

In Chancery of New Jersey.

Between

THEODORE LITTLE,
Administrator, &c. of John
B. Miller,

Complt.

and

DAVID L. MILLER,

and

SOPHIA M., his wife; JEHIEL
K. HOYT, ET ALS.,

Defts.

Bill, &c.

*To the Honorable Abraham O. Zabriskie, Chancellor of the
State of New Jersey :*

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Humbly complaining shows unto your Honor, your orator, Theodore Little, of Morristown, in the County of Morris and State of New Jersey, administrator of all and singular, the goods and chattels, rights and credits, monies and effects, which were of John B. Miller, late of the township of Chatham, in the said County of Morris, deceased, that the said John B. Miller died intestate at the said township of Chatham, on or about the fifth day of September, eighteen hundred and seventy-two, and after- 20

wards the Surrogate of the said County of Morris, granted and issued unto your orator letters of administration of the goods and chattels, rights and credits, monies and effects, which were of the said John B. Miller at the time of his death, bearing date the first day of October, in the year aforesaid, as by reference to the said letters of administration now in the possession of your orator and ready to be produced and proved according to law, and to which your orator prays leave to refer, will more fully and at large appear.

- 10 And your orator further shows that besides other lands, the said John B. Miller in his life time was seized and possessed of the land and real estate hereinafter particularly described, and being so seized, the said John B. Miller and one Jehiel K. Hoyt, on or about the tenth day June, eighteen hundred and seventy-two, made an agreement, by which said John B. Miller did sell and agree to convey, and said Hoyt did purchase and agree to pay for the land hereinafter described, which agreement was reduced to writing and was signed and sealed by said
 20 Miller and also by said Hoyt, and is in the words following:
 "Agreement for sale of land between John B. Miller and
 "Jehiel K. Hoyt."

"This agreement, made this tenth day of June, A. D.
 "eighteen hundred and seventy-two, between John B.
 "Miller, of the township of Chatham, in the County of
 "Morris, and State of New Jersey, of the first part, and
 "Jehiel K. Hoyt, of the same place, of the second part,
 "witnesseth, that the said Miller for and in consideration
 "of the sum of thirty-nine thousand three hundred and
 30 "ninety-two dollars to be paid as hereinafter mentioned,
 "doth agree with the said Hoyt, that he will well and
 "sufficiently convey to the said Hoyt, his heirs and assigns,
 "or to such person or persons as the said Hoyt may
 "designate on or before the first day of September next
 "ensuing, by a full covenant warranty deed free and clear
 "from all incumbrances all that tract or lot of land and
 "premises situated, lying and being in the township of
 "Chatham, in the County of Morris and State of New
 40 "Jersey, butted and bounded as follows, to wit ; Beginning

"at a stone monument marked 'W. B., 1855,' at the south
 "westerly corner of the old Jonathan Harris lot, and also
 "a corner to land owned by William Bryce at the date
 "hereof, running thence (1.) along said Bryce's land north
 "forty-nine degrees and thirty minutes, east fifteen chains
 "and six links to another stone monument marked 'W.
 "B., 1855,'" another corner of said Bryce's land; thence
 "(2.) south forty-one degrees and fifteen minutes, east seven
 "chains to a corner of the Daniel Genung and Abraham
 "Corey lot; thence (3.) along the same north sixtythree de- 10
 "grees and thirty minutes, east twelve chains and sixty-four
 "links to another corner of said Genung and Corey lot,
 "also corner to a lot now owned by Mary Miller; thence
 "(4.) along the line between the said last mentioned two
 "lots, north fifteen degrees and thirty minutes, west seven
 "chains and forty-four links to another corner of said
 "Genung and Corey and Mary Miller lots; thence (5.)
 "along line of said Genung and Corey lot and partly along
 "the Calvin Genung lot, north eighty-five degrees and
 "thirty minutes, west six chains and thirty-nine links to a 20
 "stone for a corner; thence (6.) north seventy-three degrees
 "and fifteen minutes, west two chains and forty-one links
 "to a corner in the pond; thence (7.) south forty-five
 "degrees and thirty minutes, west three chains and ninety
 "links; thence (8.) north thirty-eight degrees and fifteen
 "minutes, west thirteen chains and sixteen links; thence
 "(9.) south fifty-three degrees and thirty minutes, west
 "nineteen chains and eighty-three links to a stone for a
 "corner; thence (10.) south forty-one degrees and ten
 "minutes, east ninety-eight and one-half links to a stone, 30
 "a corner of lands of Margaret A. Keep; thence (11.)
 "south fifty-one degrees and forty-five minutes, west one
 "chain and eighty-six links to another corner of said
 "Margaret A. Keep's land; thence (12.) south forty-one
 "degrees and ten minutes, east sixteen chains and fifty-
 "three links to the place of beginning, containing forty-
 "nine acres and twenty-four hundredths of an acre of land.
 "The above description is taken from a map recently made
 "by John W. Hancock for the said John B. Miller. And
 "the said Miller agrees that he will open a new road sixty 40

