-Chancellor STEVENS says, in *Mayor Jersey City v. Jersey City Water Supply Co.*, *supra*, at page 19:

“The application is denied, but as the denial is, no doubt, appealable, no injustice will be done, * * *. The test of the right to appeal is whether the party be aggrieved, and Jersey City is certainly aggrieved if it has a legal right to recover damages in this court and an opportunity to vindicate that right is denied.”

This case was appealed to the Court of Errors and affirmed, as above stated, so the Court of Errors evidently considered the case was properly before it.

POINT SEVEN

For the reasons hereinbefore set out, the petitioners-appellants pray that this court reverse the decrees appealed from and grant to the petitioners an order for a writ of assistance.

J. HARRY HULL,
Solicitor for Petitioners-Appellants.

J. HARRY HULL,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

DALLAS B. PRATT,
Complainant-Appellant,

and

AARON ENGEL, CELIA ENGEL, his wife,
MAURICE CURTICE, ENGEL & CUR-
TICE, INC., a New Jersey Corpora-
tion, CHARLES E. S. SIMPSON and
EDNA B. SIMPSON, his wife,
Defendants-Appellees.

On Appeal from
the Court of
Chancery

BRIEF ON BEHALF OF DEFENDANT CHAS. E. S. SIMPSON

Statement of Facts

This appeal is an attempt to bring up for review two certain orders made in the Court of Chancery:

1. An order denying a motion for a writ of assistance (p. 74); and
2. An order denying a motion for a re-argument of the application for the writ of assistance (p. 75).

The application for the writ of assistance was made on January 3, 1933 (p. 6) and the order denying the motion was made on April 24, 1933 (p. 74); the argument of the motion took place upon the return of the motion on January 3, 1933, and was continued to April 24th, 1933 (p.

75, l. 39), upon which date the order was made denying the motion for reargument (p. 75), the Vice-Chancellor having verbally expressed his views on that day (p. 72). Dallas B. Pratt, who was the plaintiff in the original foreclosure suit, died on October 9th, 1929 (p. 23, l. 26), and there never has been a change of parties complainant since that time, although the moving papers show a representative capacity, but without proof of appointment or qualification in New Jersey.

The sale of the property under the writ of execution took place on July 31, 1929, but the application for the writ of assistance was not made until January 3, 1933, *three and one-half years after the alleged sale*. Throughout the record there is no allegation that the alleged deed from the Sheriff of Bergen County to Dallas B. Pratt was in fact ever delivered to Dallas B. Pratt. The only reference to a deed is set forth in the affidavit of Scott Watson (p. 51, l. 34), in which he deposes that he mailed the deed to Messrs. Sprague, Merle, Smith & Smart, of New York, attorneys, &c.

POINT I

The application for a writ of assistance must be made to the court within a reasonable time after the sale of property at judicial sale.

On page 23 of the printed case (l. 30) the Court of Chancery, in refusing the writ of assistance, used the following language:

“A court of equity will not afford relief by means of the issue of a writ of assistance

unless the purchaser of premises at judicial sale shall apply to the court therefor within a reasonable time after the sale."

See "Words and Phrases" and decisions defining reasonable time.

Our own courts have given expression upon the subject:

Schenck v. Conover, 13 N. J. Eq. 220;
Barton v. Beatty, 28 N. J. Eq. 412 (approved in *Loomir v. Kliegman*, 82 N. J. Eq. 124);

In *Board of Home Missions v. Davis* (70 N. J. Eq. 577), Vice-Chancellor BERGEN held that

"the exercise of the power to make this order rests in the sound discretion of the court and 'is only used when the right is clear and when there is no equity or appearance of equity in the defendant'."

POINT II

There is no proof in the moving papers that the Sheriff's deed was ever delivered to Dallas B. Pratt in his lifetime, or that it was ever in his possession.

An absolutely necessary element to the validity of a deed and to pass title to real estate is the actual delivery of a deed to real estate to the grantee, and his acceptance thereof. This doctrine comes to us from the early English cases and has been followed by the American courts without variation, the courts holding the rule to be that

"a deed discovered after the death of the grantor even though the document may in-

include all necessary names and be regularly signed and acknowledged is not a good deed to the person named as the grantee because it never was delivered."

Numerous affidavits appeared in the moving papers shown in the record, but no reference is made in any of them to the fact of the delivery of the deed at any time to Dallas B. Pratt in his lifetime. The only deduction that can be made is that the deed never was delivered to him. Had the delivery been made surely some person would be in existence who could and would have made affidavit to that very important fact. As a fact there seems to have been and now is being made an effort to conceal the fact that the deed was never delivered to or accepted by Dallas B. Pratt in his lifetime; and there is no proof that he at any time even saw the deed; and there is an absence of proof that any person ever saw him in possession of the deed.

POINT III

There is nothing in the record except the copy of the will and codicils of Dallas B. Pratt, to show the authority of the trustees to act.

It seems clear that before asking the aid of the Courts of New Jersey to assist persons under foreign appointment, in any proceeding affecting real estate, ancillary letters should be issued by the proper authorities in New Jersey. Bearing upon this question are the questions of revocation, final accounting and discharge.

It is not for the courts of New Jersey to surmise or even guess at such matters when questions affecting real estate are involved.

POINT IV

An action of ejectment is now pending in the New Jersey Supreme Court between the same parties hereto, involving the identical real estate involved in the subject-matter of this appeal.

