

INDEX

| | PAGE |
|---|------|
| Bill of Complaint | 1 |
| Amendment | 12 |
| Notice of Lis Pendens | 13 |
| Amended and Supplemental Answer of The Rector, Wardens and Vestrymen of Grace Church, in Haddonfield, and of Arthur Y. McNeill | 15 |
| Reply | 23 |
| Petition to Be Made a Party-Defendant | 26 |
| Order | 30 |
| Answer of Trustees of the Episcopal Fund of the Diocese of New Jersey | 32 |
| COMPLAINANTS' TESTIMONY: | |
| George R. MacClelland—Direct | 42 |
| Cross | 43 |
| Re-direct | 44 |
| J. Blair Cuthbert—Direct | 50 |
| Cross | 55 |
| Arthur Y. McNeill—Direct | 60 |
| Walter S. Stoy—Direct | 135 |

| | PAGE |
|---|------|
| DEFENDANTS' TESTIMONY: | |
| Edgar G. Cuthbert—Direct | 65 |
| Cross | 71 |
| Recalled—Direct | 113 |
| LeFevre W. Downing—Direct | 76 |
| Cross | 78 |
| Recalled—Direct | 107 |
| Recalled—Cross | 84 |
| Joseph Walton—Direct | 81 |
| Cross | 83 |
| Recalled—Direct | 113 |
| Recalled—Cross | 114 |
| Arthur Y. McNeill—Direct | 85 |
| Cross | 91 |
| Re-direct | 96 |
| William C. Marshall—Direct | 128 |
| Cross | 130 |
| Exhibit C1, Letter, J. Blair Cuthbert to Rector and Vestry, Grace Episcopal Church, Dated June 10, 1925 | 142 |
| Exhibit C2, Letter, Louis B. LeDuc to J. Blair Cuthbert, Dated Oct. 3, 1925 | 145 |
| Exhibit C3, Letter, R. Bowden Shepherd to J. Blair Cuthbert, Dated Sept. 21, 1926 | 146 |
| Exhibit C4, Letter, Collingswood Extension Realty Co. to A. W. McNeill, Dated Jan. 15, 1923 | 148 |
| Exhibit C5, Letter, A. Y. McNeill to Collings- wood Extension Realty Co., Dated Jan. 18, 1923 | 149 |

| | PAGE |
|---|------|
| Exhibit C6, Letter, Collingswood Extension Realty Co. to A. Y. McNeill, Dated Feb. 5, 1923 | 150 |
| Exhibit C7, Letter, Collingswood Extension Realty Co. to A. Y. McNeill, Dated Feb. 10, 1926 | 151 |
| Agreement Between Arthur Y. McNeill and Collingswood Extension Realty Co. . . | 152 |
| Exhibit C9, Deed Between Joseph Ogden Cuthbert and Rector, Wardens and Vestrymen of Grace Church, Haddonfield, N. J., Dated Oct. 19, 1885 | 156 |
| Exhibit C10, Deed Between Rector, Wardens and Vestrymen of Grace Church, Haddonfield, N. J., and Arthur Y. McNeill, Dated March 25, 1925 | 160 |
| Exhibit D1, Agreement Between Rector, Wardens and Vestrymen of Grace Church, Haddonfield, N. J., and Arthur Y. McNeill, Dated Feb. 4, 1924 | 165 |
| Exhibit D4, Statement of Delinquent Taxes Assessed Against Grace Church, Haddonfield | 169 |
| Exhibit D5, File of Chancery Court in re: The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, N. J. | 172 |
| Exhibit D6, Map | 209 |
| Exhibit D7, Assignment of Mortgage, Arthur Y. McNeill to The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, Dated Feb. 9, 1928 | 211 |

| | PAGE |
|--|------|
| Exhibit D8, Excerpt from Charter and By-Laws of Grace Church, Haddonfield, N. J. | 214 |
| Conclusions | 216 |
| Final Decree | 223 |
| Notice of Appeal | 226 |
| Petition of Appeal | 227 |
| Answer to Petition of Appeal | 231 |
| Answer to Petition of Appeal by Arthur Y. McNeill, Defendant-Respondent | 233 |
| Notice of Argument | 234 |

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey:*

Complainants, J. Blair Cuthbert, of Collingswood,
N. J., T. Percival Cuthbert of Pittsburgh, Penna., 10
Flora Bowden Lum of Haddonfield, N. J., Hannah
C. Ebert, of Ashland, N. J., Louisa Hopkins, of Had-
donfield, N. J., Edgar Cuthbert, of Haddonfield,
N. J., George C. Gillespie, of Moorestown, N. J.,
Anna C. Boyd, of Philadelphia, Pa., Mary Cuthbert
Rue, of Moorestown, N. J., Marguerite Nickerson, of
Corcoran, California, Charles W. Cuthbert and
Gladys Cuthbert Raines, of Oakland, California, the
heirs at law of J. Ogden Cuthbert, deceased, and 20
Collingswood Extension Realty Co., a corporation of
New Jersey, and Edward L. Katzenbach, Attorney
General of New Jersey, say that:

1. On or about the 19th day of October, 1885,
J. Ogden Cuthbert during his lifetime conveyed unto
the rector, wardens and vestrymen of Grace Church,
Haddonfield, New Jersey, by deed recorded in the
office of the Register of Deeds of Camden County
in Book 120 of Deeds, page 174, the following de- 30
scribed premises:

All that certain lot or parcel of land situate
in the Borough of Collingswood, County of
Camden and State of New Jersey, bounded and
described as follows:

BEGINNING at a corner to Samuel H.
French's lands in the line of other lands of said

Cuthbert and in the middle of the Haddonfield and Camden Turnpike Road; thence (1) along said French's line in the Westerly side of a private road to Cooper's Creek North twenty-two degrees West, two hundred forty-seven feet, nine and one-half inches to a corner in the same to other lands of said Cuthbert; thence (2) by
10 said other lands, South twenty-six degrees, forty-eight minutes West, One hundred sixty-five feet, six inches to a corner to the same in the middle of said turnpike road; thence (3) along the said middle line of said turnpike South sixty-four degrees, fourteen minutes East, One hundred eighty-seven feet, three and one-half inches to the place of beginning.

Containing thirty-five hundredths of an acre, more or less.

2. Said conveyance was made for a nominal consideration of one dollar and was intended as a gift.
20 Furthermore, the conveyance was made to the rector, wardens and vestrymen of Grace Church aforesaid upon the following trusts:

30 "In trust, nevertheless, that they the said parties of the second part, their successors and assigns, shall and will hold the said land and premises to the use of the Protestant Episcopal Church in the diocese of New Jersey, to be used only for and as a site for a chapel, school house, mission, parish building, or other use of said Protestant Episcopal Church in the said diocese, and that the said parties of the second part shall have power to grant and convey said lands and premises to any parish of said Protestant Episcopal Church in said diocese within whose bounds said land and premises may come to lie

by its proper title, if incorporated, and by apt words of conveyance or may in the same event convey said lands and premises to the Trustees of The Episcopal Fund of the Diocese of New Jersey for the use of said Parish."

3. The said J. Ogden Cuthbert departed this life on the 30th day of September, 1887, and he is survived by the following heirs at law:

J. Blair Cuthbert, of Collingswood, New Jersey; 10
T. Percival Cuthbert, of Pittsburgh, Pennsylvania;
Flora Bowden Lum of Haddonfield, New Jersey;
Hannah C. Ebert, of Ashland, New Jersey; Louisa
Hopkins, of Haddonfield, New Jersey; Edgar Cuth-
bert, of Haddonfield, N. J., one of the vestrymen of
the Grace Church, Haddonfield, N. J.; George C.
Gillespie, of Moorestown, N. J.; Anna C. Boyd, of
Philadelphia, Pa.; Mary Cuthbert Rue, of Moores-
town, N. J.; Marguerite Nickerson, of Corcoran,
California; Gladys Cuthbert Raines, Oakland, Cal.; 20
and Charles W. Cuthbert; and Collingswood Extension Realty Co., a corporation of New Jersey, all of whom are the complainants in this suit.

4. The rector, wardens and vestrymen of Grace Church of Haddonfield, N. J., never intended to accept the gift of the said J. Ogden Cuthbert, nor did they intend to carry out, nor did they carry out, the provisions of the trust contained in the aforesaid deed. They permitted taxes and municipal 30
liens to accumulate against the aforesaid lands for a period extending over fifteen years. The trustees of the estate of J. Ogden Cuthbert, deceased, not wishing to permit the lands to be sold for non-payment of municipal liens paid some of the aforesaid liens amounting to over \$500.00, out of its own funds.

5. The lands aforesaid lie on the boundary line between the Borough of Collingswood and Westmont. The rector, wardens and vestrymen of the Holy Trinity Church of Collingswood of the Protestant Episcopal diocese of New Jersey, were unwilling to accept the lands aforesaid for the purpose of building a church or school or parish house thereon, but instead purchased a lot five blocks westwardly thereof in the heart of the populated section of Collingswood. The rector, wardens and parishioners of the aforesaid Protestant Episcopal Church residing in Westmont also refused to avail themselves of the opportunity of utilizing the lands aforesaid for church and school purposes, but instead acquired a site for a church in another part of Westmont. Some of the complainants offered to acquire more land from the estate of J. Ogden Cuthbert, deceased, for the use of the parishioners, rector, wardens and vestrymen residing either in Collingswood or Westmont, but notwithstanding that offer the parishioners, rectors, wardens and vestrymen refused to accept the lands to be used and held by them upon the trust set forth in the deed aforesaid. The rector, wardens and vestrymen of Grace Church of Haddonfield, N. J., abandoned the lands for the reason that the trust was incapable and impracticable of execution in accordance with the intention of the donor, J. Ogden Cuthbert, deceased, as expressed in the aforesaid deed, and furthermore, refused to carry out the intentions of the donor.

6. When the rector, warden and vestrymen refused to carry out the provisions of the trust in the aforesaid deed and expressed their desire to abandon the lands aforesaid to some of the complainants, the trustees of the estate of J. Ogden Cuthbert of-

ferred to accept a reconveyance of the aforesaid lands from the Grace Church of Haddonfield, N. J., and in place thereof offered to contribute to the fund of said church the sum of \$1000.00. The rector, warden and vestrymen of said church refused to accept the offer of the trustees aforesaid on the advice of counsel.

7. Notwithstanding the condition imposed upon the aforesaid conveyance by the said J. Ogden Cuthbert, deceased, and in violation of the terms thereof the rector, wardens and vestrymen of Grace Church of Haddonfield, N. J., did on the 25th day of March, 1925, grant and convey by deed of that date the premises above described unto Arthur Y. McNeill, senior warden of said Grace Church of Haddonfield, N. J. Said deed was recorded in the office of the Register of Deeds of Camden County in Book 583 of Deeds, page 460.

10

8. The deed from J. Ogden Cuthbert to the rector, warden and vestrymen of Grace Church, Haddonfield, N. J., was for the nominal consideration of one dollar and was intended as a gift to the aforesaid rector, warden and vestrymen to be used by them in the manner prescribed in said deed. In violation of the trust provisions contained in said deed the rector, warden and vestrymen conveyed said premises for a consideration of one thousand dollars and the payment by the said Arthur Y. McNeill of taxes and assessments and legal expenses involved in the transfer of title from the rector, warden and vestrymen of Grace Church of Haddonfield, N. J., to defendant, Arthur Y. McNeill. The conveyance was made contrary to the intension of the grantor, J. Ogden Cuthbert, deceased, as ex-

20

30

pressed in deed recorded in the office of the Register of Deeds of Camden County in Book 120, page 174. He never permitted the trustees under said deed to accept a money consideration for any conveyance made by them, and furthermore, he insisted that any conveyance made by said trustees must be in accordance with and limited by the powers conferred on them by the aforesaid deed. The rector, warden and vestrymen aforesaid were limited to a conveyance either to any parish in the Protestant Episcopal diocese of New Jersey or to the trustees of the Episcopal Fund of the Diocese of New Jersey to the use of said parish.

9. Defendant, Arthur Y. McNeill, *et ux.*, by deed dated the 18th day of October, 1926, and recorded in the office of the Register of Deeds of Camden County in Book 642 of Deeds, page 332, and for a consideration of one dollar granted and conveyed unto Laurence Crombie the premises aforesaid.

10. The said Laurence Crombie was a straw man for defendant, Arthur Y. McNeill, and on the same day, October 18th, 1926, he conveyed the premises in question unto Collingswood Extension Realty Co. for a consideration of thirty thousand dollars. Said deed is recorded in the office of the Register of Deeds of Camden County in Book 642 of Deeds, page 333. The consideration for said deed was paid by complainant, Collingswood Extension Realty Co. to Arthur Y. McNeill.

11. Said conveyances were not only made in direct violation of the condition imposed by the grantor, J. Ogden Cuthbert to the original donee, but in violation of the trusts and confidences which

the rector, warden and vestrymen of Grace Church of Haddonfield, N. J., imposed in defendant, Arthur Y. McNeill. By means of said conveyances defendant, Arthur Y. McNeill was able to make a secret profit of upwards of twenty-eight thousand dollars. During the pendency of proceedings for the purpose of acquiring a deed from the rector aforesaid, Arthur Y. McNeill negotiated with Collingswood Extension Realty Co. for the sale to it of lands in question for thirty thousand dollars. The moneys realized from a private sale of the premises in question by defendant, Arthur Y. McNeill, became the property of complainants, heirs at law of J. Ogden Cuthbert, deceased, and is now claimed by them. 10

12. On the 18th day of October, 1926, Collingswood Extension Realty Co. executed and delivered unto Laurence Crombie a bond and mortgage to secure the sum of twenty-four thousand dollars as part payment for the lands in question. Said mortgage is recorded in Book 295 of Mortgages, page 397. Said mortgagee was immediately assigned for the nominal consideration of one dollar unto Arthur Y. McNeill, which assignment is recorded in said Register of Deeds office in Book 72 of Assignments, page 61. The complainants aforesaid claim to be entitled to an assignment of this mortgage to them for the reason that the rector, warden and vestrymen aforesaid, when they refused to execute the trust of the aforesaid deed lost all rights to the lands aforesaid. 20 30

13. The deed of conveyance referred to in paragraph 10 and the mortgage referred to in paragraph 12 were fraudulently obtained by the said Arthur Y. McNeill and in direct violation of the terms and conditions of the trust deed. When complainants

learned that the rector, wardens and vestrymen of Grace Church were intending to convey the premises in question in violation of the intention of the original donor, J. Ogden Cuthbert, they made inquiry from the Bishop and other officers of the Diocese of the Protestant Episcopal Church of New Jersey whether they had the right to sell the premises at private sale. Complainants were never given a satisfactory answer nor were they informed that
10 the rector, warden and vestrymen of Grace Church had actually agreed to sell the premises in question to its senior warden, Arthur Y. McNeill, or to any other person. All negotiations for the sale of the premises in question were had without the knowledge of those complainants who are the heirs at law of J. Ogden Cuthbert, deceased.

14. Complainants suspected that defendant, Arthur Y. McNeill might obtain a personal advantage
20 from the sale of the aforesaid lands so they voiced their objection to a private sale of the premises in no uncertain terms. They informed the rector and vestrymen aforesaid that it was even impossible for them to convey the lands to the complainants, who were rightfully entitled to the same, for a money consideration, and that the trust deed did not give the rector, warden and vestrymen aforesaid the power of alienation except to another incorporated parish of the Protestant Episcopal Diocese of New
30 Jersey, or to the trust fund of the aforesaid diocese in trust for an incorporated parish in which the lands lie to be used for school and church purposes only. Notwithstanding the objections of complainants and without their knowledge, the rector, warden and vestrymen aforesaid proceeded to sell the lands to defendant, Arthur Y. McNeill, senior

warden of Grace Church and one of the wardens entrusted with the duty of carrying out the trust provisions of the deed from J. Ogden Cuthbert, deceased. It was not until just prior to the filing of this bill that complainants learned the true sales price of the lands in question.

15. Defendants, rector, warden and vestrymen of Grace Church of Haddonfield, N. J. and defendant, Arthur Y. McNeill, utterly failed to carry out the provisions of the trust deed of the donor, J. Ogden Cuthbert, and caused a lapse or total failure of the purposes and uses for which the lands in question were intended by the original donor, J. Ogden Cuthbert, deceased. 10

16. Complainant, Collingswood Extension Realty Co. relied on the representations of defendant, Arthur Y. McNeill to the effect that he would be able to convey the premises in question to it free from any claims which the heirs at law of J. Ogden Cuthbert, deceased, might have against the premises in question. Notwithstanding the representation the heirs at law are now claiming the title in fee simple to the lands in question so purchased by it. Negotiations for the purchase of the lands in question for \$30,000.00 from defendant, Arthur Y. McNeill, were had with him by said complainant, Collingswood Extension Realty Co., since the early part of 1924. By reason of the claims of the heirs at law of J. Ogden Cuthbert, deceased, in and to said lands, this complainant prays for the return of all moneys paid by it to defendant, Arthur Y. McNeill and the cancellation of the mortgage in the amount of \$24,000.00 now held by the said Arthur Y. McNeill covering the lands in question. This complainant 20 30

also offers itself ready to reconvey the aforesaid premises to the persons as this Court shall direct.

17. Edward L. Katzenbach, attorney general of New Jersey, is made a complainant in this suit by reason of his visitation over public charities in this State.

Complainants are without adequate remedy at law
10 and therefore pray:

1. That the lands described in paragraph 1 of this complaint be reconveyed to the heirs at law of J. Ogden Cuthbert, deceased.

2. That the mortgage now held by Arthur Y. McNeill be cancelled of record or be assigned to the heirs at law of J. Ogden Cuthbert, deceased.

20 3. That Arthur Y. McNeill pay over to Collingswood Extension Realty Co. all moneys received from it on account of the purchase price of the aforesaid lands.

4. That a resulting trust be declared in the aforesaid premises in the heirs at law of J. Ogden Cuthbert, deceased.

30 5. That Arthur Y. McNeill and the rector, warden and vestrymen of Grace Church of Haddonfield, N. J., who are the defendants to this suit may answer this bill and each statement therein made.

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

7. That complainants may have such other and further relief as they may be entitled to and as the premises may warrant.

And complainants will ever pray, etc.

PHILIP WENDKOS,
*Solicitor for and of Counsel
with Complainants.*

10

20

30

AMENDMENT.

IN CHANCERY OF NEW JERSEY.

10 Between
 J. BLAIR CUTHBERT, *et*
als., COLLINGSWOOD EX-
 TENSION REALTY Co., a
 corporation, EDWARD
 L. KATZENBACH, Attor-
 ney General of New
 Jersey,
Complainants,
 and
 20 ARTHUR Y. McNEILL, *et*
als., RECTOR, WARDENS
 A N D VESTRYMEN OF
 GRACE CHURCH OF HAD-
 DONFIELD, N. J.,
Defendants.

On Bill, &c.
 Amendment.

The bill of complaint filed herein is hereby
 amended as follows:

30 Paragraph 17 of the bill shall read:

Edward L. Katzenbach, Attorney General of New
 Jersey is made a party defendant to this suit by
 reason of his right of visitation over public charities
 in this State.

To paragraph 5 of the prayer in said bill shall be
 added the name of Edward L. Katzenbach, Attorney

General of the State of New Jersey, as a party defendant to this suit.

PHILIP WENDKOS,
*Solicitor for and of Counsel
with Complainants.*

NOTICE OF LIS PENDENS.

IN CHANCERY OF NEW JERSEY.

10

Between

J. BLAIR CUTHBERT, *et
als.*, COLLINGSWOOD EX-
TENSION REALTY Co., a
corporation, EDWARD
L. KATZENBACH, Attor-
ney General of New
Jersey,

Complainants,
and

ARTHUR Y. MCNEILL, *et
als.*, RECTOR, WARDENS
AND VESTRYMEN OF
GRACE CHURCH OF HAD-
DONFIELD, N. J.,

Defendants.

20

On Bill.
Notice of Lis
Pendens.

30

To Whom it May Concern:

Notice is hereby given of the pendency of a suit in the Court of Chancery in the State of New Jersey

entitled as above, the general object of which is to set aside the conveyance made by Lawrence Crombie to Collingswood Extension Realty Co., which conveyance is recorded in the office of the Register of Deeds of Camden County in Book 642 of Deeds, page 333; to declare the mortgage invalid made by Collingswood Extension Realty Co. to Lawrence Crombie, recorded in the office of the Register of Deeds of Camden County in Book 295 of Mortgages, page 397, which mortgage was assigned to Arthur Y. McNeill and recorded in Book 72 of Assignments, page 61, and declare a resulting trust in the premises described in the conveyance to Collingswood Extension Realty Co., recorded in the office of the Register of Deeds of Camden County in Book 642 of Deeds, page 333, on behalf of the following complainants, to wit:

J. Blair Cuthbert, T. Percival Cuthbert, Flora Bowden Lum, Hannah C. Ebert, Louisa Hopkins, Edgar Cuthbert, George C. Gillespie, Anna C. Boyd, Mary Cuthbert Rue, Marguerite Nickerson, Charles W. Cuthbert and Gladys Cuthbert Raines, the heirs at law of J. Ogden Cuthbert, deceased.

PHILIP WENDKOS,

Solicitor for Complainants.

Amended and Supplemental Answer of the 15
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill

AMENDED AND SUPPLEMENTAL ANSWER
OF THE RECTOR, WARDENS AND
VESTRYMEN OF GRACE CHURCH
IN HADDONFIELD AND OF
ARTHUR Y. McNEILL.

10

IN CHANCERY OF NEW JERSEY.

| | | |
|------------------------------|---|---------------------|
| Between | | On Bill, &c. |
| J. BLAIR CUTHBERT, <i>et</i> | } | Amended and Supple- |
| <i>als.,</i> | | mental Answer of |
| <i>Complainants,</i> | | the Rector, War- |
| and | | dens and Vestry- 20 |
| ARTHUR Y. McNEILL, <i>et</i> | } | men of Grace |
| <i>als.,</i> | | Church in Haddon- |
| <i>Defendants.</i> | | field and of Arthur |
| | | Y. McNeill. |

The rector, wardens and vestrymen of Grace Church in Haddonfield (hereafter called Grace Church) a religious corporation of the State of New Jersey, and Arthur Y. McNeill, for an amended and supplemental answer to the bill of complaint in the above cause, say: 30

1. They admit the allegations of paragraph 1, except that they refer to the deed of conveyance in

16 *Amended and Supplemental Answer of the
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill*

question for an accurate description of the premises conveyed.

2. They admit the allegations of paragraph 2, except that they deny that the conveyance operated as a private gift but on the contrary allege that
10 its effect was to create a public charity or trust.

3. Defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph 3, except that they deny that the complainant, Edgar Cuthbert, is a vestryman of Grace Church, and further deny that the complainant, Collingswood Extension Realty Co., is an heir of said Joseph Ogden Cuthbert; and they leave complainants to their proofs of said allegations.
20

4. Defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph 4 and, therefore, deny the same, except that defendants admit that it was impossible for Grace Church to pay taxes assessed against said property and that the same remained unpaid for many years.

5. Paragraph 5 is denied, except that defendants
30 admit that Grace Church accepted the gift of said land and received the same subject to the trust restrictions expressed in the deed of the donor, but that it was not possible at any time thereafter to devote the lands in question to the purpose of building a church or school or parish house thereon.

6. Paragraph 6 is denied.

Amended and Supplemental Answer of the 17
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill

7. Answering paragraph 7, defendants admit the conveyance to the defendant, Arthur Y. McNeill, which conveyance was pursuant to an order of this Court, duly made and entered in a certain cause prosecuted under authority of Chapter 152 of the Session Laws of 1905 and the Acts amendatory thereof and supplemental thereto. All the remaining 10 allegations of paragraph 7 are denied.

8. Answering paragraph 8, defendants admit the conveyance by Joseph Ogden Cuthbert to Grace Church, which conveyance created a public charity or trust. Defendants admit the conveyance to the defendant, Arthur Y. McNeill, by Grace Church of said property, for the consideration stated, which consideration and conveyance, after a full disclosure of McNeill's relation to Grace Church, as its senior 20 warden, was expressly approved by order of this Court. All the remaining allegations of said paragraph are denied.

9. Paragraph 9 is admitted.

10. Paragraph 10 is admitted.

11. Paragraph 11 is denied. The reconveyance of said property by the defendant, Arthur Y. McNeill, 30 was made two years and a half after his offer to purchase same had been accepted by Grace Church, during which period the re-sale value of said property greatly increased as the result of the building development of the neighboring territory, the construction of a wide boulevard running into Haddon

18 *Amended and Supplemental Answer of the
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill*

Avenue on the north, and almost immediately adjoining the said property on its west side, and of the real estate boom throughout Camden County.

12. The execution of the mortgage and assignment of the same referred to in paragraph 12, are
10 admitted. All other allegations of said paragraph are denied.

13. These defendants have no knowledge or information as to any inquiries made by complainants to the Bishop and other officers of the Diocese of the Protestant Episcopal Church of New Jersey, relative to the proposed sale of the said property and neither admit nor deny the same but leave complainants to their proof thereof. All the other
20 allegations of said paragraph are denied.

14. Paragraph 14 is denied. No objection with regard to the aforesaid sale of this property by Grace Church was ever voiced by any of the complainants prior to the completion of said sale or at any time thereafter, with the single exception that the complainant, J. Blair Cuthbert, by letter dated June 10, 1925, questioned the legality of the said sale. His objections were taken up with him by
30 counsel for the defendant, Arthur Y. McNeill, and nothing further was heard from said complainant thereafter until the bringing of this suit. Defendants say further that, at the time the aforesaid agreement of sale of the said property by these defendants was entered into, the complainant, Edgar Cuthbert, one of the heirs of the donor, Joseph

Amended and Supplemental Answer of the 19
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill

Ogden Cuthbert, was a vestryman of said corporation and attended the meeting of the vestry at which the said sale was approved and voted in favor of such approval.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

10

FIRST AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

Complainants, heirs of Joseph Ogden Cuthbert, have no standing at law or in equity to attack the said conveyance by the Grace Church to the defendant, Arthur Y. McNeill, such heirs having no right or interest by way of reverter or otherwise in or to the lands so conveyed. 20

SECOND AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

The said conveyance by Grace Church to the defendant, Arthur Y. McNeill, was pursuant to the lawful order of this Court and valid and binding upon the complainants.

30

THIRD AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

The said conveyance by Grace Church was pursuant to the doctrine of *cy pres* and effected a lawful conveyance of the said premises.

20 *Amended and Supplemental Answer of the
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill*

FOURTH AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

The complainants, and each of them, are in laches.

10 FIFTH AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

The complainant, Collingswood Extension Realty
Company, is estopped from claiming the relief
sought.

SIXTH AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

20 Said bill of complaint is scandalous, impertinent
and argumentative and should be dismissed.

By way of further answer to the bill of complaint
herein, these defendants say:

30 Immediately following the hearing of this case on
February 9, 1927, before Honorable E. B. Leaming,
one of the Vice-Chancellors of this Court, the ques-
tion having been raised at said hearing as to the
right of the defendant, Arthur Y. McNeill, to retain
as against the defendant, Grace Church, part or all
of the profits earned by him on his re-sale of the
aforesaid property to the complainant, Collingswood
Extension Realty Company, and the said Arthur Y.
McNeill, desiring to promptly dispose of any pos-
sible issue between Grace Church and himself there-
upon offered to transfer to Grace Church all the net
profits earned by him on the said re-sale, and to
effect the said purpose at once executed and deliv-

Amended and Supplemental Answer of the 21
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill

ered to Grace Church an assignment of the \$24,000 purchase-money mortgage made by said Collingswood Extension Realty Company to Laurence Crombie and by Laurence Crombie assigned to the defendant, Arthur Y. McNeill, and at the same time delivered to Grace Church the following letter, viz:

“February 9, 1928. 10

The Rector, Wardens & Vestrymen of Grace Church in Haddonfield, Haddonfield, New Jersey.

Gentlemen:

At the hearing of the suit brought by the Cuthbert heirs to attack the conveyance to me of the Collingswood lot, formerly owned by the Church, the question of the validity of this conveyance was raised as between the Church and myself. 20

I do not want the slightest question to remain in regard to such a transaction, and although I am advised by my counsel that my liability, if any, is probably confined to the difference between what had been previously offered by the Collingswood Realty Company for this land, to wit: \$6,000., and the price which I paid, plus expenses, or approximately \$2500., under the circumstances I do not care to accept any profit out of the property and I accordingly propose 30 to turn over to the Church the entire net profits realized from my re-sale of the property for \$30,000.

I am, therefore, handing to your Junior Warden, with this letter, an assignment of the \$24,000 purchase money mortgage made by the Collingswood Extension Realty Company, which

22 *Amended and Supplemental Answer of the
Rector, Wardens and Vestrymen of Grace
Church in Haddonfield and of Arthur
Y. McNeill*

is in default and subject to call. I furthermore propose, as soon as all expenses are determined, to remit to your body in cash, the balance of the net profits resulting from my re-sale.

Very truly yours,
ARTHUR Y. McNEILL."

10

And the defendant, Grace Church, shows that it has accepted the said assignment of the mortgage above referred to and the said agreement in full discharge of any claims which it had or might have had against the said Arthur Y. McNeill and that it has now no claim of any kind whatsoever against the said last named defendant.

STARR, SUMMERILL & LLOYD,
LOUIS B. LEDUC,

20

*Solicitors for Rector, Wardens
and Vestrymen of Grace Church
in Haddonfield and of Arthur Y.
McNeill, respectively.*

30

REPLY.

IN CHANCERY OF NEW JERSEY

| | | | |
|---|---|---------------|----|
| <p>J. BLAIR CUTHBERT, <i>et</i> <i>als.,</i></p> | } | | |
| <i>Complainants,</i> | | | 10 |
| v. | | On Bill, etc. | |
| <p>ARTHUR Y. McNEILL, <i>et</i> <i>als.,</i></p> | } | Reply. | |
| <i>Defendants.)</i> | | | |

1. Complainants join issue with all the allegations and defenses of the amended answer of the defendants. 20

2. Complainants deny that defendants rector, wardens and vestrymen of Grace Church are entitled to the proceeds of the sale of the *locus in quo* made by defendant, Arthur Y. McNeill, to Collingswood Extension Realty Company.

3. The assignment of the mortgage of \$24,000.00 made by defendant, Arthur Y. McNeill, to the defendant rector, wardens and vestrymen of Grace Church, is void. 30

4. The order of the Court of Chancery entered in a certain cause prosecuted under authority of Ch. 152, P. L. 1905, is invalid.

5. Said order was obtained without disclosing to the Court all the information to which the Court was entitled for the purpose of granting the order referred to in paragraph 7 of the amended answer. Said order was fraudulently obtained.

6. The order of this Court approving the sale of the *locus in quo* to defendant, Arthur Y. McNeill, is not binding on the complainants, the heirs at law of
10 Joseph Ogden Cuthbert, because no provision is made in the aforesaid statute Ch. 152, P. L. 1905, for giving these complainants notice of the proceedings undertaken by these defendants.

7. These complainants have not been brought into Court either by subpoena or substituted service directed by this Court so that the findings of this Court in the proceedings referred to in paragraph 7 of the amended answer would affect the rights or
20 interests of these complainants; no provision is made in the Ch. 152, P. L. 1905, for bringing complainants in court.

8. In the absence of these complainants in the Court of Chancery at the time the order of this Court was made in the aforesaid proceedings it was a *nudum pactum*, void and of no effect on these complainants.

30 9. The interests of the defendant, Grace Church, were not promoted by a sale of the *locus in quo*.

10. Said statute Ch. 152, P. L. 1905, and the amendments thereof and the supplements thereto are unconstitutional in that they impair the obligations imposed by Joseph Ogden Cuthbert on the rec-

tor, wardens and vestrymen of Grace Church, Haddonfield, N. J.

11. In the aforesaid proceedings no application was made by these defendants to apply to the proceeds *cy-pres* the intention of the donor, Joseph Ogden Cuthbert. The deed of the said Joseph Ogden Cuthbert expressly prohibits the application of the lands conveyed thereby to the Grace Church for purposes other than those mentioned. 10

12. The above order of this Court having been entered in the proceedings to which these complainants were not parties, is not available to defendants for the purpose of barring complainants their right to a decree in these proceedings.

13. The petition of the rector, wardens and vestrymen of Grace Church, Haddonfield, filed for the purpose of being permitted to sell the *locus in quo* free of the trust provisions imposed by Joseph Ogden Cuthbert, does not disclose a cause of action which may form the foundation or basis of a decree of this Court. 20

PHILIP WENDKOS,
Solicitor for Complainants.

PETITION TO BE MADE A PARTY
DEFENDANT.

IN CHANCERY OF NEW JERSEY.

10 Between

J. BLAIR CUTHBERT, *et
als.*, COLLINGSWOOD EX-
TENSION REALTY CO., a
corporation, EDWARD
L. KATZENBACH, Attor-
ney General of New
Jersey,

Complainants,
and

20

ARTHUR Y. MCNEILL, *et
als.*, RECTOR, WARDENS
AND VESTRYMEN OF
GRACE CHURCH OF HAD-
DONFIELD, N. J.,

Defendants.

On Bill, &c.
Petition to Be Made
a Party Defendant.

30 *To the Honorable, Edwin Robert Walker, Chan-
cellor of the State of New Jersey:*

The petition of The Trustees of the Episcopal
Fund of the Diocese of New Jersey, a religious cor-
poration of the State of New Jersey, respectfully
shows that:

1. Heretofore a bill of complaint was filed in the

above-entitled cause, seeking to compel the re-conveyance of the lands and premises more particularly mentioned and described in said bill of complaint to the heirs at law of J. Ogden Cuthbert, deceased, who are parties complainant herein; and also praying that the mortgage now held by Arthur Y. McNeill covering said premises be cancelled of record or be assigned to the said heirs at law of the said J. Ogden Cuthbert, deceased; and also praying that the said Arthur Y. McNeill pay over to Collings-wood Extension Realty Company all moneys received from it on account of the purchase price of said lands; and further praying that a resulting trust be declared in the aforesaid premises in the heirs at law of J. Ogden Cuthbert, deceased. 10

2. That petitioner has an interest in the subject matter of this suit, in that it has an estate in expectancy in said lands and premises by virtue of the conveyance thereof executed and delivered by J. Ogden Cuthbert on October 19th, 1895, and recorded in the office of the Register of Deeds of Camden County in Book 120 of Deeds, page 174, &c., wherein and whereby said conveyance was made upon the following trusts: 20

“In trust, nevertheless, that they the said parties of the second part, their successors and assigns, shall and will hold the said land and premises to the use of the Protestant Episcopal Church in the diocese of New Jersey, to be used only for and as a site for a chapel, school house, mission, parish building, or other use of said Protestant Episcopal Church in the said diocese, and that the said parties of the second part shall have power to grant and convey said lands and premises to any parish of said Protestant Epis- 30

copal Church in said diocese within whose bounds said land and premises may come to lie by its proper title, if incorporated, and by apt words of conveyance or may in the same event convey said lands and premises to the trustees of The Episcopal Fund of the Diocese of New Jersey for the use of said parish."

10 3. Petitioner should have been made a party defendant herein because of its aforesaid interest in the subject matter of this suit.

4. Petitioner only recently came into actual knowledge of the pendency of this suit and, therefore, became informed of its interest in the outcome thereof

Your petitioner, therefore, prays that it may be made a party defendant to the bill of complaint filed herein.

20

HOWARD EASTWOOD,
Solicitor of Petitioner.

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

30 WALTER E. ROBB, being duly sworn according to law, on his oath deposes and says:

1. I am one of the trustees of "The Trustees of the Episcopal Fund of the Diocese of New Jersey," a religious corporation under the laws of the State of New Jersey, and am also secretary and treasurer of the board of trustees of said corporation; that I have read the foregoing petition and the matters

and things therein set forth are true to the best of my knowledge and belief and particularly is it true that heretofore a bill of complaint was filed in the above-entitled cause, seeking to compel the re-conveyance of the lands and premises more particularly mentioned and described in said bill of complaint to the heirs at law of J. Ogden Cuthbert, deceased, who are parties complainant herein; and also praying that the mortgage now held by Arthur Y. McNeill covering said premises be cancelled of record or be assigned to the said heirs at law of the said J. Ogden Cuthbert, deceased; and also praying that the said Arthur Y. McNeill pay over to Collingswood Extension Realty Company all moneys received from it on account of the purchase price of said lands; and further praying that a resulting trust be declared in the aforesaid premises in the heirs at law of J. Ogden Cuthbert, deceased. 10

2. That the said trustees of the Episcopal Fund of the Diocese of New Jersey claims to have an interest in the subject-matter of this suit on the ground that it has an estate in expectancy in the lands and premises described in said bill of complaint, which were conveyed as more particularly mentioned and set forth in the foregoing petition upon the trusts therein recited. 20

3. The Trustees of the Episcopal Fund of the Diocese of New Jersey should have been made a party defendant herein because of its aforesaid interest in the subject-matter of this suit. 30

4. That only recently knowledge came to the said Trustees of the Episcopal Fund of the Diocese of New Jersey of the pendency of this suit and only

then did they become aware of their interest in the outcome of said litigation.

WALTER E. ROBB.

Sworn and subscribed to before me this day
of March, A. D. 1928.

10

ORDER.

IN CHANCERY OF NEW JERSEY.

Between

20 J. BLAIR CUTHBERT, *et*
als., COLLINGSWOOD EX-
TENSION REALTY Co., a
corporation, EDWARD
L. KATZENBACH, Attor-
ney General of New
Jersey,

Complainants,
and

30 ARTHUR Y. McNEILL, *et*
als., RECTOR, WARDENS
AND VESTRYMEN OF
GRACE CHURCH OF HAD-
DONFIELD, N. J.,
Defendants.

On Bill, &c.
Petition to Be Made
a Party Defendant.
Order.

A petition having been filed by the Trustees of
the Episcopal Fund of the Diocese of New Jersey,

whereby it appears that subsequent to the filing of the bill of complaint herein, knowledge of the pendency of this suit came to petitioner, and petitioner has an interest in the subject-matter of this suit, and will be affected by the decree that may be made herein.

It appearing that due notice of this application has been given to all parties to the bill of complaint filed herein; and the Court having read and considered the petition and affidavit thereto annexed 10 and the Court having heard argument of counsel and duly considered the matter, it being satisfied of the truth of the matters in said petition contained, and the said Trustees of the Episcopal Fund of the Diocese of New Jersey, has an interest or title in said premises mentioned and described in the bill of complaint, which the decree in this Court will affect.

It is, on this 2nd day of April, 1928, ordered that the said Trustees of the Episcopal Fund of the Diocese of New Jersey, be made a party defendant to the bill of complaint filed in this cause: 20

It is further ordered that the Trustees of the Episcopal Fund of the Diocese of New Jersey serve true but uncertified copies of this order on all of the parties to the bill of complaint filed herein within 2 days of this order, and that it have 3 days after the date hereof to file its answer to the bill of complaint herein.

Respectfully advised, 30
E. B. LEAMING,
V. C.

ANSWER OF TRUSTEES OF THE EPISCOPAL
FUND OF THE DIOCESE OF NEW
JERSEY.

IN CHANCERY OF NEW JERSEY.

10

Between
J. BLAIR CUTHBERT, *et*
als.,
Complainants,
and
ARTHUR Y. MCNEILL, *et*
als.,
Defendants.)

On Bill, &c.
Answer of Trustees
of the Episcopal
Fund of the Diocese
of New Jersey.

20

Defendant, Trustees of the Episcopal Fund of the
Diocese of New Jersey, a religious corporation of
the State of New Jersey, answering the bill of com-
plaint herein, says:

1. It admits the allegations of paragraph 1.
- 30 2. It admits the allegations of paragraph 2, ex-
cept that it denies that the conveyance in question
operated as a gift, but alleges that it was intended
to create a public charity or trust.
3. It has no knowledge or information sufficient
to form a belief as to the allegations of paragraph

3; and, therefore, leaves complainants to prove said allegations.

4. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 4, and, therefore, leaves complainants to prove the same.

5. Paragraph 5 is denied, except that defendant 10 is informed in such manner that it believes it to be true that Grace Church accepted the title of said land subject to the trusts expressed in the deed therefor, but it was impossible thereafter to actually devote said lands to the purpose of building a church or school or parish house thereon.

6. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 6, and, therefore, leaves complainants 20 to prove same.

7. Defendant admits the conveyance to the defendant, Arthur Y. McNeill, alleged in paragraph 7 of the bill of complaint, but insists that said conveyance was pursuant to an order of this Court duly made and entered in compliance with the statute of the State of New Jersey in such case made and provided. The remaining allegations of paragraph 7 are denied. 30

8. Defendant admits that portion of the allegations of paragraph 8 setting forth conveyance by J. Ogden Cuthbert to Grace Church. It also admits the conveyance to the defendant, Arthur Y. McNeill, by said Grace Church, but insists that said

34 *Answer of Trustees of the Episcopal
Fund of the Diocese of New Jersey*

conveyance by Grace Church to said Arthur Y. McNeill was duly approved by order of this Court and Bishop and Standing Committee of the Diocese of New Jersey. The remaining allegations of said paragraph 8 are denied.

9. It admits paragraph 9.

10 10. It admits paragraph 10.

11. It denies paragraph 11 and further alleges that since the filing of the bill of complaint herein it has been informed in such a manner that it believes it to be true that the defendant, Arthur Y. McNeill, has made an offer to said Grace Church to turn over all of the moneys received from the sale of said premises by him, less his expenses in connection with perfecting the title thereto, which
20 offer has been accepted by the officials of said Grace Church.

12. It admits the execution of the mortgage and the assignment thereof mentioned in paragraph 12. The remaining allegations of paragraph 12 are denied.

13. Defendant has no knowledge or information sufficient to form a belief as to allegations of paragraph 13, and, therefore, leaves complainants to
30 their proofs of the same.

14. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 14, and, therefore, leaves complainants to their proof of said allegations.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

FIRST AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

That Grace Church conveyed the premises in question to the defendant, Arthur Y. McNeill, pursuant to the order of this Court, as a result of proper proceedings to obtain same, and said order is valid and binding upon the complainants. 10

SECOND AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

Said conveyance by Grace Church was absolutely lawful, and made it possible for the said Grace Church to carry out the trusts of the donor of said premises in a more practicable manner. 20

THIRD AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT.

Complainants, heirs of Joseph Ogden Cuthbert, have no reversionary or other right or interest in said premises and, therefore, are not entitled to the remedy they seek through their bill of complaint.

FOURTH AFFIRMATIVE DEFENSE TO THE BILL OF
COMPLAINT. 30

Complainant, Collingswood Extension Realty Company, is estopped from claiming the relief it seeks.

HOWARD EASTWOOD,
*Solicitor for Defendant, Trustees
of Episcopal Fund of the Dio-
cese of New Jersey.*

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
 10 J. BLAIR CUTHBERT, *et* }
 als., } *Complainants,*
 } and
 ARTHUR Y. MCNEILL, *et* }
 als., } *Defendants.*

On Bill, etc.

20 February 9, 1928.
 March 12, 1928.
 April 10, 1928.

LEAMING, V. C.

30 PHILIP WENDKOS, Esq., for complainants.
 LOUIS B. LEDUC, Esq., for defendant, Arthur Y.
 McNeill.
 STARR, SUMMERILL & LLOYD, Esqs., for defendant,
 Grace Church of Haddonfield.
 HOWARD EASTWOOD, Esq., for defendant Trustees
 of the Episcopal Fund of the Diocese of New
 Jersey.

The Court: If counsel are ready they may proceed, I have looked over the pleadings.

Mr. LeDuc: Did your Honor receive a stipulation filed yesterday?

The Court: Yes, the files in both cases are here.

Mr. LeDuc: The stipulation as to certain facts 10
in this case?

The Court: Yes, I marked the stipulations filed.

Mr. Wendkos: If the Court please, this proceeding was filed on behalf of the heirs-at-law of J. Ogden Cuthbert, and after giving the matter thought I came to the conclusion that the Collingswood Extension Realty Company would properly be a party defendant, and I consulted Mr. Propert, who represents them, and he is here in their behalf, and I therefore move that the change be made. 20

The Court: I don't think it can be made on a mere motion of that kind unless it is consented to by everybody.

Mr. LeDuc: It is not agreeable to me, if the Court please.

The Court: I don't know how you are going to shift anybody over like that on a mere motion, Mr. Wendkos. They have come in here as complainants and answers have been filed to their bill, and as defendants they will stand in a very different attitude, they have got to file answers to the bill. 30

Mr. Wendkos: I suppose we will be obliged to proceed in the manner in which I began the proceedings. In addition to the stipulation it was agreed between Mr. LeDuc and myself to introduce certain documentary evidence.

Mr. LeDuc: There is no objection to the offer.

10 Mr. Wendkos: Here is a carbon copy of a letter written by J. Blair Cuthbert to the Rector and Vestry of Grace Episcopal Church, June 10, 1925, and this is the reply to that letter written by Mr. LeDuc.

(Said letters offered in evidence and marked Exhibits C1 and C2.)

20 Mr. Wendkos: I am introducing in evidence a letter written by R. Bowden Sheppard from the Diocese of New Jersey, office of the Archbishop, Trenton, New Jersey, to J. Blair Cuthbert, dated September 21, 1926.

(Said letter offered in evidence and marked Exhibit C3.)

30 Mr. LeDuc: There is no objection to the offer of these carbon copies, but we are not, however, admitting they were necessarily received; we do admit, according to my understanding with Mr. Wendkos, the originals of these carbon copies were duly sent by the sender, Collingswood Extension Realty Company.

Mr. Wendkos: I introduce in evidence a letter dated January 15, 1923, addressed to Mr. A. Y. McNeill, 134 Kings Highway, Haddonfield, New Jersey,

the letter having been sent by the Collingswood Extension Realty Company to him.

(Said letter offered in evidence and marked Exhibit C4.)