"feet in width, on or before the second day of September
 "next, from the Upper Madison road to the new road
 "lately laid out through the above described premises and
 "marked on the map thereof recently made by John W.
 "Hancock as aforesaid. And the said Hoyt for himself,
 "his executors and administrators doth covenant,
 "promise and agree to and with the said Miller, his execu-
 "tors and administrators, that he, the said Hoyt, will pay,
 "or cause to be paid to the said Miller, his heirs or assigns,
 10 "the consideration of said purchase in manner as follows :
 "the sum of one hundred dollars on the execution of this
 "agreement ; and on the day of the execution and delivery of
 "said conveyance, the further sum of four thousand nine
 "hundred dollars, and that upon the last above named day,
 "he or such person or persons to whom said conveyance
 "shall be delivered, shall execute and deliver to the said
 "Miller his or their bond and mortgage upon said premises
 "to secure the sum of thirty-four thousand three hundred
 "and ninety-two dollars, being the residue of the purchase
 20 "money aforesaid, which said sum, secured by said bond
 "and mortgage, shall be payable at the termination of
 "seven years from the date thereof, and that the interest
 "thereon shall be payable annually, and shall begin to run
 "only six months after the date of the delivery of said
 "conveyance. It is also agreed that said bond shall con-
 "tain the usual sixty day interest clause. It is further
 "agreed between the parties hereto that the said mortgage
 "shall contain an agreement whereby the said Miller, his
 "executors, administrators, or assigns, shall release to the
 30 "said Hoyt, his heirs, executors, administrators, or assigns,
 "any portion of said premises on the payment to him, the
 "said Miller, of such sum as shall be equivalent to the rate
 "of eight hundred dollars per acre for such part to be re-
 "leased, and such sum so paid shall thereupon be endorsed
 "upon the said bond as a payment on account thereof."
 "In witness whereof the parties to this agreement have
 "hereunto set their respective hands and seals the day and
 40 "year herein first above written."

“Executed and delivered in the presence of John W. Hancock.”

JOHN B. MILLER, [L. S.]

JEHIEL K. HOYT. [L. S.]

“Received this tenth day of June, 1872, from J. K. Hoyt one hundred dollars, being the first payment named within the foregoing agreement. JOHN B. MILLER.”

And your orator further shows that on the tenth day of June, eighteen hundred and seventy-two, the said agreement was duly acknowledged by said John Miller and said Jehiel K. Hoyt, as deeds and conveyances of land are required to be acknowledged, before John W. Hancock, a commissioner, to take the acknowledgment and proof of deeds as by the certificate of said commissioner endorsed on the said agreement, and to which your orator prays leave to refer, will more fully and at large appear. 10

And your orator further shows, that on the fifth day of September, eighteen hundred and seventy-two, the said Hoyt, or some one claiming under him, caused the said agreement to be recorded in the office of the clerk of the said County of Morris, and the same was then recorded in said office in Book I. 8 of deeds, at pages 292, &c. 20