Although no mention is made in the printed case of any ejectment suit pending in the New Jersey Supreme Court, nevertheless the fact remains that such suit is actually pending and is undetermined. The ejectment suit was instituted at the suggestion of his Honor Vice-Chancellor Fallon, in the opinion filed upon the denial of the motion for the writ of assistance (p. 25, l. 18). Counsel for the appellants cannot deny the pendency of the Supreme Court ejectment suit. The purpose of this reference to the ejectment suit is to apprise the court of the pendency of that suit, although it does not appear in the printed record.

POINT V

There is nothing in the printed record to show the appointment and qualification of the alleged trustees, or any authority to act.

The printed record, at page 59 shows an alleged copy of the will and codicils of Dallas B. Pratt, without anything as to the qualification or legal appointment of any trustees.

It will be noted that throughout the entire record, the proceedings have been carried through

under the same name of Dallas B. Pratt, without any interruption, although the admitted allegation is that Dallas B. Pratt died on October 9th, 1929, and the notice of appeal also shows the sole name of Dallas B. Pratt (p. 1), but the petition of appeal and the printed cover of the case, assume to show an entirely different title of the cause which, it is insisted, is entirely unjustified by the record, and the reasons stated in the first paragraph of Point V.

POINT VI

The denial of the motion for a reargument rested in the sound discretion of the court and is not appealable.

All substantial rights between the parties were settled upon the denial of the motion for the writ of assistance, and the appropriate practice was an appeal from that particular order. The allowance of the reargument rested in the discretion of the court; the appellants having asked for a reargument raises a very serious question as to whether, having selected his remedy in asking a reargument, he did not waive his right to appeal from the very order which he sought to reargue.

For the reasons stated it is urged that the two orders appealed from should be affirmed.

Respectfully submitted,

CHAS. E. S. SIMPSON,
Of Counsel and Defendant per se.

New Jersey Court of Errors and Appeals

Between

DALLAS B. PRATT,
Complainant,
and

AARON ENGEL, CELIA ENGEL, his wife,
MORRIS CURTICE, ENGEL & CURTICE,
INC., a New Jersey corporation,
CHARLES E. S. SIMPSON and EDNA
B. SIMPSON, his wife,
Defendants.

On Petition for Writ of Assistance
against CHARLES E. S. SIMPSON.

On Appeal from
Chancery

ALEXANDER D. B. PRATT, individually,
and ALEXANDER D. B. PRATT, WAL-
TER N. STILLMAN and the UNITED
STATES TRUST COMPANY OF NEW
YORK, devisees and trustees under
the Last Will and Testament and
Codicils of DALLAS B. PRATT, de-
ceased,

Petitioners-Appellants,
and

CHARLES E. S. SIMPSON,
Defendant-Respondent.

APPELLANTS' BRIEF IN REPLY

The replying brief of the defendant-respondent, Charles E. S. Simpson, was received by the solicitor for the petitioners-appellants on Saturday, October 14th, 1933, fifteen days after the service of appellants' brief on the respondent.

Appellants' counsel asks the privilege of submitting this short memorandum in reply.

POINT ONE

Attention is called to Point II of respondent's memorandum. That point recites that the Sheriff's deed was not delivered to Dallas B. Pratt in his lifetime, nor was it in his possession.

It appears from the record in the office of the Clerk of the Court of Chancery, and also from the affidavit of Scott Watson, Esq., the solicitor who conducted the foreclosure suit, that he received the deed from the Sheriff on September 14th, 1929 (S. C., p. 51); that the same was recorded on September 17th, 1929, and that on October 1st, 1929, he mailed the deed to the New York attorneys for the complainant, and Pratt died in New York on October 9th, 1929. That simple statement would seem to meet the objection raised in Point II without further discussion.

POINT TWO

Points III and V of respondent's brief are practically the same. They may be answered as one.

It was stated in open court at one of the hearings, and it also appears on page 42 of the State of Case that

“An exemplified copy of the will of Dallas B. Pratt, together with all proceedings connected with the probate thereof, including the decree admitting the same to probate, letters testamentary, and letters of trustee-

ship granted thereon, was duly filed in the office of the Surrogate of the County of Bergen on January 14, 1933."

These two points were not argued nor raised on either appearance before the Vice-Chancellor sitting. They cannot, therefore, be raised before this Court. However, the authority of the United States Trust Company of New York to act as trustee and perform the usual duties as such had been obtained from the Superintendent of Banking and Insurance. Proof of that fact could have been furnished, had it been required.

The petitioners appeared before the Court as devisees under a will which vested the legal title in them.

Counsel for the petitioners has appeared in the Court of our State for the United States Trust Company of New York on many occasions for more than ten years. This is the first time, according to his recollection, that his client's authority to act as a trustee has ever been questioned.

POINT THREE

Replying to Point IV

The point is made in respondent's brief that an ejectment action is now pending in the Supreme Court regarding the same piece of property which is the subject of this appeal. This is entirely immaterial. The ejectment action was brought during this appeal and it has never been suggested that a suitor could not pursue any remedy that was open to him. Of course, his claim may be satisfied but once.

For the reasons hereinbefore set out in the original and this brief the orders appealed from should be reversed, and for nothing holden.

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28 Vreeland Avenue,
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For the reasons hereinbefore set out in the original and this brief the orders appealed from should be reversed, and for nothing holden.

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