Mr. Wendkos: Another letter over the signature of Arthur Y. McNeill, January 18, 1923, addressed to Mr. G. R. MacClelland, President, Collingswood Extension Realty Company.

10

(Said letter offered in evidence and marked Exhibit C5.)

Mr. Wendkos: Another letter dated February 5, 1923, addressed to Mr. A. Y. McNeill, 134 Kings Highway, West—I suppose it is—Haddonfield, New Jersey, sent by the Collingswood Extension Realty Company.

20

(Said letter offered in evidence and marked Exhibit C6.)

Mr. LeDuc: I am asked by Mr. Wendkos to admit a letter bearing date February 10, 1926, from the Collingswood Extension Realty Company to McNeill, which, however, is not signed, dealing with certain negotiations for the sale of property in Collingswood, or to admit that the property in this suit was sold for \$30,000. The fact itself is not disputed, but before I admit it I object to the introduction in evidence of any testimony regarding the resale of this property in that it is irrelevant, incompetent and immaterial and seeks to illicit scandalous and impertinent matter, and has no bearing on the issues stated in the pleadings in this case. That point has

30

been made to your Honor on motion to strike, and it has been argued.

The Court: I will let the evidence go in.

10 Mr. LeDuc: As far as the fact is concerned it is conceded by counsel for Mr. Arthur Y. McNeill that the property in question was sold by him to the Collingswood Extension Realty Company, October 18, 1296, for a purchase price of \$30,000, of which \$6,000 was paid in cash and \$24,000 represented by a purchase money mortgage taken back at that time.

(Said letter offered in evidence and marked Exhibit C7.)

Mr. Wendkos: I am introducing in evidence a copy of the will of J. Ogden Cuthbert, deceased, certified by the Surrogate of Camden County.

20 (Said copy of will offered in evidence and marked Exhibit C8.)

Mr. LeDuc: No objection.

30 Mr. Wendkos: I think that is all I have to introduce, Mr. LeDuc. This is the deed made by J. Ogden Cuthbert, dated the 19th day of October, 1885, by which the premises in question were conveyed to the Rector, Wardens & Vestrymen of Grace Church, Haddonfield, New Jersey, upon the stipulations and trust provisions therein contained, the deed is recorded in Book 120 of Deeds, page 274, in the office of the Register of Deeds of Camden County.

(Said deed offered in evidence and marked Exhibit C9.)

Mr. Wendkos: I offer in evidence deed from the church to Arthur Y. McNeill, dated the 25th day of March, 1925, and the certificate of record being attached thereto.

(Said deed offered in evidence and marked Exhibit C10.)

Mr. Wendkos: I offer in evidence deed dated the 18th day of October, 1926, made by Arthur Y. McNeill, and wife, to Lawrence Crombie, reciting a consideration of \$1.00, with a certificate of record attached. 10

(Said deed offered in evidence and marked Exhibit C11.)

The Court: What is that for?

Mr. Wendkos: The same property, but instead of conveying the title directly to the Collingswood Extension Realty Company it went through a straw man. I offer in evidence another deed dated the same date, 18th of October, 1926, Lawrence Crombie, single, to Collingswood Extension Realty Company, reciting a consideration of \$30,000., conveying the premises in question with a certificate of record attached. 20

(Said deed offered in evidence and marked Exhibit C12.) 30

Mr. LeDuc: May it please the Court, a certain draft of letter referred to in connection with the sale by McNeill to the Collingswood Extension Realty Company has unfortunately been marked in evi-

dence; I did not concede it, and Mr. Wendkos now withdraws it.

The Court: What is that?

Mr. LeDuc: It is not signed —

The Court: What number is it?

10 Mr. Wendkos: C7.

The Court: All right, it is withdrawn.

Mr. Wendkos: Over the objection of counsel for defendant this is withdrawn and I wish to have the right to prove it in the regular way.

The Court: Proceed.

20

GEORGE R. MACCLELLAND, SWORN.

By Mr. Wendkos:

Q. Mr. MacClelland, on February 10, 1926, were you the president of the Collingswood Extension Realty Company?

A. Yes, sir.

30 Q. I show you a letter dated February 10, 1926, addressed to Mr. A. Y. McNeill—copy of a letter—was the original of that letter sent by you to Mr. McNeill?

A. I believe so, I have forgotten exactly, I can't tell you exactly, but I believe so; that has not been signed here by myself, but that is as I remember it.

Q. What do you remember about it?

A. I remember we made Mr. McNeill that kind of an offer.

Q. Now, in connection with that offer was the letter sent embodying those terms?

A. I believe it was, a letter was sent, I can't swear exactly that this was the exact letter sent to Mr. McNeill, I haven't a copy with me of that letter, but I think our files would have that copy, wouldn't they?

Q. This came from your files.

10

A. Then that would be a copy of the letter.

Q. Did you finally purchase on those terms?

Mr. LeDuc: Objected to as incompetent, irrelevant and immaterial, the deed which is in evidence speaks for itself.

The Court: I think the letter may go in.

Mr. LeDuc: May I cross-examine?

20

The Court: Yes, sir.

Cross-examination.

By Mr. LeDuc:

Q. Mr. MacClelland, won't you look at that letter and tell me whether it isn't an original as distinguished from a carbon copy?

A. Yes, sir.

30

Q. It is not a carbon copy, is it?

A. It is not a carbon copy.

Q. Do you think you sent the carbon copy to Mr. McNeill and kept the original in your files?

A. That letter —

Q. Answer the question, please. Do you think

you sent the carbon copy to Mr. McNeill and kept the original in your own files?

A. No, I think we sent the original letter.

Q. Is it your regular practice to prepare two originals and put one in your files and send the other to the person to whom it is addressed?

A. No, it is not.

Q. How do you account for the fact this is an original?

10 A. This letter was framed by one of the men in my office, and as you can see, there are various notations made on here, and evidently a new letter drawn.

Q. Apparently this is a mere draft, isn't it?

A. Yes.

Q. You don't know whether it is a true copy of the letter sent to McNeill?

A. I can't say.

20 Mr. LeDuc: I object to the offer of the letter in evidence.

By Mr. Wendkos:

Q. Mr. MacClelland, I show you a carbon copy of a letter dated the same date, February 10, 1926, now, is this the copy of the original sent to Mr. McNeill?

30 A. I would like to see it—isn't the copy sent to Mr. McNeill in evidence here? That apparently is, this carbon copy that is in our files takes in certain notations made in lead pencil and that is apparently a copy of the letter sent to Mr. McNeill.

Q. Over the word "president," is that place for your signature?

A. Yes, sir.

Q. Did you sign the original?

A. Yes, sir.

Mr. Wendkos: I offer that in evidence.

The Court: That carbon copy you have just examined is the same as the other except it embodies the pencil notations?

The Witness: The pencil notations on the first copy are incorporated in the second; the first was evidently not sent, the second was sent.

Mr. LeDuc: No objection to the offer of this carbon copy, my only objection was as to the suspicious appearance of the other exhibit. 10

The Court: Let it be filed.

(Said letter offered in evidence and marked Exhibit C7 in place of the other letter that was withdrawn.)

Q. Now, I show you a carbon copy of a letter dated January 15, 1923, addressed to Mr. McNeill, is that a copy of a letter sent by your company to Mr. McNeill? 20

A. I believe that it is, yes, sir.

Q. Is this letter addressed to you as president of the company by Mr. McNeill in answer thereto, dated January 18, 1923—the first letter I offered was January 15, 1923?

A. I believe it is, yes, sir.

Q. Here is another letter, carbon copy of letter, dated February 5, 1923, addressed to Mr. McNeill, is this a copy of the original you sent to Mr. McNeill? 30

A. I believe that it is, yes, sir.

Mr. Wendkos: Any objection?

Mr. LeDuc: There were no objections made in the first instance.

Q. You signed the original sent to Mr. McNeill?

A. Yes, sir.

Q. Have you any definite knowledge whether the letter of February 5, 1923, was received by Mr. McNeill?

10 Mr. LeDuc: February 3, 1923.

Mr. Wendkos: I think it is the 5th.

Mr. LeDuc: Excuse me.

The Witness: I believe it was received, I think we received an answer declining—that price was later declined, that offer was later declined.

20 Q. That letter embodies an offer of \$40. a foot?
A. Yes, sir.

Q. And the offer was later declined?

A. Yes.

Q. By whom?

A. By Mr. McNeill, as I remember it.

30 Mr. Lloyd: If the Court please, I want to get myself on record—I have been substituted as solicitor for the Rector, Wardens & Vestrymen of Grace Church, Haddonfield, and in going over the answer that has been filed I think there are one or two corrections that ought to be made. On page 4 of the answer, in paragraph 18, “The said McNeill further agreed to pay, and did pay, \$1,000. irrespective of whether or not he should be successful in securing the said approval of the proposed conveyance” be stricken out —

The Court: What paragraph are you reading from now?

Mr. Lloyd: Paragraph 18 of the answer by the church.

The Court: If you want to make any changes in that your adversaries will have to know what they are to see whether there is any objection. What change is it?

10

Mr. Lloyd: Strike out "The said McNeill further agreed to pay" etc., that entire sentence.

Mr. Wendkos: I object to that.

The Court: You can't strike it out, you might be privileged to amend the answer, because you may be bound by what you said, as evidence.

Mr. Lloyd: As I understand the fact to be, if the Court please, the defendant McNeill did not agree to pay \$1,000. irrespective of whether or not he should be successful, but did agree to pay the church \$1000. and the other expenses if he were successful, it is merely an erroneous statement in there.

20

The Court: You will have to establish that by evidence. You want to amend that part of your answer eliminating that statement, is that correct?

30

Mr. Lloyd: Yes, sir.

The Court: Any objection?

Mr. Wendkos: If the Court please, Mr. LeDuc and I went over some of the testimony, to be intro-

duced, yesterday, and if my recollection is correct I think that was the understanding from the reading of the papers in connection with the sale by McNeill to the church, I may not be right about it, but I am speaking from memory. As a matter of fact, I think the allegation is correct.

Mr. Lloyd: That will develop then in the proof, if the Court please.

10

The Court: Do you object to him making the amendment to having that section 18 considered now amended by the statement he makes?

Mr. Wendkos: Subject to the matter of proof?

The Court: Certainly.

Mr. Wendkos: No objection.

20

The Court: Very well, let section 18 be considered as now amended by the elimination of that part—the next to the last line preceding the period, the line below and the three words of the preceding line, that part eliminated, “The said McNeill further agreed to pay, and did pay, the sum of \$1000. irrespective of whether or not he should be successful in securing the said approval of the proposed conveyance.” You may make that amendment.

30

Mr. Lloyd: I think that additional paragraph being #21 should be added, “The Rector, Wardens & Vestrymen of Grace Church, Haddonfield, New Jersey, have no knowledge or information sufficient to form a belief as to the allegations of fraud alleged in the bill of complaint, and, if such fraud has been practiced that the defendant McNeill be required by order of this Court to account to the

Rector, Wardens & Vestrymen of Grace Church, Haddonfield, New Jersey, for any and all profit derived from the resale of the land in question.”

The Court: What is the attitude of counsel touching that?

Mr. LeDuc: No objection on behalf of Mr. McNeill.

Mr. Wendkos: No objection.

10

The Court: Very well, I will allow those amendments on one condition, that the answer be redrawn embodying them, because there is a lot of confusion that arises from these amendments made at trial that are not embodied in the pleadings. Let an amended answer be filed embodying those changes. That is especially important because your original answer is not signed at all, there has been no answer filed by the church.

20

Mr. Lloyd: Then there is no necessity for that order of substitution.

The Court: So you will have to withdraw that answer exactly as this answer that has been filed, except with those two changes.

Mr. Stockwell: I am associated with Mr. LeDuc, in order to make my position clear.

30

J. BLAIR CUTHBERT, SWORN.

By Mr. Wendkos :

Q. Mr. Cuthbert, what is your position with respect to the estate of Joseph Ogden Cuthbert?

A. The estate of Joseph Ogden Cuthbert* is now closed; during the latter part of the activity of the estate I was trustee along with Mr. Gillespie and the
10 Camden Safe Deposit and Trust Company.

Q. While you were trustee for the estate, were you approached by Mr. George Bergen in his lifetime?

A. Yes, I was.

Q. For what purpose?

A. Mr. Bergen represented a community of interests, he represented the church, because he was solicitor for Grace Church, he was solicitor for
20 Camden Safe, and naturally the legal advisor of the trustees of the Cuthbert Estate, Camden Safe being the principal of the trustees, kept the books, etc.—they were the major trustee.

Q. Do you know whether he was a member of the Vestry of the Grace Church at Haddonfield?

A. He was solicitor for the church, whether he was a vestryman or not I don't know; the church records would show that. Mr. Bergen represented all, it was a family affair.

30 Q. Mr. Bergen saw you about what time?

A. I can tell you the year because it was the last year of the life of Benjamin Reeve, Mr. Reeve died the following year, this was just before Mr. Reeve—Mr. Reeve was trust officer of the Camden Safe and naturally was co-trustee.

Q. Would you say it was about 1911 or 1912?

A. Possibly, yes, I think that is about the time.

Q. Now, what did Mr. Bergen say to you in this representative capacity?

A. Mr. Bergen called Mr. Gillespie and myself at the Camden Safe to talk over getting rid of that piece of ground, the church didn't want it, and Mr. Bergen made a proposition —

Mr. LeDuc: I move that that be stricken out, that the church didn't want it.

10

The Court: He may state what he said in that respect, show the entire transaction.

The Witness: The church couldn't use it —

Mr. LeDuc: I object to that and move that it be stricken out.

The Court: Are you testifying to what he stated?

20

Mr. LeDuc: I move that it be stricken out.

The Witness: He wanted to deed that back to the trustees in lieu of \$1000. and he proposed to take that \$1000. and put a memorial window in the church edifice about to be erected or proposed to be erected in memory of Joseph Ogden Cuthbert, our ancestor, and the donor of that piece of ground.

Q. That was the church at Haddonfield.

30

A. Yes, and Mr. Reeve agreed and so did I, thought it was very nice, and about that time Mr. Alexander Wood—strange to say that all the gentlemen connected in the case at that time are now dead except myself, I am the sole survivor of all the main interests at that time, and for that reason I wish to be explicit, I feel the responsibility. We

were about to accept Mr. Bergen's proposition to take back that lot and turn over \$1000. of the estate's money to the church to be used by the vestrymen in this memorial window, or any other way, perhaps, the church wished to use it, and about that time Mr. Alexander Wood, then president of the Camden Safe, happened to look in Mr. Reeve's office —

- 10 Mr. LeDuc: I don't like to interrupt the witness' discussion, but I think he is rambling on.

The Court: I think it may be competent; it is certainly interesting.

- The Witness: When Mr. Wood found out what was going on he said, "You had better watch what you are doing," he said, "I think you had better go outside and get an outside opinion, because," he said, "George"—referring to Mr. Bergen—"being the solicitor for the church, solicitor for the Camden Safe, and naturally this Cuthbert estate, it was too much of a family affair," he said, "I think you had better go outside and get an opinion," so Mr. Reeve recommended that we go over to Howard M. Cooper, now dead, and get that opinion, and I took the papers and proposition in writing to Mr. Cooper, Mr. Cooper called in William S. Casselman, now president of the West Jersey Title Company—I went back from Mr. Cooper's office to Mr. Casselman, and Mr. Casselman sent me back to Mr. Cooper, and he rendered a decision in writing, it was on one letterhead but he said a whole lot on it, and I took that letter to Mr. Casselman and he smiled and shook his wise old brow and he said, "Take that over to Mr. Reeve," trust officer at the Camden Safe —
- 20
- 30

Mr. LeDuc: Whose was the wise old brow, I am a little confused.

The Witness: Mr. Casselman, I have a great deal of respect for him.

Mr. LeDuc: He shook his head?

The Witness: Yes, I can almost quote the decision, I think I can go through the Cuthbert portfolio in the Camden Safe and get the original letter written by Howard M. Cooper, but I can almost quote it. 10

Q. Did Mr. Bergen make the proposition to you as proposed —

A. Yes.

Q. To take back —

A. To deed back the lot to the trustees.

Q. Listen to the question. For the estate to take back the lot, now, did he make that statement to you and accompany it with a statement that he was making that proposition with authority from the vestry of the church? 20

A. He was the solicitor of the church and I had every reason to believe he spoke with authority.

Q. Did he say to you he was instructed by the vestry to take that matter up?

A. I don't recall that, he may have made such a statement, I don't know; I don't want to guess, I only want to state the truth that I can back up. 30

Q. Did he say the matter was discussed at a regular meeting of the vestry?

A. I don't recall, that would be speculative testimony and I can't give it, but I can quote in my own language the opinion given by Mr. Cooper on which we acted.

Q. I am not asking for that, I simply want to know whether you can recall did Mr. Bergen to say to you in so many words, not identical with what I am saying, but in so many words, that the matter was discussed at a meeting of the vestry and he was authorized to discuss the question of returning the ground to the estate with the trustees?

A. Mr. Bergen had in his hand the original deed of transfer of the ground, he had that in his hand, 10 he had other papers in his hand pertaining to that piece of ground that was the church's papers; what these letters were I can't say, but he had a bunch of papers with him including the deed for the lot and he wanted us to take it back. He didn't tell me, I don't think, that the vestrymen by resolution authorized him to do it, or not, but he represented the vestry, he represented us, he represented the Camden Safe, he represented everything, and we were going to take it back, Mr. Reeve, I, and Mr. Gillespie all said, "Yes, we will take it back and do the 20 best we can with it." It wasn't very much at that time.

Q. Did Mr. Bergen say to you that the vestry would like a little more ground on that point?

A. I don't think so.

Q. Did he ever say to you that the vestry had considered the proposition at one of its regular meetings to consult the trustees of the estate about getting more ground?

A. I never recall any such proposition of that 30 kind, I don't recall the church ever desiring more ground at that point.

Q. Did the question of returning the ground or, rather, was the question of returning the ground to the estate discussed by any other vestryman of the church with you or any of the trustees?

A. No, sir, we treated with Mr. Bergen only, I

never met any of the vestry, only treated with Mr. Bergen, in fact, I really didn't know who they were.

The Court: Mr. Bergen, I happen to know, was a member of the vestry of that church, but whether at that particular time I am not sure.

Mr. Wendkos: I think the minutes will disclose that, if the Court please. Mr. LeDuc, is there any objection to offering these minutes in evidence? 10

The Court: Counsel can look it up and stipulate whether Mr. Bergen was a member of the vestry.

Mr. Wendkos: Do you want to stipulate that Mr. Bergen was a member of the vestry at that time?

Mr. LeDuc: Yes, he was a member of the vestry in 1811 and 1912; I don't know whether those were the proper years, but that is a fact. 20

Mr. Wendkos: Mr. Bergen was treasurer in 1911, wasn't he?

A Voice: I recall his death was 1918 and he was connected with the vestry for a period of 15 years prior to 1918.

Cross-examination.

30

By Mr. LeDuc:

Q. Mr. Cuthbert, you said, I believe, that Mr. Bergen expressed a desire to erect a memorial window in the new church edifice?

A. Yes, that or any other proposition that the ves-

try chose to apply the \$1000. we were to give in exchange for the lot.

Q. I am calling your attention particularly to the new church edifice, wasn't that the parish house in Haddonfield, now erected, that he had reference to when he mentioned a new church edifice?

A. No, it was the moving of the old frame church back and building a new church in front of it.

Q. That was a long time before 1911, wasn't it?

10 A. Yes, the church was erected, I think, at that time, but this money was to be used to put a window in the church.

Q. You are one of the complainants in this suit?

A. They are using my name as a complainant.

Q. You mean by that you are not a complainant but they are using your name?

A. I am willing to be a complainant, I am very much dissatisfied with the situation.

20 Q. As a matter of fact, it was you who brought this matter to Mr. Wendkos' attention?

A. No I never met Mr. Wendkos until he was retained by one of the purchasers of a piece of that ground from the real estate company.

Q. The Collingswood Extension Company?

A. Yes, I never met him up until that time.

Q. After you met him in connection with this matter did you take up with other of the Cuthbert heirs the matter of joining in this suit?

A. Yes, sir.

30 Q. How did you do that, by personal interview?

A. I called on most of them, yes, sir.

Q. Did you get any of them to consent to be complainants?

A. Over 50%.

Mr. Wendkos: I don't see that that is material.

The Court: I don't know the purpose of it, but you may examine on it if you think it is relevant.

Mr. LeDuc: I think it is important, if the Court please.

Q. Will you kindly name the complainants named in this bill of complaint who authorized you to join them with you as complainants in this case?

A. Will I name them. - Mary C. Rue, Burlington; 10
George C. Gillespie, Moorestown; T. Cuthbert, Sarasota, Florida, and myself, that represents over 50% of the holdings; those names alone will be over 50% of the Cuthbert heirs who might benefit, or lose, or anything in this transaction.

Q. Now, all right. Did you get Flora Bowden Lun, of Haddonfield, did she authorize you to join her as a party complainant?

A. I think she did Mr. Wendkos, direct.

Q. I am asking you.

20

A. No, sir, not me.

Q. What about Mrs. Hanna Ebert?

A. No.

Q. Louisa Hopkins?

A. No.

Q. J. Edgar Cuthbert?

A. No, sir.

Q. Anna C. Boyd, of Philadelphia?

A. I didn't interview Mrs. Boyd, Mr. Gillespie did.

Q. She didn't authorize you?

30

A. No, sir.

Q. Marguerite Nickerson?

A. They are in California.

Q. You didn't see them?

A. No, sir.

Q. Or write to them?

A. No, sir, none of the California people did I communicate with.

Q. Charles W. Cuthbert?

A. No, sir.

Q. Gladys Cuthbert Raines?

A. No.

Q. You still say the 4 you named are more than half the names I read?

A. Mary C. Rue represents 25% of the heirs.

10 Q. You are measuring it by the interest in the estate and not by the number of the heirs?

A. Correct.

The Court: What is the point of this, Mr. LeDuc? Supposing only one of them is retained and all the others stricken out as complainants, that one is entitled to an adjudication.

20 Mr. LeDuc: I simply wanted to show that the appearance of all the heirs is deceptive, I thought your Honor might be impressed by that, that is all.

The Court: That doesn't impress me at all, if anyone has any rights, even though it is only one, that will be gone into just as thoroughly as if it was all. It might affect a jury, but it doesn't affect me.

Mr. Wendkos: I would like to offer the minute book.

30

Mr. LeDuc: I don't want to admit the book as an entirety, I am willing to admit any minutes you want to point out.

Mr. Wendkos: I want to point out the absence of a minute.

The Court: You admit this is the minute book?

Mr. LeDuc: Yes, sir.

The Court: Will you admit there is no minute in it on the date he names?

Mr. Wendkos: I want to find a minute accepting the deed from Joseph Ogden Cuthbert by the vestry of the church.

10

Mr. LeDuc: The minute book begins at a year several years subsequent to the date of the trust deed, and it couldn't —

The Court: Are you prepared to stipulate that book contains no minute—state the date.

Mr. Wendkos: 1892. I am asking counsel to stipulate that there is no minute book of the vestry —

20

Mr. LeDuc: We don't know, there must be.

Mr. Wendkos: There is no minute book extant.

Mr. LeDuc: I am not prepared to stipulate that, I don't know, there may be a minute book in the church.

The Court: Make your proof on that, if you have it, as to the fact that there is at this time no existing minute book prior to that date, if you can show it.

30

Mr. Wendkos: This is all I have to prove.

Mr. LeDuc: Do you rest?

Mr. Wendkos: Yes, sir.

The Court: What about the proof which you want to make that there is no existing minute book prior to that date?

Mr. Wendkos: I will have to put Mr. McNeill on the stand, he is the only one who would know.

10

ARTHUR Y. McNEILL, SWORN.

By Mr. Wendkos:

Q. Mr. McNeill, I show you a book marked "Minutes" —

The Court: You had better show what his con-
20 nection with the church was.

Q. Mr. McNeill, are you the Senior Warden of the Rector, Wardens & Vestry of Grace Church, Haddonfield?

A. Yes, sir.

Q. I show you a book marked "Minutes," is this the minute book of the vestry of the church?

A. It is, sir.

Q. Is this the only book containing the minutes of
30 the meetings with which you are acquainted?

A. It is, sir.

Q. Do you know of the existence of another minute book?

A. No.

Q. To your knowledge was there ever any other minute book of the Grace Church?

A. I see the date in here is 1892, and it is fair to

believe, since the parish is 80 odd years old there were prior minutes.

Q. But do you know?

A. Personally, no.

The Court: How long have you been a vestryman—are you now?

The Witness: Yes, I have been a vestryman about 20 years.

10

The Court: Continuously?

The Witness: Continuously, yes, sir, I succeeded to the senior wardenship at the death of Mr. Bergen.

Q. Are you acquainted with the place of safe keeping of the minutes?

A. Yes, sir.

Q. Of the church?

20

A. Yes, sir.

Q. Have you had occasion to look into that place?

A. Well, not being the secretary I don't have the need to inquire as to whether the church records are always there, but there is a safe provided—a safe place provided for the records. I don't know whether these are kept in the safe, but my recollection is the communion silver and articles of that kind are kept in the safe, but there is a safe place provided, and much care is taken in handling the records of the organization.

30

Q. Did you have anything to do with getting these minutes for to-day's trial?

A. Absolutely not.

Q. You had no action in getting them?

A. No, sir.

Q. Now, if there were any other minutes besides these would you have had occasion to see them?

A. No, minutes are minutes, and unless they refer to a question in litigation they would have no value for reference purposes, they simply show the recordings of the various meetings, and this is from 1892, which is a few years back.

Q. So far as you know there are no other minutes besides these?

10 A. No, but I am led to believe there are records earlier in date than that, but where they are I don't know.

(No cross-examination.)

Mr. LeDuc: If the Court please, I move to strike the evidence in the stipulation filed in this final hearing and the evidence offered to-day on behalf of the complainant tending to show the resale price of this property, that is, the resale by Mr. McNeill. In making this motion I must anticipate your Honor's ruling, still I feel I should make it again at this time because it affects the case —

20

The Court: The motion will be denied, make your proof.

Mr. LeDuc: I will offer in evidence agreement between Grace Church and Arthur Y. McNeill, bearing date February 4, 1924.

30

(Said agreement offered in evidence and marked Exhibit D1.)

Mr. LeDuc: Which relates to the land involved in this case. I offer in evidence the minutes of the

meeting of the Vestry of Grace Church on February 11, 1924.

The Court: I think they are probably in the stipulation.

Mr. LeDuc: That is true, that offer is withdrawn in view of that fact. The stipulation referred to the treasurer's report of Grace Church for the year 1923, and I desire to offer in evidence that report, 10
and also the treasurer's report for the first nine months of 1924.

(Said reports offered in evidence and marked Exhibits D2 & D3.)

Mr. LeDuc: I offer in evidence the tax bills, including assessments for benefits against the land involved in this cause, for the year 1924, and previous delinquent years. 20

(Said tax bills offered in evidence and marked Exhibit D4.)

Mr. LeDuc: The exhibit, which consists of five sheets, being marked Exhibit D4. I offer in evidence the entire docket in the proceedings entitled—your Honor has them, I guess—"In re: The Rector, Wardens & Vestrymen of Grace Church, Haddonfield, New Jersey," and being initiated by petition for the sale of church land involved in this case, 30
that entire file is offered.

(Said file offered in evidence and marked Exhibit D5.)

Mr. LeDuc: I think your Honor ought to have a

map of the locus in quo. I am offering the best map we have, Mr. Wendkos, and I went over it yesterday, the outline in red crayon represents the triangular conveyed by Joseph Ogden Cuthbert, this is Haddon Avenue, and I might say opposite this lot is the old Cuthbert homestead which stood for a great many years there. I call attention to the stipulation that Cuthbert Boulevard was opened in the latter part of the year 1925, that is, work was begun
10 in the latter part of 1925 on the construction of that boulevard. This, I think, goes direct to Collingswood on the west and Haddonfield on the east, the Township of Haddon, which includes the community of Westmont, immediately adjoins directly on the east. The entire lot in question lies within the Borough of Collingswood and having a frontage on Haddon Avenue.

The Court: How far is this property from Haddonfield
20

Mr. LeDuc: The property is a little less than two miles from Haddonfield, and immediately west of this location and about four or five squares on Haddon Avenue is the Church of the Holy Trinity of Collingswood. I want to make it clear that Cuthbert Boulevard was non-existent at the time and there was no highway whatsoever.

30 Mr. Wendkos: I will not stipulate to that.

Mr. LeDuc: All right, I will have proof.

(Said map offered in evidence and marked Exhibit D6.)

•

EDGAR G. CUTHBERT, SWORN.

By Mr. LeDuc:

Q. Mr. Cuthbert, are you one of the complainants in this case?

A. No, sir.

Q. Now, I show you a copy of the bill of complaint in which the name Edgar C. Cuthbert appears, 10 is that your name?

A. Edgar, G., yes, that is my name.

Q. But you say you are not a complainant?

A. No.

Q. Are you one of the heirs of Joseph Ogden Cuthbert?

A. Yes.

Q. What relation do you bear to Joseph Ogden?

A. Nephew.

Q. You were a nephew?

20

A. No, grandson.

Q. You live where now?

A. I live 7 Roberts Avenue, Haddonfield.

Q. And have you lived there how long, approximately?

A. 1919.

Q. Prior to that time, where did you live?

A. In the old Cuthbert house in Westmont.

Q. Which is located where in reference to the lot involved in this controversy?

30

A. Right straight across the street.

Q. That is on the southerly side of Haddon Avenue?

A. Yes, right.

Q. How long did you live there before you came to Haddonfield?

A. I think it was 7 years.

Q. Were you familiar with the physical condition of this church lot on Haddon Avenue in the year 1924?

A. Yes.

Q. Will you state what that condition was?

A. In 1924, or when I lived there?

Q. 1924, the date of the agreement between McNeill and Grace Church.

A. They had some little bit of rubbish in there,
10 some stone and stuff from the road, I think, by that time.

Q. Was the lot level, or was it low or high?

A. It was low, very low.

Q. Now, have you any means of fixing the approximate value of the lot in 1924?

A. I don't get that question.

Q. Have you any means of measuring the approximate value of that lot in 1924?

A. Why, from the fact that the property I sold
20 across the street —

Q. When did you sell that property?

A. I sold that in either late 1919 or early in 1920.

Q. What was the property you say you sold then?

A. The old house across the street, the old Cuthbert homestead.

Q. What area was involved in that sale?

A. About an acre and a half.

Q. How much frontage on Haddon Avenue?

A. I think 248 feet, practically 5 lots.

30 Q. What was the sales price you secured?

A. \$5,150—either \$5,100, or one hundred and fifty, I think it was \$5,100.

Q. For 250 foot frontage on Haddon Avenue?

A. 248 foot frontage.

Q. By a depth of how much, or approximately?

A. I think it was somewhere around 300 feet, it ran back to the next street.

Q. Was it rectangular?

A. Almost square.

Q. Was there any difference in the condition of the lot in the early part of 1920 and the early part of 1924?

A. The lot in question?

Q. The lot in question, the church lot?

A. There may have been some stuff dumped in there, I don't know, there may have been a little put in there, not much, it was very rough and low, and water all around through there, so I had to keep the drain open, there was a lot there probably 3 feet below grade with a drain in there, a pipe, and all the time I lived there I had to keep that drain open because the Township would not be bothered with it, and I did it to keep the mosquitoes away from my own house. 10

Q. Was there any difference in the character of the territory immediately surrounding this church lot between 1920 and 1924? 20

Mr. Wendkos: I object.

The Court: I think it is competent.

The Witness: I don't imagine it was much.

Q. Let us know exactly what it was.

A. In 1919, well, I don't think there was anything built there between 1920 and 1924—yes, there was, there were some small houses built back. 30

Q. How far from the church lot were those houses you refer to?

A. Down Cuthbert Road.

Q. How far down?

A. On the back end of my lot.

Q. About a square?

A. About a square.

Q. Were there any other buildings erected within the interval between 1920 and 1924 in the immediate neighborhood?

A. The real estate operation had not started, had it?

Q. I am asking you.

A. No, I don't think there was; I didn't keep close tabs on it, but I don't think so.

10 Q. You were familiar with the conditions surrounding this lot in 1924?

A. Simply by going by, looking at it.

Q. In 1924 what houses or buildings of any kind were standing within the immediate vicinity of the lot—first of all, the old homestead across the street?

A. Yes.

Q. What others?

A. Two or three houses built down Cuthbert Road.

20 Q. About a block away you said that was?

A. Yes, sir.

Q. Any others?

A. Nothing on the pike.

Q. Nothing on Haddon Avenue?

A. Until you got maybe two squares down.

Q. Then what did you have?

A. Then we had some small houses down towards the railroad.

30 Q. Back of those, to the north of this lot, were there any buildings constructed?

A. I don't think so.

Q. As a matter of fact, it was farm land at that time, wasn't it?

A. Yes, I think it was. You are talking north?

Q. By north I mean the direction indicated on the map.

A. There were some houses built in here, but that was during 1919.

Q. How far back?

A. Back two or three squares, they were there in 1919 when I left.

Q. How many houses?

Q. Quite a bunch of houses back there, that is, back in Collingswood, and they were there in 1919 when I sold; nothing was built on the other tract when I was there.

10

Q. Did you get the best price you could for the ground you sold?

A. I had a "For Sale" on it for 5 years, and I never had but one inquiry on it; the sale sign was there for five years and I got the best price I could.

Q. Was that the inquiry that led to this sale?

A. One inquiry lead to the sale prior to that for \$5100., and the man, in fact, made a sale, he put up \$100. purchase money, and he forfeited it and let it go.

20

Q. Is there any continuation of the old Cuthbert Road across Haddon Avenue—was there in 1924 any continuation of Cuthbert Road, was there any thoroughfare to the west of this lot within the distance of a couple of blocks?

A. No, not for two blocks this side.

Q. The nearest thoroughfare paralleling the west-erly side of this lot was how near, did you say?

A. About two blocks.

Q. Was the Cuthbert homestead included in this sale you testified to for \$5,150?

30

A. The house and 10 lots.

Q. And the house passed by the sale?

A. The house and all included in the 10 lots.

Q. Now, were you a vestryman of Grace Church?

A. I was not at that time.

Q. When were you elected a vestryman?

A. After I had moved up to Haddonfield about 1922, maybe.

Q. You were a vestryman in 1924 and 1925?

A. Yes, sir.

Q. Were you present at the meeting of the vestry of February 11, 1924, when Mr. McNeill proposed to purchase from the church this particular lot?

A. I was.

10 Q. Do you recall that meeting?

A. Yes.

Q. Did you at that time consider that the purchase price proposed by him was fair to the church?

A. I certainly did.

Q. You consider that now, you still consider it was fair?

A. I think they were fair at that time, yes, now I do.

20 Q. Do you still consider now that the terms offered by Mr. McNeill were fair at the time he offered them?

A. Yes, I certainly do.

Mr. Wendkos: He hasn't qualified.

Mr. LeDuc: I am asking his opinion.

30 Mr. Wendkos: He can't give an opinion unless he is an expert on real estate values.

The Court: Let the answer stand, I think it is competent.

Q. Do you recall, Mr. Cuthbert, prior to this meeting of February 11th, when Mr. McNeill proposed to buy the lot from the church, whether the sale of

this particular lot had ever been discussed at vestry meetings?

A. No, not at the meetings I attended. I did not attend them all by any means, but not at the meetings I ever attended.

Q. Did you have anything to do with the matter of negotiations with the trustees of the estate of Joseph Ogden Cuthbert to which Mr. Blair Cuthbert referred a while ago?

A. Yes, I think before I moved from there I was 10
anxious to see a church on the property and I took it up with some of the trustees—whether I saw them all I can't say—but I thought I had it fixed up that the estate would possibly give them another lot, more room on the side, and then I went to Will Early in Merchantville, he is now dead, and asked him what he thought we could do with it, and he said he thought it couldn't be done, that we couldn't sell that piece of land, or trade it in, it had to be for church purposes only. 20

Cross-examination.

By Mr. Wendkos:

Q. I want to straighten out a few things for you. Did you know I brought suit on behalf of the heirs of the Cuthbert estate?

A. Yes.

Q. Did I inform you I was bringing suit against 30
the Grace Church?

A. I got a letter to that effect.

Q. Did you ever deny to me personally the privilege of making you a party complainant to this suit?

A. I never gave you authority to.

Q. Did you deny me the privilege?

A. I never answered the letter, never paid any attention to it.

Q. When was Haddon Avenue paved?

A. They were paving it when I moved into the house.

Q. When was that?

A. 1919, I think I lived there either 6 or 7 years—about 1913 Haddon Avenue was paved, they were paving there when I moved there.

10 Q. With concrete?

The Court: About what?

The Witness: 1913.

Q. I mean the present concrete pavement, when was that done?

A. I think they were putting down another road, I guess they probably put that road down before
20 I left, I don't know.

The Court: If you are going to fix the date you had better name it more than one year, because I remember they were a long time fixing it and I thought they would never get through.

Q. Was it paved after you made the sale of your house?

A. They started before I sold my house, because
30 the reason I can say that is because one of my kids caught a runaway horse going down the car tracks over the ties, they were working on it then.

Q. Just before you left?

A. Probably a year or a year and a half before that was the second time.

Q. Do you know whether values in the vicinity of 1924 were different from the values of 1919?

A. I didn't know at that time; I have heard it since they have gotten big prices there. There was no reason why it should have gone up.

By Mr. LeDuc:

Q. What do you mean when you say you have learned prices have gone up, do you mean before or since 1924?

A. About that time, along from that time on they have gone out of sight. 10

By Mr. Wendkos:

Q. As vestryman of the church you would be interested in its welfare, wouldn't you?

A. I would, yes, sure.

Q. If you knew that there was an offer approximating \$7500. for the triangular lot would you in the face of that knowledge decline to sell it to that offerer? 20

A. Would I decline to sell it?

Q. Would you?

A. For the price here?

Q. I am asking you this, if you knew that there was a price approximating \$7500. offered for that lot —

A. Yes.

Q. In the year of 1923 would you decline to sell for that price to the person who made the offer? 30

A. Sell it to him at the same price?

Q. \$7500., that is what I mean?

A. No, I would have sold it to him.

Q. You would have, wouldn't you?

A. In 1923?

Q. Yes.

A. Certainly, I would have sold it to them.

Q. Did you know there was such an offer in 1923?

A. I did not know.

Q. Was any such offer to the church communicated to you?

A. No.

Q. Did you know that Mr. McNeill refused such an offer?

A. No.

Q. Did Mr. McNeill inform you he had such an offer?

10 A. No.

Q. I want to call your attention to some testimony that you gave before Mr. Robbins as Master in the proceedings brought by the church for the benefit of Mr. McNeill to sell to him that piece of land for \$1000. plus taxes. I am going to read what you said at that time and I am going to ask you whether that is true, whether the statement made by you at that time was true: "In the year 1913 I lived
20 in the town of Westmont in Haddon Township, laying between the Borough of Haddonfield and the Borough of Collingswood. While I lived there I attended the Grace Church in Haddonfield of which I had been a member for some years. In that year there were a number of Episcopalians in the Borough of Collingswood who attended the Holy Trinity Church there and who were anxious to get a larger church and were thinking of building. I
30 knew about this Cuthbert lot and suggested they build their church on that lot but they were unwilling to do so as they said the lot was entirely too small for the church." Is that true?

A. Too small and too far away.

Q. I am asking you whether that testimony is true?

A. Yes.

Q. "They subsequently bought the site of the

present church, 4 or 5 squares nearer their church. Before they selected their present site I also offered if they would take this piece of land to get the heirs of the Cuthbert estate to donate additional land so that they might have a piece large enough for their church, but they did not favor my proposal because they claimed it was too far removed from the center of Collingswood and they wanted something nearer the center part of the town." Is that true?

A. Yes.

10

Q. "The following year in the town of Westmont, the Episcopalians there started a mission in a dwelling-house and I suggested for them to get the Cuthbert lot and put a building on that for their mission, but they also objected that it was too far from the center of their settlement. I also proposed to them to have the heirs of the estate donate more land if they would build some kind of a church structure on it, but they did not favor my proposal on account of the distance they would have to walk." Is that true? 20

A. Yes, in a way, but I said that as a general description of what I said.

Q. This is the language exactly as you stated it to the stenographer at that time.

A. There certainly seems to be more there than what I said, but it has the same meaning.

Q. Now, with the knowledge of an offer in the year 1923 of \$7500., or approximately that amount, would that change your opinion about the value of the lot? 30

The Court: Of this property?

Q. This particular property, the one that was deeded by Joseph Ogden Cuthbert, in his lifetime, to the Grace Church.

A. I can't say it would change my opinion but it would be a better offer, but I don't think the lot was worth all that.

Q. Do you suppose it would be worth that much money to the adjoining landowner who wanted to straighten out his land and have Haddon Avenue frontage?

A. It might have been that he could have made a trade just as well and it wouldn't have cost him
10 nearly as much.

Q. I didn't ask that, you said it might have been. If that offer were made to the church you would sell it at that price, wouldn't you?

A. Certainly.

LEFEVRE W. DOWNING, SWORN.

20 By Mr. LeDuc:

Q. Where do you live, Mr. Downing?

A. Haddonfield.

Q. Had you any relation to Grace Church in Haddonfield?

A. Junior Warden.

Q. How long have you been Junior Warden?

A. Possibly ten years, possibly.

Q. Is that office next in rank to the Senior Warden?
30

A. It is.

Q. Prior to your 10-year service as Junior Warden were you a member of the vestry?

A. Yes, sir.

Q. For how long?

A. 15 or 18 years I think I have been a vestryman there.

Q. Altogether?

A. Yes, sir.

Q. Have you held any other office?

A. Treasurer.

Q. Are you treasurer now?

A. No.

Q. When were you treasurer?

A. After the death of Mr. Bergen in 1918.

Q. For how long?

A. 9 years, I resigned March a year ago.

10

Q. Now, I want to direct your attention to the meeting of the vestry on February 11, 1924, when Mr. McNeill's proposition in regard to this church land was first brought up, do you recall that meeting?

A. I do.

Q. Were you present?

A. Yes, sir.

Q. You voted on the proposition submitted?

A. Yes, sir.

20

Q. And you voted how?

A. In the affirmative, to accept the proposition.

Q. Prior to that meeting had there been any discussion in the vestry at any time of the sale of that same land to the owner of the adjoining land?

A. Not to my knowledge, but they had several discussions in the vestry pertaining to an actual sale, because I never thought we had anything to sell.

Q. Did Mr. McNeill prior to this meeting of February 11, 1924, bring to the vestry the matter of the adjoining owners desiring to purchase?

30

A. Not to my knowledge.

Q. But you say the matter had been discussed?

A. Yes, from the fact we would occasionally get bills from Collingswood for taxes, but never accepted, they were never accepted during Mr. Ber-

gen's time, to my knowledge and belief, and they went by default.

Q. Why?

A. We never had money in the treasury to pay it.

Q. Why was it you did not consider seriously the proposition of sale?

A. We didn't think we had anything to sell.

Q. What do you mean?

A. I didn't think we could have a clear title to
10 the thing.

Q. Was that advice you received from counsel?

A. No, that was my own impression.

Q. You voted in favor of the proposition offered
by Mr. McNeill?

A. Yes, sir.

Q. Did you consider then that was a fair propo-
sition to the church?

A. I did, yes.

Q. Did you personally?

A. Yes.
20

Q. Do you now consider the proposition which
he then made was fair to the church?

A. Absolutely, at that time.

Cross-examination.

By Mr. Wendkos:

Q. Would you have considered it a fair proposi-
30 tion if you knew there was an offer of about \$7500
at that time?

A. I wasn't aware of such a thing.

Q. If you were aware of such a proposal would
you still have considered then it was a fair sale to
Mr. McNeill for \$1000?

A. With an offer of \$7500, to sell it for \$1000?

Q. Yes.

A. No.

Q. Did you ever know Mr. McNeill had such an offer on behalf of the church?

A. No.

Q. Did Mr. McNeill ever communicate such an offer to you?

A. No.

Q. Did he ever tell you he received the original letter, a copy of which this is—read this copy—did he ever tell you he received such a letter in behalf of the church? 10

A. I don't think it is necessary to read it because I never saw it, never heard of it.

Q. Did he ever tell you he received an offer from this realty company?

A. No, sir.

Q. He never communicated that at a vestry meeting, did he?

A. Not to my knowledge, sir.

Q. If you had nothing to sell why did you consider the acceptance of \$1000. for the conveyance? 20

A. Simply an offer that Mr. McNeill made in an endeavor to get the land back and he would make the Grace Church the present of \$1000. if he got it.

Q. That wasn't the consideration?

A. No.

Q. It was simply a gift?

A. A gift to the church.

Q. And it was this means of getting the title into himself, wasn't it?

A. I can't answer, I don't know what his object was. 30

Q. The Grace Church did not intend to make a deed, did it?

A. I can't answer that.

Q. You as a vestryman would know whether Grace Church itself intended to make a deed—we

will put it this way, give me your general impression of this transaction, you just stated that Mr. McNeill wanted to make a present of \$1000. to the church.

A. That was his offer.

Q. Then it was for him to get the title into himself, was that the idea?

A. That would be my impression.

10 Q. You didn't feel obligated to give him a deed for the \$1000, did you?

A. No, I don't think I did.

Q. No, you felt if he was to get title that was entirely up to him, wasn't it?

A. Absolutely.

Q. You felt it was for the Chancery Court to make title to it?

A. That was a matter for him to decide.

Q. You always felt the Grace Church had nothing to sell?

20 A. That was simply the impression we got, yes.

Q. And that \$1000. was not a consideration for the conveyance from the church?

A. A gift from Mr. McNeill to the church.

Q. You were secretary of the vestry at one time?

A. No.

Q. You were only a vestryman, were you.

A. That is all, I was Junior Warden at that time.

Q. Did you prepare any statements or financial accounts?

30 A. I did.

Q. They appear in the minute book, don't they?

A. Yes.

Q. I happened to read your name in the minute book and that is why I am asking that question.

A. Yes.

Q. Do you know of the existence of any other minute book than this one?

- A. No, that is long before my time.
Q. If there were another minute book would you be in position to have seen it or had it?
A. No, sir, never.
Q. It would have been available to you if it had existed?
A. If we had occasion to use it I would imagine so, but where it is I have no knowledge whatsoever, none whatsoever.