And your orator further shows and charges the truth to be, that on or about the twenty-sixth day of August, eighteen hundred and seventy-two, the said John B. Miller and the said Jehiel K. Hoyt did mutually agree to extend the time for the delivery of the deed of conveyance, and praying and securing the purchase money mentioned in said agreement until the first day of October then next, but before the arrival of the day last named, and before said Miller had conveyed said land, and before said Hoyt had paid and secured the purchase money pursuant to said agreement as thus extended, said John B. Miller, died. 30

And your orator further shows that the wife of the said John B. Miller, whose name is Mary Miller, hath survived her said husband and is now living and claims a right of dower in said land. Her position, as your orator has been informed and believes, is this: That she was willing and expected, had her said husband continued in life, to have joined with him in executing the conveyance, which 40

by said agreement, said John B. Miller had agreed to make and deliver and to have acknowledged said conveyance in such manner as to have forever barred her dower and right of dower in and to the said land, and that she is still willing to convey and release her right of dower in said land to the said purchaser thereof, she only asking that this Honorable Court will secure and protect her rights as the widow of said deceased, in and to the purchase money agreed to be paid for said lands.

10 And your orator further shows that the said widow has made and delivered to your orator an agreement in writing, bearing date the thirteenth day of December, eighteen hundred and seventy-two, by which she agrees that if the said purchase money named in said agreement be paid and secured to your orator as administrator as aforesaid, she will at the time the payment is made to your orator, upon your orator's request, release to the purchaser or purchasers, all her dower and right of dower in said land and accept therefor such portion of the purchase money as this Court may allow and decree to her as her right in the premise.

20 And your orator further shows that the said John B. Miller left him surviving but one child and but one heir-at-law, namely, his son David L. Miller, who is a man past middle life, and is married, and his wife's name is Sophia M. Miller, and she claims, or may claim, some right of dower in the said land, but your orator charges, that she is not under the circumstances of this case entitled to any dower or right of dower in or to said land.

30 And your orator further shows and charges the truth to be, that on or about the twenty-eighth day of September, eighteen hundred and seventy-two, the said Jehiel K. Hoyt did serve notice in writing upon the said David L. Miller, notifying him, the said David L. Miller, that he, said Hoyt, looked to him said David, for the fulfilment of the said contract on his part, and that on the first of October then next, he should request from said David, and he then requested him to deliver on that day, a deed of said premises in conformity with said contract, and further, in and by the said notice said Hoyt did designate as the person to whom
40 the said conveyance should be made and delivered, Henry

E. Reddish and Henry C. Ohlen, both of Madison, and that on that day the second payment of forty-nine hundred dollars would be ready for him (said David) and that the bond and mortgage for the balance of the purchase money as contemplated in the agreement, would be ready for delivery on that day.

And your orator further shows that he is unable to state precisely how, or in what manner said Reddish and Ohlen are connected with said Hoyt in respect of the said agreement, but your orator charges that the said Reddish and Ohlen with one Charles T. B. Keep, are assignees in whole or in part of said agreement from said Hoyt, or that said Hoyt is an agent or trustee for said Keep, Reddish and Ohlen in respect of said agreement.

And your orator further shows that he has been informed, and he believes it true, that on or about the first day of October, eighteen hundred and seventy-two, said Hoyt, Reddish, Keep and Ohlen, or some of them, did demand a deed of conveyance of said land from said David L. Miller in execution and performance of said contract, and tendered, or were ready to tender, a bond and mortgage made to said David L. Miller, and to pay him the cash payment then to be made, but because said David L. Miller could not then convey said land free and clear of the dower of the said widow of John B. Miller, nor free and clear of divers judgments previously recovered against said David L. Miller, said Hoyt, Reddish, Keep and Ohlen were unwilling to, and refused to accept such title as said David could then make to them for said land.

And your orator further shows and charges, that on and before the first day of October, eighteen hundred and seventy-two, said Hoyt, Reddish, Keep and Ohlen had notice and knew that your orator claimed the right to receive the purchase money and the securities mentioned in the said agreement as part of the personal estate of the said John B. Miller, to be administered by your orator as personal estate, and that said David L. Miller had and held the title to said land as a mere trustee for the said purchaser or purchasers.

And your orator expressly charges that the said David

L. Miller has no right to receive the money or securities mentioned in the said agreement, and that he is bound to convey said land to said Hoyt, or the person or persons he has nominated, or may nominate for that purpose, and that your orator, as administrator as aforesaid, is entitled to receive the consideration for said land mentioned in said agreement and to administer the same as personal assets of said deceased.

And your orator further shows that said Hoyt, Reddish,
 10 Keep and Ohlen, since the first day of October, eighteen hundred and seventy-two, have declared it to be their purpose to insist upon the execution and specific performance of the said agreement, and have declared that the time of completing the conveyance of said land and vesting in them, or some of them, the legal title to said land, is not material to them, provided it be done in a reasonable time hereafter. And your orator charges and respectfully submits that said Hoyt is, or his assignees and nominees are, bound to receive the legal title to said land and pay there-
 20 for the consideration specified in said agreement, although the legal title was not conveyed to them on the first day of October, eighteen hundred and seventy-two.

And your orator further shows that he has been informed, and he believes it to be true, that on or about the twenty-third day of December, eighteen hundred and sixty-five, in the Circuit Court of the said County of Morris, one John H. De Hart, recovered a judgment against said David L. Miller for about the sum of five hundred and eighty-one
 30 dollars and ninety-six cents damages and costs. That said judgment is unpaid and unsatisfied. That said John H. De Hart heretofore died intestate, and that his wife, Eliza J. De Hart, hath administration of his personal estate, and your orator is informed that she claims that said judgment is a lien on said land, but your orator charges that, inasmuch as the said David L. Miller is only seized of said land as a trustee for the use of your orator, as administrator as aforesaid, the said judgment is no lien on said land. And your orator further shows that he had been informed, and he believes it is true, that on or about the first
 40 day of August, eighteen hundred and sixty-one, in the

Circuit Court of the County of Morris, one John C. Littell, recovered a judgment against said David L. Miller by confession on bond and warrant of attorney, for the sum of two thousand four hundred and nineteen 56-100 dollars debt, and four dollars costs, and that by virtue thereof, said John C. Littell claims to have some lien on the said land, but for the reasons hereinbefore stated, your orator charges that said last mentioned judgment is no lien on said land.

Your orator further shows and charges that he has been informed that in the Circuit Court of the County of Morris, on the seventh day of October, eighteen hundred and sixty-one, one John F. Voorhees recovered a judgment against the said David L. Miller, for the sum of two hundred and thirty-two dollars and sixty-nine cents damages and costs. That afterwards said John F. Voorhees died testate, and that the executors of his will and George E. Voorhees, Charles H. Dalrymple, and your orator, who claims by virtue of said last mentioned judgment to have some lien on said land, but your orator, for the reasons hereinbefore stated, charges that said last mentioned judgment is no lien on said land.

Your orator further shows that on the eighth day of January, eighteen hundred and sixty-two, in the Circuit Court of the County of Morris, Apollos R. Wetmore, George C. Wetmore and David Wetmore, recovered a judgment against the said David L. Miller for one hundred and sixty-nine 25-100 dollars damages and costs, by virtue of which last mentioned judgment, the last named plaintiffs also claim a lien on said land; but for the reasons afore- 10
said, your orator claims that it is no lien thereon.

And your orator further shows that he is informed that on the seventeenth of September, eighteen hundred and seventy-two, one Harvey C. Genung, caused to be docketed in the Court of Common Pleas of the County of Morris, a certain judgment recovered by him against said David L. Miller, on the twenty-ninth of February, eighteen hundred and seventy-two, in the Court for the trial of small causes, held before Isaac Bird, Esquire, a Justice of the Peace, for thirty-six dollars and fifteen cents debt, and three dollars 20

and six cents costs, by virtue of which last mentioned judgment said Harvey C. Genung claims to have some lien upon said land, but for the reasons aforesaid, your orator charges that it is no lien thereon.