10

JOSEPH WALTON, SWORN.

By Mr. LeDuc:

- Q. Where do you live, Mr. Walton?
A. Haddonfield, Washington Avenue.
Q. What connection do you have with Grace Church, Haddonfield?
A. Vestryman. 20
Q. How long have you been a vestryman?
A. About 10 years, I should say 10 or 11.
Q. Have you held any office in the vestry?
A. Not in the vestry, I am missionary treasurer, but that is hardly an office in the vestry.
Q. You were a member of the vestry on February 11, 1924, weren't you?
A. Yes.
Q. Were you present at a meeting that day when Mr. McNeill's proposition in regard to this Collingswood lot came up?
A. Yes. 30
Q. Did you vote on that proposition?
A. I did.
Q. How?
A. For it.

Q. Going back prior to that meeting can you recall whether or not Mr. McNeill had brought before the vestry the matter of the adjoining owner to that property desiring to acquire it?

A. It seems to me there was an informal discussion at one time in which it was mentioned by him, although I am not certain of that, that this nearby owner wanted to square his lot, something of that kind, that is about all I can recall, but there was, 10 about a year before the final passage of this motion, some discussion of that kind, but nothing was done, it was merely informal.

Q. Why wasn't anything done?

A. Well, as far as I could ever understand the lot was so tied up nothing could be done with it; I had by hearsay heard and the question had been brought up at various times and it was thought nothing could be done in putting a church there or clearing the title—well, it was in our possession 20 but it wasn't an asset at all.

Q. Was it this reason or some other reason that resulted in there being no action taken on this discussion you mention?

A. I imagine so. When I got in the vestry I got the general impression that this had been talked about before.

Q. Did you consider the proposition made by Mr. McNeill to his vestry of February 11, 1924, was a fair proposition to the church?

30 A. I felt it was.

Q. Do you still consider it was a fair proposition at that time?

A. I do. As a matter of fact, the way I felt about it, here was something doing us no good, as a matter of fact, we didn't own the property, it was in the possession of the Borough of Collingswood, taken, as I gather it, for taxes, and here was an oppor-

tunity to get some advantage to the church without any costs, and we stood to win everything and lose nothing.

Q. You still feel that way about it?

A. Yes, as of that time.

Cross-examination.

By Mr. Wendkos:

Q. Mr. Walton, if you had known in 1923 there was an offer of \$7500., a bona fide offer of \$7500. for that lot would you still have considered the proposition which Mr. McNeill made a fair one? 10

A. No, of course, I couldn't have considered it if I had known there was a bona fide offer of such an amount.

Q. Did Mr. McNeill ever inform you either individually or in the vestry that he had an offer of \$7500 or thereabouts for that lot? 20

A. There was no amount ever mentioned of that kind. I think I answered that a moment ago when I stated there had been some informal discussion as to someone trying to square their lot.

Q. Who started it?

A. I don't know, it was a discussion in the vestry at the time, merely informal.

Q. You also were of the impression you had nothing to sell?

A. I knew we had been originally in possession of that property but, of course, it was long before I ever came into the vestry I knew we had possession of that property but I had been told it had passed into the possession of Collingswood for assessment of taxes; I knew we had some interest that might be of value if it could be used. 30

Q. During your term as a vestryman was the

proposition ever discussed about building a church on that lot?

A. It seems to me every time—if I can recall correctly—every time something was mentioned about it the fact that it was not in an advantageous position for a church was mentioned, although I can't say that was gone into very thoroughly. My opinion was it was of no use for a church property.

10 Q. Do you know whether the vestry ever intended to consider the building of a church on that property?

A. During my term of office, which was only 4 or 5 years before this proposition came up, there had been no consideration of that kind at all, that is, no thought of ever putting up a church there.

20

LEFEVRE W. DOWNING, recalled.

By Mr. Wendkos:

Q. Mr. Downing, during your term as a vestryman did the vestry of the church ever consider the proposition of building a church on that particular lot?

30 A. Never, not to my knowledge. The nearest approach to that was they tried to establish a mission there but that never amounted to anything.

ARTHUR Y. McNEILL, recalled.

By Mr. LeDuc:

Q. You live in Haddonfield?

A. Yes, sir.

Q. I think you stated you are the senior warden for Grace Church and have been so for a period of how many years? 10

A. About 10 years.

Q. And prior to that a vestryman for a great many years?

A. Prior to that junior warden.

Q. Do you recall Mr. MacClelland of the Collingswood Realty Company either telephoning or writing you in January, 1923, to the effect that his company was interested in acquiring the lot owned by the Grace Church of Collingswood in order to square out his adjoining lot? 20

A. Yes, sir.

Q. Did you advise the vestry of Grace Church of such an inquiry?

A. Yes, talked of it informally, but nothing was done because we considered by reason of the trust condition we had nothing to sell.

Q. Why did you conclude that you had nothing to sell, on what ground, if any, did you reach that conclusion? 30

A. Because of the long number of years of association with our previous senior warden who was then counsellor for us the statement was made by him —

Q. Whom?

A. George J. Bergen, the statement was made by him to the vestry that because of the trust condition,

it would be very difficult and even almost impossible to remove it.

Q. I show you a letter offered in evidence as Exhibit C6, bearing date February 5, 1923, addressed to you—I am showing you a carbon copy of it—Collingswood Extension Realty Company on the bottom, and ask you to read that letter and state whether or not you received it.

A. "Mr. A. Y. McNeill" ——

10 Q. Don't read it out loud.

A. What is your question?

Q. Did you receive that letter?

A. I have no recollection of receiving it, but I presume I did. It had very little significance to me because of the trust imposed and we simply passed it up, but the matter was, however, taken before the vestry, and discussed informally but no action was taken.

20 Q. Did anything occur later on to make you change your mind as to the possibility of selling this land?

A. Yes, my recollection is that I referred the matter to you and asked you whether such a thing was possible by due process of law, whether there was any likelihood of removing a trust imposed by the original deed to Grace Church.

Q. Can you state when that was?

A. The latter part of 1923, presumably in December.

30 Q. What did you do then?

A. I asked you to look into the matter further and report to me, and my recollection is that you did, and your reply was it was possible, though remote, however, it was worth looking into, which I then told you to proceed.

Q. Now did you give any proposition to the church after getting that advice from me?

A. A regular proposition was drawn up and submitted by me to the church, which was considered by the vestry in my absence; as I recall, I was even ushered out of the building so I wouldn't be a party to the agreement.

Q. Now at that time had you any private or secret information in regard to the value of the lot you proposed to buy from your church?

A. Absolutely not. As a resident of the town for nearly 40 years, and connected with the church that entire length of time, my motive was to put Grace Church in the possession of funds which heretofore they had not been able to realize upon, and I was willing to hazard my money in litigation and make Grace Church a contribution in addition to that in order to find out whether such a thing would be possible for the benefit of the congregation. 10

Q. Did you know anything about this lot which you failed to communicate to your vestrymen? 20

A. Absolutely none.

By the Court:

Q. Did you tell them you had an opportunity to get \$5000. or more if the title could be made good?

A. The matter was discussed upon the receipt of this letter in an informal way; the matter of price was absolutely insignificant to me because we had nothing to sell until the matter could be put in such shape when the matter could be considered by the vestry on a dollars and cents basis. 30

Q. The thought is in my mind why the vestry would sell it to you for \$1000 when somebody else was willing to pay \$5000, the expense of getting title, if it could be gotten, surely wouldn't be \$4000, so the thought occurs to me if the vestry had known

that somebody else held it at \$5000 that it would occur to them they could have made a similar proposition to that which you made for more than \$1000.

A. May I answer, your Honor?

Q. Yes.

A. The answer to that is that nobody knew the cost of the litigation in advance, and nobody on the vestry as a body had the right to hazard the finances of the parish itself for the acquisition of
10 anything so speculative, and we had no guarantee for a year after that proposition that the title could be cleared, and in the meantime the church had the \$1000.

Q. This is the thought that occurs to me, and I would like to have you explain it. I am assuming I might have been the owner of that property, the same as the church was, with a title that was very embarrassing and that might have been of no value at all, but that there was a possibility that the title
20 could be made good through some legal proceeding, and someone said to me, "I will take the necessary expenses, assume the necessary expense to take the legal proceedings, and if title can be made good I will give you \$1000," I should have thought that was probably a pretty good offer and would have been inclined to accept it if I had known nothing else, but if I had known at the same time somebody else held it at \$5000 I would have said, "No, it will not cost \$4000 to find out whether a good title could be made
30 and therefore I should charge more than \$1000."

A. It is purely a speculative amount, I didn't know in advance the cost of fees and expenses of the litigation; I was hazarding my money for the benefit of the church.

Q. You hardly estimated them at \$4000, did you?

A. I didn't know what it would be, I was after the

proposition to let the church benefit by it, as my actions in the community will indicate.

Q. Didn't it seem to you the church could have done better on the \$5000 than on the \$1000?

A. The proposition was offered to each of the other vestrymen to do what I did, it was not a scheme of my own, I was the Senior Warden, and I was trying to bring this proposition into a money bearing value.

Q. The point is why didn't you see whether 10
you couldn't get a better offer from these people who wanted to straighten out their lines?

A. I thought we had nothing to sell.

Q. They weren't to get the \$1000 unless the title was perfected?

A. Yes, they were, my proposition to the vestry was \$1000, win or lose.

Q. \$1000 for the chance on it?

A. Yes, sir.

Q. But there already had been given to you an 20
opinion there was a likelihood that that title could be cleared?

A. Yes, that is the reason why I released the \$1000, based on the opinion; there was no guarantee or any assurance.

Q. It seems to me if I had known of that other offer and had represented the church that I would have said to them, "Won't you make us a better offer than that?" I would have said to them that Mr. LeDuc had said to me there was a chance of this 30
title being made good, now, can't you make a better offer than \$1000?

A. That would have been the better judgment, but your judgment isn't always good in the matter of jump conclusions. It was furthest from my mind that any offer would be under the intrinsic value of the ground; if it is a matter of price and the

price was underestimated I am still ready to make good my original grant and make good any unpaid price. My interest was to let the church benefit.

Q. How long after that was it you got the \$30,000?

Mr. LeDuc: 2½ years after the agreement, if the Court please.

10 The Witness: A lot has taken place in Camden County in that respect in the matter of values.

The Court: The difference between \$1000 and \$30,000 is out of proportion, ordinarily. I don't know about this, but I know values doubled but they didn't go thirty times in this locality.

By Mr. LeDuc:

20 Q. What was it, Mr. McNeill, you actually paid in legal fees and expenses in order to clear off these trust restrictions?

A. The first item was a tax bill of \$800, which I think was settled by an adjudication of \$500, the matter of expenses and legal fees, as I recall, was approximately \$1000 and my gift to the church was \$1000, which made a total valuation of approximately \$2500, and as against that \$2500, if my memory serves me rightly, there was an appraisal
30 at the time of this ground having been sold by the church to me of about \$2500 or \$2200, as I recall it.

The Court: An appraisal, did you say?

The Witness: Yes.

Mr. LeDuc: It is in the record, if the Court please, before the Master.

The Court: In the Master's proceedings?

The Witness: Yes, sir.

Cross-examination.

By Mr. Wendkos:

10

Q. How much did you pay in taxes?

A. About \$500, I think. You mean in tax adjustment?

Q. Yes.

A. Approximately \$500.

Q. Do you know why that adjustment was made?

A. Based upon, as I presume, as I understand municipalities, they would be glad to give a discount on accrued taxes rather than have it on their tax books in the shape of a sale or expense; it is quite customary for boroughs to discount delayed taxes over a period of time, within a reasonable sum. 20

Q. Wasn't it represented to the Borough of Collingswood that the church was paying these taxes?

A. Not to my knowledge, sir. I don't know why it should be, the Borough of Collingswood, or any other borough, isn't interested in the source of the money, it is simply a matter of debit and credit.

Q. Now, you say immediately after the receipt of that letter you discussed with the vestrymen informally the question of the adjoining owner taking the land, is that right? 20

A. That is correct.

Q. Not before the receipt of it, but after the receipt of it?

A. It couldn't be discussed before.

Q. But after the receipt of the letter?

A. After the receipt of the letter, correct, sir.

Q. I want to ask you a very pointed question. Why didn't you disclose the price to the vestrymen?

A. From the fact that over a period of 38 years when this matter had been discussed in 3800 different angles that we had nothing to sell until the title in the trust restrictions was removed, and it made no difference to me, and I hope to the rest of the vestry, because it was insignificant until the title was cleared up.

Q. As a matter of fact weren't there incumbrances on the church property, on the church property in Haddonfield, amounting to \$7500 at that time?

A. I think there were.

Q. Wouldn't it have been a wonderful thing if that \$7500 derived from that offer would have paid off the incumbrance?

A. An income from any source would have been delightful.

Q. Wouldn't it have been a wonderful thing for the church if the money derived from that offer was used to pay off the \$7500 incumbrance?

A. It is a wonderful thing to dispose of any obligation.

Q. Certainly, it would be. And, notwithstanding your knowledge of the matter, you refused to divulge the offer?

A. Absolutely not. I am not sure the figures were not mentioned myself, sir, in a purely informal way.

Q. You have heard these men testify?

A. That is a matter of years ago and the matter of price wouldn't be indelible upon their minds at this late date.

Q. Do you, Mr. McNeill, realize you are implicating the rest of your vestry by your answers?

A. I did not intend to, sir.

Q. How long were you associated with the church?

A. How long?

Q. Yes.

A. About 35 years.

Q. In all that time did the church ever consider the proposition of building a church, chapel, mission house, or any other structure, mentioned in the deed on that particular lot?

A. Absolutely not, with this qualification, that 10
the matter was talked over informally but nothing decided upon because of the irregular shape of the lot, it was practically impossible to build for that reason.

Q. What was the occasion for your talking about it?

A. It was ours by reason of a grant and whether we could utilize that privilege under which he heired the property we simply considered it because it was up to us as sponsors of the proposition. 20

Q. And when you found out it couldn't be used you practically gave it up, is that right?

A. Because of the fact that the taxes —

Q. No, because it couldn't be used for the purposes intended by the grantor you practically gave it up?

A. As far as our parish was concerned, but that didn't preclude —

Q. Wait a minute.

A. All right, excuse me?

Q. Isn't it a fact you paid \$600 for counsel fees? 30

A. I have no record of the figures in my mind—
if counsel will answer that question —

Q. I am asking you.

A. I have no knowledge of the amount of \$600 for counsel fees, it ran in my mind it was \$800, which included expenses; it may have been \$600 for coun-

sel fees, but the matter of amount had no significance to me, sir.

Q. As a matter of fact, you were not paying the church for a conveyance of that property, were you?

A. That is what my agreement intended to do.

Q. Wasn't your intention to make the church a present of \$1000 if, through your own efforts you could perfect the title.

A. If, or without, or anything else.

10 Q. All you were interested in was to get the land?

A. To get the money for Grace Church.

Q. You were more interested in getting the land, weren't you?

A. No, I wasn't interested in getting the land.

Q. Now, the negotiations with the Collingswood Extension Realty Company commenced about January, 1923, didn't they, between you and they?

A. The letters offered in evidence would show that.

20 Q. That letter I just showed you was dated February 5, 1923?

A. Yes.

By the Court:

30 Q. I want at this moment to inquire what you mean by the last answer, that you weren't interested in getting the land, I can't see why you took the land if you weren't interested in doing it, if you wanted to give the church \$1000 why didn't you do it?

A. Your Honor, by reason of the terms of the gift I gave the \$1000. to Grace Church, win or lose, on their willingness to accept the proposition.

Q. Your prospect of getting the land must have entered into it?

A. Yes, because I was advised by counsel such a thing was possible, though remote.

Q. But the very fact of getting the land entered into the agreement, the very fact that the land was to come to you, if you succeeded, showed there was some value attributed to it?

A. Isn't it perfectly logical the proposition should weigh both ways, or hit a balance?

Q. You knew perfectly well if you did succeed in getting the land you could sell it for probably over 10 \$5000. by reason of this former offer?

A. According to this offer I did, but I wasn't interested in selling it then.

By Mr. Wendkos:

Q. "In consideration of the agreement of the party of the first part to sell"—meaning the church vestry—"the party of the second part agrees to pay"—meaning you—"the sum of \$1000 at the time of settlement, and further, to pay all taxes assessed, with interest and cost thereon standing against said property at the time of settlement, as well as all legal expenses involved in order to clear the title, and take any legal steps to clear the said title, and as aforesaid, the said party of the first part not to be liable in any event to pay the assessment, or legal expenses, which he may have paid or incurred in clearing the title according to this agreement." So you were not to pay that \$1000 unless you got clear title? 20 30

A. That is not my understanding.

Q. It says so right here.

A. That was not the spirit, the money was to go to the church despite the fact whether the title could be cleared or not.

Q. Why didn't you pay the money before you received the deed?

A. Does a business man do that?

Q. How long were those negotiations pending with the Collingswood Extension Realty Company beginning with January, 1923?

A. I should say a matter of a year.

Q. Any longer?

A. Approximately a year.

10 Q. About 1924?

A. What was your question, sir?

Q. Were there any negotiations between you and the Collingswood Extension Realty Company in 1924?

A. What was the date of my agreement with them?

Q. I don't care about that, were there any negotiations?

20 A. The negotiations were made from the date of the starting until the agreement was executed.

By Mr. LeDuc:

Q. When was the start of the negotiations?

A. About December, 1923.

Q. Negotiations with whom?

30 A. There was only one negotiation to make, that was the negotiation with the Collingswood Extension Realty Company, they wrote to the vestry concerning an offer of squaring up, or buying, or selling.

Q. A letter has been offered in evidence dated February 5, 1923.

A. My recollection is Mr. McClelland's representative came in to see me personally concerning this situation and this letter put in concrete form any proposition of theirs.

Q. The testimony of Mr. McClelland is there was no answer to that letter you have before you.

A. That is possible.

Q. You did not answer that letter?

A. I have no knowledge of it.

Q. You weren't in touch with him after that?

A. His man was in to see me regularly on a matter of ten days apart for a matter of two or three weeks.

Q. You gave McClelland a deed in October, 1926, 10—the Collingswood Extension Realty Company?

A. 1926.

Q. October, 1926, the deed is offered in evidence and bears that date. Now, having that in mind, I ask you were you in negotiation with McClelland throughout this entire period during 1923 to the latter part of 1926?

A. Give me that question again.

(Question repeated.)

20

A. Not after proceedings had been started in order to clear the title.

Q. As far as you can recall how long before this deed was given to the Collingswood Extension Realty Company were you negotiating with McClelland for the ground?

A. For that time less the time the litigation was on, from December, 1923, from the time the Court of Chancery took up the subject of title.

30

The Court: I think the record might show, in order to make things clear, that the petition filed in the Court of Chancery for the sale of this land was filed April 10, 1924; the Master's report was filed October 30, 1924. I don't see any confirma-

tion of the Master's report. Haven't you scattered these since the files have been there?

Mr. LeDuc: I don't think so, the files themselves are not always in order.

The Court: The order confirming the Master's report, December 8, 1924.

10 By the Court:

Q. I wanted to ask this witness another question. This letter of February 5, 1923, to you from the Collingswood Extension Realty Company, in the body of the letter it refers to the offer being in behalf of the Collingswood Extension Realty Company, of which I am president, the board of directors of that company authorize me to make your church an offer of \$40, a front foot, and that letter is addressed to you personally and not the church, but you understood it to be an offer to the church?

A. Yes, and that is the reason it was discussed informally.

Q. On this letter in pencil there is Mr. LeDuc's name and address, and telephone number, is that in your handwriting?

A. No, sir.

Q. And down at the bottom there are some pencil notations, are they yours?

30 A. No, sir, absolutely not, it looks like McClelland's writing.

Mr. LeDuc: It may be stipulated that the writing of my name and address is by an officer of the Collingswood Extension Realty Company, Mr. Green.

Mr. Wendkos: Mr. Green is a director and officer of the Collingswood Extension Realty Company.

By Mr. LeDuc:

Q. Referring to this letter of February 5, 1923, to which Mr. Wendkos has referred in his examination of you, and the fact that the agreement of sale to the church was entered into February 11, 1924, 10 over a year later, I ask whether or not the offer that letter embraced was in your mind at the time you made your contract with the church?

A. Absolutely not.

Q. Had you had any negotiations of any kind in the intervening period?

A. They had been to my office, written me letters about it, and my answer was always the same, we had nothing to sell.

Q. I am asking you after that letter was sent 20 which McClelland testified no answer was given, was he in touch with you after that?

A. Yes, he came in once in a while, wanted to know if anything was new.

Q. What did you tell him?

A. I told him the matter had to be cleared up by the court before the vestry could do anything.

By the Court:

Q. I still have a feeling I would like to have you 30 remove if the facts justify it. It seems to me, if I had been a member of the vestry of that church and received that offer in writing addressed to me for the church, addressed to me as a vestryman of the church, and referring to it as an offer to the church, I would have felt it my duty to take that

letter to the first vestry meeting and show it to them.

A. That was practically done.

Q. In order to show them what sort of an offer had been made me. Now, why didn't you do that?

A. It was discussed informally. I don't know that the original letter was not handed to them, I have no knowledge of that, it is quite likely that is exactly what happened, and in further answer to
10 your question again, the vestrymen were of the opinion that I was, that the trust restriction made it impossible to do anything with it, so the price offered had no bearing on it.

Q. In view of this formal offer, which had been reduced to writing, after prior discussions, because the letter itself refers to prior conversations, don't you think that the writer of that letter was entitled to an answer from the church clerk, entitled to some action on the part of the vestry, there stating you had nothing to sell, or stating that you
20 couldn't entertain the offer?

A. The ruling of the vestry was probably—"Mr. McNeill has been handling this and let him take it up with the buyers and tell them we have nothing to sell." Those things are not always handled by correspondence.

Q. Had there at that date been any opinion procured from anyone as to whether there was any possibility of straightening that title?

30 A. What date was that?

Q. That date of that letter?

A. No, I don't think there had.

Q. Are you sure?

A. The dates don't mean a great deal to me, my recollection is the matter of the title came up in the latter part of 1923, and this letter bears date February, 1923. If it had been discussed it was purely

problematical whether it could be done at all; no definite answer had been given concerning the fact of whether it was possible, there was a chance.

Q. When did you first consult Mr. LeDuc in the matter?

A. I recollect about the first of 1924.

Q. You are quite sure it wasn't before that?

A. It couldn't have been a month or two before that, as early as November or December, 1923.

Q. The petition, of course, wasn't filed until after you concluded your agreement with the church. The date of the filing of the petition is April 10, 1924. 10

A. Your Honor, wouldn't the petition have the date after the agreement with the church was executed?

Q. It wasn't until after that the petition was filed?

A. That was filed when, sir? I would have to inquire from the attorney of the legality of doing it before the correct move was made. 20

By Mr. Lloyd:

Q. Mr. McNeill, when was the first you received any offer, or any negotiations from the Collingswood Extension Realty Company?

A. According to the evidence submitted by Mr. McClelland's letter that was in, I think, February, 1923. 30

Q. That speaks of some prior letter and some conversation.

A. A matter of a few days before that his representative had been in to see me, a matter of a week.

Q. His representative, after this letter was writ-

ten, saw you off and on continually for a period of about a year?

A. Mr. Green, his representative, is in court, and he can tell us when, sir; I can't recall it, but that is correct, he was in and out to see me many times during the entire period.

Q. This piece of ground assumed rather a strategic position, didn't it?

A. For what?

10 Q. For the benefit of the Collingswood Land Company's land?

A. Yes, but not for church purposes, right.

Q. And the Collingswood Land Company were anxious to get it and they communicated that fact to you?

A. Right.

Q. Now, who was counsel for the church at that time?

A. At the time of these negotiations?

20 Q. Yes.

A. We had no counsel.

Q. Do you know whether or not a legal opinion was ever received by the church after these negotiations were submitted by you to the vestry?

A. I presume Mr. LeDuc took it up with the vestry, as the sponsor of this agreement I don't know whether I was present at such a meeting, being a party to the agreement I wasn't permitted in the meeting.

30 Q. Before this time do you recall to whom in the vestry you called attention to the fact that the Collingswood Extension Realty Company was so anxious to get this piece of ground?

A. The matter was informally discussed by the vestry, the fact we had the property, title was in our name, the vestry knew they owned the property subject to these tax assessments.

Q. There was a bona fide offer in writing of roughly \$6000 for this piece of property?

A. Right.

Q. Did you when you went to Mr. LeDuc for your opinion obtain from him any idea as to what his fees would be?

A. No, sir, I am not in the habit of asking counsel in advance their fees, the type of counsel selected is well worth their charges.

Q. You had no idea of what his counsel fees 10 would be?

A. No, sir, my motive was first to give Grace Church the benefit of this thing that had been standing —

Q. That is, to give them \$1000 if you could get the property?

A. It didn't make any difference, according to the agreement it is if I did, but that wasn't my understanding.

Q. When was the money actually paid to the 20 church, do you recall?

A. That I don't know, I presume shortly after the completion of the agreement.

Q. Was that, do you recall, at the time of final settlement?

A. That was at the time counsel would instruct me the money was due his clients.

The Court: When the deed was made?

30

The Witness: No, I would be instructed by counsel, according to the agreement.

The Court: Was it paid until the deed was made?

The Witness: That I don't remember, sir, the records would have to show that.

Mr. LeDuc: It was paid at settlement, your Honor.

The Court: The settlement was after title had been conferred by the Court?

10 Mr. LeDuc: That is correct.

Q. Then it wasn't paid between the time of the authorization of this agreement and confirmation by the Court, at any rate, which was December 8, 1924?

A. I can't answer the question, I paid the bill when the bill was due by the agreement we took, that is the time I paid the \$1000.

Q. Now, did you ever suggest to the vestry that they obtain counsel to get an opinion similar to the opinion you apparently received from Mr. LeDuc?

20 A. Mr. LeDuc represented the vestry.

Q. In this transaction did he represent the vestry or did he represent you?

A. The vestry, Mr. Lloyd, had no particular counsel outside of Mr. LeDuc. In other words, the vestry knew that Mr. LeDuc was representing me, he was anxious to do something in behalf of the vestry and since no other counsel was required there was no necessity of calling in additional counsel because the matter was so friendly.

30 Q. Do you recall any one specifically, Mr. McNeill, to whom you conveyed the information about this letter of February 5, 1923?

A. When the figures were mentioned?

Q. Yes.

A. No, the matter was informally discussed and the chances are the letter was read.

Q. Before you entered into this agreement with the church did you obtain an option from Mr. LeDuc?

A. About what?

Q. About clearing up the title to it?

A. Before I entered into the agreement with the church, and the date of that agreement is what?

Q. February 11, 1924.

A. As I recall it, in going out on the train one night I asked Mr. LeDuc, "Is it possible to do anything with the Grace lot in Collingswood, it has been standing still a number of years and I think something ought to be done to put it in motion," and he said, "It is possible, but not at all sure," and I went before the vestry and I said, "This is anybody's opportunity, but I do want to put the Grace Church in possession of some funds which I believe that property is worth." 10

By the Court:

20

Q. On December 8, 1924, that sale was confirmed and you knew then your title was perfect, and the settlement made very soon after —

Mr. LeDuc: March, 1924.

The Court: What date?

Mr. LeDuc: March 25, 1925.

30

Q. Everything had been completed on that date and it had cost you approximately \$2500, and at that time you knew you had a perfect title, that it had cost you only about \$2500 all told, including the \$1000 you paid to the church, and you knew then you could sell it for at least five or six thou-

sand dollars to this land company, and didn't you feel under any obligation to say to the vestry, "You might have the benefit of this offer that was made to you ahead of mine, and have the difference between what it has cost me and \$2500 and the five or six thousand dollars you now can get for it," did you feel that duty was due to the church or not?

10 A. No, for the reason that the sale had not actually taken place, nothing had been completed, I could not naturally say to them, "Now, I have made some money on this, now, you come along with me."

Q. Still later you were able to sell it for \$30,000, didn't you feel the vestry ought to have some portion of that, at least?

20 A. According to my agreement, as I had hazarded a chance of the expenses of the litigation, it was purely a financial proposition, and what I proposed to do with my asset rested with me to treat the vestry in the church perfectly square.

By Mr. LeDuc:

Q. Mr. McNeill, prior to the time you say I advised you there was a chance of removing these trust restrictions had anyone else advised you in a similar way?

30 A. Absolutely not, I never invited anybody, never asked anybody, considered it over a period of twenty years absolutely impossible.

Q. Had you had advice from the solicitor of the church, Mr. Bergen, in regard to the removal of these?

A. He had told us over a period of many years it was next to impossible that such a restriction could be removed. I think in explanation of that statement was the fact at that period, so many years

ago, the ground was of so small a value and the assessments against the ground were so great it wouldn't warrant them getting something that wasn't worth it.

The Court: At the time your agreement was made Mr. Bergen was not alive, was he?

The Witness: No, I succeeded to his position as Senior Warden of the parish.

10

Q. I was your personal attorney at the time you made the offer to buy?

A. Yes, sir.

Q. And I represented the church only in so far as —

A. Because of the fact the church had absolute confidence in you and me you were in a dual capacity.

Q. My only representation of the church was for 20 the purpose of clearing the title, wasn't it?

A. That is right.

LEFEVRE W. DOWNING, recalled.

By Mr. Lloyd:

Q. Mr. Downing, how long did you say you have 30 been a vestryman of Grace Church?

A. Possibly 15 years or more, maybe longer.

Q. During 1922 and 1923 were you a vestryman?

A. I was.

Q. Were you Junior Warden at that time?

A. No—maybe I was Junior Warden at that time, yes, I think I was.

Q. Did you attend the meetings regularly?

A. Yes.

Q. During that time?

A. Yes, I think I did; some I missed.

Q. I show you a letter dated February 5, Exhibit C6, and ask you if you ever saw that letter?

A. I think not to the best of my knowledge and belief, I did not.

10 Q. Did you ever hear of an offer of \$40 a front foot being made in February or subsequent thereto up to the time of the making of this agreement with Mr. McNeill?

A. Never heard of any bona fide offer of any price.

Q. Did you know that anyone was anxious to acquire title to this piece of property?

A. No, I can't say positively; there were informal discussions, once, I think I recall, someone wanted to square up their ground, and that is all I know of it.

20 Q. Were there any figures mentioned?

A. No, sir.

By Mr. LeDuc:

Q. I want to ask one question I omitted on direct examination. You were the financial officer of the vestry in 1925, weren't you?

A. Yes, sir.

30 Q. Can you state what was done with the \$1000 paid by Mr. McNeill?

A. Placed in the Haddonfield Trust Company on a special deposit, it was there when I resigned as treasurer, to the best of my knowledge and it is still there.

Q. And was that an investment approved by the order of the Court of Chancery, do you know?

A. No, we just simply held the funds, we were instructed we couldn't use the funds, and we placed it there on special deposit.

Q. Couldn't use them for any purpose?

A. We were restricted in using the funds, an injunction of some kind.

Q. That is on time deposit at the Haddonfield Trust Company?

A. Yes, sir.

By Mr. Lloyd:

10

Q. That is in accordance with the 1905 Act that these proceedings—that the title of this property was cleared up by?

A. I don't know about that.

The Court: Mr. Lloyd, the answer filed by the church was filed by Mr. LeDuc; you have since been substituted, I understand?

20

Mr. Lloyd: Yes, sir.

The Court: Now, this answer seeks a dismissal of the bill, it seeks to have the decree in this case of such a nature that the church cannot by any possibility profit by this money going to the church, in other words, the answer of the church is practically the same as the answer of McNeill. Now, if the Court should be of the opinion that this deed was void as between the church and McNeill by reason of his trust relationship to the church, and by reason of his failure to perform his full duty as a trustee, or warden, or vestryman of the church, then it might be that the church would become entitled to a considerable sum of money from Mr. McNeill of all the profits he has made in this trans-

30

action, but your answer, as it now stands, will, as I take it, deny to the church any such recovery.

10 Mr. Lloyd: If the Court please, I came in the case the night before last, and I understood the facts to be set forth in the answer. In court here this morning they have developed differently and, I think, in justice to my client, I should ask for an adjournment to properly prepare a new answer to correspond with the facts as they are now shown, and pray for certainly a resulting trust or, at least, that I have an opportunity to think it over. These facts are entirely different from anything I had been informed about.

20 The Court: It is quite possible, in case Mr. McNeill is held to be accountable for this profit he made, the money will go to the church instead of the Cuthberts. In other words, supposing we should find that this decree of the Court of Chancery has perfected this title so that the conveyance was absolutely perfect, and conveyed a perfect title, and that the present owners of this title have therefore a perfect title to this property by reason of the decree of the Court of Chancery made pursuant to the statute. Now, supposing we should find, also, that under the authority of *Stewart v. Lehigh Valley Railway Company*, and the very many decisions of our Court of Appeals along the line of *Stewart v. Lehigh Valley Railway Company*, that Mr. McNeill was not entitled to profit in this transaction
30 by reason of the fact that he was a vestryman of the church and had trust duties to perform and therefore must account for any profits he has received, my present impression would be that that money would go to the church and not to the Cuthbert estate. That is just a present impression;

and I mention it now because it seems to be now, at least, a matter worthy of consideration.

Mr. Lloyd: That was my thought in suggesting paragraph one, but I had no idea the facts would be as they are developing.

The Court: What is the attitude of counsel touching the application to amend the answer?

Mr. Wendkos: I think, if the Court please, this is taking an undue advantage. This matter was set down for the 17th of January, I think that was the date, and sometime prior to the date set down for trial a motion was made by Mr. LeDuc before your Honor, and at that time I conceived certain phases of the case which I did not have prior to the argument, and I believe Mr. LeDuc did also, and he had ample opportunity to engage counsel for the church, and if I recall, Mr. LeDuc stated to your Honor in chambers, and feels now, he should engage other counsel for the church; now, to come at this late date; waiting until the eve of trial, and have other counsel enter upon the suit and then that counsel ask for an adjournment, I think that is taking an undue advantage.

Mr. LeDuc: Let me say the only reason that Mr. Lloyd was called in at the last minute was because other counsel who had been selected to represent the church was unable to be present today because of a long drawn out trial at the Gloucester County Circuit. Immediately after the argument was made on behalf of my motion to strike, and with the consent of the church—rather, the church employed Mr. Ralph Wescott, who was prepared to go ahead, no substitution had been made, but

he was acquainted with the facts, but at the last minute he got tied up with a long railroad case, and then at the last minute we felt it necessary to call upon Mr. Lloyd. Mr. Lloyd has been brought in hurriedly, and necessarily at the last moment.

The Court: Is there anything more to be offered today?

10 Mr. Wendkos: Here is my contention relative to Mr. LeDuc's statement. Immediately after the argument, Mr. Stockwell, Mr. LeDuc and myself appeared before your Honor, and it was my understanding —

Mr. Stockwell: I don't think I was around.

20 Mr. Wendkos: Yes, sir, Mr. Stockwell was engaged for the church, and we appeared to have the date changed because Mr. Stockwell produced a memorandum showing it was impossible to try it at that time.

30 The Court: It is almost impossible not to be convinced by Mr. Stockwell's appearance, he seems to be shocked at your suggestion, his attitude is very convincing. Let us finish with whoever is here today. I am going to have the church protected in this case if it needs protection. Is there anybody else to testify today?

EDGAR CUTHBERT, recalled.

By Mr. Lloyd:

Q. Mr. Cuthbert, when you, in your prior testimony estimated the value of this ground was \$2200 —

A. Yes.

Q. Which I believe is right, is it, you had no knowledge of any offer such as \$6000 being made for it?

A. No, I based my price on what I sold my place for across the street.

Q. You didn't know at that time that this particular piece of ground was being sought after by the Collingswood Extension Realty Company?

A. No, absolutely not.

Q. You did not know?

A. I thought the church was getting something out of it.

The Court: You didn't know of their offer of four or five thousand dollars?

The Witness: No, sir.

JOSEPH WALTON, recalled.

By Mr. Lloyd:

Q. Mr. Walton, did you know that an offer of roughly \$6000 had been made for this piece of ground?

A. I didn't know of any offer of any kind.

Q. No offer at all?

A. No.

Q. That is the reason you thought this arrangement of \$1000 —

A. Was a good one for the church.

Cross-examination.

10

By Mr. LeDuc:

Q. The fact that an offer had been made by an adjoining owner was known to you, wasn't it?

A. An offer to square, someone in the vicinity wanted to square their lot.

Q. Why weren't you interested in inquiring at what price the adjoining owner was willing to buy?

20 A. There was no reason for me to ask why because I was given to understand we couldn't do anything anyhow, no matter what he would offer.

By Mr. Lloyd:

Q. The vestrymen had no counsel at that time, did they?

30 A. No, sir, I don't think we ever had counsel, except as there happened to be a lawyer on the vestry.

By Mr. LeDuc:

Q. This was about a year prior to the actual agreement made with Mr. McNeill?

A. Yes, sir.

By Mr. Wendkos:

Q. Who was the attorney on the vestry?

A. None to my knowledge since Mr. Bergen's death, he was the last we had.

Q. Did the church engage counsel at the time of this agreement with Mr. McNeill?

A. It was the proposition brought to the vestry by Mr. LeDuc who was Mr. McNeill's counsel and we felt he was acting for the whole outfit. 10

Q. Did you authorize him to act for the church?

A. I believe the minutes will show for that, I don't know, but I think they should appear on the minutes.

By the Court:

Q. At the time the agreement was made with Mr. McNeill did he inform the board that Mr. LeDuc had advised him that there was fair prospects of getting a good title to this property? 20

A. No, my thought was and always had been that he wanted to accomplish something that everyone else had given up, that was my impression, here was a thing a number of people had talked about and he thought he was good enough to go in and clear it up.

Q. And you looked upon this \$1000 as a gift?

A. Practically, yes, I thought it was a very good thing for the church. 30

Mr. Wendkos: I read from the minutes. "The following resolution, moved by Mr. Dowling and seconded by Mr. Cuthbert was after full discussion unanimously adopted, resolved that Louis B. LeDuc of Camden, New Jersey, be employed as counsel for the corporation," etc.

The Court: That is one of the several resolutions that were passed to put the agreement through, about the same date?

The Witness: Yes.

The Court: The date of the agreement was when?

10 The Witness: February 4, if I am not mistaken.

By Mr. LeDuc:

Q. In connection with that resolution don't you recall that I stated that there was a very fair opportunity of removing the trust restriction by a suit?

A. I don't recall those words, but with you getting into it I felt there must be some chance or you
20 wouldn't be as interested.

By Mr. Lloyd:

Q. The vestry didn't have any legal advice at all, did it?

A. No.

Q. Independent legal advice?

A. No.

Q. Are there any other members of the vestry
30 here who have not testified?

A. No.

Mr. LeDuc: The defendant McNeill rests.

The Court: Well, I am very clear as to what my duty is, and I wish to discharge it, although it will involve me in considerable more trouble and time,

and possibly a great deal more labor, but I think in the present situation it is my duty to see that the church file an answer in this case under which it may receive any benefit that by any possible theory of the law can fall to it in the event of a decision which now looks to me as though it might be possible. I therefore think I ought to have the present solicitor for the church file an amended answer of that nature and require that it be done at once and that the case be finished at a day at this time fixed 10 so there will be no delay of more than a week or so by reason of the adjournment and by reason of the amendment. It is quite possible that at the subsequent hearing no testimony will be needed that has not already been introduced, but with a new answer on file everyone should have an opportunity to introduce new testimony to meet the averments of the new answer, if they desire. Now, in order that all counsel may see what I have in mind at this time that impels me to take this course, aside 20 from the fact that the answer which is now prepared was prepared by the same counsel who represents Mr. McNeill, with the understanding that the interests of him and the church were identical, and that the present counsel for the church is a substituted counsel appointed since the answer was filed, aside from that fact, which would seem of itself to call for an amended answer, my thoughts are these, which I only express in a tentative way. The 30 early and leading case in our Court of Appeals touching the duties of a board of management, whatever that may be, a board of directors of a corporation or, I apprehend—any board of a church who has charge of the business affairs of the church, when dealing with the corporation, are trust duties of a very high, and a very important, and serious nature by reason of the trust that is imposed upon

- such managing officers, and in this connection I would suggest that it might be best for proof to be made in this case showing exactly what the duties of a vestry of a church may be in the management of its business affairs. Perhaps we all know, but we don't know authoritatively, and it will be necessary, possibly, to prove it, unless counsel can agree upon it. In *Stewart v. Lehigh Valley Railway Company* it was held in effect that a director
- 10 of a corporation cannot deal with the corporation which he represents, it doesn't matter how much good faith may have been exercised upon his part, his contracts with his corporation are voidable at the instance of the corporation. The reason for that is perfectly plain. One cannot buy themselves, one cannot bargain with himself, he cannot in the capacity of an individual deal with himself as a trustee, and to the same extent he is prevented with dealing with the other members of the board.
- 20 He cannot by walking out of the room relieve himself of the duties and responsibilities of a director or trustee, those duties obtain in his absence just as they do in his presence, his contract with the board is subject to repudiation by the body itself that the board represents, at their option. That is the general principle, and that principle, I take it, is applicable in this case. Now, there is to be added to that the very, very important circumstance in this particular transaction that Mr. McNeill, who
- 30 purchased this property, from the evidence now in, appears to have known that if he got a perfect title to it he could in all probability turn it over to someone else at a considerable profit. He had received an offer in his capacity as a member of the vestry, he had received an offer which it was his duty to submit to the vestry, for five or six thousand dollars for this very land; as a member of

the vestry it was his duty to submit that offer, even though he might have thought that the church could not make a good title. When he did find, through Mr. LeDuc, that there was a possibility that the church could make a good title certainly a duty was present to submit to the vestry the fact he could get five or six thousand dollars, that they could get five or six thousand dollars for this land if a good title could be made when he was making a proposition to them that he would give them one thousand dollars and take upon himself the responsibility, and the expense, and the risk of procuring a good title, which obviously wouldn't cost him four thousand dollars, so it seems to me there is at least a strong prima facie case in favor of this church, first, upon the ground of the inability of the trustee to buy the property for himself at all in any kind of a fair or unfair manner; second, because of the possibility—and I am only referring to it now as a possibility—because of the possibility of a conclusion under the facts of this case that there was added incapacity, a duty cast upon him by reason of the offer that had been made to him to submit such an offer to the board before he accepted title to it under any kind of an agreement. I think that ought to appear as a defensive pleading of the church. There has been great delay on the part of the church in repudiating this transaction. Now, there may be some reason for that delay, there may not; that, perhaps, can be made a matter of defense upon the part of Mr. McNeill. It may be a matter that can be explained by the church. It appears today that the very first that anybody knew of this prior offer to Mr. McNeill has been very recently, so that there could be no repudiation by the church on the claim that this offer had been made to Mr. McNeill and had not

been communicated by him to the church prior to the time the church received the knowledge of the fact that the offer had been made, so there can be no laches there. The facts are that they have only recently received this knowledge, and it may be, too, that they haven't known until this suit was brought that Mr. McNeill has received \$30,000 for this property. That fact might excuse them from a more prompt repudiation, or, as the cases call it, exercising their option to declare the contract void, which is in effect a repudiation. Now, I think I am in the performance of a plain duty, although an onerous one, in making the provision for the amendment to this answer and a further hearing. Now, Mr. Lloyd, I will expect you to prepare an amended answer and serve it upon all adversary counsel within a week. Can you do that?

Mr. Lloyd: Yes, sir.

The Court: How long do you want to make any answer to that in case an answer should be desired?

Mr. LeDuc: I would say, if the Court please, five days.

The Court: Very well, that will make 12 days. Now, supposing I give you March 12, after motions, for final disposition of the cause. Will that be satisfactory, can everybody be ready by that time?

(At this point a further hearing of the matter was adjourned until March 12, 1928.)

Camden, New Jersey, March 12, 1928.

(Trial of the cause resumed, on the above date, pursuant to adjournment, in the presence of respective counsel.)

Mr. Joline: About a quarter of an hour ago Mr. Robb, of Burlington, who sits here, approached me in this case saying that he is one of the members of the Episcopal Fund of the State of New Jersey of which Mr. Pierce is another member, Mr. Pierce was the private secretary of the last Governor of New Jersey, Siltzer, and they seem to think maybe the Episcopal Fund of New Jersey has some interest in this matter. He said he got the papers from the Bishop of New Jersey, Paul Mathews, last week, and he immediately went to Mr. Eastwood, to look into the matter, as they were to appear here this morning, and Mr. Eastwood is sick and can't leave his home and he wants an adjournment of two weeks to find out whether they have any interest in the matter and whether they are concerned in any way.

Mr. Wendkos: If the Court please, I can't see where the standing committee or the Bishop is concerned in this matter; in the first place they have approved the sale of this property by affixing their signatures to an approbation; in the second place, there is in evidence a letter from the office of the archdeacon and bishop to the effect that they have waived any interest in the land whatever, they approved of the sale, they thought it was done in a legal fashion, and I don't see why at this late date they should come in and claim any interest either in the profits or the land.

Mr. Joline: Bishop Mathews is going to a hospital this morning, he has been very sick, and he is to have an operation performed, and that may be the reason for the delay on his part in sending the papers to Mr. Robb.

The Court: Were they made defendants in this suit?

10 Mr. Wendkos: No, sir, because of the correspondence in my possession. When I commenced the suit they were informed of the fact and they waived all interest whatsoever in the property and approved of the procedure.

The Court: I am not sufficiently familiar with the organization of the church to know just how far the property rights of individual churches are subordinated to the rights of the parent organization.
20

Mr. Wendkos: I think the statute fixes that. It has been some time ago since I examined the statute, but they begin with as early as 1799, if my memory serves me right the bishop simply has the power to approve sales, mortgages, and so forth, and, as a matter of fact, there is a printed form which comes from that office to be attached to any mortgage or lease which may be made by any church corporation, and I particularly recollect that that certificate, so called, was attached to the original deed that was put in evidence here at the last hearing. Why at this late date, having approved to the sale, after having forfeited all rights in it, after having informed one of the complainants they had no further interest in the matter, and they thought it was done in a legal fashion, why
30

should they come in at this late date and ask for a continuance in a matter in which they have no interest, and I don't think the statute gives them any authority?

The Court: Has there been an answer filed, a separate answer of the church?

Mr. Wendkos: I have received last Thursday a combined answer, not a separate answer. 10

The Court: Has there been a reply filed to that?

Mr. Wendkos: I have just filed my reply this morning.

Mr. Summerill: Since the last hearing the defendant, Arthur Y. McNeill, assigned to the church in Haddonfield the mortgage of \$24,000 which he held on the lot in question in order to show bona fides and good faith, in view of the fact he thought his actions were perfectly legal and straight, but in order to settle all doubt he assigned that to the church, and on the question of the latter there is somewhat of a communicative interest between the church and the defendant McNeill, and the answer is a joint answer by the church and by McNeill. 20

Mr. Joline: Mr. Robb says he can explain the matter to your Honor. I don't know anything about it, I simply come in here as his friend asking for the postponement. 30

The Court: I think they should be heard if they wish to intervene. I think it would be wrong for me to foreclose them by any ruling to the effect that they have no interest at this time; I think if

they have an interest, or claim an interest, or right of any kind they ought to be heard. It may be they can show that any consent which they filed was wrongfully obtained, that it was through inadvertence, or that it was void for any reason. I don't think I ought to prejudge their standing or interest in this matter without having them heard. I think they should promptly file a petition of intervention, or whatever document they are advised is appropriate, in order that their rights may be preserved. I have been wondering, Mr. Wendkos, whether or not you may not in all of this proceeding have erred in your failure to make a direct attack on the decree of the Court in the order of sale.

Mr. Wendkos: I believe I did, if the Court please.

20 The Court: In that case I think the church ought to be made a defendant.

Mr. Wendkos: The Bishop?

The Court: The supreme authority, whatever it might have been.

30 Mr. Joline: Mr. Robb represents the Episcopal Fund of the Diocese of New Jersey, that is a corporation that has to do with the property of churches.

The Court: I feel convinced that the supreme organization, whatever title that may have, or any organization of the church that might be entitled to funds that are in controversy here, has any claim of rights, they ought to be heard, otherwise they

would not be barred and it would perhaps occasion a rehearing. I think, if I were you, Mr. Wendkos, I would give some reflection to the suggestion I just made, that a decree of the Court of Chancery, once solemnly made, can only be opened in one way, and that is by a direct attack on the decree, and in that attack, of course, everybody interested would have to be made a party. I only make that suggestion for your reflection.

Mr. Wendkos: May I have the privilege in the form of an amended complaint? 10

The Court: I wouldn't want to pass upon that at this time. That occurred to me this morning as I was reading over this answer and I make the suggestion to you for your reflection. Any course you may determine to adopt, of course, I will hear you on, and in the meantime I think the supreme authority of the Episcopal Church, or any authority of the church who claims to have an interest in this matter, I think ought to be given a right to intervene, and probably the better course would be a petition for intervention. 20

Mr. Wendkos: Will your Honor fix the time?

The Court: Yes.

Mr. Joline: Mr. Eastwood is now sick, it may be the grippe, or something like that, that will keep him in bed a week or so; I simply get that from Mr. Robb who was unable to see Mr. Eastwood this morning. 30

The Court: I shouldn't want to deny Mr. Eastwood the privilege of himself representing the

church, but at the same time I don't think we ought to hold the case over for that; there are so many counsel that are entirely familiar with this, and I apprehend the attitude of the supreme authority of the church would probably be in harmony with the attitude of the defendant church, and they perhaps could operate together through the same counsel.

- 10 Mr. Joline: Mr. Robb tells me if Mr. Eastwood doesn't get well right away they will get other counsel. I would like two weeks postponement, because Mr. Eastwood has got to look into this matter.

The Court: Can't we arrange for a continuance of two weeks with the understanding that the new issues brought in will be ready for trial at that time?

- 20 Mr. Summerill: If the Court please, unfortunately, or fortunately, I am prosecutor of the pleas of Gloucester County, and Judge Swackhamer has set down criminal trials, and I will be engaged down there two weeks from today, and if it is convenient for your Honor I would suggest 3 weeks.

- 30 The Court: I would like to have it ready for trial on whatever time we fix, and any intervention there is and any new condition of the pleadings that may arise will be prompt enough to enable us to go to trial on the day fixed. There are various counsel involved and they all have to appear. What about your prosecutorship?

Mr. Summerill: I will be all right on April 3, if the Court please. We are going to start trials

on Wednesday, 21, and that will probably run for a week, over through Monday the 26th, probably the middle of that week.

The Court: I have unfortunately filled my calendar too full for the purpose, I have two final hearings for Monday, the 2nd, and I have a final hearing each day during all that week. There is only one final hearing for Monday, the 9th, and I can give you the place following that case for Monday the 9th. Will your work then be finished? 10

Mr. Summerill: Yes, we will be through then.

The Court: We ought to give time to get the pleadings in shape. I would like very much, if any case about that time should happen to go over that we could substitute this on a day other than Monday.

Mr. LeDuc: I hope your Honor will do that. 20

The Court: We will bear that in mind.

(At this point an adjournment was taken until Monday, April 9, 1928.)

Camden, New Jersey, April 9, 1928.

(Trial of the cause resumed, on the above date, pursuant to adjournment, in the presence of respective counsel.)

The Court: What is the situation in this case at this time, gentlemen?

10

Mr. Summerill: If the Court please, since the former hearing, the defendant, McNeill, has assigned to the Grace Church the mortgage covering the premises in question; that assignment has been executed and been recorded, and with those changes taking place we have filed an amended answer setting up those changes, and the defendant would like to produce the testimony proving these additional facts, unless Mr. Wendkos will consent to it. I have the witness here who recorded the assignment, and Mr. Wendkos said he would not require the register to come up with the original assignment.

20

The Court: You had better make your proof if you have the witness here.

30

WILLIAM C. MARSHALL, sworn.

By Mr. Summerill:

Q. Mr. Marshall, you are a member of the bar of the State of New Jersey?

A. Yes, sir.

Q. You are also a vestryman of the Grace Church, Haddonfield?

A. Yes, sir.

Q. Mr. Marshall, will you tell the Court any steps taken by you with reference to an assignment of the mortgage in this case?

A. An assignment of the mortgage from Mr. McNeill to the church was placed in record by me this morning at the office of the register of deeds.

Q. The original assignment is lodged in his hands, 10 is that right?

A. Yes.

Q. Mr. Marshall, at my request, did you make a copy of that assignment?

A. I did.

Q. Have you that with you?

A. I have.

Mr. Summerill: I understand Mr. Wendkos will consent to the use of the copy.

20

The Court: All right.

Mr. Summerill: I offer this copy in evidence.

(Said copy of assignment offered in evidence and marked Exhibit D7.)

The Court: It is in form an absolute assignment of the mortgage?

30

Mr. Summerill: Yes, sir.

The Court: No conditions?

Mr. Summerill: No, a straight assignment.

Cross-examination.

By Mr. Wendkos:

Q. Mr. Marshall, you recorded that this morning?

A. Yes, sir.

Q. Were you a vestryman of the church before the recent election?

10 A. No.

Q. How long have you been a vestryman?

A. Since the election on the 13th, the recent annual meeting, the 13th day of March, I think.

Q. That was a day after the last hearing, wasn't it?

A. I don't know.

Q. The last hearing was on the 12th, I believe, and the assignment was not recorded until this morning?

20 A. No.

By Mr. Summerill:

Q. Do you know why it was not recorded until this morning?

30 A. Yes, it was through an inadvertence of the rector who through the press of all the changes that had occurred since the annual meeting of the congregation that he had overlooked the request that this be recorded, so it was entirely an inadvertence that it had not been recorded several weeks ago.

Q. Do you know whether or not of your own knowledge that advice of counsel was given to the church as to the recording of this mortgage?

A. I don't know absolutely, but I do know, nevertheless, that that was done, by the statements of the rector, and of counsel at the time.

By Mr. Wendkos:

Q. Who was counsel for the church, Mr. Marshall?

A. Mr. Summerill.

Q. For the church?

A. Yes.

Q. Do you know in whose possession the assignment was between the 12th or 13th and today?

A. I know it has been in the possession of the church for some time in a safe deposit box in Haddonfield, but what day that was put in, I don't know.

Q. Which bank?

A. The Haddonfield Safe Deposit & Trust Company.

Q. Does the church have its own box there?

A. Yes, and I may add I went with the rector, who has access to this box, and saw him take out the assignment, and he gave it to me to be recorded. 20

Q. When was this?

A. That was Saturday.

Q. On Saturday?

A. Yes.

The Court: Was there anything done about the cash that had been paid, was that turned over to the church?

Mr. Summerill: No, that was not.

30

Mr. Wendkos: If the Court please, I think we are in the position of trying this case backwards, I didn't know that I would be put in the position of having to call witnesses.

The Court: On this subject?

Mr. Wendkos: No, on the complainant's side of the case, I had no witnesses sworn at all on my behalf except Mr. Blair Cuthbert.

The Court: If we open up the case again, except on matters that have transpired since the last hearing, it may lead us into a good many ramifications.

10 Mr. Wendkos: Except this, the amended answer of the church and McNeill was filed, which sets up some new matter.

The Court: Yes, anything pertinent to the amendment.

Mr. Wendkos: I think it is pertinent to the amendment.

20 The Court: I wanted to ask counsel about the money that Mr. McNeill has received, the answer, as I recall, says something about that. Have you any evidence?

30 Mr. LeDuc: I have here a copy of a letter, the full text of which is set out in the supplemental answer, the last paragraph reads, "I am therefore handing to your junior warden with this letter an assignment of the \$24,000 purchase money mortgage made by Collingswood Extension Realty Company, which is in default and subject to call, and furthermore propose, as soon as all expenses are determined, to remit to your body in cash the balance of the net profit resulting from my resale." Your Honor will appreciate the fact the expenses cannot be determined until the end of this litigation, and he thinks he is liable to remit all the net profits of the re-

sale, and in this letter he says he will pay back all the net profits as soon as the expenses have been determined. If there is no objection on Mr. Wendkos' part I will offer this.

Mr. Wendkos: Isn't it in the pleadings?

Mr. LeDuc: Yes.

Mr. Wendkos: That is all right then. 10

Mr. LeDuc: Then we won't offer it, if the Court please.

The Court: I am wondering whether it was prudent for the church and Mr. McNeill to answer together jointly. I must confess I am a little disappointed to have the answers joined, there keeps coming to me the possibility of their interests diverging. The suggestion made about the expenses would indicate that the church joins with Mr. McNeill in the notion that he should deduct before paying to the church the cash he has received for this property any expenses incident to this trial, which might include lawyers' fees, or various charges on which the church and Mr. McNeill might not agree, and by reason of that disagreement might meet with the withdrawal of the offer entirely. I don't want to stand in the way of the most amicable attitude between Mr. McNeill and the church, in fact, I want to encourage that, the only thought I have in my mind is that they both should guard against the possibility of their interests becoming diverse, and yet a diverse attitude can not be permitted by either of them under a joint answer. 20 30

Mr. Summerill: If the Court please, we don't fancy at any time that the interest of Mr. McNeill and the church might become in controversy, but if they do become that way the answer filed by the church will probably be identical with the one that would be filed by Mr. McNeill and I see no reason why we should not proceed with the answer at the present and if they do become divergent an amended answer, or separate answer, can be filed
10 in substantially the same form, either by Mr. McNeill or the church, in order to keep the court record straight. We feel the mortgage has been assigned back to the church again and there is harmony between Mr. McNeill and the defendant church.

Mr. LeDuc: We don't see how their interests could become divergent, Mr. McNeill has stripped himself of every possible interest in this controversy and his sole participation is simply to see that the
20 church gets what he feels they are entitled to, that is what he originally had in mind, the two parties are united in opposition to the demand of the heirs, and we filed the joint answer with the idea of emphasizing that solidarity of purpose and unity of interests, and if in some unexpected way a divergence should crop out Mr. Summerill is here representing the church and I am here representing Mr. McNeill, and the fact I am sitting alongside of Mr. Summerill means I am here in a special or
30 assisting capacity on the part of the church. As counsel for Mr. McNeill I have never been able to see how the issue between Mr. McNeill and the church could be raised by the heirs. We have not dodged that issue, but I don't see how that issue is properly in this case at all, but having met it, it is out, completely out of the case, and the only thing your Honor has to weigh is the question of

whether or not the heirs of Joseph Ogden Cuthbert are entitled to benefit as against the church, and it is that issue we are prepared to argue. If any other possible issue appears between the church and McNeill, Mr. Summerill and I will separate and oppose each other on that issue.

The Court: You may go ahead as you think best.

10

WALTER S. STOY, SWORN.

Mr. Wendkos: In order to apprise the Court in advance the purpose of this testimony, I may say that in paragraph 8 of the amended answer there appears a statement, "Defendants admit the conveyance by Joseph Ogden Cuthbert to Grace Church, which conveyance created a public charity or trust. Defendants admit the conveyance to the defendant Arthur Y. McNeill by Grace Church of said property, for the consideration stated, which consideration and conveyance, after a full disclosure of McNeill's relations to Grace Church, as its senior warden, was expressly approved by order of this court," and then in the third affirmative defense, the allegation appears, "The conveyance by Grace Church was pursuant to the doctrine of cy-pres and effected a lawful conveyance of said premises." The testimony Mr. Stoy will give this morning is directed against those two particular allegations.

20

30

Mr. Summerill: If the Court please, we object to that, that was all brought out at the prior hearing, the doctrine of cy-pres, and everything else,

the only changed status now is the fact that the assignment has been made from McNeill to the church, that is quite proper, but this is bringing in testimony which should have been brought in before.

The Court: I don't see what new testimony this assignment has opened up. I wanted to inquire, however, about the attitude of the bishop who has
10 intervened and answered here. Are there any proofs to be taken on his part?

Mr. Eastwood: If the Court please, I think the only matter in issue there is the question of whether the trustees of the Episcopal Fund are properly and duly incorporated. Mr. Wendkos raised that in his reply to the answer I filed, and I discovered Saturday afternoon the fact that that body was incorporated by Legislative enactment in 1860. I
20 have the law here and also a typewritten copy of the two amendments.

The Court: I think you may introduce this, Mr. Wendkos.

By Mr. Wendkos:

Q. Mr. Stoy, how old are you?

A. 66.

30 Q. Were you acquainted with Mr. Joseph Ogden Cuthbert during his lifetime?

A. From childhood back as far as I can remember until his decease.

Q. Do you know the circumstances surrounding the gift of this plot by Mr. Cuthbert to the church?

A. I do.

Q. Will you tell the Court —

The Court: I didn't know that you meant to go into that, that is your original case, isn't it? What are you going to show, what Mr. Cuthbert intended and wanted to do?

Mr. Wendkos: Yes, sir.

The Court: You can't do that, how does he know what was in Mr. Cuthbert's mind? How has this been opened as new matter? 10

Mr. Wendkos: If the Court please, I don't like to make any complaint, but the understanding was between Mr. LeDuc and I there was to be no oral testimony introduced at the time of the last hearing, but to my surprise oral testimony was introduced on his part; I wasn't prepared, under any circumstances, to introduce any oral testimony, but I accepted the situation without any complaint. Had I known there would have been any oral testimony I assure your Honor I would have used every effort to prepare myself at that time, and secondly, I don't see how, in view of their amended answer, which raises the question of cy-pres—I don't believe the original answer raised that question—that I shouldn't be given the opportunity to show what Mr. Cuthbert's intention was with the plot and show how it was impossible to apply this doctrine of cy-pres. 20 30

The Court: On what theory do you claim the right to establish by parol proof what his intention might have been when his intention was manifested by the written instrument?

Mr. Wendkos: The recent case of *Noice v. Schnell*,

decided by Justice Katzenbach, I have the Atlantic Reporter citation, 137 Atlantic 582, at page 590, there the question of cy-pres is raised, and he said there in connection with testimony given regarding the testator's intention, "For the purpose of determining the object of a testator's bounty, or the subject of disposition, or the quantity of interest intended to be given by his will, a court may inquire into every material fact relating to the
10 person who claims to be interested under the will, and to the property which is claimed as the subject of disposition, and to the circumstances of the testator, and of his family and affairs, for the purpose of enabling the Court to identify the person or thing intended by the testator, or to determine the quantity of interest he has given by his will."

The Court: That is all right under certain circumstances in order that the court may stand in
20 the boots of the testator. You may show anything you choose about Mr. Cuthbert, as to where he lived, as to what his habits were, the nature of his life, if you think anything can be gained by that, but you can't show what he intended by any oral proof, by what he may have said to anyone. Your last question indicated you were coming to that.

Mr. Wendkos: Yes.

30 Mr. LeDuc: Your Honor has indicated your ruling, but I don't want it to appear on the record as Mr. Wendkos stated it, our agreement was the other way, we stipulated that facts should be offered and either side should be pleased to show whatever they wanted by oral proof, and Mr. Wendkos was the first one to put a witness on the stand.

The Court: Whatever the facts may have been if Mr. Wendkos says he was surprised, or misunderstood, he may examine this witness on anything that shows the circumstances surrounding the donor, but not what he may have said, or what the witness may have thought he intended, or what his purposes may have been.

Mr. Wendkos: I have no further questions.

Mr. Summerill: If the Court please, one more matter that will go in by consent. I have the charter and by-laws of the Grace Church of Had-donfield, the charter under which we are operating, and I offer that in evidence. One of the reasons I desire it in evidence is that it gives the church the right to buy and sell real estate.

10

The Court: I have been thinking the entire church organization might be involved in this case. Certainly I would put that in, at least.

20

(Said paper offered in evidence and marked Exhibit D8.)

The Court: I haven't read the answer of this Episcopal Fund Society.

Mr. Eastwood: Our answer is somewhat the same as the answer of the defendant Grace Church. The position of my client being that we feel that this fund can be properly administered by the officials of Grace Church in view of the fact it will be more or less entirely supervised by the Court of Chancery under the order permitting it to sell this real estate, the fund, of course, to be administered in accordance with the original intention of the

30

donor, however, the trustees of the Episcopal Fund have authority under its charter to administer such a fund, and are willing to assume that if the Court feels under all the circumstances it might be wise.

The Court: Make whatever proof you want to, I don't know how I can determine what this society is, or what its powers are, or duties, unless you have the necessary evidence.

10

Mr. Eastwood: I have the charter here, with copies of two amendments that were made which broaden the original powers, which will give the Court the necessary information as to the powers of the different trustees of the Episcopal Fund. I would like to offer it, and I believe Mr. Wendkos has seen it and no objection is made to it.

The Court: Make your offer.

20

Mr. Eastwood: Phamplet Laws of New Jersey, 1860, page 76, "An Act to incorporate trustees for the management and care of the fund for the support of the Episcopate of the Diocese of New Jersey, approved February 14, 1860," and also copy of an amendment to that Act, approved March 17, 1862, and a further supplement —

The Court: Phamplet Laws is it?

30

Mr. Eastwood: Phamplet Laws of 1862.

The Court: What page?

Mr. Eastwood: I have a copy of the exact language of that supplement, and I will furnish the Court with the page, if I may. Also a further

supplement approved April 4, 1871, Phamplet Laws of 1871, and I will furnish the Court the pages of those two supplements. I also offer in evidence, if the Court please, the journal of the Diocese of New Jersey, which embodies the personnel of the various bodies, the constitution, and accounts of the convention.

The Court: Any objection to this?

10

Mr. Wendkos: No objection.

The Court: Does that show an organization under this statute, that you are still an organized body and on operative concern?

Mr. Eastwood: It does, sir.

The Court: It shows your duties and powers as a church organization.

20

Mr. Eastwood: No, it does not, because that is created in the charter itself under this Legislative enactment of 1860.

The Court: I am only making the inquiry to know whether you are putting in everything necessary for me to consider.

Mr. Eastwood: I believe I am offering all that is necessary for your Honor to decide the matter. 30

(Said papers offered in evidence and marked Exhibit D9.)

The Court: Is there anything more? Let the testimony be considered closed. I will ask counsel to

hand me your authorities and I will take the matter up.

EXHIBIT C1.

720 Park Avenue,
Collingswood, N. J. June, 10th.
1925.

10 RECTOR and VESTRY,
Grace Episcopal Church,
Haddonfield, New Jersey.
Gentlemen:

Representing a number of the surviveing heirs of Joseph Ogden Cuthbert, dec'd, I address you in reference to a plot of ground at Collingswood. This land was conveyed to Grace Church some forty years ago, in Trust, as a Gift to the Episcopal Dioses of New Jersey, for Episcopal Church purposes.

20 In all these years, Grace Church authorities have failed to function in accordance with the Trust, they have also failed to convey the plot to another Church of the Dioses that the intention of the gift may have been realized.

At this latter day we learn that an attempt is being made to dispose of this land, by sale on the open market.

30 Please understand, that such action will be contested at law, by the writer associated with a number of his kinsman, we take umbrage that your authorities, first should have suffered the land to be sold for taxes, second permitting the tax-lien to be lifted by an attorney, thus placing the property in a very uncertain atmosphere, absolutely foreign to the intention of the donor.

Some years ago, Borough Ordinance demanded gradeing and the laying of sidewalks and curbing on Haddon Avenue. For Cuthbert Estate (including the Church Lot in question) this work was done under my supervision as Trustee and paid for from Estate funds, an item which cannot be overlooked under present conditions.

For your information I would further state that on an occasion, George J. Bergen Esq, as your Solicitor, approached the Trustees of the Cuthbert Estate with a proposition, to take back this land and substitute a cash donation in the sum of \$1000. Dollars, the same, in the name of the donor, to be applied to the new Church edifice at Haddonfield. The trustees Messrs, Thomas L. Gillespie, Benjamin C. Reeve Trust Officer, Camden S D & T Co., and the writer, favored Mr. Bergens idea, whereupon Mr. Alexander Wood, President of Camden Safe, raised a legal question and recomended that an outside opinion in the matter be first obtained. We accordingly engaged the services of the late Howard M. Cooper Esq, a very able Attorney. The opinion when rendered ended the controversy. While I have not Mr. Coopers brief befor me, its substance was, first, that the Trustees had no authority to make donations from Trust funds nor to invest them in land speculation, and second, that the Church had nothing to sell, theirs being a gift in Trust, of singular purpose without further provision. In accepting the gift, the Church became a party to the contract, as set forth in the Conveyance, further action lay to the Church.

With those interested at the time, it is a coincidence that the writer is the sole survivor, it becomes my duty to follow the matter to a satisfactory conclusion. Recently I laid this subject before an Attorney who is familiar with the Cuthbert Estate, his

views are very clear and precise, I cheerfully submit them.

If the Church desires to forfeit the Gift and to be relinquished from the contract in the conveyance, that Grace Episcopal Church, Haddonfield, the present Trustee, obtain a Writ of consent from the Trustees of the Episcopal Fund, of the Dioceses of New Jersey to convey the Trust for other than Church purposes, then a conveyance can be made to the
10 Heirs of the donor or their representatives, under a satisfactory agreement, and permit them to clear the Title and make some disposition of the land.

As it is, this Lot covered with brush and weeds is a detriment to the neighborhood, its irregular boundary prevents the proper development of adjoining property, it should not continue.

Viewing the uncertain legal status now affecting the situation, I request that some action be taken at once.

20 Speaking with respectful candor for myself and others I await your reply with interest and appreciation,

very truly yours,
J. Blair Cuthbert

EXHIBIT C2.

Louis B. Le Duc
Counsellor at law
Camden, New Jersey

—
25 Broadway

October 3, 1925.

10

Re: Grace Church, Haddonfield

Mr. J. Clair Cuthbert,
720 Park Avenue,
Collingswood, N. J.

Dear Mr. Cuthbert:

Under date of June 10th last you addressed a letter to the Rector and Vestry of Grace Church, Haddonfield, which has been referred to me for reply as solicitor for the Church. The Vestry, I understand, did not meet during the summer months and it was not possible therefore to take any action on your letter until recently, which accounts for the considerable delay in replying thereto. 20

Since writing your letter I believe you retained Judge Lippincott in the matter. I had a conference with him and submitted my file of pleadings for his inspection. I understood that he had advised you that the action taken by the Church in regards to its Collingswood property was in full conformity to law. I do not know, therefore, whether you are still interested in pursuing the inquiries set forth in your letter to the Church. If you are, however, I would suggest that at your convenience you come to my office and let me show you the papers and discuss the matter fully with you. I have not the slightest doubt that I can satisfactorily answer any questions you may care to raise. 30

I may add that you have obviously been misinformed as to the facts; and neither the Vestry nor myself would like you to continue under a false impression, unfair alike to them and to yourself.

With kind regards and recollections of our hours together during the old case of *Guerin v Camden S. D. & T. Co.*, I am,

Very sincerely,

Louis B. Le Duc

10 L/B

EXHIBIT C3.

DIOCESE OF NEW JERSEY

Office of the Archdeacon

Telephone 6704 307 Hamilton Ave.

Trenton, N. J.

Sept. 21, 1926.

20 Mr. J. Clair Cuthbert,
Bettlewood Apartments,
Bettlewood & Eldridge Aves.,
Collingswood, N. J.

My dear Mr. Cuthbert:

Since receiving your letter of September 18th I have consulted the records which we have in regard to the sale of this property, and I find that everything has been done legally.

30 Grace Church, Haddonfield, was perfectly aware that the land conveyed to Grace Church in 1885 was devoted solely to Church uses. Finding that it was impossible because of its shape to use it for such a purpose either now or in the future a suit was instituted in the Court of Chancery to clear up the title. The master appointed in the case, after taking testimony for two days, recommended and the

Court approved a sale to Mr. McNeill for the price and on the terms stated; namely, that he would pay the back taxes, all expense incurred, and give the Church one thousand dollars. Later the Bishop of New Jersey and the Standing Committee of the Diocese approved this sale so that it became effective.

It was ascertained at the time that the value of the land was somewhat in the neighborhood of two thousand two hundred dollars, and with the back taxes and expenses incurred and the one thousand dollars for Grace Church it was felt that the price was a proper one. 10

In regard to your statement, it is true that if a Church building had been put on the lot that it would have been free of taxes, but until such time as there was a building on the property it was subject to taxes just as any other vacant land would be, and, of course, no building had been erected and, therefore, the taxes had accumulated because Grace Church had failed to pay them. 20

If you want any further information in regard to this matter I would suggest that you write to the Rev. Charles S. Lewis, 835 Edgewood Ave., Trenton, N. J. Canon Lewis is secretary of the Standing Committee and holds all the papers in the case.

I think all the legal requirements have been complied with. Mr. Bayard Stockton, the Chancellor of the Diocese, is also a member of the Standing Committee and therefore their action was approved by him at the time when the matter was brought before that body in February 1925. 30

Very truly yours,

R. Bowden Shepherd

EXHIBIT C4.

Incorporated

G. R. McClelland
PresidentG. Thomas Flack
Secretary-Treasurer

COLLINGSWOOD EXTENSION REALTY CO.

Look over

10 "Collingswood Extension"

Before Buying Your Home

45 E. Main Street, Haddonfield, N. J.

Haddon Avenue, Westmont, N. J.

Jan. 15, 1923.

Mr. A. W. McNeill,
134 Kings Highway, W.,
Haddonfield, N. J.

Dear Sir;—

20 Following our phone conversation of this date, in regard to that triangular plot of ground in the Borough of Collingswood, opposite the present end of Cuthbert Rd., I may say that this Company is very anxious to straighten out property lines, and is willing to come to any reasonable agreement in the way of exchange or of purchase if that be possible.

We would propose that land be exchanged so that this lot would be rectangular in shape, reducing your frontage and saving taxes in addition to making it a better building site.

30 Or we are willing to exchange with you, offering any other plot of corresponding value on our tract.

We are willing to purchase if that be possible.

Hoping to hear from you at your earliest convenience, I remain

Yours very truly,
Collingswood Extension Realty Co.

EXHIBIT C5.

THE LIVERPOOL AND LONDON AND GLOBE
INSURANCE CO. LTD.

Entered United States 1848

ARTHUR Y. Mc NEILL

Agent

10

Haddonfield, N. J.

Losses Paid in Great Conflagrations

San Francisco. 1906 \$4,522,805

Chicago. 1871 3,239,491

Boston. 1872 1,427,290

Baltimore. 1904 1,051,543

January 18, 1923

Mr. G. R. MacClelland, President,
Collingswood Extension Realty Co.,

45 E. Main St.,

Haddonfield, N. J.

20

Dear Sir:

Your esteemed favor of the 15th inst. in re: triangular plot of ground in the Borough of Collingswood, opposite the present end of Cuthbert Rd. is having my personal attention, and you will be advised accordingly concerning same in a later mail.

Yours very truly,

A. Y. McNeill

AYMcN:ALP

30

EXHIBIT C6.

Louis B. Le Due Camden 3216
Van Russ Bldg
Lombard 2947
Feb. 5, 1923.

10 Mr. A. Y. McNeill,
134 Kingh Highway, W.,
Haddonfield, N. J.

Dear Mr. McNeill;—

In regard to that triangular plot of land located in the Borough of Collingswood, and now owned by the Grace Church, Haddonfield, concerning which I previously wrote you in behalf of the Collingswood Extension Realty Co., of which I am President, the Board of Directors of that Company authorized me to make your church an offer of \$40.00 a front foot.

20 We had previously offered to buy without naming a price.

As the narrow point of this land is not of much value without the addition of our land, we feel that this is a very fair offer.

We would prefer to buy the whole plot if your deeds will permit, and if not, would like to purchase part and square up lines on the balance. I believe this would be profitable to the church as well as to ourselves. Hoping to hear from you at the

30 earliest possible date, I remain,

Yours very truly,
Collingswood Extension Realty Co.

EXHIBIT C7.

February 10, 1926.

Mr. A. Y. McNeill,
134 Kings Highway,
Haddonfield, N. J.

Dear Sir:—

Following negotiations that have been pending regarding the triangular lot in Collingswood at French Lane, we understand that you are willing to sell at Two Hundred Dollars (\$200.00) per foot frontage on Hadden Avenue building line. 10

The engineers advise us that this frontage is slightly less than one hundred and fifty feet, the original deed granting 187.29 feet as measured on the centre line of Haddon Avenue.

At a selling price of Thirty Thousand Dollars (\$30,000.), please consider the terms of the following offer:—

A deposit of One Thousand Dollars (\$1,000.) upon signing agreement, and Five Thousand Dollars (\$5,000.) additional at settlement in sixty days, or as soon thereafter as title is guaranteed; the seller taking a two years' mortgage at six per cent for Twenty-four Thousand Dollars (\$24,000.), reducing Three Thousand Dollars (\$3,000) every six months, together with a clause to release twenty feet toward Cuthbert Boulevard upon additional payment of Two Thousand Dollars (\$2,000.) on account of principal. 20 30

The above offer seems equitable and we trust meets your favorable consideration.

Very truly yours,

COLLINGSWOOD EXTENSION REALTY CO.

.....
PRESIDENT

GAMcC-B

THIS AGREEMENT made the _____ day of June, A. D. 1926, between ARTHUR Y. McNEILL of the Borough of Haddonfield, County of Camden and State of New Jersey, of the first part, hereinafter called the "SELLER," and COLLINGSWOOD EXTENSION REALTY CO., a New Jersey Corporation, of the second part, hereinafter called the "BUYER,"

10 WITNESSETH, That the SELLER agrees to sell and convey and the BUYER agrees to buy all that certain tract or parcel of land and premises situate in the Borough of Collingswood in the County of Camden and State of New Jersey, more particularly described as follows:

20 BEGINNING at a corner to Samuel H. French's lands in the line of other lands of J. O. Cuthbert and in the middle of the Haddonfield and Camden Turnpike Road; thence (1) along said French's line in the Westerly side of a private road to Cooper's Creek North twenty-two degrees West, two hundred forty-seven feet nine and one-half inches to a corner in the same to other lands of said Cuthbert; thence (2) by said other lands, South twenty-six degrees forty-eight minutes West, one hundred sixty-five feet six inches to a corner to the same in the middle of said turnpike road; thence (3) along the said middle line of said turnpike South
30 sixty-four degrees fourteen minutes East, one hundred eighty-seven feet three and one-half inches to the place of beginning.

for the price or sum of Thirty thousand dollars (\$30,000), under and subject to the following terms and conditions:

1. A first payment of One thousand dollars (\$1,000) receipt of which is hereby acknowledged by the SELLER.

2. The balance of the purchase price shall be paid in the following manner:

Five thousand dollars (\$5,000) in cash at time of final settlement and a purchase money first mortgage covering the land conveyed to be given by the BUYER to the SELLER, in the amount of Twenty-four thousand dollars (\$24,000) with interest at the rate of six per cent per annum, payable within three years, but obligating the BUYER to pay at least \$2500. at the end of each six months period during the term of said mortgage; and the said mortgage to contain a release clause providing for the granting of releases on the following terms: 10

The land conveyed to be divided for such purpose into seven lots, each lot having a frontage of 20 feet along Haddon Avenue (formerly Haddonfield and Camden Turnpike Road) measured from the Westerly boundary of said land, except the most Easterly lot which will take up the balance of said frontage. The first of said lots, or the Westerly 20 feet in frontage, shall be subject to release upon payment of \$4,000 on account of the principal of said mortgage. The three 20-foot lots adjoining said first lot shall each be subject to release upon the payment of the sum of \$5,000 on account of the principal of said mortgage; the remaining three lots shall each be subject to release upon the payment of the sum of \$3,000 on account of the principal of said mortgage. The lots released, however, shall in all cases be outside lots, so that at all times the land covered by said mortgage shall be a single undivided tract. The bond accompanying said mortgage shall correspond in terms therewith and shall be executed by the BUYER and also by G. R. McClelland, president of the buyer company. 20 30

3. Final settlement shall be made at the office of Louis B. LeDuc, 25 Broadway, Camden, New Jer-

sey, within thirty days from the date herewith or the deposit made herewith at the option of the SELLER may be applied on account of the purchase price or be forfeited as liquidated damages to the SELLER and not as a penalty, provided that the necessary title searches can be obtained from any first-class New Jersey title company by that date. Should there be any delay, not the fault of the BUYER in the procuring of such searches, the
10 time for the final settlement shall extend until such searches can be obtained.

4. The title to the premises shall be free and clear of all incumbrances, including municipal liens and assessments, except municipal improvements in the course of construction and not assessed, obvious easements, usual restrictions running with the land, and shall be a marketable title, and the SELLER shall tender a special warranty deed conveying such title at the time of the final settlement, or in the
20 event that such title cannot be as above, then this deposit shall be returned to the BUYER.

5. All adjustments shall be made as of date of settlement and possession shall be given the BUYER on such date.

6. The BUYER shall pay for searches and all other expenses, excepting the preparation of the deed, which shall be paid for by the SELLER.

7. This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.
30

8. Time is the essence of this agreement.

9. The parties agree that this agreement is not to be recorded.

IN WITNESS WHEREOF the SELLER has set his hand and seal and the BUYER has caused these presents to be signed by its president and its cor-

porate seal affixed hereto attested by its secretary,
the day and year first above written.

Arthur Y. McNeill (L. S.)

WITNESS:

Amelia L. Prem

COLLINGSWOOD EXTENSION REALTY CO.

By G. R. McClelland
President.

Attest:

G. Thomas Flack
Secretary.

10

[ENDORSED.]

L. T. Appl 16038

continued to

Lawrence Crombie

\$5000 pd at of Phila

Settlement Oct 20 1926

20

\$1000 down

Memorandum of Agreement:

between

Arthur Y. McNeill

and

Collingswood Extension Realty Co.

Title Policy

Land Title

6625

24,000 _____

30

Bd & Mtg Dated Oct 18, 26

3 yrs — \$2500 ea 6 mo

7 — 20' lots —

1—W @ 4000 4000

3 @ 5000 ea 15000 25000

3 @ 3000 ea 9000

EXHIBIT C9.

This Indenture, made this nineteenth day of October in the year of our Lord one thousand eight hundred and eighty-five Between Joseph Ogden Cuthbert, of the borrough of Haddonfield, in the County of Camden, in the State of New Jersey, of the first part and "The Rector, Wardens, and Vestrymen of Grace Church, Haddonfield, New Jersey" of the second part: Witnesseth, that the said party of the first part, for and in consideration of one dollar, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said party of the second part, All the following described lot of land situate in the township of Haddon in the County and State aforesaid and bounded as follows: BEGINNING at a corner to Samuel H. French's land in the line of other lands of said Cuthbert and in the middle of the Haddonfield and Camden turnpike Road; thence (1) along said French's line in the westerly side of a private road leading from said turnpike road to Cooper's Creek north twenty-two degrees west, two hundred forty-seven feet nine and one half inches to a corner in the same to other land of said Cuthbert; thence (2) by said other land, south twenty-six degrees forty-eight minutes west, one hundred sixty-five feet six inches to a corner to the same in the middle of said turnpike road; thence (3) along the

said middle line of said turnpike south sixty-four degrees fourteen minutes east, one hundred eighty-seven feet three and one half inches to the place of beginning. Containing thirty-five hundredths of an acre, more or less.

Being a part of the same premises which Nathan Conard and Maria Conard, Executors of the last will and testament of Daniel Conard, deceased by deed dated March 11th 1850 of record in the office of the Register of deeds of Camden Co. at Camden, N. J. 10
in Book "K" of deeds page 115 &c granted and conveyed unto the said Joseph Ogden Cuthbert in fee.

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits, thereof, and of every part and parcel thereof. And also, all the estate right, title, interest, property, possession 20
claim and demand whatsoever, with the appurtenances.

To Have and to Hold, the said premises, with all and singular the appurtenances unto the said "The Rector, Wardens, and Vestrymen of Grace Church, Haddonfield, New Jersey," their successors and assigns forever. In Trust, nevertheless, that, they, the said "The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey," their successors and assigns shall and will hold the said 30
lands and premises to the use of the Protestant Episcopal Church in the diocese of New Jersey, to be used only for and as a site for a chapel, schoolhouse, mission, parrish building, or other use of said Protestant Episcopal Church in said diocese, and that the said "The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jer-

sey" shall have power to grant and convey the said lands and premises to any parish of said Protestant Episcopal Church in said diocese, within whose bounds said lands and premises may come to lie, by its proper title if incorporated, and by apt words of conveyance; or may in the same event convey said lands and premises to the Trustees of "The Episcopal Fund of the Diocese of New Jersey" to the use of said parish.

10 In Witness Whereof the said party of the first part, has hereunto set his hand and seal. Dated the day and year first above written.

J. Ogden Cuthbert (SEAL)

Signed sealed and delivered
in the presence of
J. Lewis Rowand

20 State of New Jersey }
Camden County } ss.

30 Be it remembered that on this nineteenth day of October in the year of our Lord eighteen hundred and eighty-five, before me this subscriber a commissioner of deeds in and for said county and state personally appeared, Joseph Ogden Cuthbert, who, I am satisfied is the grantor mentioned in the above deed or conveyance and I having first made known to him the contents thereof, he acknowledged that he signed, sealed, and delivered, the same as his voluntary act and deed. All of which is hereby certified.

J. Lewis Rowand
Com. of deeds.

[ENDORSED.]

7

1609

Deed.

Joseph Ogden Cuthbert

to

"The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey."

10

Received Oct. 30th 1885 and Recorded in Book No. 120 of Deeds, page 274, &c in the Office of the Register of Deeds &c. of CAMDEN COUNTY at CAMDEN, N. J.

Jehu Evans,
Register.

Pd.

Oct. 30/85
at 10 A. M.
\$1.50

20

55-532

In Chancery of N. J. Re: Rector, Wardens & Vestrymen of Grace Church, Haddonfield. N. J.

On Pet. etc.

Ex. P-1—10/10/24

Saml K. Robbins
Master

30

EXHIBIT C10.

This Indenture made this 25 day of March 1925 between THE RECTOR WARDENS and VESTRYMEN of Grace Church Haddonfield New Jersey party of the first part and ARTHUR Y. McNEILL of the Borough of Haddonfield County of Camden and State of New Jersey party of the second part Witnesseth whereas Joseph Ogden Cuthbert on October 19 1885 conveyed to the said party of the first part all that certain tract or parcel of land and premises hereinafter described but subject to the condition and restriction that the said land so granted and conveyed should be held in trust and devoted to certain religious uses in the said deed specified and without power in the said party of the first part to sell and convey the same free of said trust conditions and restrictions and Whereas the New Jersey Court of Chancery did on December 5 1924 conformably to the statute in such case made and provided order adjudge and decree that the said land and premises should be sold by the said party of the first part to the said party of the second part free and clear of the conditions restrictions and obligations imposed by way of trust in the said deed of Joseph Ogden Cuthbert on consideration of the said party of the second part paying to the said party of the first part the sum of One thousand dollars (\$1,000) and also paying the taxes and assessments with interest and costs outstanding against said lands and premises as well as certain legal expenses involved in procuring the said decree and further that the said party of the first part execute and deliver unto the said party of the second part a

proper conveyance of the said lands and premises the said party of the second part to be thereupon relieved from liability to see to the application of the purchase money arising from such sale Now therefore the said party of the first part by virtue of the power authority and direction to wit given by the said order and decree of the New Jersey Court of Chancery and in consideration of the sum of One thousand dollars (\$1,000) to wit paid by the said party of the second part the receipt whereof is hereby acknowledged together with other good and valuable considerations has granted bargained sold aliened enfeoffed released conveyed and confirmed and by these presents does grant bargain sell alien enfeoff release convey and confirm unto the said party of the second part his heirs and assigns ALL that certain tract or parcel of land and premises situate in the Borough of Collingswood County of Camden and State of New Jersey bounded and described as follows BEGINNING at a corner to Samuel H. French's land in the line of other lands of said Cuthbert and in the middle of the Haddonfield and Camden Turnpike Road thence extending (1) along said French's line in the Westerly side of a private road leading from said Turnpike Road to Coopers Creek North twenty-two degrees west two hundred forty-seven feet nine and one-half inches to a corner in same to other land of said Cuthbert thence (2) by said other land South twenty-six degrees forty-eight minutes West one hundred sixty-five feet six inches to a corner to the same in the middle of said Turnpike road thence (3) along the said middle line of said Turnpike South sixty-four degrees fourteen minutes East one hundred eighty-seven feet three and one-half inches to the place of beginning Containing thirty-five hundredths of an acre more or less Together with all and singular

10

20

30

the improvements woods ways rights, liberties privileges hereditaments and appurtenances to the same belonging or in any wise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and of every part and parcel thereof and also all the estate right title interest property possession claim and demand whatsoever both in law and equity of the said party of the first part of in and to the said premises and every part thereof with the appurtenances To have and to hold the said premises above described with all and singular the hereditaments and appurtenances unto the said party of the second part his heirs and assigns to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever and the said party of the first part for itself its successors does by these presents covenant grant and agree to and with the said party of the second part his heirs and assigns that it the said party of the first part and its successors all and singular the hereditaments and premises above described and granted or mentioned and intended so to be with the appurtenances unto the said party of the second part his heirs and assigns against it the said party of the first part and its successors and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend In witness whereof the said party of the first part has caused these presents to be signed by its Rector and its corporate seal to be affixed hereto attested by its Secretary dated the day and year first above written THE RECTOR WARDENS and VESTRYMEN OF GRACE CHURCH HADDONFIELD NEW JERSEY by Augustus Walton Shick rector (Corp Seal) Attest Wm. H. Lindsay Secretary Signed sealed and delivered in

the presence of Wm H Lindsay State of New Jersey County of Camden ss Be it remembered that on this 25th day of March in the year of our Lord one thousand nine hundred and twenty-five before me a Master in Chancery of New Jersey personally appeared William H Lindsay who being by me duly sworn on his oath saith that he is the Secretary of the Rector Wardens and Vestrymen of Grace Church Haddonfield New Jersey the grantor within named and that Rev Augusta W. Shick is the Rector that deponent knows the common or corporate seal of said grantor and that the seal annexed to the within deed or conveyance is such common or corporate seal that the said deed or conveyance was signed by the said Rector and the seal of said grantor affixed thereto in the presence of deponent that said deed or conveyance was signed sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes there in expressed pursuant to a resolution of the Board of Directors of said grantor and at the execution thereof this deponent subscribed his name thereto as witness Wm H Lindsay Sworn and subscribed the day and year aforesaid Louis B LeDuc Master in Chancery of New Jersey Application having been made in behalf of the Rector Wardens and Vestrymen of Grace Church Haddonfield for consent to sell the premises in the foregoing instrument particularly described This Is to certify that we the Bishop and a majority of the Standing Committee of the Diocese of New Jersey do hereby consent to the proposes sale of said premises In witness whereof we have hereto set our hands and seals this twenty third day of February in the year of our Lord nineteen hundred and twenty-five

Paul Matthews (seal)
Bishop of New Jersey

Alfred B. Baker
 Charles Smith Lewis
 E. Vicars Stevenson
 Warren R. Dix
 Fred. B. Kilmer
 Charles Mecum

Signed sealed and delivered
 in the presence of

Charles M. Perkins

- 10 State of New Jersey County of Camden SS Be it remembered that on this 24th day of February in the year 1925 before me a Master in Chancery of the State of New Jersey personally came Charles M. Perkins of full age who being by me duly sworn on his oath saith that he saw the within Paul Matthews Bishop of New Jersey and Alfred B Baker, Charles Smith Lewis, E Vicars Stevenson, Warren R Dix, Fred B Kilmer and Charles Mecum being the
- 20 Bishop of New Jersey and a Majority of the Standing Committee of the Diocese of New Jersey sign seal and deliver the within instrument as their voluntary act and deed and that deponent at the same time signed the same as a subscribing witness Subscribed and sworn before me the day and year aforesaid Louis B. LeDuc Master in Chancery of N J Recorded March 26th 1925 at 9.32 A M by Joshua C Haines Register.