And your orator further shows that he has been, and now is, ready and willing to do all such acts and things as are, or may be necessary or proper on his part as administrator as aforesaid, to specifically perform the said agreement, and to perform on his part such orders and decrees in the
 10 premises as this Honorable Court shall make, and also as soon as the purchaser or purchasers shall complete the said purchase to open the said road mentioned in said agreement, pursuant to the terms thereof. And your orator well hoped that the said David L. Miller would have conveyed the said land to said Hoyt or his appointees, and that the said Hoyt, or his appointee or appointees, would have paid and secured to your orator, as administrator, as aforesaid, the purchase money named in said agreement, but now, so it is, may it please your Honor, that the
 20 said defendants combining and confederating with divers other persons at present unknown to your orator, but whose names when discovered, your orator prays may be inserted in this his bill of complaint, with apt and proper words charge them as defendants hereto, to injure and aggrieve your orator in the premises, not only refuse to execute the said agreement and pay over to your orator the said purchase money, or in any other manner to comply with your orator's reasonable requests in the premises hereinbefore mentioned, but they make various untrue and erroneous
 30 pretences of law and fact, all which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator, as administrator, as aforesaid. In tender consideration whereof, and for as much as your orator is without adequate remedy in the premises by the strict rules of the common law, and without the assistance of this Court where matters of this nature are particularly cognizable
 40 and relievable.

To the end, therefore; that the said defendants and their confederates when discovered may full, true, perfect

and distinct answer make (but without oath or affirmation—answer under oath or affirmation being hereby waived) to all and every the matters aforesaid, and that as fully as if the same were here again repeated paragraph by paragraph, and they thereunto particularly interrogated. That the said agreement may be decreed to be specifically performed, and particularly that it may be decreed that the said David L. Miller is seized of the legal title to the said land as a trustee of and for the said Jehiel K. Hoyt, or his appointee, and is bound to, and shall convey the legal title to said land, with the appurtenances, unto said Hoyt, or his appointees, upon his or their paying and securing the said purchase money to your orator, as administrator, as aforesaid, pursuant to said agreement, and that said land be conveyed free and clear of all incumbrances, real or apparent, made, caused, or suffered by the said David L. Miller. That it may be decreed that the said Sophia M. Miller, the wife of the said David L. Miller, is not entitled to any dower or right of dower, inchoate or otherwise, in or to the said land, and that said land be conveyed by the said David L. Miller and held by the purchaser or purchasers thereof, for ever hereafter, free and clear of any dower, or right of dower, of the said Sophia M. Miller, inchoate, or otherwise.

That the said Jehiel K. Hoyt, Henry E. Reddish, Charles T. B. Keep and Henry C. Ohlen, may be decreed and required to perform the said agreement in all things by the purchaser or purchasers by the said agreement to be performed, and particularly that they, or some of them, may be required to pay and secure unto your orator, as 10 administrator, as aforesaid, the purchase money mentioned in the said agreement, according to the terms of the said agreement, upon your orator delivering or procuring to be delivered to them, a release of the dower and right of dower of the said Mary Miller, widow of said John B. Miller, in and to the said land. That the rights of the said Mary Miller, in and to the said purchase money may be ascertained, and the time and manner of paying to her what may be due to her in that respect, may be ordered and decreed. That said judgments against the said David 20

L. Miller and every of them, may be declared and decreed to be no liens or lien on the said land and premises, and that the said land be conveyed by the said David L. Miller to the said purchaser or purchasers free and clear of said judgments, and of every of them That the said purchase money mentioned in the said agreement, may be decreed to be personal assets of the estate of the said John B. Miller, deceased, and as such, payable to, and receivable by your orator, as administrator, as aforesaid, and that
 10 your orator may have such other and such further relief in the premises as the nature and circumstances of his case does or may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the States' writ of Subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said David L. Miller and Sophia M. his wife, Jehiel K. Hoyt, Henry E. Reddish, Charles T. B. Keep, Henry C. Ohlen, Mary Miller, John C. Littell, George
 20 E. Voorhees and Charles H. Dalrymple, executors of John F. Voorhees, deceased, Apollas R. Wetmore, George C. Wetmore and David Wetmore, Eliza J. De Hart, administratrix of John H. De Hart, deceased, and Henry C. Genung, commanding them and each of them, on a certain day, and under a certain penalty therein to be expressed to be, and appear in this Honorable Court, then and there to answer the premises and to stand to, abide and perform such orders and decrees in the premises as to your Honor shall seem meet and as shall be agreeable to equity and good con-
 30 science.

And your orator, as in duty bound, will ever pray, &c.

JACOB VANATTA,

Sol. and of Counsel with the Complainant.

A true copy,

S. H. Little, Clk.

IN CHANCERY OF NEW JERSEY.

Between

THEODORE LITTLE,

Administrator, &c. of

JOHN B. MILLER, deceased,
Complt.

and

DAVID L. MILLER, and

wife, and others,

Defts.

Answer.

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The answer of David L. Miller, one of the defendants to the bill of complaint of Theodore Little, administrator of John B. Miller, deceased, complainant.

This defendant now and at all times hereinafter, saving and reserving unto himself all and all manner of exceptions unto the many and manifold errors and insufficiencies in the complainant's bill of complaint contained, for answer thereto, or to so much thereof, as this defendant is advised, is material for him to make answer unto, he answers and says:--

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1. That he admits that the said John B. Miller died intestate, on or about the time for that purpose in said bill stated, and that the complainant was duly appointed his administrator, as therein stated.

2. That he admits that the said John B. Miller died seized and possessed of the land and real estate, particularly described in said bill of complaint : but whether he ever made and entered into the contract for the sale thereof, particularly set forth in said bill, with said Jehiel K. Hoyt, this defendant has no personal or other knowledge, except by hearsay, and cannot answer, and therefore does not admit the same, and leaves complainant to make such proof thereof as may be advised.

3. That this defendant has no personal or other knowledge, except by hearsay, and cannot answer with certainty as to whether or not the said John B. Miller, deceased, and the said Jehiel K. Hoyt ever made any agreement to extend the time for the performance of said supposed agreement to convey said tract of land ; but this defendant has reason to believe that no valid extension thereof was ever made, and therefore denies the same.

4. And this defendant further answering, says that he admits that said John B. Miller left him surviving a widow, Mary Miller, who has died since the filing of said bill of complaint, that said Mary Miller was not the mother of this defendant, but was the second wife of said John B. Miller, and never had any children by him, and this defendant says that the said Mary Miller and this defendant at the time of his death were the only next of kin of said John B. Miller, and that the personal estate of said John B. Miller will be divided between this defendant and the personal representatives of said Mary Miller, that is to say, two-thirds thereof to this defendant and one-third thereof to said Mary's personal representatives. And this defendant says that he has no doubt that the position of said Mary is truly stated on the tenth and eleventh pages of said bill so far as it goes ; but he says that the said Mary Miller, in her life time, was the real complainant in this suit : that the said bill of complaint was prepared and filed by her Counsel for her benefit, only

and without consultation with, or request from, this defendant.

5. And this defendant has no knowledge as to any agreement made between said Mary Miller and said complainant as to her release of dower in said premises, and leaves complainant to make such proof thereof as he may be advised; but he says that any such agreement, if made, is or was merely colorable.

6. And this defendant admits and asserts the truth to be that this defendant is the only son and sole heir-at-law of 10 said John B. Miller, and also, with the exception of said Mary Miller, deceased, his sole next of kin, and entitled to all his real and personal estate, subject to the rights of said Mary as dowress and distributee therein, and that he has a wife, Sophia M. Miller, as stated in said bill, and that said Sophia claims an inchoate right of dower in said premises.