30

STATE OF NEW JERSEY
 County of Camden

I, JOSHUA C. HAINES, Register of Deeds and Mortgages for the County of Camden, do hereby certify, that the foregoing is a true copy of the record of the DEED from THE RECTOR WARDENS &

VESTRYMEN OF GRACE CHURCH, HADDONFIELD, N. J. to ARTHUR Y. McNEILL as the same is of record in my office in Book 583 of Deeds page 460 &c.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Camden, this third day of March A. D. 1928.

Joshua C. Haines

Register.

(Seal.)

10

[ENDORSED.]

Certified Copy of
DEED

THE RECTOR, WARDENS & VESTRYMEN OF GRACE CHURCH,
HADDONFIELD, N. J.

TO

ARTHUR Y. McNEILL.

20

EXHIBIT D1.

AGREEMENT, entered into this 4th day of February, 1924, between the Rector, Wardens and Vestrymen of Grace Church of Haddonfield, New Jersey, part of the first part, and Arthur Y. McNeill of Haddonfield, New Jersey, party of the second part. 30

WHEREAS the party of the first part is the owner of an equity of redemption from tax sale of a tract or parcel of land within the Borough of Collingswood, in the County of Camden and State of New Jersey, more particularly described in paragraph 1 of this agreement, and the said property

has been sold at tax sale for taxes and assessments and purchased by the Borough of Collingswood; and

WHEREAS the party of the first part is desirous of selling the said property if it can be redeemed from the tax sale and also relieved of certain encumbrances in the nature of trust obligations imposed upon the said property and the party of the first part in the deed from the grantor, Joseph
10 Ogden Cuthbert; and

WHEREAS the party of the first part cannot conveniently raise the funds required to pay off the said tax and assessments, with the interest and costs accumulated thereon, and the legal expenses which would be required for the prosecution of a suit in the Court of Chancery to relieve the party of the first part from the said trust obligations imposed in its deed to the said property as aforesaid;

NOW, THEREFORE, THIS AGREEMENT
20 WITNESSETH, that the parties hereto, for and in consideration of the mutual covenants hereinafter set forth, do covenant and agree with each other as follows:

1. The party of the first part agrees to sell and the party of the second part agrees to buy, all that certain tract and parcel of land located within the Borough of Collingswood, in the County of Camden and State of New Jersey, bounded and described as
30 follows:

BEGINNING at a corner to Samuel H. French's lands in the line of other lands of said Cuthbert and in the middle of the Haddonfield and Camden turnpike Road; thence (1) along said French's line in the Westerly side of a private road leading from said turnpike road to Cooper's Creek north twenty-two degrees West, two hundred forty-seven feet

nine and one-half inches to a corner in the same to other land of said Cuthbert; thence (2) by said other land, south twenty-six degrees forty-eight minutes West one hundred sixty-five feet six inches to a corner to the same in the middle of said turnpike road; thence (3) along the said middle line of said turnpike south sixty-four degrees fourteen minutes East, one hundred eighty-seven feet three and one half inches to the place of beginning. Containing thirty-five hundredths of an acre, more or less; the said agreement of each party, however, to be conditioned upon the said party of the first part securing from the Court of Chancery of New Jersey an order or decree relieving said party of the first part from the trust obligations imposed by the deed to the said property from the said Joseph Ogden Cuthbert and authorizing and enabling it to convey the said property free and clear of encumbrances, or upon the removal of such encumbrances in any other legal and sufficient way.

10

20

2. In consideration of the agreement by the party of the first part to sell the said property, the party of the second part agrees to pay the party of the first part the sum of One thousand dollars (\$1,000) at time of settlement, and further to pay all taxes and assessments, with interest and costs thereon, outstanding against the said property at time of settlement, as well as, all legal expenses involved in prosecuting the suit in the New Jersey Court of Chancery to clear the title to said property and taking any other steps legally necessary to clear the said title as aforesaid, the said party of the first part not to be liable in any event to pay the party of the second part for any taxes, assessments or legal expenses which he may have paid or incurred

30

in clearing the title to said property in accordance with this agreement.

3. Party of the first part agrees to prosecute the suit in the Court of Chancery for the purpose of clearing the title to the said property, as well as to take whatever steps may be proper and necessary to clear the said title, with promptness and diligence, and to give all necessary assistance to counsel selected for such purpose by the party of the second
10 part.

4. Settlement upon this agreement shall take place within a reasonable time after the said property has been freed from encumbrances as aforesaid.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first
20 above written.

The Rector Wardens and Vestrymen of
Grace Church in Haddonfield
New Jersey

Augustus Walton Shick
Rector (SEAL)

Attest

Wm. H. Lindsay
Sec'y of Vestry

WITNESS:

30 Amelia L. Prem

Arthur Y. McNeill

[ENDORSED.]

AGREEMENT
Between
GRACE CHURCH
and

ARTHUR Y. McNEILL

In Chancery of N J In Re: Rector
Wardens & Vestrymen of Grace
Church, Haddonfield, N. J.
On Pet. &c.

10

Ex. P-9—10/18/24

Saml. K. Robbins
Master

EXHIBIT D4.

20

STATEMENT OF DELINQUENT TAXES
ASSESSED AGAINST GRACE CHURCH
HADDONFFIELD, COVERING
LOT KNOWN AS PLATE SIX, BLOCK SIXTY-
ONE, LOT TEN, covner of Haddon Ave. & Borough
Line.

55-532

In Chancery of N. J. Re: Rec- 30
tor, Wardens & Vestrymen of
Grace Church, Haddonfield,
N. J.

Ex P-5 10/10/24

Saml K, Robbins
Master.

| Year | Taxes | 30 Cost of Adv. | 20 Total at interest to Nov. 1, 1923 | 10 Inter- est | Fee for selling | Total |
|------|--------------|--------------------------|--|---------------------|-----------------------|-----------------|
| 1913 | 4.53 | 2.00 | From Dec. 20, 1913, @ 8% 9 yrs. 10 mo. | 5.50 | 1.00 | 13.03 |
| 1914 | 4.41 | 2.00 | From Dec. 20, 1914, @ 8% 8 yrs. 10 mo. | 4.14 | 1.00 | 11.55 |
| 1915 | 4.54 | 2.00 | From Dec. 20, 1915, @ 8% 7 yrs. 10 mo. | 5.78 | 1.00 | 13.32 |
| 1916 | 4.55 | 2.00 | From Dec. 20, 1916, @ 8% 6 yrs. 10 mo. | 3.82 | 1.00 | 11.37 |
| 1917 | 4.52 | 2.00 | From Dec. 20, 1917, @ 8% 5 yrs. 10 mo. | 3.42 | 1.00 | 10.94 |
| 1918 | 5.06 | 2.00 | From Dec. 20, 1918, @ 8% 4 yrs. 10 mo. | 2.80 | 1.00 | 10.86 |
| 1919 | 5.22 | 2.00 | From June 1, 1919 on half and Bal. from Dec. 1, 1919 @ 8% | 2.54 | 1.00 | 10.76 |
| 1920 | 5.96 | 2.00 | From June 1, 1920 on half and Bal. from Dec. 1, 1920 @ 8% | 2.05 | 1.00 | 11.01 |
| 1921 | 6.46 | 2.00 | From June 1, 1921 on half and Bal. from Dec. 1, 1921 @ 8% | 1.25 | 1.00 | 10.71 |
| 1922 | 6.34 | 2.00 | From June 1, 1922 on half and Bal. from Dec. 1, 1922 @ 8% | .71 | 1.00 | 10.05 |
| 1923 | 2.93 | | 2nd Half | | | 2.93 |
| | <u>54.52</u> | | | TOTAL | | <u>\$116.53</u> |

Interest on \$54.52 from Nov. 1, 1923
to December 18th, 1924 @ 8%

4.90

121.43

In addition to the above it will cost 20¢ a year to satisfy in County Clerk Office.
(This to be paid to County Clerk)

Also cost of preparing a "Quit Claim Deed by Borough Solicitor (This to be
paid to Borough Solicitor.

| | |
|---------------------|----------|
| Curb Assessment | \$135.43 |
| Street Assessment | 334.22 |
| Sidewalk Assessment | 139.55 |
| 1924 Taxes | 6.42 |

Defendants' Exhibits

171

30

20

10

EXHIBIT D5.

IN CHANCERY OF NEW JERSEY.

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

10 Your petitioner, the Rector, Wardens and Vestrymen, of Grace Church, Haddonfield, New Jersey, a body corporate organized and existing under the laws of the State of New Jersey, respectfully shows the following:

1. October 19, 1885, Joseph Ogden Cuthbert, conveyed to your petitioner the following lot and parcel of land situate in the Borough of Collingswood, in the County of Camden and State of New Jersey, and
20 bounded and described as follows:

BEGINNING at a corner to Samuel H. French's lands in the line of other lands of said Cuthbert and in the middle of the Haddonfield and Camden Turnpike Road; thence (1) along said French's line in the Westerly side of a private road to Cooper's Creek north twenty-two degrees west, two hundred forty-seven feet nine and one half inches to a corner in the same to
30 other lands of said Cuthbert; thence (2) by said other lands, south twenty-six degrees forty-eight minutes west, one hundred sixty-five feet six inches to a corner to the same in the middle of said turnpike road; thence (3) along the said middle line of said turnpike south sixty-four degrees fourteen minutes east, one hundred eighty-seven feet three and one half inches to

the place of beginning. Containing thirty-five hundredths of an acre more or less.

The said conveyance was not an absolute conveyance of the title to the said property but a conveyance in trust, the deed containing the following limitation in the habendum clause:

In trust, nevertheless, that they the said "The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey" their successors and assigns shall and will hold the said lands and premises to the use of the Protestant Episcopal Church in the diocese of New Jersey, to be used only for and as a site for a chapel, school-house, mission, parrish building, or other use of said Protestant Episcopal Church in said diocese, and that the said "The Rector, Wardens, and Vestrymen of Grace Church, Haddonfield, New Jersey" shall have power to grant and convey the said lands and premises to any parish of said Protestant Episcopal Church in said diocese, within whose bounds said lands and premises may come to lie, by its proper title if incorporated, and by apt words of conveyance; or may in the same event convey said lands and premises to the Trustees of "The Episcopal Fund of the Diocese of New Jersey" to the use of said parish.

2. The lot of land so conveyed to your petitioner for the religious purposes stated has since proven wholly unfit and inadequate for such purposes. The lot in question is small and being of a triangular shape is not adapted for the erection of a Church building. Within about 400 yards northwestwardly of the said lot and likewise of Haddon Avenue in the Borough of Collingswood, stands the Church of

the Holy Trinity, a Protestant Episcopal Church erected many years after the date of said grant to petitioner. The lands lying around and in the neighborhood of the said lot so conveyed to your petitioner by Joseph Ogden Cuthbert have been extensively developed for building purposes within the last few years and a great number of dwelling houses have been erected thereon and are now inhabited. This growth in the neighboring population, insofar as it consists of members of the Protestant Episcopal Church, has been absorbed by the Church of The Holy Trinity in Collingswood, above referred to, and there is no present demand or need in the immediate neighborhood of said lot for the erection and maintenance of a Protestant Episcopal church there or of any Protestant Episcopal chapel, school house, mission, parrish building or other structure for religious purposes. Furthermore, there is no reason, particularly in view of the location of the church of your petitioner in Haddonfield, about a mile and a half distant, and of the church of The Holy Trinity in Collingswood, above referred to, to expect that there will ever be any necessity or demand for the erection and maintenance of a Protestant Episcopal church or of any Protestant Episcopal chapel, school house, mission, parrish building or other structure for religious purposes on the lot referred to; and the existing situation and circumstances therefore in the place and neighborhood where the said lot is located are such that the interests of your petitioner will be better promoted by the sale or disposal of the said lot and by devoting the proceeds of such sale to some other use or purpose consistent with the nature and objects of your petitioner and as may be determined by this court.

3. Your petitioner further shows that its church at Haddonfield is only about a mile and half from the said lot conveyed to it by Joseph Ogden Cuthbert, that the number of its parishioners in Haddonfield is small, that the said number of its parishioners has not increased materially since the date of said conveyance and that in the last ten years, during which time the town has practically doubled in population, there has been no appreciable increase in its parishioners in Haddonfield. With the increasing costs during this period it has become increasingly difficult for your petitioner to maintain its Church in the Borough of Haddonfield and to meet the financial demands that are made upon it there. There are two mortgages upon different parts of the church lands and buildings of your petitioner in the Borough of Haddonfield in the total amount of \$7500.00, which mortgages impose a heavy burden upon your petitioner and render it impossible for your petitioner to assume other pecuniary obligations, particularly such as would be involved in any effort to establish any church, chapel, school house, mission, parrish building or other structure for religious purposes upon said lot.

10

20

4. Petitioner further shows that its financial difficulties during the period since the date of said grant by Joseph Ogden Cuthbert to date have been such that it has been unable to pay the taxes assessed against said lot by the Borough of Collingswood, that it has been forced to default in such payments for a great number of years; and that in consequence, the said lot has been advertised for sale for taxes by the Borough of Collingswood, and the said Borough, as a result of such tax sale, now holds a certificate of purchase thereof. That the taxes

30

and assessments for improvements against the said lot, together with lawful interest thereupon, amount in the aggregate to about \$800.00. That your petitioner has no funds with which to pay this said tax bill and no means of raising such funds except by sacrificing other needs of its Church and parish at Haddonfield.

10 5. The said lot, however, in the event that such trust encumbrance, imposed upon it in the said deed of Joseph Ogden Cuthbert, could be removed, would have a market value over and above the amount of the said tax encumbrance, and your petitioner has found a purchaser ready and willing to purchase the said lot for a price above the amount of the said tax encumbrance, if a clear title to said lot can be offered.

20 6. And your petitioner shows, upon the facts above set forth, that a situation has arisen with regard to the said lot conveyed to it by Joseph Ogden Cuthbert and the trust encumbrance imposed upon said lot in said deed, in which the interests of your petitioner would be better promoted by the sale or disposal of the said lot free and clear of such encumbrance, and by devoting the proceeds of such sale to some use or purpose consistent with the nature and objects of your petitioner, as more particularly provided for in an act authorizing the sale of land
30 granted or devised to religious associations, etc., enacted in 1905, and the acts amendatory thereof and supplemental thereto. (3 Compiled Statutes, page 4299-4300, Secs. 10-13)

Your petitioner therefor prays:

1. That this petition may be inquired of by the court and that the Chancellor may direct what notice of the said application shall be given and in what manner and to what persons.

2. That it may be decreed that the existing situation and circumstances in the place where the said lot of land is located are such that the interests of your petitioner will be better promoted by the sale of the said lot of land.

10

3. That it may be decreed that the said lot of land be sold free and clear of such trust encumbrance subject to the approval of this court, and the proceeds of such sale invested as this court may direct in a manner consistent with the nature and objects of your petitioner.

4. That your petitioner may have such other and further relief as may be justified.

And your petitioner will ever pray.

20

LOUIS B. LE DUC,

*Solicitor for and of Counsel
with Petitioner.*

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } SS.

William H. Lindsay of full age, being duly sworn according to law, on his oath deposes and says: 30

I am the secretary of the Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, the aforesaid petitioner, and have held that office for the last seven years. I have read the foregoing petition and the facts therein set forth are true.

WM. H. LINDSAY.

Sworn and subscribed to before me this 7th day
of April, A. D. 1924.

IMOGENE N. MARCUS.

NOTARY PUBLIC OF NEW JERSEY.

My Commission Expires December 23, 1926.

[ENDORSED.]

10

55-532

IN CHANCERY OF NEW JERSEY.
IN RE: THE RECTORS, WAR-
DENS AND VESTRYMEN OF
GRACE CHURCH, HADDON-
FIELD, NEW JERSEY,

(SALE LANDS)
PETITION

20

Louis B. De Duc,
Solicitor of Petitioner,
23 Broadway, Camden, N. J.
(Filed Apr. 10, 1924.)

IN CHANCERY OF NEW JERSEY.

| | | |
|----|---|---|
| 30 | In Re: The Rector, War- dens and Vestrymen of Grace Church, Haddon- field, New Jersey. | } ON PETITION ORDER OF REFERENCE. |
|----|---|---|

This matter being opened to the court by Louis
B. LeDuc, Solicitor for the petitioner, the Rector,

Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, upon good cause shown;

It is on this third day of June, 1924 ORDERED that this application and petition be referred to Samuel K. Robbins a special Master of this Court, to inquire into the merits thereof and the truth of the allegation of the said petition, and whether or not the said lands should be sold, in accordance with the prayer of the said petition, and what the said lands are reasonably worth, and that he report to the Chancellor with all convenient speed.

(Signed) E. R. Walker,
C.

Respectfully advised
Bayard Stockton,
A. M.

IN CHANCERY OF NEW JERSEY.

20

In Re: The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey.

On Petition, &c.
Master's Report.

30

I, the undersigned, one of the Special Masters of this Court, do respectfully report to the Chancellor, that in pursuance of an order of reference in the above matter, bearing date the third day of June, one thousand nine hundred and twenty-four (1924), directing me to inquire into the merits of

the application and petition of the Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, and the truth of the allegations of the said petition, and whether or not the said lands should be sold in accordance with the prayer of said petition, and what the said lands are reasonably worth; I have been attended by Louis B. LeDuc, Esq., Solicitor and of counsel with the petitioner, and have taken the depositions of witnesses and have considered the matters referred to me.

10 And I further report that the said lands consist of a triangular piece of ground in the Borough of Collingswood, County of Camden, State of New Jersey, at the extreme easterly boundary of said Borough where it joins the Township of Haddon; that said lands form a rightangled triangle, having a base or front on Haddon Avenue of about one hundred and fifty feet, and its greatest depth about one hundred and thirty feet, the hypotenuse of
20 said triangle being about one hundred and eighty-seven feet, which lot was conveyed to the petitioner by Joseph Ogden Cuthbert on October 19th, 1885, by the deed and upon the trust set forth in the petition.

And I further report that said lands are situate about one mile and a half from the church edifice of the petitioner at Haddonfield, New Jersey, and about five city squares distant from Holy Trinity Church, in the Borough of Collingswood, and is not
30 adapted to or required for any of the uses or purposes named in said trust; that the petitioner has been unable to utilize said land for any of the purposes set forth in said deed; that it is unlikely that said lands can ever be used to advantage by the petitioner or others for any of the purposes set forth in said deed; that the petitioner has never derived any benefit from said lands, which are unim

proved, but, on the contrary, has been charged with taxes for the same and other assessments which it has been and is unable to pay and which now amount, together with costs and interest, to the aggregate sum of Eight Hundred Dollars (\$800.00) or over; that the allegations in said petition are true, and that the said lands should be sold in accordance with the prayer of the said petition.

And I further report that the said lands, in addition to their irregular shape, are very much below 10
grade and will require considerable filling in before being built upon, the cost of which filling in will be approximately Five Hundred Dollars (\$500.00), and that in their present condition said lands are reasonably worth the sum of Two Thousand Dollars (\$2,000.00).

And I further report that an offer, in writing, has been made to the petitioner by one Arthur Y. McNeill (Senior Warden of said petitioner) to purchase said lands from the petitioner upon condition 20
that the petitioner secures from this Court a Decree relieving it from the trust obligations imposed by the deed above-mentioned, and to pay to the petitioner therefor the sum of One Thousand Dollars (\$1,000.00), and further to pay the taxes and assessments, with interest and costs thereon, outstanding against said lands, as well as the legal expenses involved in procuring such decree, which agreement bearing date the fourth day of February, 1924 and 30
duly executed, was produced to me and marked Exhibit P9, and that I am satisfied from the evidence before me that the offer so made by said agreement is a highly advantageous offer to the petitioner for the lands in question, and will, if carried out, produce a larger net amount to the petitioner than the sale of said lands in any other way or manner.

And I further report that in my opinion, from the

evidence produced before me and accompanying this, my report, the interests of the petitioner in said lands requires, and will be promoted, by a sale thereof for the price and upon the terms set forth in said agreement.

Respectfully submitted this twenty-fourth day of October, one thousand nine hundred and twenty-four (1924).

Samuel K. Robbins
Special Master.

10

IN CHANCERY OF NEW JERSEY.

20 In Re: The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey. } On Petition, &c. DEPOSITIONS.

30 Depositions taken before me, the undersigned, one of the Special Masters of the Court of Chancery of New Jersey, at my offices, No. 428 Market Street, in the City of Camden, New Jersey, on Friday, the tenth day of October, one thousand nine hundred and twenty-four (1924), at ten o'clock in the forenoon, pursuant to an order of reference made in this cause and bearing date the third day of June, A. D. 1924, in the presence of Louis B. LeDuc, Esq., Solicitor of the Petitioner.

* Samuel K. Robbins
Special Master.

The Solicitor of the petitioner offers in evidence a deed from Joseph Ogden Cuthbert, to the Rector, Wardens and Vestrymen of Grace Church, Haddonfield, N. J., dated the 19th day of October, one thousand eight hundred and eighty-five duly acknowledged according to law by the said J. Ogden Cuthbert, before J. Lewis Rowand, a Commissioner of Deeds, and duly recorded in the office of the Register of Deeds of Camden County, at Camden, N. J., on October 30, 1885, in Book No. 120 of Deeds, page 274 &c. as appears by endorsements thereon, which deed is marked Exhibit P1. 10

Samuel K. Robbins
Master.

LeFevre W. Downing, being duly sworn according to law, on his oath, says:

I am Junior Warden and Treasurer of the Grace Church, Haddonfield, N. J. I have served as such since June of 1918. 20

As Treasurer of said church, I have compiled a report showing the financial condition of the church on December 31, 1923, for the fiscal year of 1923, being from January 1st, 1923. I have here the report which I prepared. (Report offered in evidence and marked Exhibit P2.)

This report is made up from the Treasurer's books of Grace Church, Haddonfield, which I keep, and shows the total receipts for that year to be the sum of \$8,584.17, including a balance on hand on January 1st, 1923, of \$392.37. This report also shows the total disbursements for the year to have been the sum of \$8,230.90, leaving balance on hand of January 1, 1924, of \$353.27. The Church has no other moneys or securities of any kind. 30

We have no endowments.

There is a mortgage against the property of this Church in Haddonfield, of \$7,500 on which the Church pays six per-cent. interest. \$6,000 of this mortgage indebtedness is on the Parish house and \$1500 on a strip of land east of the Parish House and east of Rectory, in Haddonfield.

I have also prepared another statement showing the receipts and disbursements from January 1,
10 1924, to September 30th, of this year (1924). This is also taken from my books of account and shows receipts totalling \$5,403.45, in which is included the balance shown by the previous statement marked Exhibit P2, and shows disbursements for the same period of \$4,550.29 leaving a balance on hand on September 30, 1924 of \$853.16. (Statement offered in evidence and marked Exhibit P3.)

This statement also shows bills due for coal, insurance, interest, &c. totalling \$1,062.50. All but
20 \$90 of this amount for diocesan expenses are now due and payable, and the latter is due at the end of the year.

I have here a printed report of my receipts and disbursements as treasurer of Grace Church, Haddonfield, N. J. for the year 1919; this was prepared by me from the original books in my possession and printed for circulation among the members of the Parish. This shows total receipts for that year of
30 \$9,483.12 which does not include any balance from the preceding year. The disbursements for that year were \$9,345.14, leaving a balance on Jan. 1, 1920, of \$137.98. (This statement offered in evidence and marked Exhibit P4.)

This covered the first full year of my office as Treasurer of the Church. Since that time there has been a gradual decline in the receipts of the Church, and it has always been a matter of anxiety as to

whether we would be able to get enough money to meet expenses and we have only been enabled to do so by extraordinary efforts in holding bazaars or other entertainments and soliciting subscriptions to meet possible deficiencies. I have been a member of the Vestry of this Church since about the year 1910 and during that time we have been confronted every year with this same condition of affairs as the Congregation is small and it is difficult to raise sufficient funds to meet the necessary expenses. 10

My predecessor as Treasurer, was the late George J. Bergen, who held that office for some years. At his death, in June of 1918, we found to our surprise that the Church was indebted to his Estate for mon-
eys advanced in the sum of \$875.00. which his widow, gave us a year to pay and we succeeded in raising the money during that time, after strenuous efforts.

I know where the land described in the deed of Joseph Ogden Cuthbert, to the Church corporation, marked Ex. P-1, is located. It is a triangular piece 20
of land lying at the junction of a private lane called French's Lane and the road from Camddn to Haddonfield, now known as Haddon Avenue about 2½ to 3 miles distant from the Church property in Haddonfield. There is no structure on it of any kind and it has produced no revenue for the Church since I have known anything about it. It has not been used for any purpose during that time, to my knowledge. The Church has never made any use of it 30
during the time I have lived in Haddonfield, but has been compelled to pay taxes and other assessments against it; that is they have been charged against the Church and assessed against the Church but the Church has not been able to make the payments on account of other expenses that were pressing. Early this year I received a statement showing the assessments on this lot for the years 1913 to 1923, in-

clusive, which without adding interest or costs amounted to \$116.53. I have this statement here. (Statement offered in evidence and marked Exhibit P-5.) In addition to this I have here a bill from the Borough of Collingswood, in which this lot is situate, for a sidewalk assessment amounting with interest to Nov. 1, 1923, to \$133.90. (Bill offered in evidence and marked Exhibit P 6.) I also have another bill from said Borough to the Church for concrete assessment on this lot amounting with interest to Nov. 1, 1923, to \$314.58. (Bill offered in evidence and marked Ex. P-7.) I also have another bill from said Borough vs. the Church for curb assessment on this lot amounting with interest to Nov. 1, 1923, to \$128.74. (Bill marked Exhibit P-8).

The statement of Taxes and the bills I have mentioned make a total of \$693.75, to which should be added whatever interest charges and costs have been incurred by the non-payment of the taxes and additional interest on the three bills. This I estimate, will amount in all to over \$800.00 at the present time.

The reason these taxes and assessments are unpaid is that the Church at no time has had the money with which to pay them and which it could, with safety, spare out of its receipts.

The piece of land to which I alluded as being covered by a \$1500. mortgage was a *strip* of land 30 feet in width, which adjoined the Church property on the east, and fronted on Kings' Highway. There was a prospect that it would be sold and built upon and used for commercial purposes which if done would be very detrimental to the Church property. We procured an option on it for \$110. a front foot and tried to raise the money by subscriptions from members of the Congregation. We only succeeded in raising \$1800. and raised the balance by putting

a mortgage on this piece of land of \$1500. the purchase of which we felt compelled to make for the protection of the other property of the Church.

The attendance at the Church in Haddonfield on Sundays does not average over one hundred persons at the morning service during the Spring, Fall and Winter. During the Summer months it is very much less.

LeFerre W. Downing.

Sworn and subscribed to, before me, this tenth day of October, A. D. 1924.

Samuel K. Robbins,
Master.

Alanson Q. Bailey, being duly sworn according to law, on his oath, says:

I am the Rector of the Church of Holy Trinity at Collingswood, N. J., and am familiar with the little strip of land owned by Grace Church, Haddonfield, on Haddon Ave., in Collingswood. Holy Trinity Church of which I am Pastor, is an Episcopal Church located on Haddon Ave. in Collingswood about five City sqaures distant from this piece of land. I do not think it is more than a quarter of a mile from my church. My church is the only Episcopal Church in Collingswood proper; there is another at West Collingswood which is in the same Borough, but a different section.

In my judgment, there is no need of a chapel, school-house mission-house, parish building or any other use in connection with the Protestant Episcopal Church that can be made of this lot at the present time, with advantage. It is too small and

too irregular in shape, being a triangle, on which to build a building suitable for a chapel, school-house or parish house, and in my judgment there will be no demand for any such building on this lot for years to come, if ever, as all of the Episcopalians in that locality are well provided for now so far as church properties go, and I have in my congregation 19 families attending my church who live beyond this piece of land.

10

Alanson Q. Bailey.

Sworn and subscribed to, before me, this tenth day of October, A. D. 1924.

Samuel K. Robbins,
Master.

20 JOSEPH WALTON, being duly sworn according to law, on his oath, says:

I am a Vestryman of Grace Church, Haddonfield, and Missionary Treasurer. I receive all moneys for mission purposes which I in turn forward to the Diocesan Missionary Treasurer. I was elected Missionary Treasurer in 1919. The quota of each church is fixed by the officials of the diocese, and is for carrying on the work of the church at home and abroad. The quota required to be raised by Grace Church, Haddonfield, N. J. during the current year is \$1915.00. Of this amount we have only raised up to date \$820.00, which I have forwarded, leaving a balance still due of \$1,095.00., which amount must be raised during the remainder of the year.

30

Our quota for 1923 was \$2425. of which we raised only \$1569. leaving a balance of \$856. for which we

are delinquent. Our quota for 1922 was \$6,000. of which we raised only \$167.00 leaving a balance of \$4,330. for which we were delinquent and which has never been paid.

I know the piece of land in the Borough of Collingswood, which was conveyed to the Church by the deed of Mr. Cuthbert, marked Exhibit P-1. It is a triangular piece, with no structure on it, and the church has never received any revenue from it to my knowledge. The financial condition of the Church with which I have been connected was such that it was unable to pay the taxes and other assessments against this property so that they became in arrears. 10

A proposition was recently made by Arthur Y. McNeill, who is now the Senior Warden of Grace Church, that if the land could be sold so as to make good title, he would agree to purchase it and pay all of the outstanding claims against it and also the costs of whatever proceedings might be necessary to enable the land to be sold and a good title given, and would pay to the Church the sum of \$1,000.00 to relinquish any claim or title that it might have in this property, and that in case it should transpire that any proceedings that might be taken should prove unsuccessful in making a sale and giving good title, that he would relieve the Church from any obligation to pay the same. I was appointed one of a Committee to take into consideration this offer and report to the Vestry our conclusions. We made a favorable report because it was the only opportunity the Church had ever had of getting any benefit of this land, which was totally unsuited to the purposes set forth in the deed of Mr. Cuthbert. 20 30

After this report was made it was approved by the Vestry and counsel employed to put the agreement in writing. The agreement was drawn up and

read in the meeting of the Vestry at which I was present, and approved by the Vestry, and ordered to be executed. (Witness being shown what purports to be an agreement dated February 4, 1924, between The Rector, Wardess, & Vestrymen of Grace Church of Haddonfield, and Arthur Y. McNeill, party of the second part, written in typewriting, on three sheets of legal cap paper, and signed by the Rector, Wardens & Vestrymen of Grace Church of Haddonfield N. J., Augustus Walton Shick, Rector, and by Arthur Y. McNeill, and marked Exhibit P-9 for identification, says:) This is the Agreement to which I alluded in my testimony just given.

Joseph Walton.

Sworn and subscribed to, before me, this 10th day of Oct. A. D. 1924.

Samuel K. Robbins,
Master.

20

EDGAR C. CUTHBERT, being duly sworn according to law, on his oath, says:

I reside at Haddonfield, N. J., and am a member of Grace Church, there, and am one of the vestrymen of said Church. I know about the parcel of land described in the deed from Joseph Ogden Cuthbert, to the Rector, Wardens & Vestrymen of said Church, marked Exhibit P-1, and am a grandson of the grantor named in that deed.

In the year 1913, I lived in the Town of Westmont, in Haddon Township, lying between the Borough of Haddonfield and the Borough of Collingswood. While I lived there I attended Grace Church,

Haddonfield, of which I had been a member for some years. In that year there were a number of Episcopalians in the Borough of Collingswood belonging to Holy Trinity Church there who were anxious to get a larger church and were thinking of building. I knew about this Cuthbert lot and suggested that they build their church on that lot, but they were unwilling to do so as they said the lot was entirely too small for the church. They subsequently bought the site of the present church about four or five 10 squares nearer Camden. Before they selected their present site I also offered if they would take this piece of land to get the heirs of the Cuthbert Estate to donate additional land so that they might have a piece large enough for their church, but they did not favor my proposition because they claimed it was too far removed from the settlement of Collingswood and they wanted something nearer the central part of the town. The following year in the 20 Town of Westmont the Episcopalians there started a Mission in a dwelling-house. I suggested them that they could get the Cuthbert lot and put a building on that for their Mission, but they also objected that it was too far from the center of their settlement. I also proposed to them to have the heirs of the Estate donate more land if they would building some kind of a church structure on it but they did not favor my proposition on account of the distance they would have to walk.

At the time I made these efforts to get a church 30 building on this lot I was living in the old Cuthbert Mansion House which was immediately across Haddon Avenue from the premises in question. I have been familiar with the property there all my life, ever since I can remember. I was born in the City of Camden from which it is only four miles and a half distant. I am now 49 years of age. I

have bought and sold land in the vicinity of this lot and am well acquainted with the value of real estate in that neighborhood.

The present value of this lot in my judgment, is not over \$2500.00. The lot extends along Haddon Avenue about 150 feet. The line of the lot towards Camden runs northeastwardly at right angles to Haddon Avenue and is about 133 feet. The lot is a right angle triangle and the hypotenuse of the triangle which was formerly the westerly side of a private lane is about 187 feet. The grade of the lot is very low and would need a great deal of filling in to bring it up to grade. In the Spring of the year it is under water unless the drain under Haddon Avenue is kept open.

Edgar C. Cuthbert.

Sworn and subscribed to, before me, this 10th day of October, A. D. 1924.

20

Samuel K. Robbins,
Master.

IN CHANCERY OF NEW JERSEY.

| | | |
|----|--|--|
| 30 | In re: The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey. | } On Petition, &c. ADDITIONAL DEPOSITIONS. |
|----|--|--|

Continuation of the taking of depositions in the above entitled cause, before me, Samuel K. Rob-

bins, a Special Master in Chancery of New Jersey, this eighteenth day of October, one thousand nine hundred and twenty-four (1924) at ten o'clock in the forenoon, at my offices, No. 428 Market Street, in the City of Camden, New Jersey, in pursuance of the order of reference before recited, and in the presence of Louis B. LeDuc, Esq., Solicitor of the petitioner.

Samuel K. Robbins,
Special Master. 10

G. JARRETT SAUERHOFF, being duly sworn according to law, on his oath, says:—

I am in the real estate business as a realtor, and reside at No. 217 N. 40th St., Camden, N. J. I am the President of the Van Russ Company, a corporation in the real estate business, and having its office in the City of Camden aforesaid. I have been engaged in said business for the past four years. During that time I have bought for myself and as President of the Van Russ Co. bought and sold real estate in the City of Camden and vicinity of Collingswood and Haddonfield and am familiar with real estate values in Collingswood and its vicinity. 20

I am familiar with the triangular piece of ground in the Borough of Collingswood, County of Camden, in this State, owned by Grace Church, Haddonfield, N. J. This land is on the extreme easterly edge of the Borough of Collingswood and adjoins the Town of Westmont, which is in Haddon Township. It has a front on Haddon Avenue of about 150 feet. On the side of the lot towards Camden the lot has a depth from the edge of the Avenue eastwardly of about 130 feet. The lot forms a rightangle triangle, 30

the hypotenuse of which is about 187 feet, and makes an acute angle at the easterly end of the lot on Haddon Avenue. The lot has no improvements on it and appears to me to be very much below grade. I have examined it recently. The shape of this land is very much against it either for utilizing it or making a sale of it. Only a portion of the frontage on Haddon Avenue could be utilized for a building such as a house or other structure because
10 of the lack of depth at the easterly end. I should say not over 70 or 80 feet, would be available for building purposes and unless the building of a place there did not require the lot being graded, it would probably cost \$500. or more to bring the lot up to grade. In order to utilize this property to advantage it would be necessary to buy if possible adjoining land in order to make the entire piece a rectangle having the same depth along the whole frontage. This may be difficult to do on account of a
20 lane known as French's Lane which runs along the hypotenuse of the triangle and which might present difficulties in acquiring title to the land over which it passes.

The Borough of Collingswood has a Sunday Law that forbids the transaction of commercial business on Sunday, which is so rigidly enforced that if we go out there to show a property to a prospective purchaser on Sunday the Borough authorities will stop us if they find it out. In the Township of Haddon, there no restrictions that are enforced, so that
30 the land in that township along Haddon Avenue is more saleable for commercial purposes such as stores, and so, on, than land in the Borough of Collingswood, where this is located. This condition puts this land practically out of the market as a location for the carrying on of business there and

makes it valuable almost wholly as a location for residences.

In my judgment, the market value of this property at the present time is about \$2000. and I doubt if it can be sold for that much money. The price of \$2,000. in my judgment, would be a fair price for it at private sale, and all that it is reasonably worth at this time.

G. JARRETT SAUERHOFF.

10

Sworn and subscribed to, before me, this 18th day of Oct. A. D. 1924.

SAML. K. ROBBINS,
Master.

AUGUSTUS WALTON SHICK, being duly sworn according to law, on his oath, says:—

I am the Rector of Grace Church, Haddonfield, 20
and have been the Rector for the past six years.

I appointed a Committee of the Vestry in January, last, to investigate and report upon a proposition made to the Church by the Senior Warden, Mr. Arthur Y. Mc Neill, relative to the purchase of the triangular piece of land in the Borough of Collingswood, which was conveyed to the Church by Joseph Ogden Cuthbert, by deed dated October 19, 1885. (Witness being shown Deed marked Ex. P-L, says:)

This is the deed to which I refer. 30

This Committee reported at a special meeting of the Vestry called on February 4th, 1924, in favor of accepting the proposal of Mr. Mc Neill and the Vestry thereupon by a resolution unanimously adopted the report of the Committee and authorized the making of a contract with Mr. Mc Neill. A

contract was drawn up between the Rector, Warden and Vestrymen of Grace Church, Haddonfield, N. J., party of the first part, and Arthur Y. Mc Neill, of Haddonfield, N. J., party of the second part, bearing date the fourth day of February, the date of said Vestry meeting and intended to carry out the resolution above mentioned. This contract was duly executed. I have the original here with me. (Original agreement produced and marked Exhibit P-9.)

10 At the meeting of the Vestry of Grace Church held on February 4, 1924, about which I have already testified, there was a quorum present. Mr. Mc Neill, one of the members of the Vestry, and the person the agreement was made, was not present at the meeting when the resolution was considered and passed.

I consider this proposition to sell this lot upon the terms set forth in this agreement, Exhibit P-9, a very desirable proposition and one that will be
20 very beneficial to the Church. The Church has never had any revenue from this land since the deed was made by Mr. Cuthbert and has been unable so far as I can learn and from what I know as Pastor of the Church for the past six years to make any use whatever of the land as a site for a chapel, school-house, mission, parish building or for any other purpose such as contemplated and mentioned by Mr. Cuthbert in his deed and I see no
30 possibility of making use of this piece of land for any of these purposes in the future. There is no necessity at this time for the use of this land for any of the purposes named, because it is too near to Holy Trinity Church in the Borough of Collingswood, which takes care of all the Episcopalians in that neighborhood. Grace Church, Haddonfield, has for some years been unable to raise sufficient funds

to meet its pressing needs and pay the taxes on this piece of land, and for that reason has not paid the taxes so they are very much in arrears.

AUGUSTUS WALTON SHICK.

Sworn and subscribed to, before me, this 18th day of October, A. D. 1924.

SAML. K. ROBBINS,

Master.

The Solicitor of the petitioner produced and offered in evidence Tax bill of the Borough of Collingswood, for taxes assessed on the lands in question, for the year 1924, showing the same to be assessed at the sum of \$200.00, and taxes for the year at \$6.30, which Tax Bill is marked Ex. P-10. 10

SAML. K. ROBBINS,

Master.

I certify that all the foregoing depositions were reduced to writing, upon the typewriting machine, and without stenography, by Marie C. Baker, a competent person selected by me, and the said testimony was so written in my immediate presence and hearing, and at the examination, and was accurately taken down from the lips of the witness. 20

SAML. K. ROBBINS,

Master.

30

[ENDORSED]

55/532 1830
 IN CHANCERY OF NEW JERSEY

In Re: Rector, Wardens and Vestry-
 men of Grace Church, Haddonfield,
 New Jersey.

10

On Petition, &c.
 MASTER'S REPORT:

Sol.

Louis B. Le Duc,
 25 Broadway,
 Camden, N. J.

MASTER'S FEES:

20

| | |
|----------------------|---------|
| Making Report | \$10.00 |
| Eng. do. 9 fols. | 3.60 |
| Depositions, 49 fol. | 14.70 |
| Swearing 6 witnesses | 1.50 |
| Marking 10 exhibits | 1.50 |
| Attendance, 2 das. | 12.00 |
| | <hr/> |

Total \$43.30
 Filed: Oct. 30, 1924.

30

EXHIBIT A.

IN CHANCERY OF NEW JERSEY.

| | | | |
|---|---|--|----|
| In Re: Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey. | } | ON PETITION, ETC. ORDER CONFIRM- ING MASTER'S REPORT AND FOR SALE OF PETITIONER'S LAND. | 10 |
|---|---|--|----|

This matter being opened to the Court by Louis B. LeDuc, solicitor for petitioner; and upon reading a report made and filed in the above entitled cause pursuant to an order of reference therein by Samuel K. Robbins, Esquire, one of the Special Masters of this court, dated the 24th day of October, 1924, whereby it appears that the lands and tenements referred to in said petition, situate in the Borough of Collingswood, County of Camden, State of New Jersey and bounded and described as follows: 20

BEGINNING at a corner to Samuel H. French's lands in the line of other lands of said Cuthbert and in the middle of the Haddonfield and Camden Turnpike Road; thence (1) along said French's line in the Westerly side of a private road to Cooper's Creek north twenty-two de- 30

grees west, two hundred forty-seven feet nine and one half inches to a corner in the same to other lands of said Cuthbert; thence (2) by said other lands, south twenty-six degrees forty-eight minutes west, one hundred sixty-five feet six inches to a corner to the same in the middle of said turnpike road; thence (3) along the said middle line of said turnpike south sixty-four degrees fourteen minutes east, one hundred eighty-seven feet three and one half inches to the place of beginning. Contain-
10 ing thirty-five hundredths of an acre more or less.

were granted and conveyed to petitioner by deed of Joseph Ogden Cuthbert on November 19, 1885, upon condition that the said lands and tenements so granted and conveyed should be held in trust and devoted to certain religious uses in the said deed specified and without power in the petitioner to sell
20 and convey the same free of said trust; and it appearing from the facts stated in said report that the existing situation and circumstances in the place where the said lands and tenements are located are such that the interests of the petitioner will be better promoted by the sale of the said lands and tenements, free and clear of the said trust; and it appearing that an offer in writing to purchase said lands has been made to the petitioner by one, Arthur Y. McNeill, upon condition that the petitioner se-
30 cures from this court a decree relieving it from the trust obligations imposed in the said deed of Joseph Ogden Cuthbert and that the said McNeill will pay the petitioner therefor the sum of One thousand dollars (\$1,000.00), together with taxes and assessments with interest and costs thereon outstanding against said lands, as well as the legal ex-

penses involved in procuring such decree; and it further appearing that the offer so made is a highly advantageous offer to the petitioner;

NOW, THEREFORE, it is on this day of December, 1924, on motion of Louis B. LeDuc, solicitor for petitioner, ORDERED that the said Master's Report and all the matters and things therein contained be, and the same are, hereby ratified and confirmed, and that the petitioner be, and it hereby is, authorized and directed to sell the said lands and tenements hereinabove described to the said Arthur Y. McNeill, free and clear of the conditions, restrictions and obligations imposed by way of trust in the said deed of Joseph Ogden Cuthbert, for the terms hereinabove stated; and upon compliance by the purchaser with such terms that a proper conveyance of the said lands and tenements shall be executed and delivered to the said Arthur Y. McNeill for the lands and tenements so sold; and said purchaser shall thereupon be relieved from liability to see to the application of the purchase money arising from such sale;

AND IT IS FURTHER ORDERED that the proceeds of the said sale shall be invested or set apart and devoted to uses authorized by the statute, and that the determination of the Trustees of petitioner thereupon shall be reported to the Chancellor for his approval.

E. R. WALKER,

C. 30

[ENDORSED]

IN CHANCERY OF NEW JERSEY

In Re: Rector, Wardens, and Vestrymen of Grace Church, Haddonfield, New Jersey.

10

ON PETITION, ETC.
ORDER CONFIRMING MASTER'S
REPORT AND FOR SALE OF
PETITIONER'S LAND.

Louis B. LeDuc,
Solicitor for Petitioner,
23 Broadway, Camden, N. J.

20

IN CHANCERY OF NEW JERSEY.

| | | |
|--|---|--|
| In Re: The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey. | } | ON PETITION, etc. AMENDED REPORT and PETITION. |
|--|---|--|

30

The undersigned, The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, petitioner herein, respectfully reports to the Chancellor as follows:

1. Pursuant to the order of this court confirming the Master's report herein and directing the sale of the petitioner's land to Arthur Y. McNeill for the consideration of the sum of \$1,000, the said sale was duly effected, and deed of conveyance executed by your petitioner to the said Arthur Y. McNeill and the sum of \$1,000 in cash paid by the said Arthur Y. McNeill to your petitioner, which sum was thereupon deposited in bank where it presently remains.

2. Pursuant to the statute in such case made and provided (3 N. J. Comp. Stat. page 4300, Sec. 3) your petitioner at a regular meeting of its Vestry (or Board of Trustees) determined that the said sum of \$1,000 should be loaned, invested and reinvested by petitioner in such securities as any executor, administrator, guardian or trustee in this State, whose duty it may be to loan money entrusted to him, may, by law, invest in and that such use of the said sum would best promote the interests of your petitioner.