7. And this defendant admits that, on or about the twenty-eighth day of September last, the said Jehiel K. Hoyt did serve on this defendant a notice of the tenor and to the effect set forth in said bill of complaint, and that said 20 notice is now in this defendant's possession, ready to be produced and proven as this Court shall direct; but whether said Henry E. Reddish and Henry C. Ohlen, or either of them, have made themselves personally responsible for the fulfilment of said contract in the place of said Hoyt, this defendant cannot say, and he does not know what the exact relations may be between said Hoyt, Reddish, Ohlen and Charles T. B. Keep, and leaves the complainant to make such proof thereof as may be advised; but this defendant thinks he does know what connexion the said 30 Charles T. B. Keep has with said supposed contract, and he will hereinafter state his belief on that subject.

8. And this defendant in further answering, says that in pursuance of the notice so served on him, signed by said Hoyt, he caused to be prepared a deed of warranty from himself and his said wife to said Reddish and Ohlen, for said premises, dated on the first day of October, eighteen hundred and seventy-two, for the consideration therein expressed, of thirty-nine thousand three hundred and ninety-two dollars, and that the same was by himself and his said 40

wife duly executed and acknowledged on the same day before Henry C. Pitney, Esquire, one of the Masters of this Court, and this defendant, by his counsel, previous to said first day of October, informed Frederick G. Burnham, Esquire, who appeared to be acting for said Hoyt, that he preferred to transact any business with regard to said tract of land or the conveyance thereof, and the payment of any money at the office of defendant's counsel, Henry C. Pitney, Esquire, in Morristown, that early in the morning

10 of said first day of October, said Burnham called on this defendant, at his house in Madison, and stated that he had certain monies and bonds and mortgages for him, which this defendant did not examine, but arranged with the said Burnham to meet him at his said counsel's in Morristown, at a later hour in the day. At the hour thus arranged he, this defendant, attended with said deed, duly executed as aforesaid, at the office of said Pitney, in Morristown, and said Burnham also attended there and produced and tendered to this defendant a package of money, which neither

20 this defendant nor anybody in his behalf; counted, and also a bond and mortgage, which were not examined by this defendant nor by any one in his behalf: said Burnham demanded of this defendant a conveyance of said premises and made said tender, on condition that said Mary Miller, the widow of said John B. Miller, should release her dower in the premises; that said Mary Miller was not present, and, of course, nothing further could be done; but this defendant expressed himself ready on that day to convey said premises at the price named in said deed of conveyance,

30 and accept in payment cas' to the amount of five thousand dollars, and the balance secured by bond and mortgage to this defendant personally, provided said Burnham would satisfy this defendant that there was a valid agreement existing against said John B. Miller, which would have bound him to convey said premises, if alive; said Burnham did not produce or show to this defendant on that day, or at any other time, any agreement made by said John B. Miller, or any extension of any such agreement; and said Burnham declined to accept said deed of conveyance and

40 pay said money and deliver said bond and mortgage, on the

ground only that said Mary Miller's right of dower was not released.

9. And this defendant denies that said Burnham, or the parties for whom he acted, made any objection to accept said conveyance on the ground of judgments standing unsatisfied against this defendant; that said Burnham and all and each of the parties for whom he was acting, well knew that all of said judgments, with one exception, were paid and were liable to be satisfied of record by order of the Court on application for that purpose, and that by the death of said John B. Miller, this defendant became seized as his heir, of a large amount of valuable real estate, besides that described in said bill of complaint, and was amply able to pay and satisfy all demands against him.

10. And this defendant in further answering says, that he has no knowledge as to what notice said Hoyt, Ohlen, Keep and Reddish may have had of the claims of complainant as to the purchase money of said tract of land, should the same be conveyed in pursuance of said supposed contract of sale; but he says that this defendant never instructed said administrator to make any such claim, and none such was ever made by his direction or consent, and that if made, it was so made by the direction and for the benefit of said Mary Miller, so that she might receive one-third of said purchase money in cash, instead of common law dower therein: that the personal estate of said John B. Miller is amply sufficient to pay all his debts, without recourse to the proceeds of the sale of any lands.