Your petitioner therefore prays that this Honorable Court will, by its order, approve the said determination of petitioner as to the investment and use of the said proceeds of sale and direct the investment of the same in accordance with such determination.

The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, N. J.

By Louis B. LeDuc,
Solicitor.

STATE OF NEW JERSEY }
 COUNTY OF CAMDEN } ss.

WILLIAM H. LINDSAY of the Borough of Haddonfield, County of Camden and State of New Jersey, being duly sworn according to law, on his oath deposes and says:

10 I am and for several years last past have been secretary of the petitioner herein, The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey.

At a regular meeting of the said corporation held on October 28th, 1925, the following resolution was regularly moved, seconded and unanimously passed by the Vestry of the Church, a quorum of the said Vestry being then and there present, viz:

20 "WHEREAS, pursuant to the order of the Court of Chancery of New Jersey, the land of The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, situate in the Borough of Collingswood, New Jersey, has been sold and conveyed to Arthur Y. McNeill and the sum of \$1,000 received from the said purchaser therefor; and

30 WHEREAS, the said sum of \$1,000 has been deposited in bank to await the determination of the vestry as to its proper investment and the approval of the Court of Chancery thereupon;

NOW, THEREFORE, BE IT RESOLVED that this Body herewith determines, subject to the approval of the Court of Chancery that the said \$1,000 shall be loaned, invested and reinvested by this corporation in such securities as any executor, administrator, guardian or trus-

tee in this State, whose duty it may be to loan money entrusted to him, may, by law, invest in; and

BE IT FURTHER RESOLVED that the treasurer of this corporation be and he is hereby authorized and instructed to so loan, invest and reinvest the said fund in such of the said securities as his discretion may approve; and

BE IT FURTHER RESOLVED that the 10 solicitor of this corporation, Louis B. LeDuc, be authorized and directed to file a report of this determination and submit the same to the Court of Chancery with a petition in due form, for the approval of the same."

WM. H. LINDSAY.

Sworn and subscribed to
before me this 20th day

November
of October, A. D. 1925.

Wm. S. Zink.

20

[ENDORSED]

IN CHANCERY OF NEW JERSEY

In Re The Rector, Wardens and Vestrymen of Grace Church, Haddonfield,
N. J.

30

ON PETITION, etc.

AMENDED REPORT AND
PETITION AND
AFFIDAVIT

Louis B. LeDuc, Solicitor,
25 Broadway, Camden, N. J.

IN CHANCERY OF NEW JERSEY.

| | | | |
|----|---|---|--|
| 10 | In Re: Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey. | } | ON PETITION, etc. ORDER APPROVING INVESTMENT OF FUNDS. |
|----|---|---|--|

This matter coming before the Court on the report of the petitioner, The Rector, Wardens and Vestrymen of Grace Church, as to the determination by the said petitioner of the use to which the proceeds of sale of the church lands directed by previous order of this court, should be devoted and petition thereupon for an order approving the said determination; and the court having read and considered the said report and petition, and the affidavit of William H. Lindsay in support thereof, and being of the opinion that the said report should be confirmed and the said determination of the vestry of petitioner approved;

30 NOW, THEREFORE, it is on this 1st day of December, 1925, ORDERED that the said report be, and the same is, hereby confirmed and that the Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, be, and the same is hereby directed to invest the proceeds of the said sale as

a separate fund, in such securities as any executor, administrator, guardian or trustee in this State, whose duty it may be to loan money entrusted to him, may, by law, invest in, and to keep the same so invested.

E. R. WALKER,
C.

Respectfully advised
Bayard Stockton
A. M.

10

[ENDORSED.]

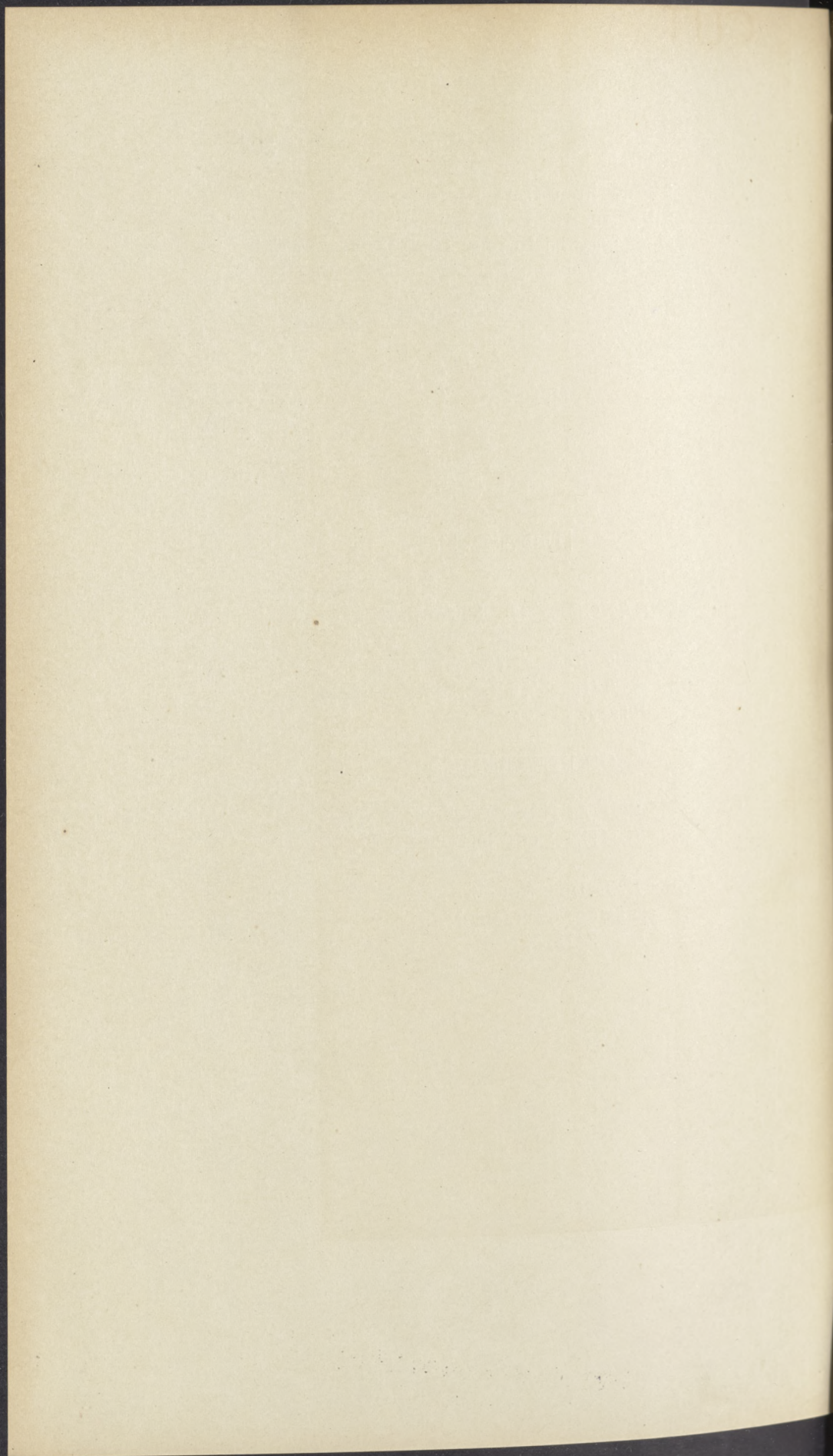
55/532 1830
IN CHANCERY OF NEW JERSEY.

In Re The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey. 20

ON PETITION, etc.

ORDER APPROVING INVESTMENT OF FUNDS.

Louis B. LeDuc, Solicitor,
25 Broadway, Camden, N. J. 30
Filed Dec. 2, 1925.



N-27°40' E →
120.00'

N-28°37'32" E →
120.00'

116.46'
N-27°40' E →

80.61
N-27°40' E →

12.85'

12.39'

14.04'

35.5'

39.5' → N-62°20' W

AD

53.74'

39.39'

FRENCH
ESTATES

TOWNSHIP

S 20° 27' 53" E →
14.11'



90°
94.6'

90°
90.25'

90°
88.20' E →

90°
22.30'

408.07'

TO
STANBRIA
AVE →
6/19785

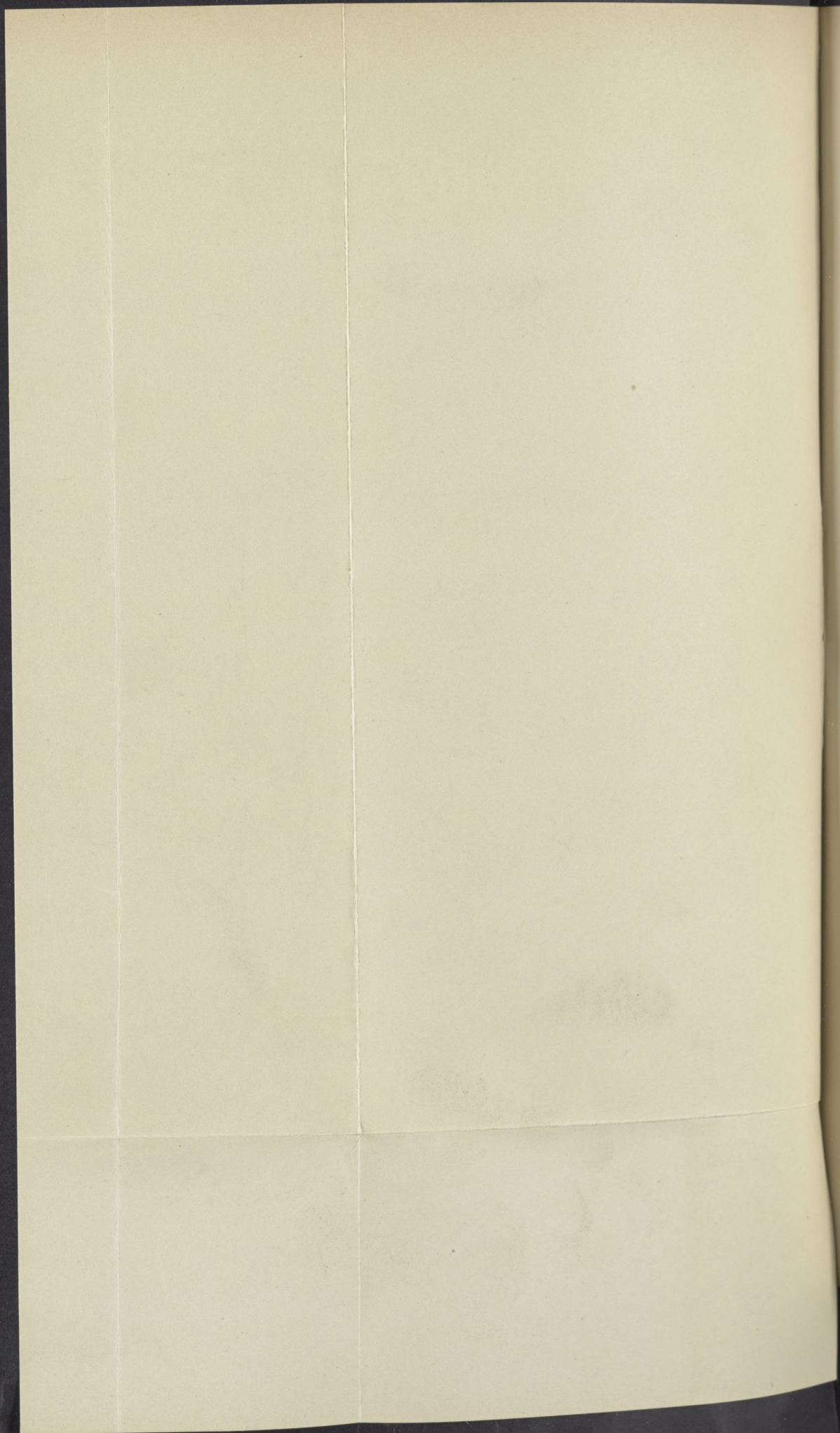


EXHIBIT D7.

KNOW ALL MEN BY THESE PRESENTS,
That I, ARTHUR Y. McNEILL, of Haddonfield, in
the County of Camden and State of New Jersey,
for and in consideration of the sum of One Dollar
and other good and valuable consideration, lawful
money of the United States of America, to me in
hand paid by THE RECTOR, WARDENS & VES- 10
TRYMEN OF GRACE CHURCH IN HADDON-
FIELD, at or before the ensealing and delivery of
these presents, the receipt whereof is hereby ac-
knowledged, have granted, bargained, sold, assigned,
transferred and set over and by these presents do
grant, bargain, sell, assign, transfer and set over
unto the said The Rector, Wardens & Vestrymen
of Grace Church in Haddonfield, its successors and
assigns all that certain INDENTURE OF MORT- 20
GAGE, bearing date the Eighteenth day of Octo-
ber, in the year of our Lord one thousand nine hun-
dred and twenty-six, made and executed by Col-
lingswood Extension Realty Company to Lawrence
Crombie, to secure the payment of the sum of \$24,-
000., together with interest thereon at the rate of
six per cent per annum, payable semi-annually, cov-
ering premises situate in the Borough of Collings-
wood, County of Camden and State of New Jersey,
in said mortgage more particularly described, which 30
mortgage was recorded in the Register's Office of
the County of Camden, N. J., on October 20, 1926,
in Book 295 of Mortgages, page 397 &c., which mort-
gage was subsequently assigned by assignment of
mortgage dated October 18 1926, made by Lawrence
Crombie to Arthur Y. McNeill, and recorded in the

Register's Office aforesaid, in Book 72 of Assignments of Mortgages, page 61.

TOGETHER with the Hereditaments and Premises in and by the said Indenture of Mortgage particularly described and granted, or mentioned and intended so to be, with the appurtenances, and the Bond or Obligation in said Indenture of Mortgage mentioned, and thereby intended to be secured, and all moneys due and to grow due thereon, and the

10 Warrant of Attorney to confess judgment thereto annexed; and all my estate, right, title, interest, property, claim and demand in and to the same.

TO HAVE AND TO HOLD, the same unto the said The Rector, Wardens & Vestrymen of Grace Church in Haddonfield, its successors and assigns, to it and their proper use, benefit and behoof forever, subject nevertheless to the equity of redemption of said Collingswood Extension Realty Co., Mortgagor in the said Indenture of Mortgage named

20 and its successors and assigns therein.

IN WITNESS WHEREOF, I, the said Arthur Y. McNeill, have hereunto set my hand and seal this 9th day of February in the year of our Lord one thousand nine hundred and twenty-eight.

(Sgd.) Arthur Y. McNeill (Seal)

Signed, Sealed and Delivered

in the presence of

(Sgd.) Edna M. Gulder

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

BE IT REMEMBERED, that on this 10th day of February in the year of our Lord one thousand

nine hundred and twenty-eight, before me the subscriber, a Notary Public of N. J., personally appeared Arthur Y. McNeill who, I am satisfied, is the grantor mentioned in and who executed the within deed or conveyance and I having first made known to him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

(Sgd.) Edna M. Gulder,
Notary Public of N. J.
(Seal) My commission expires Jan. 18, 1931.

10
20

[ENDORSED.]

ASSIGNMENT OF MORTGAGE.

ARTHUR Y. McNEILL,
To
THE RECTOR, WARDENS & VESTRYMEN OF GRACE CHURCH IN
HADDONFIELD. 30

Received in the office of
the County of
on the day of
A. D. 192 at o'clock in

the noon, and recorded in
 Book of Mortgages for
 said County, on pages

—
 Paid \$1.00

Del.
 Wm. Carey Marshall
 Apr. 9-28, at 9.47 A. M.

10

—
 EXHIBIT D8.

CHARTER AND BY-LAWS

—of—

GRACE CHURCH,

—in—

HADDONFIELD,

New Jersey.

1859.

20

James Dobelbower, Printer,
 510 Minor St. above Fifth,
 Philadelphia.

(3)

CHARTER.

Haddonfield, April 20th, 1843.

30

TO ALL WHOM THESE PRESENTS MAY CONCERN.

We whose names and seals are hereto affixed do
 certify, That the congregation of Grace Church, in
 Haddonfield, in the County of Gloucester and State
 of New Jersey, which is a Society worshipping ac-
 cording to the customs and usages of the Protestant
 Episcopal Church, desiring to form themselves into

a Body Corporate, according to the act of the Legislature of the State of New Jersey in such case made and provided, met in Grace Church aforesaid on the Seventeenth day of April, in the year of Our Lord, one thousand eight hundred and forty-three, pursuant to ten days previous notice given as the intention of said Congregation to form themselves into a body corporate by an advertisement set up in open view on the outer door of said Grace Church, it being the place where said Congregation usually assemble for Divine service, which notice designated the day when, and the place where, they designed to meet for that purpose. There being no Rector or Minister present, Doctor Charles D. Hendry, Esq., one of the Church Vestry, presided, and Benjamin M. Roberts, the Secretary recorded the proceedings.

10

The Congregation then proceeded, by a vote of the majority of those present, to designate the corporate name or title by which the said Church shall be known, and which is, The Rector, Wardens and Vestrymen of Grace Church in Haddonfield.

20

The Congregation then chose two Wardens and seven Vestrymen, and also by a majority of voices, fixed and determined on the Second Tuesday of March annually as the day on which new elections of officers of said Church shall take place.

In testimony whereof, and in order that these proceedings may be recorded, we the Church Wardens and Secretary aforesaid, have hereunto set our hands and seals, this Twentieth day of April, in the year of Our Lord, one thousand eight hundred and forty-three.

30

| | |
|--------------------|--------|
| CHARLES D. HENDRY, | [L.S.] |
| THOMAS ASHBURNER, | [L.S.] |
| JOSIAH E. COLES, | [L.S.] |
| JOHN WHITE, | [L.S.] |

J. Z. FENNIMORE, [L.S.]
 BENJAMIN M. ROBERTS, [L.S.]
Secretary,
 GEORGE LEE, [L.S.]
 WILLIAM STURNS, [L.S.]
 J. FEW SMITH, [L.S.]

NOTE.—The foregoing is a copy of the original as recorded May 27th, 1843, in the Clerk's Office of Gloucester County, at Woodbury, in Book of Miscellaneous Records, No. 1, folio 373.

The Church was duly Consecrated by the Right Rev. G. W. Doane D.D., L.L.D., Bishop of the Diocese, on the 29th day of September, 1842, being the Festival of St. Michael and all angels.

CONCLUSIONS.

20

IN CHANCERY OF NEW JERSEY.

| | | | |
|----------|------------------------------|---|--|
| Between: | J. BLAIR CUTHBERT, <i>et</i> | } | Final Hearing on Bill to Declare a Charitable Trust Terminated and a Reverter in Favor of the Heirs at Law of the Donor. Conclusions. |
| | <i>als.,</i> | | |
| | <i>Complainants,</i> | | |
| | and | | |
| 30 | ARTHUR Y. McNEILL, <i>et</i> | } | |
| | <i>als.,</i> | | |
| | <i>Defendants.</i> | | |

Complainants comprise some of the heirs at law of J. Ogden Cuthbert, deceased, and seek a decree

of this Court declaring a resulting trust to have arisen in their behalf in certain real estate conveyed by their ancestor in his lifetime to "The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey," in trust.

The deed of conveyance bears date October 19th, 1885. It recites a money consideration of one dollar, and by words of bargain and sale grants to the party of the second part the land therein specifically described, "together with all and singular the buildings, improvements, woods, ways, rights liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and of every part and parcel thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, with the appurtenances." The habendum is: "To have and to hold the said premises with all and singular the appurtenances unto the said 'The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey,' their successors and assigns forever, in trust nevertheless that they the said 'The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey,' their successors and assigns shall and will hold the said land and premises to the use of the Protestant Episcopal Church in the diocese of New Jersey to be used only for and as a site for a chapel, schoolhouse, mission, parish building or other use of said Protestant Episcopal Church in said diocese, and that the said 'The Rector, Wardens and Vestrymen of Grace Church Haddonfield, New Jersey,' shall have power to grant and convey the said lands and premises to any parish of said Protestant Episcopal Church in said diocese within

whose bounds said land and premises may come to lie by its proper title if incorporated and by apt words of conveyance, or may in the same event convey said lands and premises to the trustees of 'The Episcopal Fund of the Diocese of New Jersey,' to the use of said parish."

Grace Church of Haddonfield is a religious corporation, with a church located in that borough; and, due to various reasons, including among others
10 want of finances and the establishment of other Episcopal churches or missions in the vicinity of the lot here in question—one at Collingswood in the year 1913 and one at Westmont in the year 1914—has found it impracticable to devote the lot to the specific use designated by the donor. Accordingly, in the year 1924, it was determined to apply to the Chancellor of this State for leave to sell the lot pursuant to our statutes authorizing sale of trust properties in cases of that nature. Proceedings were
20 then taken before the Chancellor—(file number 55-532)—and sale was thereafter ordered by the Chancellor. In December, 1924, the Chancellor confirmed the sale and directed the investment of the proceeds. The sale was made to one of the vestrymen of the Grace Church who has since sold the land at a considerable profit, and not wishing to retain the profit has since secured it to the Church.

The present holder of the legal title to the land has been joined as complainant herein and seeks
30 restoration of his money in the event of his title being held imperfect. By amendment to the bill the Attorney-General has been made a defendant; he has not answered or participated in the cause.

PHILIP WENDKOS, Esq., for complainant;
LOUIS B. LEDUC, Esq., for defendant, McNeill;
MESSRS. STARR, SUMMERILL & LLOYD, for defendant, The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey.
HOWARD EASTWOOD, Esq., for defendant, The Trustees of the Episcopal Fund of the Diocese of New Jersey.

10

LEAMING, V. C.:

The deed of conveyance here the subject of controversy vests the fee of the land in The Rector, Wardens and Vestrymen of Grace Church in trust for the use of the charitable organizations therein specified; accordingly it is a conveyance to a charitable use and is properly classed and defined as a public trust.

It cannot be doubted that the trust conveyance was initially valid and operative, since the charitable organizations for whose use it was created were in existence and capable of taking, and the particular use to which the land was to be devoted contemplated a future, as distinguished from an immediate use, including the contemplation of the land, at some subsequent period, falling within a different parish from the one named. Accordingly, this charitable gift must be distinguished from those that fail initially and are void *ab initio* either through the existence of conditions precedent to their taking effect or through the absence of existing charities capable of taking. This distinction becomes important herein since our present considerations are to be devoted only to a public trust initially valid and the impracticability of performance of which

20

30

in the particular manner specified by the donor has arisen through changes of subsequent conditions, including the erection of churches of the denomination specified near the donated premises.

The claim of complainants is to the general effect that by reason of the trustees named in the grant having failed to devote the land to the particular use specified by the donor, and having caused its sale under the statutory proceeding referred to, the
10 trust has been broken and, in consequence, the title to the land has become vested by reverter in the heirs at law of the donor. The decree sought is, in effect, a decree of forfeiture.

A resulting trust does not arise in favor of the heirs at law of the donor of a public trust by reason of an abuse of such trust. In *Mills v. Davison*, 54 N. J. Eq. 659, the deed of gift to the church provided as an expressed condition and limitation that the church should not sell or mortgage the
20 property and that no building should be kept or maintained or erected thereon except for purposes of public worship in accordance of the usages of the Protestant Episcopal Church (see page 662). This was held to be a public trust. At page 667 of the opinion of the Court, it is said: "The deed of the grantors having conveyed away the entire estate in the premises, a resulting trust will not arise in favor of the grantors by reason of an abuse of the trust." To the same
30 effect is *MacKenzie v. Trustees of Presbytery*, 67 N. J. Eq. 652, at page 678, and again *Trustees Princeton University v. Wilson*, 78 N. J. Eq. 1, at page 6. The same view is stated in *Tudor on Charities*, 4th Ed., page 109, as follows: "A charitable trust, which has once taken effect, can never cease during the period, perpetual or otherwise, during

which it was intended to subsist; and it is immaterial what length of usage there may have been to the contrary. So also, if a perpetual trust is created for a particular charitable purpose which has taken effect in the first instance, no subsequent failure of the purpose will defeat the trust, and it is immaterial in this case whether there was, or was not, initially any charitable intention beyond the accomplishment of the particular purpose. If the charitable devise takes effect in the first instance the heir at law is disinherited once and for all." This, I am convinced, is an accurate statement of the rule defined by the authorities. And in Zollman on American Law of Charities, Sec. 307, it is said: "When a valid charitable trust has been created without a provision for a reversion, it raises an implied condition against a reverter, permanently excludes the interests of the heirs and next of kin * * * and does not leave them as such a 'scintilla of right.' "

10

20

The conclusion seems irresistible that this charitable trust having taken effect initially with no limitation of time for its accomplishment and no provision for reverter, and its performance in the particular manner directed having become impracticable by changing conditions which have occurred since the creation of the trust, no reverter can be said to have arisen in favor of the heirs at law of the donor.

It will be observed that in defining the particular use to which the land should be devoted the donor has added: "or other use of said Protestant Episcopal Church in said diocese." In what has been said touching the use defined by the donor no consideration has been here given to those words. It has been herein assumed that these supplemental words may be considered as controlled by the rule

30

of construction of *ejusdem generis*. But it is not thereby intended to recognize that rule of construction as prevailing over the liberal rule of construction to be applied to charitable gifts.

Nor can the deed of gift here under consideration be regarded as analagous to a bequest of money to be applied to a particular purpose initially impossible of accomplishment and in which bequest no charitable intent can be said to have existed beyond
10 the accomplishment of the defined purpose. Here, by grant, a fee is vested in trust in perpetuity with no provision for reversion and with no limitation as to time of accomplishment. The trust is perpetual and the remedies incident to it are well defined and do not embrace forfeiture for non-performance. In *Mills v. Davison*, *supra*, at page 664, it is said:
20 "Every conveyance to a charitable use is a conveyance to hold upon the trust declared, and the execution of the trust is the condition upon which the estate is taken and held, to be given effect to not by the forfeiture of the title, but by those methods by means of which a court of equity compels the performance of such trusts." Those remedies are specifically pointed out in *MacKenzie v. Trustees of Presbytery* (*supra*), at page 670, citing *Tudor on Charities*, second and third editions. They embrace
30 (a) following the trust estate into the hands of one to whom it has been wrongfully conveyed; (b) the following of the property into which the trust estate has been converted; (c) a proceeding against the trustees. But a reference to the authorities there cited, as also to the fourth edition of *Tudor on Charities*, Section V, page 242, will disclose that these remedies are available alone to the Attorney-General in behalf of the public and to the trustee or *cestui qui* trust in aid of the trust, and do not contemplate forfeitures of title for breach of trust or

impracticability of performance by reason of changed conditions. Unless the trust here involved can be said to have been void *ab initio*—and I do not understand that to be even suggested—I am unable to discern any theory on which the present bill can be maintained.

The bill may be dismissed.

Submitted: June 5, 1928.

Determined: July 12, 1928.

10

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between:

J. BLAIR CUTHBERT, *et*
als.,

Complainants,

and

ARTHUR Y. McNEILL, *et*
als.,

Defendants.

20

On Bill, &c.
Final Decree.

This cause coming on to be heard on bill, answer, 30 replication and proofs, in the presence of Philip Wendkos, Esq., solicitor for complainants; Louis B. LeDuc, Esq., solicitor for the defendant, Arthur Y. McNeill; Starr, Summerill & Lloyd, solicitors for the defendant, The Rector, Wardens and Vestrymen of Grace Church in Haddonfield, New Jersey, and

- Howard Eastwood, Esq., solicitor for the defendant, Trustees of the Episcopal Fund of the Diocese of New Jersey, and the Court having inspected the pleadings and considered the testimony offered by the respective parties and the argument of counsel made thereon, being of the opinion that the complainants are not entitled to the relief prayed for and that the deed dated the 19th day of October, 1885, made by J. Ogden Cuthbert to The Rector, Wardens and Vestrymen of Grace Church in Haddonfield, New Jersey, for the lands and premises described in the complainants' bill was a valid and operative conveyance in trust for the uses and purposes therein expressed, with no limitation of time for its accomplishment and no provision for reverter, and the performance in the particular manner directed having become impracticable by changing conditions which have occurred since the creation of the trust, that no reverter arose in favor of the heirs at law of the donor; and it further appearing that a valid title to the lands and premises described in said bill, became vested in the defendant, Arthur Y. McNeill, and thereafter co-complainant, Collingswood Extension Realty Co., by virtue of the conveyance from The Rector, Wardens and Vestrymen of Grace Church in Haddonfield, New Jersey, and the Chancery proceedings set forth in the answer filed in this cause, and that, therefore, the bill of complaint filed by the complainant should be dismissed with costs:
- 30 It is, therefore, on this 23rd day of July, 1928, on motion of Starr, Summerill & Lloyd, solicitors of the defendant, The Rector, Wardens and Vestrymen of Grace Church in Haddonfield, New Jersey, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of

this Court does hereby order, adjudge and decree that no reverter arose in favor of the complainants or any of the heirs of J. Ogden Cuthbert, deceased, by reason of any cessation of the prescribed uses of the lands and premises described in the complainants' bill under the terms of the trust created by the conveyance dated the 19th day of October, 1885, nor by the sale and conveyance of said lands and premises by The Rector, Wardens and Vestrymen of Grace Church in Haddonfield, New Jersey, to Arthur Y. McNeill; and that Arthur Y. McNeill, and thereafter co-complainant, Collingswood Extension Realty Co., acquired a valid title in fee to the said lands and premises by virtue of the conveyance from The Rector, Wardens and Vestrymen of Grace Church in Haddonfield, New Jersey, and the Chancery proceedings hereinbefore recited;

10

And it is further ordered and decreed that the bill of complaint be and the same hereby is dismissed with costs.

20

Respectfully advised,

E. B. LEAMING,

V. C.

30

NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

| | | |
|----|--|-----------------------------------|
| 10 | Between: J. BLAIR CUTHBERT, <i>et</i> <i>als.</i> , <div style="text-align: center;"><i>Complainants,</i></div> and ARTHUR Y. McNEILL, <i>et</i> <i>als.</i> , <div style="text-align: center;"><i>Defendants.</i></div> | On Bill, &c. Notice of Appeal. |
|----|--|-----------------------------------|

20 *To Starr, Summerill & Lloyd:*

The complainants hereby appeal from the final decree made by the Chancellor on the advice of Vice-Chancellor E. B. Leaming, in the above-entitled cause, on the 23rd day of July, 1928, and from every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

PHILIP WENDKOS,
Solicitor for and of Counsel
with Complainants.

30

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

PHILIP WENDKOS,
Of Counsel with Complainants.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

| | | |
|------------------------------------|------------------|---------------------|
| Between: | | 10 |
| J. BLAIR CUTHBERT, <i>et al.</i> , | } On Appeal from | |
| <i>Complainants-Appellants,</i> | | Court of |
| and | | Chancery. |
| ARTHUR Y. MCNEILL, | | Petition of Appeal. |
| <i>Defendants-Respondents.</i> | | |

*To the Honorable, the Court of Errors and Appeals
in the Last Resort in All Causes:* 20

The petition of J. Blair Cuthbert, T. Percival Cuthbert, Flora Bowden Lum, Hannah C. Ebert, Louisa Hopkins, George C. Gillespie, Anna C. Boyd, Mary Cuthbert Rue, Marguerite Nickerson, Charles W. Cuthbert, Gladys Cuthbert Haines, and Collingswood Extension Realty Company, the appellants in the above-stated cause, respectfully shows that:

Your petitioners find themselves aggrieved by a final decree made in the Court of Chancery. by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, advised by Honorable E. B. Leaming, Vice-Chancellor, bearing date the 23rd day of July, 1928, wherein the petitioners were complainants and Arthur Y. McNeill, Rector, Wardens and Vestrymen of Grace Church of Haddonfield, N. J., a 30

corporation, and Edward L. Katzenbach, Attorney-General of New Jersey, were defendants, in this respect, to wit: That the said decree adjudges that no reverter arose in favor of the complainants or any of the heirs of J. Ogden Cuthbert, deceased, by reason of any cessation of the prescribed uses of the lands and premises described in the complainants' bill, nor by the sale and conveyance of said lands and premises by the Rector, Wardens and Vestrymen of Grace Church of Haddonfield, N. J., to Arthur Y. McNeill; and that

Arthur Y. McNeill and thereafter co-complainant, Collingswood Extension Realty Company, acquired of valid title in fee to the said land and premises; and that

The bill of complaint be, and the same is hereby dismissed, with costs.

And your petitioners humbly appeal from each and every part of the said decree of the Chancellor as aforesaid, upon the ground that the same is erroneous, in that:

1. The Court found that

The charitable trust created by J. Ogden Cuthbert, deceased, by deed dated October 19th, 1885, having taken effect initially with no provision for reverter and its performance in the particular manner directed, having become impracticable by changed conditions which have accrued since the creation of the trust, no reverter can be said to have arisen in favor of the heirs-at-law of the donor.

The Court should have found upon the evidence before the Court that the charitable trust created by J. Ogden Cuthbert by his deed dated October 19th, 1885, and the lands which he conveyed thereby to the rector, wardens and vestrymen of Grace

Church of Haddonfield, N. J., had been abandoned and that by virtue of said abandonment had reverted to the heirs-at-law of the said J. Ogden Cuthbert, deceased.

And the Court should have found that the trust created by J. Ogden Cuthbert, deceased, had spent itself and as a consequence the estate had reverted to the grantor or his heirs.

The Court should have found that the charitable trust created by the said J. Ogden Cuthbert, deceased, must have been accepted in the terms of which it was created or else relinquished and that upon the conversion of the trust by the rector, wardens and vestrymen, etc., and later by Arthur Y. McNeill, the estate has reverted to the grantor or his heirs. 10

The Court should have found that the charitable trust created by J. Ogden Cuthbert, deceased, was restricted in plain and unequivocal terms to the erection of a church edifice upon the particular lands described in the deed conveying said lands to the rector, wardens, vestrymen of Grace Church, Haddonfield, N. J., and that the trust would end when the lands ceased to be used for church purposes. 20

The Court should have found that in the absence of a limitation over in the grant upon the cessation of the use for which the lands were conveyed, the legal estate reverted to the grantor or his heirs.

The Court should have found that when the lands and the charitable trust appurtenant thereto had been abandoned by the rector, wardens and vestrymen of Grace Church of Haddonfield, N. J., the trustee held the legal estate subject to a resulting trust to the grantor's heirs, and that the lands passed by deeds to Arthur Y. McNeill and later to the co- 30

complainant, Collingswood Extension Realty Company, charged with a resulting trust in favor of the heirs-at-law of J. Ogden Cuthbert, deceased, the original grantor.

The Court should have found that by virtue of the unconstitutionality of the proceedings taken by the rector, wardens and vestrymen of Grace Church of Haddonfield, N. J., the title in Arthur Y. McNeill to the lands and premises described in the bill of complaint, and thereafter the title in the co-complainant, Collingswood Extension Realty Company, was invalid.

Your petitioners, therefore, pray that said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem proper.

PHILIP WENDKOS,

20

*Solicitor for and of Counsel
with Appellants.*

[ENDORSED.]

Consent is hereby given to the filing of the within petition of appeal out of time.

30

11-14-28

Starr, Summerill & Lloyd,
Solicitors of Rector, Wardens
and Vestrymen of Grace
Church, Haddonfield.

Louis B. Le Duc,
Sol'r of Arthur Y. McNeill.

11-6-28

Howard Eastwood,
Sol'r of Trustees of the Epis-
copal Fund of the Diocese
of New Jersey.

Philip Wendkos,
Solicitor for and of Counsel
with Appellants.

Edward Katzenbach,
Attorney-General of New Jer-
sey.

10

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

20

Between

J. BLAIR CUTHBERT, *et al.*,
Complainants-Appellants,

and

ARTHUR Y. McNEILL, *et*
als.,
Defendants-Respondents.

On Appeal from
Court of Chancery.
Answer to Petition
of Appeal.

30

The answer of the above-named respondents to
the petition of appeal of the above-named appel-
lants.

These respondents, not acknowledging all or any
of the matters which, in said petition of appeal are

contained to be true, for answer thereto, nevertheless, say and admit that an order was, on the 23rd day of July, last past, made and entered in in the Court of Chancery in the cause for that purpose mentioned in said petition as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced.

10 And these respondents are advised and believe that said order is agreeable to equity and that they pray that the same may be affirmed with costs to be adjudged to these respondents.

STARR, SUMMERILL & LLOYD,
*Solicitors of Defendants-Respondents,
Arthur Y. McNeill and Rector, Wardens,
and Vestrymen of Grace Church of Haddonfield, N. J., a corporation.*

20

30

ANSWER TO PETITION OF APPEAL BY
ARTHUR Y. McNEILL, DEFENDANT-
RESPONDENT.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between

J. BLAIR CUTHBERT, *et al.*,
Complainants-Appellants,

and

ARTHUR Y. McNEILL, *et*
als.,
Defendants-Respondents.

On Appeal from
Court of Chancery.
Answer to Petition
of Appeal by Arthur
Y. McNeill, Defen-
dant-Respondent.

20

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

This respondent, not acknowledging all or any of
the matters which, in said petition of appeal are
contained to be true, for answer thereto, neverthe-
less, says and admits that an order was, on the 23rd
day of July, last past, made and entered in the Court
of Chancery in the cause for that purpose mentioned
in said petition, as is therein stated, but as to the
substance and form thereof, this respondent prays
to refer thereto when the same shall be produced. 30

And this respondent is advised and believes that
said order is agreeable to equity and that he prays

that the same may be affirmed with costs to be adjudged to this respondent.

LOUIS B. LEDUC,
*Solicitor for and of Counsel
 with Arthur Y. McNeill,
 Defendant-Respondent.*

10

NOTICE OF ARGUMENT.

NEW JERSEY COURT OF ERRORS
 AND APPEALS.

20 J. BLAIR CUTHBERT, *et al.*,
Plaintiff-Appellant, }
 v. } Notice of Argument.
 ARTHUR Y. McNEILL, *et al.*,
Respondent-Appellee. }

30 *To Starr, Summerill & Lloyd, Solicitors for Respondent, Rector, Wardens, Vestrymen of Grace Church of Haddonfield, New Jersey. Louis B. LeDuc, Solicitor for Respondent-Appellee, Arthur Y. McNeill.*

Please take notice that the argument of the bill in the above-entitled cause will be brought on at the next term of the New Jersey Court of Errors and Appeals to be held at the State House in Trenton, on Tuesday, the 5th day of February, 1929, at the

hour of 11 o'clock, in the forenoon, or as soon thereafter as counsel can be heard.

PHILIP WENDKOS,
*Solicitor for and of Counsel
with Appellant.*

[ENDORSED.]

10

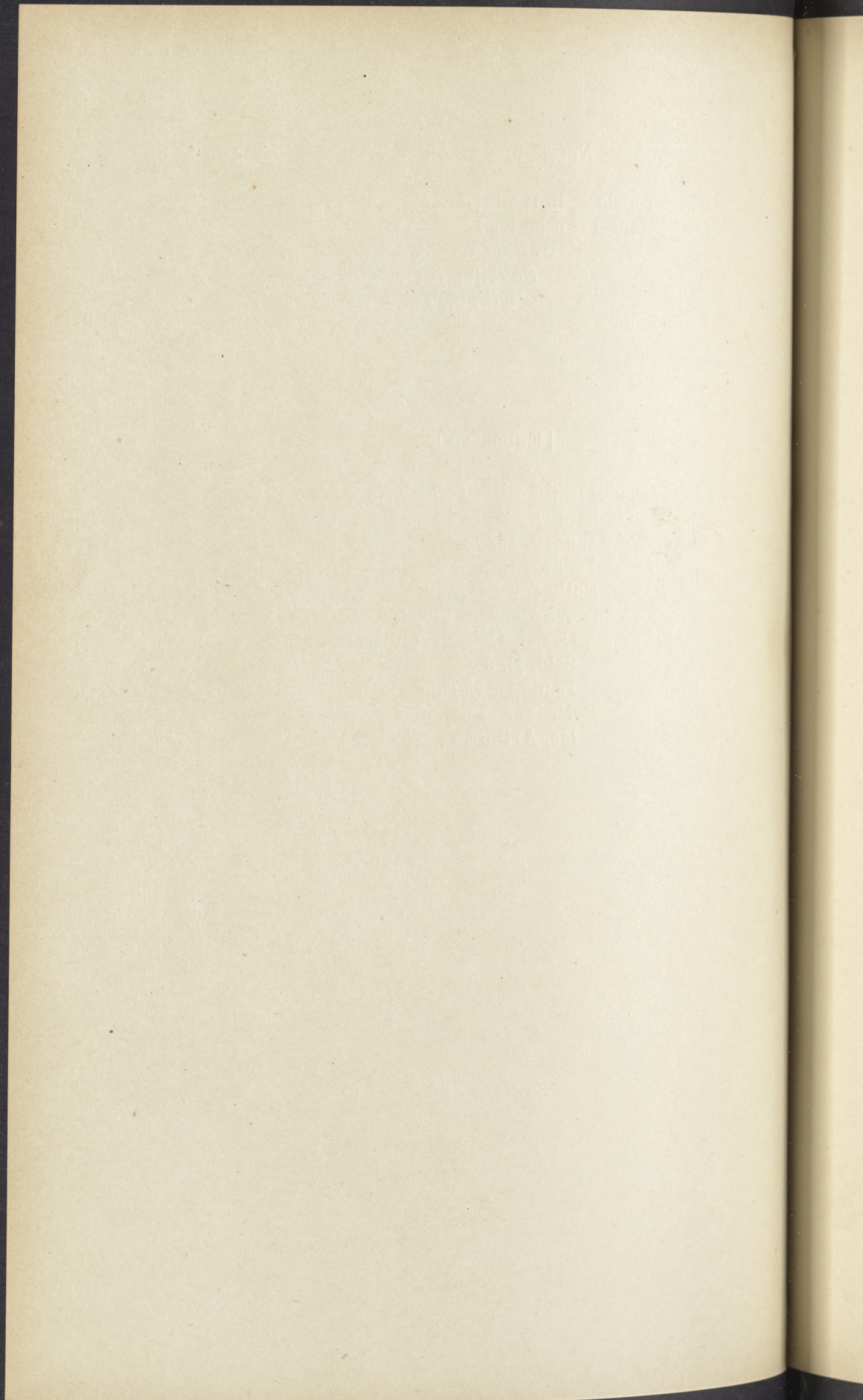
Service of the within Notice of Argument is hereby acknowledged this day of January, 1929.

Starr, Summerill & Lloyd,
Sol'r for Respondent, Rector,
Wardens, Vestrymen of
Grace Church of Haddon-
field, N. J.

20

Louis B. LeDuc,
Sol'r for Respondent-Appel-
lee, Arthur Y. McNeill.

30



NEW JERSEY COURT OF ERRORS
AND APPEALS.

J. BLAIR CUTHBERT, *et als.*,
Complainants-Appellants,

v.

ARTHUR Y. MCNEILL, *et als.*,
Defendants-Respondents.

BRIEF OF COMPLAINANTS-APPELLANTS.

On October 19, 1885, Joseph Ogden Cuthbert, by deed bearing that date and recorded in the office of the Register of Deeds of Camden County in Book 120, page 274, conveyed to The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, a religious corporation of the State of New Jersey and one of the defendants herein, hereinafter called "Grace Church," a certain lot and parcel of land fully described in said deed, upon certain trusts recited in the said deed and set forth in the bill of complaint, principally to be used only for and as a site for a chapel, schoolhouse, mission of the Protestant Episcopal Church of the Diocese of New Jersey. At no time subsequent to the aforesaid conveyance has Grace Church ever seriously considered the erection of a church building on that lot, nor has it ever erected a house of worship or schoolhouse thereon.

On two occasions between 1913 and 1924, the lot was sold by the Borough of Collingswood at public sale for delinquent taxes and assessments and in each case was bought in by the said borough, which, at the beginning of 1924, held certificates of sale therefor.

In 1913, there were several members of the Protestant Episcopal Church in the Borough of Collingswood, belonging to Holy Trinity Church of the said denomination, who were anxious to build a larger church. Edgar C. Cuthbert, one of the heirs of Joseph Ogden Cuthbert, and a complainant in this suit, suggested to a group of these Episcopalians that they might build their church on the lot conveyed by Joseph Ogden Cuthbert to Grace Church, but they were unwilling to accept his proposal. In 1914, members of the Protestant Episcopal denomination in Westmont started a mission in a dwelling-house in that community. Again, Edgar C. Cuthbert suggested to these people that they might use the lot for the purpose of erecting a church, or other building for the purpose of worship, thereon; but they also refused to accept.

On or about January 29, 1924, Arthur Y. McNeill, who was then senior warden of Grace Church, offered to purchase the aforesaid lot from Grace Church for the sum of one thousand dollars (\$1,000), he to assume the payment of all taxes, assessments, &c., but the sale was to be subject to the removal by court order of the trust restrictions imposed upon the lot in the deed of Joseph Ogden Cuthbert, the cost of securing such court order, however, to be borne solely by the said McNeill.

On the same day, a special meeting of The Rector, Wardens and Vestrymen of Grace Church was called for February 11, 1924, to consider a proposition for the sale of the said lot. On February 11, 1924, the

said special meeting of the vestry was convened and the vestry accepted Mr. McNeill's proposition and recommended and authorized the execution of a contract of sale with Arthur Y. McNeill and further authorized the commencement of proceedings in Chancery to relieve the property of trust obligations imposed upon it.

Pursuant to the action taken at the said special meeting, an agreement of purchase and sale was entered into between Grace Church and Arthur Y. McNeill.

Thereafter and on or about April 10, 1924, Grace Church filed its petition in the Court of Chancery of New Jersey, praying, among other things, that the lot conveyed to it by Joseph Ogden Cuthbert, as aforesaid, be sold free of trust encumbrances for the principal reason that such lot had since proven wholly unfit and inadequate for the specific purposes expressed in the deed of conveyance.

The matter was referred to Hon. Samuel K. Robbins, Special Master, whose report, upon the advice of Bayard Stockton, Advisory Master, was adopted by the Chancellor, and an order was made by him directing a sale of the premises in accordance with the agreement between Grace Church and Arthur Y. McNeill, consented to by the Bishop and Standing Committee of the Protestant Episcopal Diocese of New Jersey. On March 25, 1925, Grace Church conveyed the said lot to Arthur Y. McNeill by deed recorded in the office of the Register of Deeds of Camden County in Book 583, page 460.

Before entering into negotiations with the Grace Church for the purchase of the land, Arthur Y. McNeill received the several offers in writing on behalf of Grace Church from co-complainant, Collingswood Extension Realty Co., the last one being for \$30,000.00. He accepted that offer on his own

behalf and in due time delivered the deed to the company through his straw man, Lawrence Crombie, for the premises in question.

Shortly after the conveyance to Arthur Y. McNeill, some of the heirs of J. Ogden Cuthbert voiced their objection to the sale of the lands to him as evidenced by exhibits.

THE STATUTE UNDER WHICH THE PROCEEDINGS FOR A SALE OF THE LANDS WERE BROUGHT DOES NOT APPLY.

By force of the rule in the Dartmouth College case, property devoted to a charitable use in the hands of a private corporation is impregnable to legislative invasion. A statute regulating the distribution of charitable property in the hands of private corporation has been pronounced void.

Mayor of Newark v. Stockton, 14 Atl., page 630; 44 N. J. E. 179;

Dartmouth College v. Woodward, 4 Wheat 58.

The Act of 1905, C. 152, 3 C. S. P., entitled: "Religious, educational, benevolent or charitable corporations" comprehends the sale of lands conveyed or devised *upon condition* that they be held in trust for specific uses and purposes and appropriating the rents, issues and profits thereof to a specific use. The grant of J. Ogden Cuthbert, however, did not state that the rents, issues and profits of the lands be appropriated to specific uses. "The grant was to use the land itself and not the issues arising therefrom." In re *St. Michael's Church*, 76 Eq. 541.

Sec. 7, Religious Societies Act of 1847, or Sec. 117, Vol. 3, General Statutes, page 2758, 3 C. S., page 4358, Sec. 147, provides that: "No land upon which a church or place of worship is or may be erected, or granted for that purpose or burying ground, shall be liable to be sold by virtue of this Act." On the date of the execution of the deed by J. Ogden Cuthbert, the gift was controlled by the law as it then existed, and Sec. 7, *supra*, applies to the end that a sale of the church lot by the church is legally impossible. That is particularly so, because the Act of 1905 does not repeal the Religious Societies Act of 1847, either by legislative enactment or implication of law. It may then logically be concluded that the complainant, Collingswood Extension Realty Company, has nothing for its money.

A PERSON ACTING IN A FIDUCIARY
CAPACITY CANNOT BUY AT HIS OWN SALE.

The law demands the utmost fidelity of the trustee. It does not tolerate personal dealing with the trust estate, nor the making of a penny's profit. The rule is grounded in sound morals and is reflected in the supplicating words of the Lord's Prayer, "Lead us not into temptation."

In re *Ludlow's Est.*, 129 Atl. 429, N. J. E. not reported;

Shanley Estate v. Fidelity Union, 138 Atl. 388, N. J. E., not reported.

As far back as February 5th, 1923, defendant, McNeill, had received an offer on behalf of The Rector, Wardens and Vestrymen of Grace Church, of approximately \$7,500.00 from his purchaser. Me-

Neill had not only not communicated that offer to the church but had withheld that information from this Court. Had that information been before this Court, it is not likely that a decree authorizing the sale of the lands free of the trust provisions would have been made.

The power (of this Court) to give relief against a judgment which has been procured by fraud or imposition is beyond all question. It deals with the conscience of the parties to a judgment and will inquire whether those parties or either of them have intentionally withheld or concealed from the Court in which the judgment was rendered, any fact which, if disclosed, would have shown that there was either no cause of action or no warrant for the decree.

THE DECREE ENTERED IN THE PROCEEDINGS IS NOT BINDING ON THE HEIRS OF THE DONOR.

The defendants, by their amended answer, plead the order of this Court, made and entered in a certain cause, prosecuted under authority of Chapter 152 of the P. L. of 1905, etc., as a bar to the right of these complainants to set aside the conveyance made by the Grace Church to McNeill. Their plea is untenable because "A decree is pleadable in bar of another suit (only) between the same parties for the same cause."

Hunson Trust v. Boyd, 80 N. J. E. 267.

The complainants in this cause were not parties to the proceedings taken by the Grace Church under the Act of 1905. No provision is made in that Act for bringing in anybody to defend, so that, there-

fore, the order of the Court in those proceedings may be entirely disregarded.

Mundy v. Vail, 34 L. 418;

Bogan v. Progressive B. & L., 112 Atl. 861,
N. J. L., 95 N. J. L. 346;

In re *Ungaro*, 102 Atl. 244, N. J. E. 88 Eq.
25;

In re *St. Michael's Church*, 74 Atl. 49, 76
N. J. E. 524.

THE SALE CANNOT BE JUSTIFIED BY
THE APPLICATION OF THE CY-PRES DOC-
TRINE.

The Court will not decree execution of a charity in a manner different from that intended, except so far as they see, that the intention cannot be executed literally, but another mode may be adopted consistent with his general intention. In *Atty. Gen. v. Oxford*, the purpose was to build a church in the parish of A; and the parish would not let the church be built. Lord Kenyon very properly said it could not be built anywhere else, and the intention must totally fail.

Atty. Gen. v. Boulton, 2 Ves. Jr. 381, 30
Eng. Rep. Repr. 683.

J. Ogden Cuthbert had a single purpose in mind, namely, the building of a chapel, parish house, etc., on that lot. What the donor had mainly at heart, as can be inferred from the scope and tenor of his deed, is the perpetual use or devotion of the lot as a site for chapel, school or mission house of the Protestant Episcopal Church. A diversion of the property could, therefore, not carry out the wishes of the donor. There is certainly less reason today than

there was formerly why Courts of Equity should be astute to encourage the establishment of charities which donors have not clearly intended to establish. There is no reason for straining the law or the declared intentions of testators in order to save charitable bequests from becoming inoperative by a lapse. Formerly the doctrine of cy-pres was pushed to a most extravagant length, but that is now much restrained.

Atty. Gen. v. Minshall, 31 E. R. Rep. 6;
Brown v. Condit, 61 Atl. 1055; 70 N. J. E. 440.

The subject of cy-pres is referred to only for the purpose of exemplifying with what strength of favor charitable bequests are regarded by the courts. But without resorting to a method of interpretation until it has received the sanction of the courts of this State, the doctrine must be considered of questionable validity.

Hesketh v. Murphy, 36 N. J. E. 304;
Thomson v. Norris, 20 N. J. E. 489.

No rule of construction is or ever will be established in New Jersey to permit the application of a specified charity, when it becomes impracticable or impossible, to another or different charity which judicial investigation shall discover as most like or nearest to the charity specified. This sort of an exercise of a so-called cy-pres power is radically different from the substitution of an entirely different charity for one which the donor founded, but which has utterly failed. The Court must act within the donor's charitable purpose and not beyond it, or alongside it or next to it.

Brown v. Condit, 70 N. J. E. 440, 61 Atl. 1055.

In the absence of a scheme judicially approved, the trustees of a charity may not make a cy-pres application of the estate on their own authority. If the trusts, by any means, can be performed with exactness, there is no room for the doctrine of cy-pres.

Trustees v. MacKenzie, 67 N. J. E. 652, 61 Atl. 1027.

In a decree of conveyance of lands subject to trust conditions this Court cannot direct the trustees to convey a better or larger estate than was conveyed to them. The property came to their hands upon certain terms and conditions and to convert this limited estate into a fee free from all restrictions and conditions by a decree of this Court would be quite contrary to the doctrine of cy-pres.

Imbrie v. Steen, 96 N. J. E. 190, 124 Atl. 155.

No necessity can exist requiring the Court to direct the trustees to take another course of conduct, on the mere ground that it would be more beneficial than that course which the testator prescribed. The power of a Court of Equity to break in upon the terms of the trust, or to change the terms and conditions imposed by its creator, exists only in extreme cases, as when not to exercise the power, the property held in trust may be lost or wholly fail to answer the purposes of the trust.

Pennington v. Metropolitan Museum, 65 N. J. E. 11, 55 Atl. 468.

There are only a very few cases in New Jersey in which the doctrine of cy-pres was actually applied. In *Christian v. Catholic Church*, 110 Atl. 579, 91

N. J. E. 374, the testator devised a tract of land and bequeathed the sum of \$50,000.00 to build an orphanage thereon. The trustee contended that it should not be limited to the requirements of using only \$50,000.00 because of the increased cost of construction and asked leave to supply an additional amount towards the cost of the building. Opportunity was given to submit to the Court a plan or scheme for the disposition of the legacy in order to give effect to the testator's charitable intention, namely the erection of an orphanage on the tract devised but on a more elaborate scale.

In *St. James Church v. Wilson*, 82 N. J. E. 546, 89 Atl. 519, a legacy of \$14,000 was bequeathed to the complainants for the purpose of erecting a church edifice on a tract of land conveyed by the testator to the complainant situate at Wolf Hill, Monmouth County. The village became stagnated; the population had declined and there appeared to be no prospect of any reasonable growth of population. No new parish could be created at such place under the canons and laws of the P. E. Church. The conclusion of the Court was that the legacy must be disposed of by the complainant trustees *in the neighborhood of Wolf Hill* in such a manner as would most nearly effect the general charitable intention of the said testator, and the complainant must propose a scheme in this court for the disposition of said fund. In all of the instances in which the doctrine of cy-pres was actually applied a personal estate or a fund was dealt with.

In *Princeton v. Wilson*, 78 N. J. E. 1, 78 Atl. 393, the trustees sought the aid and direction of the Court to enable them to erect a graduate school upon a tract of land in Princeton and commonly called the golf links. The testator bequeathed the sum of

\$325,000 to Princeton University for the erection, construction and maintenance "upon the grounds of the said university," of a building to be known as the "John R. Thomson Graduate College of Princeton University." Since the testator's death another gift was proposed to be made to the university conditioned upon the location of the graduate school on the golf links property of the university, and still another gift was made which could not be used in its entirety if the graduate school were to be erected on the central campus. The Court approved the erection of the graduate school in the golf links property. Here again we have the effectuation of testator's purpose almost literally but on a more elaborate scale, and a case in which a fund was applied cy-pres the testator's general charitable purpose.

When a *personal* estate is once effectually given to charity, it is taken entirely out of the scope of the law of remoteness. The rules against perpetuities—do not prevent pure personal estates from being given in perpetuity to charity; and when this has once been effectually done, it is neither more nor less alienable because there is an indefinite suspense or abeyance of its actual application or of its capability of being applied to the particular use for which it is destined. If strict compliance with the wishes and directions of the author of the trust should turn out to be impracticable, this Court has power to apply the surplus, or the whole, to such other purposes as it may deem proper upon what is called the cy-pres principle.

Chamberlayne v. Brockett, 8 Ch. App. Cas. 206, 42 L. J. Ch. 368.

Defendant, Grace Church, has not disclosed an extreme case of necessity for selling the lands in ques-

tion or of the necessity of applying the proceeds of the sale for the erection or maintenance of a church or mission in the immediate vicinity of the lands in question. It may have disclosed that the church in Haddonfield was encumbered by a mortgage of \$7500, but neither the deed nor the decisions in our State would permit the use of the proceeds of such a sale to discharge a mortgage on another church. The very fact that Grace Church petitioned to invest the proceeds of the sale to Arthur Y. McNeill, amounting to \$1000, points to the absence of an extreme case of necessity for a sale. In New Jersey a sale of lands granted for charitable purposes, for the purpose of increasing income is not permitted. Furthermore the investment of the proceeds of the sale in legalized securities is by no means an application of the fund *cy-pres* the original intention of the donor.

There is no claim that the community surrounding the lands has become stagnant. On the contrary, the fact that McNeill was able to get about 30 times what he paid for the land is strongly indicative of growth. There is, therefore, a likelihood that in the near future the lands may be used for the purposes intended by the original grantor.

Tyssen Charitable Bequests (Ed.) 1921, p. 183.

A case for the *cy-pres* application of trust funds cannot be manufactured, but must arise *ex necessitate rei*. At page 184, the writers of the 2nd edition of Tyssen's work say, "Of such cases the learned author of this book says, 'In these cases, it is settled law that property once devoted to charity is so devoted forever, and on failure of the primary object, the property will be applied to some other

charitable purpose,' ' citing a list of cases appearing on pp. 184 and 185. *A.-G. v. Bishop of Llandaff*, 2 M. & K. 583; *Hayter v. Trego*, 5 Russ. 113; *A.-G. v. Gibson*, 2 Beav. 317 n; *A.-G. v. Ironmonger's Co.*, 2 M. & K. 576; *A.-G. v. Ironmonger's Co.*, 2 Beav. 313; *Incorporated Society v. Price*, 1 Jo. & Lat. 498; *A.-G. v. Fraunces* (1866), W. N. 280; *A.-G. v. Hankey*, L. R. 16 Eq. 140 n; *A.-G. v. Bunce*, L. R. 6 Eq. 563; *Re Templemoyle School*, L. R. 4 Eq. 295; *A.-G. v. Stewart*, L. R. 14 Eq. 17; *Re Prison Charities*, L. R. 16 Eq. 129; *Spiller v. Maude*, 32 Ch. D. 158 n; *Wilson v. Barnes*, 38 Ch. D. 507; *A.-G. v. Earl of Craven*, 21 Beav. 392. On page 188, "It is clear from an examination of the foregoing cases that not one of them is sufficient to justify the proposition." The proposition is, however, to be found in *Tudor on Charities*, Ch. IV., Sec. I, where it is stated in more emphatic terms, and in support of the proposition cites *A.-G. v. Hicks*, Highn Mort. 336; *A.-G. v. London*, 3 B. C. C. 171 and *Dale v. Powell*, 13 T. L. R. 466. And the passage in *Tudor* continues, "If a charitable devise takes effect in the first instance, the heir-at-law is disinherited once and for all." And in support of this statement we are referred to *A.-G. v. Green*, 2 B. C. C. 492 at p. 191. That proposition cannot be supported by *A.-G. v. Green*. It was a devise of personal property to pay the overplus to University College for the buying of perpetual advowsons for the members of the college and the residue was to be applied by the executors to such charitable uses as they in their discretion should think best. It is difficult to see how under this will, the point referred to (the disinheritance of the heir after an effectual charitable devise), could have arisen.

At p. 192. For any principle of law this case would seem to be a slender foundation, but when

it is employed to support the proposition for which it is cited as the sole authority it appears to collapse under a burden greater than it can bear.

We may conclude that the proposition in question has no real foundation, but we may at the same time remark that the courts would be slow to hold that there was in fact no general intention in favor of charity where a definite charitable trust had failed. See *Re Davis* (1902), 1 Ch. 876.

“The rule of equity in this respect” says Lord Parker in *Bowman v. Secular Society, Limited* 1917 App. Cas. 406, 422, “is well known, and however admirable in the interests of the public, has, I think, gone further than any other rule or canon of construction in defeating the real intention of testators.” See *University of London Medical Science Inst. Fund*, 1909.

Tyssen Charitable Bequest (1888), p. 441.

There remains a fourth class of cases in which cy-pres is dragged in, and a very unsatisfactory class it is. It comprises a number of cases in which a testator has devoted property to some charitable purpose; but owing to some impediment, act, either of law, or of the consent of some person, or the default of some expected set of circumstances, the testator's object cannot be carried out in the manner pointed out by him. The Courts have then held in some cases that the testator had only a particular intention, and that failing, the gift failed; but in other cases they have held that beyond the particular intention expressed there was a general intention of charity, and then the failure of the particular intention has let in the general intention and the Court has applied the fund cy-pres.

The only principle which we can see, on which

such a distinction could be logically based, is this, namely, that when the gift can be read as devoting the property to charity, and adding a condition subsequent to the gift, then if the performance of the condition becomes impossible, the gift becomes absolute; whereas if the condition is precedent to the gift, and the condition becomes impossible the gift fails altogether. This is a principle well known in private gifts, and it has been recognized in charitable gifts.

A leading case on the subject is *Moggridge v. Thackwell* (7 Ves. 36), May, 1803, where Lord Eldon summed up the authorities by saying, "All the cases prove that there the substantial intention is charity, though the mode by which it is to be executed fails by accident or other circumstance, the Court will find some means of effectuating the general intention."

As this decision is regarded as fixing this indefinite principle in our law, it will be worth our while to dismiss the cases on which it is based and see whether some more definite result cannot be deduced from them.

The great weight of authority as gleaned from the reading of the cases on which Lord Eldon based his questionable conclusion in *Moggridge v. Thackwell* is clearly against the application of the cy-pres doctrine in a case where property, devised for charitable purposes, has through the default of some person or circumstances, not been devoted to the objects intended by the testator in the manner pointed out by him.

FAILURE TO CARRY OUT THE TRUST PROVISIONS AND ABANDONMENT OF THE USE WORKS A REVERSION.

A trust may be repudiated on the evidence of conduct without any express declaration of disclaimer. Mere lapse of time is no bar to the execution of a trust if a good excuse is given, but otherwise equity will not enforce the provisions after a great delay.

Lewin, p. 198, 1 Lewin p. 273.

T. M. conveyed in 1816 to employers of the school at Plum Creek the *locus in quo* on which the neighbors maintained a schoolhouse which was occupied as such without interference or abandonment as a subscription school from 1815 up till 1836. Since that time the schoolhouse had been vacant and wholly unfit for use. In 1843, T. M. sold the lands to defendant. The grant was on an implied condition or agreement, that the school should be kept up. At the time of the defendant's entry it had been discontinued for the space of seven years without an indication on the part of the employers of an intention to resume it, and this was certainly enough to raise a legal presumption of its abandonment. The abandonment of the trust for seven years being irretrievable, the defendant as the *grantor's SUCCESSOR* had a right to enter and hold against all the world.

Kirk v. King, 3 Pa. St. 436.

Where there is evidence on which it can be found that the non-user was so unreasonable in duration as to defeat the purpose of the grant, it will be regarded as an abandonment.

Gage v. Dist. School, 9 Atl. 387, Sup. Ct. of N. H.

A small parcel of land in Newark was conveyed to the grantees, their heirs and assigns forever, for a burying ground and to be appropriated for no other use or purpose whatsoever. The C. Q. T. refused to use the *locus in quo* for the only use to which it was held for them. There was an actual and complete abandonment and prohibition of use and inability on the part of equity to intervene for more than 40 years. By the absolute extinction of the sole use for which the plaintiffs held this land the fee reverted to the original proprietors. The object of the proprietors' conveyance had wholly failed. The trust was barren and its execution prohibited.

Mayor of Newark v. Watson, 29 Atl. 487,
56 N. J. L. 667.

Where no time is limited for the performance of a condition which in a devise of lands to a town for a schoolhouse, it was determined that the vested estate would be forfeited on non-compliance within a reasonable time with the condition and that a neglect for twenty years to comply with the condition was a forfeiture.

Hayden v. Stoughton, 5 Pick. 528.

A delay of twenty-nine years in commencing to build a church was held to be unreasonable.

Upington v. Corrigan, 69 Hun. 320.

THE ABSENCE OF WORDS OF REVERTER
DOES NOT NECESSARILY PREVENT A RE-
VERSION OF THE ESTATE.

John S. Young conveyed to four trustees a certain tract of land in Central City, Ky., for the pur-

pose of having established, erected and maintained thereon a Union Church in which four congregations might worship. At that time Central City was but a small village. The church was built and for many years used by the congregations in accordance with the wish and understanding of the grantor. But with the growth of the City the church was abandoned. The conveyance was to the said party of the second part and their successors forever. An inspection of the deed shows beyond question that the grantor was giving it to the trustees of these various churches for the sole and exclusive purpose of having erected thereon an edifice wherein the members of the several denominations may worship. While the deed contains no provision to the effect that, in the event the property shall cease to be used for the purpose for which it was granted, it shall revert to the grantor, such provision was not necessary; for, the conveyance being a voluntary one for a charitable purpose, it would automatically revert to the grantor when the purpose for which it was conveyed had failed.

“A contract for the sale of the property for the purpose of reinvesting the proceeds in other property, admitted in the last paragraph of the answer, was the termination of the use as a place of public worship, and in our judgment, worked a reversion to the heirs of the testator as of the date of the contract.”

Grundy v. Neal, 145 S. W. 402, Court of Appeals, Kentucky.

There can be no question here but that the purposes for which the property had been conveyed to trustees had failed. There was not only a failure of the purposes for which the conveyance was made,

but an abandonment of the property by the trustees named in the conveyance. The heirs at law of the donor are entitled to the property.

The case of *Tracy v. Borough of Keansburg*, 99 N. J. L. 35, is a Supreme Court issue involving the construction of certain statutes and the language used in a deed. The premises in question are situate on part of a tract of land, jurisdiction over which was ceded by this State to the United States for certain public purposes long before the borough was created.

The Court held that there was nothing in the borough charter, express or implied, to indicate any intent as to what shall become of the excepted territory in the unanticipated future contingency of the United States no longer needing it. The Supreme Court followed the decision in *Freeholders of Cumberland County v. Buck*, 79 E. 472, and held that this land had been abandoned and reverted to the original grantor by such abandonment.

THE TRUST PROVISIONS CONTAINED IN THE DEED CANNOT BE DESTROYED BY THE TRUSTEE AND THE ESTATE GRANTED TO THEM CONVERTED INTO A FEE SIMPLE ABSOLUTE.

A Court of Chancery cannot completely terminate rights acquired under the deed by authorizing the trustees to convey the property free from the covenants, conditions and restrictions of the trust, to the end that the property may be held, used, conveyed, mortgaged or otherwise disposed of by the grantees free from covenants, conditions and restrictions.

Imbrie v. Steen, 96 N. J. E. 190.

When the trust comes to an end, the trustees hold the legal estate in fee subject to a resulting trust to the grantor's heirs and the legal estate descends to the heirs and, when sold, passes by deeds to the last holder of the title charged with this resulting trust.

Hopkins v. Grimshaw, 165 U. S. 342.

On the one hand, the Courts of this State have adopted the view that gifts of charitable uses are practically inalienable. Indeed, the inalienability of the trust estate to other purposes than the uses for which it was donated results from the fact that the trust is created.

Mills v. Davison, 54 N. J. E. 659.

In 1620, R. B. bequeathed £100 upon trust for the benefit of poor persons belonging to the parish of St. Andrew Undershaft. That sum and more was, a few years later, laid out in the purchase of the messuage and land in question, and the conveyance taken in the names of certain parishioners as feoffees of the charity. In 1677, one, F, bought the property from the feoffees and he soon devised it to the governors of Christ's Hospital. That institution had continued in the undisturbed enjoyment of the rents and profits from 1680 to 1834, a period of 154 years.

The Court held that since F and his feoffees had full notice upon the face of the conveyance that the land sold was held by the parties conveying in trust for the benefit of the poor of the parish, the conveyance to F, being a breach of the trust, the governors of Christ Church must reconvey the land upon trusts expressed by the donors of the money with which the land was purchased.

Atty. Gen. v. Christ's Hospital, 40 Eng. Reports Reprint Ch. B. 20, p. 131.

G. D., in 1717, devised lands upon trust, that out of the rents, issues and profits thereof to purchase lands in C for the purpose of erecting college buildings, to be called Downing College and to obtain a charter therefor. All of the trustees died in the lifetime of the testator.

The testator left him surviving one heir-at-law, who entered upon the possession of the estate and he enjoyed it until his death. He died without issue, but he devised the same estate to his wife and she enjoyed the possession thereof until 1764. A bill was then filed, 47 years later, against her and her husband's heirs for the purpose of enforcing the trust provisions of the original testator's will, dated in 1717. The Lord Chancellor declared that the trusts of the charity in question ought to be carried into execution in case his Majesty should be pleased to grant his royal charter to incorporate the college and his royal license to take the devised premises in *mortmain*.

Atty. Gen. v. Bowyer, 3 Ves. Jr. 714.

On the other hand Zollman approved *Brown v. Condit*, *supra*, and at Sec. 149, says: "It must not be supposed, however, that there can be no reverter without a reverter clause. Some Courts, indeed, have taken the position that once a gift is vested in a charity it cannot find its way back to the heirs. This is an extreme view which has not found a large following. The present trend is most distinctly toward maintaining the doctrine of lapse as against the exercise of a judicial *cy-pres* power based upon intentions of charitable donors established by uncertain exercises which often amount to mere assumptions if not fictions."

If the view be adopted that the heirs of the donor of a charitable trust have permanently lost their

interests in the property because a charitable trust, which has once taken effect, can never cease during the period, perpetual or otherwise, during which it was intended to subsist, or in other words, that the lands are perpetually clothed with a trust provision which cannot be destroyed either by legislative enactment or by an act of the trustees, then the conclusion is irresistible that the title of the co-complainant, Collingswood Extension Realty Company, is impaired.

The corporation, The Minister, Church Wardens and Vestrymen of the Church of St. Mary, in Burlington, by grant from Queen Anne in 1709, was created with power to hold lands in fee and perpetuity not to exceed the yearly value of £300 for the maintenance of a minister and a church; with power to sell lands, provided lands so sold be bona fide purchased and settled for the uses aforesaid.

On Oct. 29th, 1712, John Tatham sold certain lands in Burlington to Robert Hunter, one of the members of the Right Honorable, the Society for the Propagation of the Gospel in Foreign Parts, to and for the sole and only proper use, benefit and behoof of the said society and of their successors and assigns forever. In 1803, the aforesaid society conveyed said lands without warranty to The Minister, Church Wardens and Vestrymen of St. Mary's Church for the use and maintenance of the Episcopal Church in Burlington, and for no other use or uses whatever.

On Sept. 15th, 1847, the church agreed in writing to sell all its right, title and interest in and to part of the lands in question to S. W. Stockton, and convey the premises free and clear of all encumbrances. Stockton resisted performance and a bill to compel him to perform was accordingly filed by St. Mary's Church. Defendant contended that the lands were

clothed with a trust whose object is the maintenance of the Episcopal Church, in an area, including not merely the parish of St. Mary, but all other Episcopal parishes that are or may be established in the City of Burlington. This construction struck the mind of the Court with great force, for it might be sufficient of itself to induce a denial of specific performance because of the vendor's inability to make a title which will secure to the purchaser the full enjoyment of the property.

St. Mary's Church v. Stockton, 8 N. J. E. 520.

Quoting the language of the Court below, whose opinion counsel for complainant reveres, "Here, by grant, a fee is vested *in trust*, in perpetuity, with no provision for reversion and with no limitation as to time of accomplishment. The trust is perpetual and the remedies incident to it are well defined."

What is to prevent some member of the Protestant Episcopal, or even a member of the public, to invoke the powers of our Court of Chancery for the purpose of giving effect to the trust or use for which the charitable gift had been conveyed? A cloud could be cast upon complainant's title at any time in the future, especially with no limitation as to time of accomplishment. It cannot be denied that the time is not far distant when the growing vicinity surrounding the lands in question will have use for the lot for the purpose of erecting a religious edifice thereon.

Should the view be adopted that the heirs of the original donor, Joseph Ogden Cuthbert, are entitled to the lands by virtue of the abandonment of the use granted, then, again, the title of the co-complainant, Collingswood Extension Realty Co., is entirely lost to it.

Counsel for complainants respectfully submits that the decree of the Court below be reversed to the end that the title of defendant, Arthur Y. McNeill, and that of the co-complainant, Collingswood Extension Realty Co., be declared invalid.

PHILIP WENDKOS,
*Solicitor for and of Counsel with
Complainants-Appellants.*

NEW JERSEY COURT OF ERRORS
AND APPEALS.

J. BLAIR CUTHBERT, *et als.*,
Complainants-Appellants,

v.

ARTHUR Y. MCNEILL, *et als.*,
Defendants-Respondents.

BRIEF ON BEHALF OF GRACE CHURCH.

This case comes up on appeal from the Court of Chancery, the final decree of that Court having been advised by Vice-Chancellor Leaming. The complainants claimed, as heirs, a right by way of reversion (or resulting trust) in certain land which had been conveyed by their ancestor to the respondent, Grace Church, for church purposes, and had later been reconveyed by the Church under authority of the order of the Court of Chancery in a separate proceeding. The decree appealed from denied that the heirs had any right to or interest in the land.

THE FACTS

The controversy relates back to a deed of conveyance (*Exhibit C9, S. of C., p. 156*) made on Octo-

ber 19, 1885, by Joseph Ogden Cuthbert to the religious corporation known as "The Rector, Wardens and Vestrymen of Grace Church in Haddonfield," but hereinafter designated "Grace Church," whereby a piece of ground in Delaware Township in the County of Camden was conveyed to the Church for designated religious uses. The conveyance was a gift ("in consideration of \$1.00"; *S. of C.*, p. 156, line 13). By words of bargain and sale, the deed granted to the Church, the land described:

"Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits, thereof, and of every part and parcel thereof. And also, all the estate right, title, property, possession claim and demand whatsoever, with the appurtenances." (*S. of C.*, p. 157, lines 12 to 22.)

The *habendum* is:

"To have and to hold, the said premises, with all and singular the appurtenances unto the said 'The Rector, Wardens, and Vestrymen of Grace Church, Haddonfield, New Jersey,' their successors and assigns forever. In trust, nevertheless, that, they, the said 'The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey,' their successors and assigns shall and will hold the said lands and premises to the use of the Protestant Episcopal Church in the diocese of New Jersey, to be used only for and as a site for a chapel, schoolhouse, mission, parish building, or other use of said Protestant Episcopal Church in said diocese, and

that the said 'The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey' shall have power to grant and convey the said lands and premises to any parish of said Protestant Episcopal Church in said diocese, within whose bounds said lands and premises may come to lie, by its proper title if incorporated, and by apt words of conveyance; or may in the same event convey said lands and premises to the trustees of 'The Episcopal Fund of the Diocese of New Jersey' to the use of said parish." (*S. of C.*, pp. 157-8.)

Grace Church was incorporated in 1843 as a religious society, "worshipping according to the customs and usages of the Protestant Episcopal Church." (*Exhibit D8, S. of C.*, p. 214, line 35.) As such it possessed all the powers given to religious associations by the Acts of this State in regard to taking and holding real estate, etc.

The land so given to the Church was a triangular piece, having a width measured along the middle of Haddon Avenue (or Turnpike) of 187 feet and an actual frontage, measured along the building line of Haddon Avenue of about 150 feet. The piece is shown on Exhibit D6 (*S. of C.*, p. 209), the westerly line of the triangle being distant 9.46 feet from Cuthbert Boulevard; Haddon Avenue, constituting the southerly boundary, being shown, although not designated, on the extreme left side of the exhibit.

The lot, by reason of its dimensions and limited area, was not adapted for church uses. Grace Church accepted the gift but was unable to devote it to any of the specific purposes named in the trust deed. The Church serves and has always served a comparatively small parish. It has never had the funds, nor the means of raising them, for building

any church or church building on the land in question. On the contrary, it had for many years the struggle for existence that churches in small communities are apt to have. It was unable for a considerable period to pay the taxes assessed against this unimproved ground and the land was actually twice sold for unpaid taxes and municipal assessments and bought in by the municipality. These facts and others, showing the financial incapacity of the Church to carry this land were exhibited to the Court of Chancery in a subsequent proceeding for sale of the land and appear in the record in this case in the shape of depositions taken in such proceeding and the Master's report based thereon, at pp. 179 to 197. (See also Exhibit D4, p. 169, and Stipulation of Facts in Supplemental State of the Case.)

It was also shown in the testimony given in said proceeding that an Episcopal Church had been established in 1913 and since maintained at Collingswood within a few squares of the lot in question, and similarly an Episcopal Parish at Westmont in 1914, less than a mile away. In both cases, the effort had been made, but in vain, to interest these respective congregations in building on the church lot. In 1924, when application was made to this Court for leave to sell, the territory immediately adjacent to the church lot was sparsely settled and such Episcopalians as resided there were committed to either the Collingswood Church or the Parish in Westmont. *Ibid.*

It being perfectly obvious under these conditions, most of which had prevailed over a period of thirty-five years, that the specific uses to which the donor had intended the lot to be put, were incapable of performance, the Church took up, in February, 1924, a proposition then made by its Senior Warden, Arthur Y. McNeill, to buy the lot from the Church

at a net price to the Church of \$1,000, the buyer to pay all taxes and municipal liens accrued against the property and also to pay the legal expenses involved in the proposed proceedings in equity to secure the order of the Court of Chancery directing the sale free and clear of the trust restrictions, conveyance being conditioned upon such order being obtained. (*Exhibit D1, S. of C., p. 165. See Stipulation, supra.*)

At that time, the lot had only a small market value, being low and requiring considerable fill, and besides being located in a thinly populated area. At the time of Mr. McNeill's offer, one of the grandsons and an heir of the donor, Mr. Edgar G. Cuthbert, was a member of the vestry and only shortly before had resided in the old homestead of the donor immediately across the street from the lot. His testimony given in the instant case, and based largely on the sales price which he received for the homestead property, was that \$1,000 was ample and upheld the fairness of McNeill's offer. (*S. of C., pp. 65-69; 190-192.*) The advice of a real estate man, produced at the proceeding for leave to sell, also sustained this price, his testimony being that the market value of the property was "about \$2,000 and I doubt if it can be sold for that much money." (*Sauerhoff, S. of C., p. 195, line 4.*) As the taxes and accrued interest then amounted to about \$750, and as Mr. McNeill had reason to expect to pay a substantial sum for legal expenses it will be seen that his offer of \$1,000 made to the Church was, so far as the vestry could judge, a fair price.

Proceedings were then taken under the statute to secure an order for sale. The entire file in this proceeding (Chancery file No. 55-532) has been offered as an exhibit and will be found in the record as Exhibit D5, at pages 172 to 207.

In this proceeding, a full disclosure was made to the Court of the entire transaction, including, of course, the buyer's relation to the vendor. The Special Master recommended a sale and an order therefor was advised by the Advisory Master. The order (*S. of C.*, p. 199) directed the sale to McNeill free and clear of the trust restrictions contained in the deed of Joseph Ogden Cuthbert. Before conveyance was made, however, the whole matter was resubmitted, in accordance with the discipline of the Episcopal Church in this diocese, to its Bishop and Standing Committee, who confirmed the sale.

It is thus evident that the vestry acted with entire diligence and good faith and if their conduct in approving the sale to their Senior Warden deserves the criticism which has been made in the course of this litigation by counsel for the complainants, such criticism has equal application to the Court of Chancery which, after a full disclosure of the known facts, confirmed the action of the vestry.

It happened, however, that a pertinent fact was not disclosed at the time to the vestry, and, indeed, was brought out for the first time on final hearing before Vice-Chancellor Leaming in this cause. A year before the Senior Warden made his proposition to buy from the Church, he had received a letter from the Collingswood Extension Realty Company, owner of the ground in the rear of the triangular lot, offering to purchase the Church ground, free of the trust restrictions for a price which would have produced about \$4,500. (*Exhibit C6, S. of C.*, p. 150.)

At the time this offer was received it was not supposed by Mr. McNeill or by any of the vestry that the land could be sold because of the trust restrictions against it. (*S. of C.*, p. 86, lines 10 to 20.) About a year later, the Senior Warden was advised that the trust restrictions might be removed by

Court order, but in presenting his proposition to the Church he failed to mention the receipt a year before of the offer from the Collingswood Extension Realty Company. See testimony of Messrs. Walton, Cuthbert and Downing, pp. 108, 113, 114.

After the purchase had been consummated, the lot increased rapidly in value. It became the center of a new building development, and a new boulevard, known as Cuthbert Boulevard, was located within nine feet of it, so as to give it the benefit of corner influence for purposes of sale. (Paragraph 12, Stipulated Facts, Supplemental S. of C.) On top of these conditions came the real estate boom of 1925 and 1926.

On February 10, 1926, the Collingswood Extension Realty Company, three years after its previous offer to McNeill, offered him the gross sum of \$30,000 (*Exhibit C7, S. of C., p. 151*), and a sale was actually consummated at this figure in October of the same year.

All of the above circumstances were, of course, known to the Church and its counsel, except the fact that an offer had been made the Senior Warden in 1923 to pay \$4,500 for the lot. Upon this fact coming out at final hearing, the validity of the sale to McNeill was at once brought in question. It was not allowed to remain in question. Immediately after adjournment of the Court, Mr. McNeill voluntarily executed an assignment of the \$24,000 purchase money mortgage which he had received from the Collingswood Extension Realty Company (*S. of C., p. 129, Exhibit D7, p. 211*) and also gave the Church his agreement to turn over in cash the net profit accruing from his resale as soon as his expenses in the pending litigation had been determined. (*S. of C., p. 21.*)

The Church was, therefore, put in possession of

all the fruits of Mr. McNeill's purchase and resale and the case was submitted to the Court of Chancery in the same position as if the initial conveyance by the Church had been to the Collingswood Extension Realty Company for \$30,000, instead of to its Senior Warden for \$1,000, plus costs.

We have dealt with the circumstances surrounding this transaction in some detail as the attempt was made below, and is repeated on appeal (Appellant's Brief, pp. 5 to 6), to embarrass the Church's case by charges of fraud against its Senior Warden. Such an issue lies between the Church and Mr. McNeill and certainly is not open to attack at the instance of the heirs. It, therefore, had no proper place in this case at all. Furthermore, as the issue has been eliminated by Mr. McNeill's action in giving the Church the full benefit of his resale, it has no place in this appeal.

The suit brought by the heirs, therefore, rests solely upon the inability and consequent failure of Grace Church to devote the lot in question to the specific trust uses intended by the donor, and upon its sale of the lot, under order of the Court of Chancery, which is alleged by appellants to have been a violation of the trust. On either and both of these grounds counsel for the appellants has based their case for a reversion of the fee simple estate in this lot. The questions which this Court is called upon to examine, are questions of law, all essential facts being admitted, and require a consideration of the legal effect of the trust deed and the estate created by it in the Church, and of the consequences, if any, upon such estate in the donee, as flowed from the impossibility of applying the land in strict accordance with the specific purposes of the trust.

THE LAW.

The learned Vice-Chancellor, who decided the case below, could have rested his decision on either of two grounds for denial of relief. These grounds, which we urged below and submit herewith, may be stated as follows:

I. The deed of the donor having conveyed away the entire estate in the premises, his heirs have no standing to claim a reversion or resulting trust or any other interest therein.

II. Even if the possibility of such reversionary interest could be predicated, there has been no failure of the trust and hence, no occasion for raising a reversionary interest.

The Vice-Chancellor confined his decision against the heirs to enforcing the first of the above-stated propositions. We shall, however, argue both.

I. THE DEED OF THE DONOR HAVING CONVEYED AWAY THE ENTIRE ESTATE IN THE PREMISES, HIS HEIRS HAVE NO STANDING TO CLAIM A REVERSION OR RESULTING TRUST OR ANY OTHER INTEREST THEREIN.

We take it there can be no question that the deed of Joseph Ogden Cuthbert created a trust. *McKenzie v. Trustees, etc.*, 67 N. J. 652, 661-3.

Conversely, the deed did not create a determinable fee. *Board of Education v. Brophy*, 90 N. J. Eq.

57; *Freeholders of Cumberland County v. Buck*, 79 N. J. Eq. 472.

Nor did it create a conditional fee, the limitations being in trust rather than on condition. *Board of Education v. Brophy, supra*; *McKenzie v. Trustees, supra*, p. 661, and *Mills v. Davison, supra*, 54 N. J. Eq. 659, 662, 664, 665.

Nor did the deed embody a mere covenant. *McKenzie v. Trustees, supra*, p. 661.

That the trust so created was a public trust, or charity, is clear. Gifts to religious organizations or for religious purposes constitute public trusts or charities.

Baldwin v. Baldwin, 7 N. J. Eq. 211, 213;
Trustees, &c. v. Beatty, 28 N. J. Eq. 570,
 572, 575;
DeCamp v. Dobbins, 31 N. J. Eq. 671, 672,
 688, 696;
Mills v. Davison, 54 N. J. Eq. 659, 662;
McKenzie v. Trustees, 67 N. J. Eq. 652, 660,
 664, 666;
Bernardsville M. E. Church v. Seney, 96
 Atl. 388 (N. J. Ct.).

The deed itself, it will be noted, in its granting clause relinquished, together with the fee, "all and singular * * * the reversion and reversions, remainder and remainders * * * thereof, and of every part and parcel thereof." (*S. of C.*, p. 157, line 16.) In the face of this grant, the appellants proclaim themselves entitled to the reversion.

The question thus arises whether a deed of conveyance which, by its terms, passes the entire beneficial estate of the grantor to a charity, leaves anything in the way of a reversionary interest, or resulting trust in such grantor. In the words of the Court below:

“Here, by grant, a fee is vested in trust in perpetuity with no provision for reversion and with no limitation as to time of accomplishment. The trust is perpetual and the remedies incident to it are well defined and do not embrace forfeiture for non-performance.” (*S. of C.*, p. 222, lines 13 to 15.)

And, quoting *Tudor on Charities*, the Vice-Chancellor says further:

“‘If the charitable devise takes effect in the first instance, the heir-at-law is disinherited once and for all.’ This, I am convinced, is an accurate statement of the rule defined by the authorities.” (*S. of C.*, p. 221, lines 9 to 14.)

As it was conceded that the trust established by Joseph Ogden Cuthbert took effect in the first instance, the Court had no hesitancy in holding that by the vesting of the trust estate the interest of the grantor and his heirs was divested for all time.

Although opposing authorities can be found in some other jurisdictions, there can be no question but that the Vice-Chancellor’s conclusions were in harmony with the law as laid down in successive decisions in this State. The first judicial expression we find is in *Mills v. Davison*, 54 N. J. Eq. 659, 667:

“The deed of the grantors having conveyed away the entire estate in the premises, a resulting trust will not arise in favor of the grantors by reason of an abuse of the trust.”

Following in order are the following:

McKenzie v. Trustees, 67 N. J. Eq. 652, 677-8 (the Court apparently extending the rule to *private* trusts);

Princeton v. Wilson, 78 N. J. Eq. 1;

West v. St. James, 83 N. J. Eq. 324, 325 (a case most apposite to the case at bar).

To the above should be added the authority of Tudor on Charities and Zollman on the American Law of Charities, cited by the Vice-Chancellor, and many other decisions in other States which it is unnecessary to set forth in this brief.

We do not suggest that the complainants have no rights with regard to the trust created by their ancestor. They may have rights of visitation. See *McKenzie v. Trustees, supra*, page 678, *et seq.*; *Mills v. Davison, supra*. They may have rights as members of the public. But it is entirely clear that the complainants in this suit are not asserting visitatorial rights, but proprietary rights, and that they are not claiming as members of the public but against the public. The end of their contention is—not the administration and enforcement of the charity, but its termination.

McKenzie v. Trustees, supra, p. 678.

The brief of appellants does not attempt to directly oppose the force of the New Jersey cases just cited. Indeed, it is difficult to see how there is any answer to their authority as controlling the case at bar. Even if we conceded, as we do not, that the facts were substantially different in the cases cited from the case *sub judice*, even if we assumed that in those cases there was only a temporary breach or violation of the trust, whereas, in ours, there was a complete abandonment of the trust, the logic and clear intent of the New Jersey cases cited requires a dismissal of the instant suit. No distinction is suggested in *Mills v. Davison*, in *McKenzie v. Trustees*, in *Princeton v. Wilson* or in *West v. St. James* between a partial or total failure of the charity. The point, as shown by the quotation above made from *Mills v. Davison*, is that whenever a conveyance or devise passes the entire beneficial estate in property

to a charity and that beneficial interest once attaches, from that moment all right or interest of the donor ceases, and having passed cannot be revived by any subsequent event, whether such event results in partial or complete failure of the charity.

As a matter of fact, complete failures of a charitable trust, thanks to the rule of liberal construction and to the application of the doctrine of *cy-pres* (discussed under our next point) are rare. There are no cases that we know of in New Jersey which involve the absolute failure of a trust which has once attached. But if such a case arose we have no hesitancy in saying that the heirs of the donor, as such, would derive no advantage from such failure.

No reversion where tenure exists.

Additional legal ground for refusing recognition to the alleged reversion (or resulting trust) in the complainants is found in the principle of law, deducible from the ancient statute of *quia emptores*, that where tenure exists there is no possibility of reverter at common law.

The statute of *quia emptores* (18 Edw. I, c. 1) enacted that on all conveyances in fee, the tenant should not hold of the grantor but of the grantor's lord. The effect of this statute upon the reversionary rights previously known to the common law is described by Professor Gray in his text book on Perpetuities, as follows:

“Sec. 31. Possibilities of Reverter.—These rights, as their name implies, were reversionary rights; but a reversionary right implies tenure, and the statute *quia emptores* put an end to tenure between the feoffor of an estate in fee simple and the feoffee. Therefore, since the stat-

ute, there can be no possibility of reverter remaining in the feoffor upon the conveyance of a fee; or, in other words, since the statute, there can be no fee with a special or collateral limitation; and the attempted imposition of such a limitation is invalid. The distinction between a right of entry for condition broken and a possibility of reverter is this: after the statute, a feoffor, by the feoffment, substituted the feoffee for himself as his lord's tenant. By entry for breach of condition, he avoided the substitution, and placed himself in the same position to the lord which he had formerly occupied. The right to enter was not a reversionary right coming into effect on the termination of an estate, but was the right to substitute the estate of the grantor for the estate of the grantee. A possibility of reverter, on the other hand, did not work the substitution of one estate for another, but was essentially a reversionary interest—a returning of the land to the lord of whom it was held, because the tenant's estate had determined.

Sec. 32. In accordance with the doctrine of the foregoing section, no possibility of reverter after a determinable fee has been sustained in England since the statute *quia emptores*. * * *

Sec. 34. Possibilities of reverter have also been spoken of by counsel and text-writers as if they were valid interests, without paying any regard to the statute *quia emptores*. But the English books reveal no actual case since the passing of the statute down to modern times, in which a determinable fee with a possibility of reverter has been held to have been created; and the learned reader need not be reminded that little reliance is to be placed on statements,

however often repeated, which have never been brought to the test of decision. 'The mere statement and restatement of a doctrine, the mere repetition of the cantilena of lawyers, cannot make it law, unless it can be traced to some competent authority, and if it be irreconcilable to some clear legal principle.' "

There should be no question but that the principle of law inherent in *quia emptores* is part of the common law in all those States of this country where tenure obtains. See Gray, Sections 22, *et seq.* In New Jersey, the Act of February 18, 1795 (Comp. Stat., N. J., 1910, p. 1534, *et seq.*) provided expressly for allodial tenure. See Section 14 (*Ibid.*, p. 1538). Gray says of the statute of this State just cited:

"Sec. 23 (New Jersey).—The St. of Feb. 18, 1795, declares that the purchaser of lands shall hold them of the chief lord, if there be any, of the fee; that all tenures are turned into free and common socage; but that this shall not take away 'any rents certain, or other services incident or belonging to tenure in common socage, due or to grow due to this State, or any mean lord, or other private person, or the fealty and distresses incident thereto;' and that the tenure of all grants made or to be made by the State shall be 'allodial and not feudal,' and 'in free and pure allodium only.' The statement in 1 Washb. Real Prop. *40, that tenure does not exist in New Jersey, is incorrect."

It would, therefore, follow that the law of England, which recognizes no reversionary right where a fee simple estate is passed to charity, has full operation in our own State. The statute of *quia emptores* and the rule of law, developed by Gray in the

above quotations, thus affords additional ground for upholding the decisions of this State which have already declared in unambiguous language that no reverter can be raised on failure of a charity.

We may at this point notice the criticism in our adversaries' brief directed against the text writers, Tyssen and Tudor. This criticism, developed in the course of a general discussion of the *cy-pres* doctrine (to which it has no direct application), begins, at the bottom of page 12, appellants' brief, with a quotation from a second edition of Tyssen. The point of criticism, however, is clearly directed to the fact that the cases cited in the first edition do not bear out the latter portion of the quoted statement from the text, to the effect that on failure of the primary object of the charity "the property will be applied to some other charitable purpose." We need not quarrel with this criticism, as the point to which it is directed is not found in our case. The cases cited by Tyssen do support the proposition that "property once devoted to charity is so devoted forever"—so far, at least, as the exclusion of any reversionary right in the donor is concerned.

On the following page of his brief, counsel attacks the passage in Tudor which had been previously quoted by the Vice-Chancellor. (The quotation referred to by counsel as found at page 191 is actually at page 109 of Tudor.) After reading counsel's criticism, one gains the impression that the only case cited in support of Tudor's text is *A. G. v. Green*, 2 B. C. C. 492. The fact is, however, that to the sentence in Tudor immediately preceding the one quoted by appellants is appended a note which sets forth six other cases, several of which are found in the note to Tyssen already referred to, and in the succeeding text on the same subject additional cases

in support of the same general proposition are adduced.

The general principle for which we are contending has, therefore, ample recognition in English authority as well as in the cases of our own State.

II.

EVEN IF THE POSSIBILITY OF SUCH REVERSIONARY INTEREST COULD BE PREDICATED THERE HAS BEEN NO FAILURE OF THE TRUST AND HENCE NO OCCASION FOR RAISING A REVERSIONARY INTEREST.

The learned Vice-Chancellor, having held that irrespective of whether the trust had failed or not, there could be no reverter to the heirs, who were, therefore, without standing in court, was not under the necessity of dealing with the contention of complainants that there had been a complete failure of the trust, first, through abandonment, and secondly, through the sale of the trust property to McNeill. His opinion, therefore, does not discuss this point, and we deal with it in our brief only in the interest of thoroughness.

We will accordingly take up the two-fold contention of the appellants that there was a complete failure of the trust, both before the sale and by the sale.

(a) There was no failure of the trust by non-user prior to the sale to McNeill.

It cannot be claimed that the Church, through its officers and vestry, were responsible for the failure

to make use of the lot of land conveyed. The evidence shows that this failure was due entirely to outside causes. See defendants' exhibits, particularly report of Special Master Robbins.

We are not, however, concerned with what caused the failure, as the inability or refusal of a trustee for any particular period of time to apply or utilize the trust fund or property does not, as a matter of law, terminate the trust. A trust is not terminated save by adjudication, and it is only the impossibility of execution that may justify a court in decreeing the termination of a trust.

Board of Education v. Brophy, 90 N. J. Eq. 57.

(b) There was no such failure as a result of the sale to McNeill.

In their contention that the sale itself violated the terms of the trust, the appellants are looking only at the specific use clauses in the deed and are ignoring entirely the general charitable purpose in which the whole gift was framed, as well as the general phrases "to the use of the Protestant Episcopal Church" (to which we shall refer more particularly later). (See *Zollman*, 132, etc.)

Not only do not appellants ignore the general charitable purpose of the gift, but they give scant heed to the fact that the sale was made by authority of an order of the Court of Chancery of this State and that such order was entered under the sanction of a statute of this State. In effect, the complainants' suit is a collateral attack upon the decree of the Court of Chancery in another proceeding. We do not, however, make any point of this and are

satisfied to have the issues settled in the present cause.

It is obvious, however, that appellants, to succeed in their contention, must in some way defeat the statute, in strict accordance with which the decree of the Court of Chancery was made.

The validity of the statute is scarcely challenged in appellants' brief. As to that validity there can be no doubt. The statute came before the Court of Chancery and was enforced by Chancellor Walker in *re St. Michael's Church*, 76 N. J. Eq. 524, and, as is well known, there have been repeated sales of church properties thereunder. The constitutional power of a legislature to deal with the enforcement of a public trust or charity cannot be questioned in view of the decision of the United States Supreme Court in *Stanley v. Colt*, 5 Wall. 119, 169 to 70. Reference may also be had to the decision in our own State in *Norris v. Thompson*, 19 N. J. Eq. 307, 310, 315, aff. 19 Eq. 575; *Mormon Church v. U. S.*, 136 U. S. 1, 59, and *Ware v. Fitchburg*, 200 Mass. 61, 85 N. E. 951; *Bridgeport Public Library v. Burrough* (Conn.), 82, A. 582; *Miller v. Atkinson*, 63 N. C. 537, 540. Even if the statute could be held to affect reversionary interests, these, being mere expectancies, and not vested rights, could claim the protection of no constitutional principle. (See *Norris v. Thompson*, *supra*.)

The statute invoked in this case was originally enacted in 1905, was amended in 1907 and again in 1910 (P. L. 1910, p. 464), and appears as Sections 10 to 13, under the title "Religious, Educational, Benevolent or Charitable Corporations" in the Compiled Statutes at page 4299, *et seq.* A similar, and in substance, identical statute was enacted by our legislature in 1911 (P. L. 1911, p. 76), and is equally available to justify the decree entered by the Court

of Chancery directing the sale. The only differences between these Acts of 1910 and 1911 give a greater amplitude to the later Act:

An examination of each of these statutes discloses that the power to direct a sale is made applicable in any case where the lands are conveyed or devised "in trust for specific uses and purposes" and the existing situation is such that the interests of the charity will be better promoted by the sale or disposal of the lands and the investment of the proceeds of sale and the application of the income therefrom to uses consistent with the nature and objects of the charity. This language is merely declaratory of the familiar principle of *cy-pres* applied for several centuries by the English Court of Chancery. It is, as stated in *Brown v. Condit*, 70 N. J. Eq. 440, 443—"the *cy-pres* power which a Court of Equity or the legislature may exercise."

We thus come to a consideration of the doctrine of *cy-pres*, and the limits thereof, as established by the decisions of our own State. The development of the doctrine is marked historically by the following decisions:

- Hesketh v. Murphy*, 36 N. J. Eq. 304 (see dictum of Beasley, C. J., at p. 310);
Newark v. Stockton, 44 Eq. 179, 191-3
 (The Court in the *McKenzie* case, 67 N. J. Eq. 675-6, says of this decision that it "accepted the *cy-pres* doctrine in its essence.")
Pennington v. Metropolitan Museum, 65 N. J. Eq. 11, 22;
McKenzie v. Trustees, *supra* (wherein the *cy-pres* doctrine was first expressly recognized and applied), pp. 672-7;
Brown v. Condit, 70 N. J. Eq. 440;

St. James v. Wilson, 82 N. J. Eq. 546
(affirmed, except as to counsel fee and
costs, 83 N. J. Eq. 324);
Board of Education v. Brophy, supra, 63;
Christian v. Catholic Church, 91 Eq. 374;
Imbrie v. Steen, 96 N. J. Eq. 190, 194;
Re Y. W. C. A., 96 N. J. Eq. 568, 573;
Leddy Post v. Roberts, 99 N. J. Eq. 217.

Cases like *Larkin v. Wikoff*, 75 N. J. Eq. 462, are readily distinguishable by virtue of the different trust provisions involved. So with *Brown v. Condit*, 70 N. J. Eq. 440, and other cases in which the doctrine of lapse of testamentary gifts was involved.

Resort to the doctrine of *cy-pres* is had where the *primary purpose* of the trust cannot be given effect save by sacrificing some secondary purpose thereof, as by changing the prescribed methods of carrying out the trust.

“Where the testator or donor had two objects in view—one primary or general, and the other secondary or particular—and these are, literally speaking, incompatible, the particular object must be sacrificed in order that effect may be given to the general object, according to law, and ‘as near as may be to the testator’s or donor’s intention.’ ”

McKenzie v. Trustees, 67 N. J. Eq. 672-673;
Re Y. W. C. A., 96 N. J. Eq. 568, 574.

The general or primary purpose of the Cuthbert trust as expressed in the deed is very broad. Grace Church is “to hold the said lands and premises to the use of the Protestant Episcopal Church in the Diocese of New Jersey.” The particular or secondary purpose was expressed in the phrase imme-

diately following: "To be used only for and as a site for a chapel, school-house, mission, parrish-building * * *." Then follows the comprehensive phrase "*or other use of the said Protestant Episcopal Church in said diocese*"—a reaffirmance of the general use or purpose first stated and clearly indicating that the donor did not intend to necessarily confine the donee to the particular uses which he specified, and which are therefore to be regarded as set forth more by way of suggestion than command.

Powers of reconveyance to designated beneficiaries are given in the Cuthbert deed, which cannot, however, be regarded as precluding a sale to others when made *ex necessitate* and in furtherance of the primary purpose of the trust. Trust property which cannot be used for the primary purpose of the trust may, under the *cy-pres* doctrine, be sold—even though alienation is strictly forbidden by the terms of the trust—and the proceeds of sale devoted to the general uses of the trust.

Imbrie v. Steen, 96 N. J. Eq. 190;

Re Y. W. C. A., 96 N. J. Eq. 568;

Fair v. M. E. Church, 57 N. J. Eq. 496;
aff. 60 N. J. Eq. 485;

Attorney-General v. South Sea Co., 4 Beav. 453 (Chancery 1841);

Stanley v. Colt, 5 Wall. 119, 169-70;

Trustees v. Carmody, 144 N. Y. S. 24, af. 105 N. E. 543;

Wells v. Heath, 10 Gray 17, 18.

Such a sale is not even invalid when done by the trustee without the sanction of statute or Court decree. In *Attorney-General v. South Sea Co.*, *supra*, from which Chief Justice Beasley quotes

with approval in *Newark v. Stockton, supra*, the Court said:

“It is plain that in ordinary cases a most important part of this duty (of a trustee) is to preserve the property; but it may happen that the purposes of the charity may be best sustained and promoted by alienating the specific property. The law has not forbidden the alienation and this Court upon various occasions, with a view to promote the paramount interests of charities, has not thought it necessary to preserve the property in specie but has sanctioned its alienation. That which the Court might have done upon its own consideration of what would have been beneficial to the charity might have been done by trustees upon their own authority in the exercise of their legal powers; and however imprudent it may have been in trustees to take so great a risk upon themselves, yet upon consideration it should appear that the transaction was fair and beneficial to the charity at the time, it does not appear to be the duty of a Court to set it aside merely because circumstances have occurred in which at the time of the inquiry and after the lapse of many years it may be supposed that a greater revenue might have been derived” (p. 458).

We are not unmindful of the fact that Vice-Chancellor Leaming avoided the construction which we have given to the phrase in the deed “or other use of said Protestant Episcopal Church in said Diocese,” and suggested that this phrase might be given a limited meaning by virtue of the doctrine of *ejusdem generis*. He stated, however:

“It will be observed that in defining the par-

ticular use to which the land should be devoted the donor has added: 'or other use of said Protestant Episcopal Church in said diocese.' In what has been said touching the use defined by the donor no consideration has been here given to those words. It has been herein assumed that these supplemental words may be considered as controlled by the rule of construction of *eiusdem generis*. But it is not thereby intended to recognize that rule of construction as prevailing over the liberal rule of construction to be applied to charitable gifts." (*S. of C.*, p. 221-2.)

The Vice-Chancellor, while avoiding adjudication, thus indicated that in his opinion the rule of *eiusdem generis* could not be applied in the face of "the liberal rule of construction to be applied to charitable gifts." Indeed, it is impossible not to perceive the general charitable purpose of the grantor, a purpose, which by construction at least, must be held to extend where necessity demands, beyond the specific purposes designated in the deed.

The rule of construction referred to is stated in Zollman as follows:

"It is obvious that a slavish adherence to the details of a testator's plan would, in time, destroy almost every charity, though it was intended to benefit all future generations. * * * Where circumstances have changed, Courts must look through the mere words of a donation to its spirit and inquire what the donor would direct if he were living. The main intention must be carried out, not defeated by a literal compliance with all the expressed terms of the gift" (pp. 89 to 90, and see particularly cases cited in footnote).

Such rule of liberal construction is exemplified in such New Jersey cases as *St. James v. Wilson*, 82 Eq. 546, 549; *Mills v. Davison*, 54 N. J. Eq. 659, 666; *Christian v. Catholic Church*, 91 Eq. 374, 376; *re Y. W. C. A.*, 96 N. J. Eq. 568, 574.

It is impossible, we submit, in the face of these authorities, to read out of the Cuthbert deed the general charitable purpose which would justify a sale of the useless real estate and an application of the proceeds thereof to the general religious purposes of the Church.

It is most significant that the appellants throughout their brief evade the vital distinction between general and specific purposes of the charity. The reason is obvious. Only by insisting on the enforcement of the specific purposes to the exclusion of the general purposes, can they maintain their contention of a failure of the trust.

We submit in conclusion that even if our first contention in this brief (adopted by the Vice-Chancellor) should be held untenable, the sale by the Church must still be upheld as done in pursuance of the principle of *cy-pres*, authorized and directed by decree of our Court of Chancery, and sanctioned by the appropriate statute of this State.

III.

ANSWER TO APPELLANTS' POINTS.

1. *The claim that the statute under which sale was made does not apply.* (App. Br., p. 4.)

The attempt is made by appellants to refer back to the old Religious Society Act of 1847, and the

point is made that the Act of 1905 (amended in 1910) relied on by the Church in applying for leave to sell, did not repeal the older statute. It seems to us too obvious for argument that the older Act, if then in force, was repealed by necessary implication in the Act of 1905.

2. *A fiduciary cannot buy at his own sale.* (App. Br., p. 5.)

It is not necessary to argue this proposition. It has no place on this appeal for reasons we have heretofore pointed out. Mr. McNeill is only a nominal party and the controversy is between the Church and the heirs.

3. *The sale was not binding on the heirs.* (App. Br., p. 6.)

As the heirs have no proprietary interest in the land, it is obvious that the decree did not affect them. If they had had vested interests, we concede that the decree could not have affected them. Under the statute, however, they could not be made parties (*re St. Michael's Church, supra*), and the decree of the Court did not even purport to adjudicate as to their rights. To secure such adjudication is the purpose of the present suit.

4. *The claim that the sale is not justified by the doctrine of cy-pres.* (App. Br., p. 7.)

Counsel for appellants concentrates his main attention on this point. An examination of the Eng-

lish and New Jersey cases which he cites will disclose that all of them support our contention that the sale of the Church property was justified under the *cy-pres* doctrine. The New Jersey cases need not be discussed. *Attorney-General v. Boulbee* is a strong authority for our proposition. See particularly pages 387-8, where the Court says:

“As to the doctrine of *cy-pres* as applied to charities, this distinction has prevailed. The Court will not decree execution of a charity in a manner different from that intended except so far as they see that the intention cannot be executed literally, but another mode may be attempted consistent with the general intention. * * * If the mode becomes, by subsequent circumstances impossible, the general object is not to be defeated if it can be attained.”

In the next English case referred to—*Chamberlayne v. Brackett*—a gift of money to build almshouses (App. Br., p. 11), the Court said:

“If there was an immediate gift of the whole residue for charitable uses, the authorities mentioned (citing cases) prove that such gift was valid and that there was no resulting trust to the next of kin of the testatrix (p. 210). * * * The intention in favor of charities is absolute, the gift and the construction of the trust is immediate; the only thing which is postponed or made dependent for its execution upon future and uncertain events is the particular form or mode of charity to which the testatrix wishes her property to be applied” (p. 212).

Counsel next takes up the alleged criticism of the text writer, Tyssen, in the publication of a second

edition of his work. We have already dealt with this before. On page 14 of the brief, Tyssen (this time the criticised first edition) is again referred to. The paragraphs that follow in our adversaries' brief can only be made clear by explanation. Immediately following the reference to "Tyssen Charitable Bequests (1888), p. 441," are two paragraphs which should be in quotation marks. These two paragraphs, however, come under a general discussion by Tyssen of initial failure of the purpose or object of a charity, and the collection of cases which the author is criticising are those in which there has been an initial failure of the trust to take effect but the Court has reconstructed the charity on different lines. These cases are properly criticised. They have no bearing on the case at bar. It is clear from the quoted text, however, that the author believes many of such cases can be justified by treating the gift as affected by conditions subsequent (thereby allowing the trust to attach) rather than by conditions precedent.

The next two paragraphs on page 1 of the brief, the first beginning with a reference to *Moggridge v. Thackwell*, are taken bodily from the same text writer, at page 445. They support our contentions. It should be noted that the word "dismissed" in the third line of the second of these paragraphs is wrongly quoted. It should be "discussed." The remaining paragraph, on page 15, is the composition of counsel and is a complete *non sequitur*.

5. *The claim that abandonment works a reversion.* (App. Br., p. 16).

The citation from Lewin supports the respondents. *Kirk v. King* was a grant *on condition*, rais-

ing a very different question than in the case at bar where, under the authority of *McKenzie v. Trustees, supra*, no condition can be implied. The same is true of *Hayden v. Stoughton*.

In *Newark v. Watson*, 56 N. J. L. 667, the land in question was relieved of the trust restrictions by legislative Act, the municipality being itself the vested beneficiary. The recognition of a right of reversion in such a case affords no precedent for the case at bar.

6. *The claim that absence of words of reverter does not prevent reversion.* (App. Br., p. 17.)

In our case, however, there was no omission of words of reversion; the reversion was expressly passed to the charity in the deed of the grantor.

The case of *Grundy v. Neal* is not in point, the deed there having been construed as raising a condition and not a trust limitation—something which is expressly forbidden in the instant case by the authority of *McKenzie v. Trustees, supra*. We may also note that Zollman cites this case twice (pp. 437, 441) as contrary to the prevailing rule.

We cannot see how *Tracy v. Borough of Keansburg* is in point; and *Cumberland County v. Buck* dealt with a determinable fee and involved a wholly different question of law.

7. *Trustee cannot, by destroying the trust estate, obtain a fee simple.* (App. Br., p. 19.)

The ^{premise} ~~purpose~~, as thus baldly stated, may be correct, but *Imbrie v. Steen* does not support it. Neither does *Hopkins v. Grimshaw*, 165 U. S. 342. There

the trust was for private and not for public purposes; nor did it evidence any general charitable purpose. See pp. 353, *et seq.*

The quotation from *Mills v. Davison* (App. Br., p. 20) is apt. The trust estate is indeed inalienable; but not necessarily the property which is the initial subject of such trust. Such property, when necessity demands it, may be alienated; the trust itself never. The failure to grasp this distinction is a fatal weakness in appellants' brief.

We pass over the English cases cited at pages 20 and 21 of our opponents' brief, as they are more favorable to our contention than opposed, and notice the quotation from Zollman on page 21. It is true that his statement that:

"Some Courts, indeed, have taken the position that once a gift is vested in a charity it cannot find its way back to the heirs. This is an extreme view which has not found a large following,"

is confusing and apparently in conflict with the statement from the same text-writer quoted by the Court below from Section 637 of Zollman's text. It is clear, however, that the author did not intend his words to be taken in the sense which counsel for appellants seeks to give them. There is a cross-reference after the first quoted sentence to the author's chapter on visitorial rights, which may furnish the explanation. It is incredible that Zollman could have regarded as "an extreme view" the proposition that a public trust once attaching could not find its way back to the heirs of the trustor, inasmuch as he cites voluminous authority in support of this proposition in Section 637.

Furthermore, counsel fails to quote the rest of the paragraph in Section 149, a reading of which

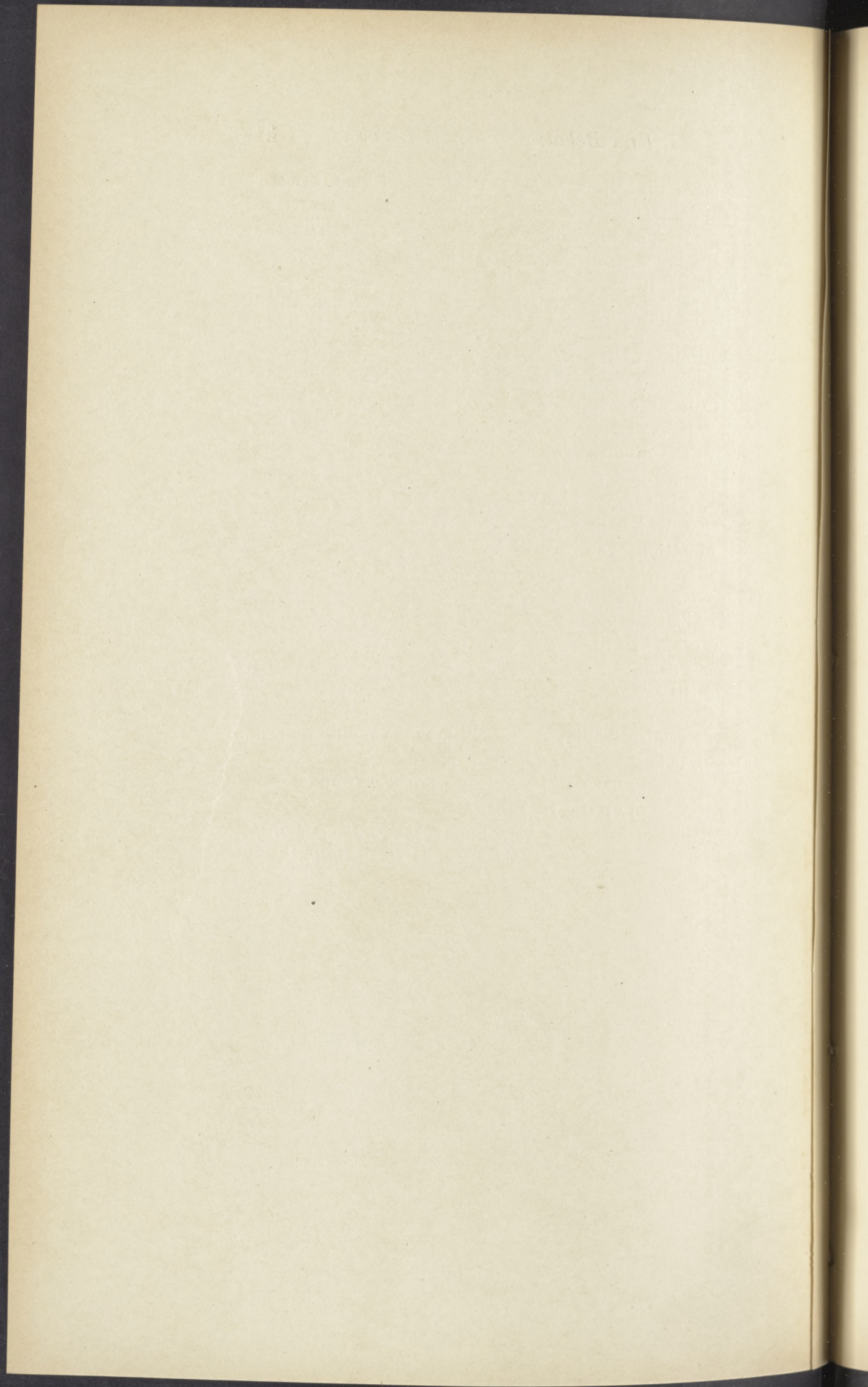
discloses that the subject discussed by the author is the defeat of charitable gifts through the doctrine of lapse—*i. e.*, the failure of the estate to vest in the first instance—for which purpose the case of *Brown v. Condit*, 70 N. J. Eq. 440, is cited. There was no lapse in the case at bar, as at the date of the deed the trustee designated was in existence and future execution of the trust was conceivably possible. Under these circumstances, the charity vests. An illustration of such vesting is found in *Attorney General v. Earl of Craven*, 21 Beav. 392 (1856), where the donor, after the great plague in Charles II's reign, had donated property for a plague hospital. No plague had since visited London, but the charity, which had gone into effect at the time of the donation, was conting^{ued}ent in existence.

St. Mary's Church v. Stockton, 8 N. J. Eq. 520, involved an attempt to sell church property without order of the Court. The decision does not even go so far as to hold that this could not be done. It merely declared that there was sufficient doubt of a good title passing to bar specific performance.

We respectfully submit that the appeal must be dismissed.

STARR, SUMMERILL & LLOYD,
LOUIS B. LEDUC,

*Of Counsel with Grace Church,
Defendant-Respondent.*



NEW JERSEY COURT OF ERRORS
AND APPEALS.

J. BLAIR CUTHBERT, *et als.*,
Complainants-Appellants,

v.

ARTHUR Y. McNEILL, *et als.*,
Defendants-Respondents.

BRIEF OF DEFENDANT-RESPONDENT, TRUS-
TEES OF THE EPISCOPAL FUND OF THE
DIOCESE OF NEW JERSEY.

This matter comes before the Court as the result of an appeal taken by complainants-appellants from a decree of the Court of Chancery, bearing date July 23rd, 1928, which decree ordered that complainants-appellants' bill be dismissed.

Complainants-appellants' bill of complaint prayed, among other things, that the lands and premises in question be re-conveyed to the heirs at law of J. Ogden Cuthbert, deceased, who were parties complainants to said suit in the Court of Chancery; that the mortgage held by defendant, Arthur Y. McNeill, be cancelled of record or assigned to the said heirs at law of the said J. Ogden Cuthbert, deceased, and that a resulting trust be declared in said lands and premises in the said heirs at law of the said J. Ogden Cuthbert, deceased.

2 *Brief of Defendant-Respondent, Trustees of the
Episcopal Fund of the Diocese of New Jersey*

The premises in question were conveyed by Joseph Ogden Cuthbert to "The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey," on October 19th, 1885, upon the following trusts: "To have and to hold, the said premises, with all and singular the appurtenances unto the said 'The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey,' their successors and assigns forever. In trust, nevertheless, that, the said 'The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey,' their successors and assigns, shall and will hold the said lands and premises to the use of the Protestant Episcopal Church of the Diocese of New Jersey, to be used only for and as a site for a chapel, schoolhouse, mission, parish building, or other use of said Protestant Episcopal Church in said Diocese, and that the said 'The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey,' shall have power to grant and convey the said lands and premises to any parish of said Protestant Episcopal Church in said Diocese, within whose bounds said lands and premises may come to lie, by its proper title, if incorporated, and by apt words of conveyance; or may in the same event convey said lands and premises to the Trustees of 'The Episcopal Fund of the Diocese of New Jersey' to the use of said parish"; said deed having been recorded in Book No. 120 of Deeds, page 274, &c., in the office of the Register of Deeds of the County of Camden, at Camden, New Jersey (Exhibit C9).

The premises in question were conveyed by The Rector, Wardens and Vestrymen of Grace Church, Haddonfield, New Jersey, to Arthur Y. McNeill by deed (Exhibit C10), dated March 25th, 1925, and recorded in the office of the Register of Deeds of Cam-

*Brief of Defendant-Respondent, Trustees of the
Episcopal Fund of the Diocese of New Jersey* 3

den County, in Book 583 of Deeds, page 460, &c.; the said sale having first been duly authorized and approved by the Court of Chancery of New Jersey (Exhibit D5, pp. 172-207).

1. THE DECREE OF THE COURT OF CHANCERY, AUTHORIZING AND APPROVING SALE OF PREMISES IN QUESTION, CANNOT BE ATTACKED COLLATERALLY.

“The decision of a court of general jurisdiction, acting within the scope of its power, has inherent in it such conclusive force that it cannot be challenged collaterally, and such decision also conclusively binds all parties embraced in it, unless on objection made to such court itself, or in a course of direct appellate procedure.”

National Docks, Etc., R. Co. v. Penna. R. R. Co., 52 N. J. Eq. 58; 28 Atl. Rep. 71.

“Judgment and proceedings may be avoided, but until this is done, they may be justified under, as the solemn act of the Court.”

Inskeep v. Lecony, 1 N. J. L. 111;

Diehl v. Page, 3 N. J. Eq. 143;

Vandyke v. Bastedo, 15 N. J. L. 224;

Podesta v. Binns, 69 N. J. Eq. 387; 60 Atl. Rep. 815;

Palmer v. Board of Chosen Freeholders, 77 N. J. L. 143; 71 Atl. Rep. 285.

“To avoid a Chancellor’s final adjudication of

4 *Brief of Defendant-Respondent, Trustees of the Episcopal Fund of the Diocese of New Jersey*

all matters in issue and determined, it must be opened by a direct assault or by an appeal.”

West Newark Improvement Co. v. West Newark, 104 Atl. Rep. 611; 88 N. J. Eq. 571;

Crawford v. Lees, 93 Atl. Rep. 201; 84 N. J. Eq. 324.

“Judgment of court of general jurisdiction, having jurisdiction of subject-matter and acquiring jurisdiction of parties, is invincible against collateral attack.”

Nitti v. Public Service Ry. Co., 139 Atl. Rep. 62;

Lippincott v. Godfrey, 136 Atl. Rep. 174.

2. TO GRANT RELIEF REQUESTED BY COMPLAINANTS-APPELLANTS WOULD DEFEAT DONOR'S INTENTIONS.

“At the threshold of the discussion of this phase of the case it should be remembered that the donors of public gifts have no special powers of divination. They cannot see the changes which time will bring. They cannot determine for all time the best methods for the development of the project for which the bequest is made. Charitable trusts are perpetual. It cannot be expected that the donors will be able to indicate except in a general way the purpose they have in mind and the class to be benefited by the gift. Vagueness is to be found in almost every charitable trust. In *Atty. Genl. v. Haberdashers Co.*, 1 Mylne & Keen, 421, the Lord Chancellor said:

*Brief of Defendant-Respondent, Trustees of the 5
Episcopal Fund of the Diocese of New Jersey*

“If the intention be charity, the Court will execute it, however vaguely the donor may have indicated his purpose.’”

Noice v. Schnell, 137 Atl. Rep. 587.

“Under the *cy-pres* doctrine, when a gift has been made for charitable purposes, which by the lapse of time can no longer be exactly executed, the gift will be administered under the direction of the Court of Chancery as near as may be according to the donor’s intention, but the plan for the future administration of the gift must be submitted to and approved by the Court of Chancery.”

Imbrie v. Steen, 2 N. J. Adv. R. 699, 124 Atl. Rep. 155;

Christian v. Catholic Church, 110 Atl. Rep. 579;

St. James Church v. Wilson, 89 Atl. Rep. 519; 82 N. J. Eq. 546;

Nichols v. Newark Hospital, 71 N. J. Eq. 130; 63 Atl. Rep. 621.

“When a gift for charitable uses can no longer be administered in exact accordance with the intention of the donor, a Court of Equity has power, under its general equity jurisdiction, to direct that the gift be administered *cy-pres*.”

In Re Y. W. C. A. of New York City, 126 Atl. Rep. 610.

“Under Supp. Comp. Stat., p. 1308, sections 1 and 2, the Chancellor is authorized to order that lands conveyed to a religious, educational or charitable association be sold, when a sale will promote or benefit the trust. Such sale may be made free from the limitations of the trust,

6 *Brief of Defendant-Respondent, Trustees of the Episcopal Fund of the Diocese of New Jersey*

and the trust will thereupon attach to the proceeds of sale.”—*Id.*

3. DONOR INTENDED THAT TRUST CREATED SHOULD NOT IN ANY EVENT FAIL.

By referring to the language of the donor's deed of conveyance, creating the trusts referred to (Exhibit C9, pp. 157, 158) it will be readily seen that the donor gave rather broad powers to the donee for the administration of the said trusts, and also provided that the donee might, to fulfil his objects and purposes intended in the conveyance of said premises, convey said premises to the defendant-respondent, Trustees of the Episcopal Fund of the Diocese of New Jersey.

The Trustees of the Episcopal Fund of the Diocese of New Jersey is an incorporated body, fully authorized and empowered to accept and administer trusts of the character specified in said deed of trust (Exhibit C9).

P. L. 1860, p. 76;

P. L. 1862, p. 221;

P. L. 1871, p. 1222;

P. L. 1903, p. 384; 3 C. S., p. 4296.

Counsel for defendant-respondent, Trustees of the Episcopal Fund of the Diocese of New Jersey, respectfully submits that the decree of the Court below be affirmed.

HOWARD EASTWOOD,

*Solicitor for and of Counsel
with Defendant-Respondent,
Trustees of the Episcopal
Fund of the Diocese of New
Jersey.*

STIPULATION OF FACTS SUBMITTED ON
FINAL HEARING.

IN CHANCERY OF NEW JERSEY.

Between
J. BLAIR CUTHBERT, *et*
als.,
Complainants,
and
ARTHUR Y. McNEILL, *et*
als.,
Defendants. } On Bill, &c.
Stipulation of Facts
Submitted on Final
Hearing. 10

The following facts are hereby stipulated by and 20
between the parties hereto by their respective counsel,
as facts in the above entitled cause to be considered
by the Court upon final hearing thereof, each party,
however, reserving the right to object to the same,
or any part thereof, as immaterial, irrelevant or
for any other reason incompetent as evidence:

1. On October 19, 1885, Joseph Ogden Cuthbert by
deed bearing that date and recorded in the office of
the Register of Deeds of Camden County in Book 30
120, page 274, conveyed to the Rector, Wardens and
Vestrymen of Grace Church, Haddonfield, New Jersey,
a religious corporation of the State of New Jersey
and one of the defendants herein, hereinafter called
"Grace Church," a certain lot and parcel of land
fully described in said deed. The said lot is

situate in the Borough of Collingswood, County of Camden and State of New Jersey, at the extreme easterly end of the said borough and immediately adjoining the Township of Haddon and the community known as Westmont. Said conveyance was not an absolute conveyance but upon certain trusts recited in the said deed and set forth in the bill of complaint herein.

10

2. The lot so conveyed was triangular in shape with a frontage of 187 feet 3½ inches on Haddon Avenue measured along the middle line of said avenue and of 149.93 feet measured along the building line of said avenue. It was mostly low ground requiring considerable filling before it could be utilized for building purposes.

20

3. Grace Church of Haddonfield, New Jersey, at the time of the said conveyance was, and still is, located on Kings Highway east, in the Borough of Haddonfield, at a distance of a little less than 2 miles from the lot so conveyed. It is the only church building or edifice of the Protestant Episcopal Church in Haddonfield and there has never been any church building of any kind in the community of Westmont, which lies between Haddonfield and Collingswood.

30

4. At no time subsequent to the aforesaid conveyance by Joseph Ogden Cuthbert had it been financially possible for Grace Church to use the said lot and no use of any kind has been made by Grace Church of the lot so conveyed. The said grantee has never had more than a total of approximately 350 parishioners and at all times from the date of said

conveyance by Joseph Ogden Cuthbert has labored under severe financial difficulties. In the last ten years, during which time the Borough of Haddonfield has approximately doubled its population, there has been no appreciable increase in its parishioners in Haddonfield. In the calendar year 1923 its treasurer's report showed total receipts of \$8,584.17 against disbursements of \$8,230.90. This is typical of the receipts and disbursements in recent years, viz: from about 1915 through 1925, receipts and disbursements having varied but slightly from the totals above set forth. Prior thereto, in the period from the date of the said conveyance to 1915, receipts and disbursements were generally less. In no year from the date of the said conveyance through the year 1925 was there any but a small surplus, and in many years there was a deficit. Necessary improvements of church property were from time to time financed by special campaigns for raising money. As a result of the above, the corporation has barely been able to sustain itself and pay the necessary salaries to its rector, organist, choir and sexton and the carrying charges of its property. In 1924, there were two mortgages upon different parts of the lands and buildings of Grace Church in the Borough of Haddonfield in the total amount of \$7,500.

5. At no time after the year 1913, were there sufficient funds available to Grace Church, after payment of salaries and the necessary carrying charges of the church's property in Haddonfield, to pay the taxes and assessments for benefits against the lot so conveyed by Joseph Ogden Cuthbert. In 1924, the taxes and assessments against the said lot amounted to the following:

4 *Stipulation of Facts Submitted on
Final Hearing*

| | | |
|----|---|----------|
| | To curb assessment, May 1, 1911, with interest | \$135.43 |
| | To sidewalk assessment, Oct. 19, 1923, with int. | 139.55 |
| | To concrete street assessment, May 1, 1922, with int. | 334.22 |
| | To taxes from 1913 to 1924, inclusive, with int. | 122.95 |
| 10 | | <hr/> |
| | | \$732.15 |

On two occasions between 1913 and 1924, the said lot was sold by the Borough of Collingswood at public sale for delinquent taxes and assessments and in each case was bought in by the said borough, who at the beginning of 1924, held certificates of sale therefor.

20 6. At no time subsequent to the aforesaid grant by Joseph Ogden Cuthbert had any request or demand been made upon Grace Church for the use of the aforesaid lot for religious purposes of any kind by any of its parishioners or by any members of the Protestant Episcopal Church in Westmont in the Township of Haddon, or in the Borough of Haddonfield. In 1913, there were several members of the Protestant Episcopal Church in the Borough of Collingswood belonging to Holy Trinity Church of the said denomination who were anxious to build a larger church. Edgar C. Cuthbert, one of the heirs of Joseph Ogden Cuthbert, and a complainant in this suit, suggested to a group of these Episcopalians 30 that they might build their church on the lot conveyed by Joseph Ogden Cuthbert to Grace Church; they replied, however, that they were unwilling to do this as the lot was too small for the church

building which they had in mind. Shortly thereafter they bought the site of the present Holy Trinity Church on Haddon Avenue in the Borough of Collingswood about 4 or 5 squares westerly of the lot conveyed by Joseph Ogden Cuthbert to Grace Church. Before this site had actually been selected Mr. Cuthbert further offered to secure further lands from the heirs of Joseph Ogden Cuthbert continguous to the lot conveyed to Grace Church as aforesaid, for the purpose of encouraging the erection of a church building thereon, but the proposition was rejected on the ground that the site was too remote from the center of Collingswood. 10

7. In 1914, members of the Protestant Episcopal denomination in Westmont started a mission in a dwelling-house in the said community. The said Edgar C. Cuthbert suggested to these people that they might use the lot conveyed by Joseph Ogden Cuthbert to Grace Church for the purpose of erecting a church or other building for the purpose of worship thereon; but they also objected that the site was too remote from the center of Westmont. When Mr. Cuthbert also suggested the possibility of acquiring additional land adjoining the lot conveyed to Grace Church such proposition was also rejected because of the location of such ground. 20

8. On or about January 29, 1924, Arthur Y. McNeill, defendant herein, who was then and is now senior warden of Grace Church, offered to purchase the aforesaid lot from Grace Church for the sum of one thousand dollars (\$1,000), the said purchaser to assume payment of all taxes, assessments &c., but the sale to be subject to the removal by court order 30

of the trust restrictions imposed upon the lot in the deed of Joseph Ogden Cuthbert, the cost of securing such court order, however, to be borne solely by the said McNeill. At that time and for several years prior thereto the lot in question had been assessed by the Borough of Collingswood at a value of two hundred dollars (\$200.00).

- 10 9. On January 29, 1924, a special meeting of the Rector, Wardens and Vestrymen of Grace Church was called for February 11, 1924, to consider a proposition for the sale of the said lot conveyed by Joseph Ogden Cuthbert. On February 11, 1924, the said special meeting of the vestry was convened and thereafter the following proceedings were had as are set forth on the minutes of the said meeting in the minute book of Grace Church, as follows:

“Grace Church Parish House,
Feb. 11, 1924.

20

Pursuant to a call dated Jan. 29, 1924, copy of which is annexed, a special meeting of the Rector, Wardens and Vestrymen of Grace Church in Haddonfield, N. J., was held at the above time and place.

There were present the following, consisting a quorum: Messrs. Shick, the rector (presiding), Downing, Prichett, Walton, Alburger, Syle, Cuthbert and Lindsay.

30

Mr. Walton reported that he and Mr. Alburger had been appointed by the Rector, a committee to investigate the proposal that the Church enter into a contract with Mr. McNeill for the purchase by him of the Church property at Westmont; that both he and Mr. Alburger felt that the proposition was highly desirable

for the Church and that a written contract covering the same had been drawn and approved by them.

On motion of Mr. Walton, seconded by Mr. Syle, and after full discussion the following resolution was unanimously adopted, viz:

‘RESOLVED that the Rector, Wardens and Vestrymen of Grace Church in Haddonfield, N. J., enter into a contract with Mr. Arthur Y. McNeill copy of which is attached hereto and that the proper officers of the said body corporate are hereby authorized and directed to execute the said contract in duplicate, one copy to be delivered to Mr. McNeill.’ 10

The following resolution moved by Mr. Alburger and seconded by Mr. Prichett was also, after full discussion, unanimously adopted:

‘RESOLVED that the Rector, Wardens and Vestrymen of the Grace Church in Haddonfield, N. J. authorize the bringing of suit in New Jersey Court of Chancery on its behalf, to relieve the property of the said corporation, described in the contract with Mr. Arthur Y. McNeill referred to in the previous resolution of certain encumbrances in the nature of trust obligations imposed upon the said property in the deed from the grantor in the event that such suit is deemed advisable by counsel for the corporation; and further to take such other steps and to give such assistance as in the opinion of counsel may be advisable or necessary to relieve the said property of the encumbrances upon it; all the above, however, upon the understanding that the Church is not to be committed to any obligation or liability not set forth in its said agreement with Mr. Authur Y. McNeill.’ 20 30

The following resolution moved by Mr. Downing, seconded by Mr. Cuthbert was also, after full discussion, unanimously adopted, viz:

10 ‘RESOLVED that Louis B. LeDuc of Camden, N. J. be employed as counsel for the corporation to take all necessary steps, including suit to clear the property described in the agreement of the corporation with Mr. Arthur Y. McNeill of encumbrances and to render the title to said property marketable; upon the understanding that the corporation does not hereby assume any obligation or liability not imposed upon it by the said agreement.’

Mr. McNeill was absent during the discussion and adoption of the foregoing resolutions.

Upon motion the meeting adjourned.

Wm. H. Lindsay,
Secretary.”

20

10. Pursuant to the action taken at the said special meeting an agreement of purchase and sale was entered into between Grace Church and Arthur Y. McNeill, defendant herein, which said agreement was in exact conformity to the copy thereof attached to the minutes of said meeting as recited therein.

30 11. Thereafter and on or about April 10, 1924, Grace Church filed its petition in the Court of Chancery of New Jersey praying, among other things, that the lot conveyed to it by Joseph Ogden Cuthbert, as aforesaid, be sold free of trust encumbrances for the reason that such lot had since proven wholly unfit and inadequate for the specific purposes expressed in the deed of conveyance thereof. Thereafter an order of reference on said petition was made to

Samuel K. Robbins, Special Master, to inquire into the merits of the aforesaid petition and report whether or not the said land should be sold in accordance with the prayer of the petition and what the said lands were reasonably worth. The said Special Master, after taking testimony, reported to the Chancellor, among other things, that the petitioner had been unable to utilize the lot in question for any of the purposes specified in said deed, and that it was unlikely that the said lot could ever be used for advantage by the petitioner or others for any of the purposes set forth in said deed; that the lot in its present condition was reasonably worth the sum of \$2,000 and that the cost of filling in which would be necessary before the lot could be used, would be approximately \$500.00; and that the offer to purchase the said lot made by Arthur Y. McNeill was "a highly advantageous offer to the petitioner for the lands in question and will, if carried out, produce a larger net income to the petitioner than the sale of said lands in any other way or manner;" and finally that the interests of the petitioner in said lands required that a sale thereof be made for the price and the terms set forth in the said agreement. Thereafter this report, upon the advice of Bayard Stockton, Advisory Master, was adopted by the Chancellor and an order made by him directing a sale of the premises in accordance with the agreement between Grace Church and Arthur Y. McNeill.

10

20

30

12. Thereafter, upon application made by Grace Church to the Bishop and Standing Committee of the Protestant Episcopal Diocese of New Jersey, the approval of the latter was secured to the conveyance of the said lot to Arthur Y. McNeill in accordance