11. And this defendant denies that said administrator is, under the circumstances of the case, entitled to receive the purchase money of said tract of land upon the sale thereof, under said supposed agreement, or otherwise, and he claims that said tract of land is his own individual property by descent from his father, John B. Miller, deceased, and is not subject to any trust whatever.

12. And this defendant in further answering says, that the true history of said supposed contract, if any such exists, is as follows:—the said John B. Miller, at his death, had reached the great age of eighty-six years, and for a year or more before his death, had become very much enfeebled 20

in mind and body and liable to be easily imposed upon and influenced. His said wife, the said Mary Miller, was a widow when he married her and the mother of two children, one of whom was the wife of said Charles T. B. Keep: that said Keep resided for many years before the death of said Miller at Madison aforesaid: that said John B. Miller for many years prior to and at his death, was seized of a large and valuable tract of land, at and near Madison aforesaid, which, however, produced little or no actual rent or

10 income; that in the spring and summer of 1872, it was apparent that said Miller could not live much longer, and said Keep, working in the interests of his mother-in-law, the said Mary Miller, devised a plan by which a large proportion of said real estate might be converted into personality and her right therein, at the death of said John B. Miller, increased accordingly: the said Keep, aided by the said Mary Miller, procured the said Miller to enter into the said supposed contract with the said Jehiel K. Hoyt, who

20 is a man notoriously insolvent and of no pecuniary responsibility, for the sale of a parcel of his said real estate described in said bill of complaint, at the price therein named, which was a very large and extravagant price, upon payment of only one hundred dollars in cash. That said John B. Miller was induced to enter into said contract if it all among other means by being led to believe that he was going to receive a very large price for his property, and said Hoyt therein acted as a mere figure-head or cover for said Keep and had no intention or expectation of carrying out the same in his own name.

30 13. And this defendant further says that when the time arrived for the completion of said supposed contract by the terms thereof, said Keep, as this defendant has heard, procured some paper to be signed by said Miller, extending the time for the completion of the same until the first day of October, 1872, without at the same time binding the said Hoyt or any assignee of his interest to complete the same on his part. That when the first day of October arrived, there was no person really ready and willing to perform said supposed contract on the part of the vendee

40 and the tender of the said sum of money and the said bond

and mortgage was only colorable and made in order to bind this defendant and to complete the conversion of said tract of land into personalty. That the money so produced and tendered by said Burnham to this defendant on the first day of October, 1872, was the money of said Burnham and used by him for the purposes of the occasion, with the full knowledge that the terms demanded by him of this defendant could not be complied with. That the said Keep, prior to said first day of October, 1872, arranged with said Hoyt that the said Mary Miller should absent herself on that day and not be in the way of executing a release of her dower in the said premises, so that the said Keep and Hoyt could make a colorable tender of said money and bond and mortgage to this defendant and make a demand on a conveyance with perfect safety; and in pursuance of such arrangement, the said Mary Miller did leave home very early in the morning of the first of October, and went by railway to New York City and there remained until very late at night, and that the said Mary Miller knew perfectly well when she so left home, that that day had been fixed for completing said supposed contract, and went away from home for the express purpose of avoiding being called upon to execute a release of her dower in said premises: or doing any other act necessary on her part for its completion. And this defendant submits that by reason of her conduct in this behalf she has forfeited, abandoned and waived all right—if ever she had any—to have said tract of land declared and decreed to be personalty, or to any part of the proceeds of the sale of the same, if the said supposed contract shall be established and 10 specifically performed.

14. And this defendant in further answering, says that the said bill of complaint was filed at the instance and request of said Mary Miller and by her private counsel and on her retainer and for her benefit, and was in reality a suit instituted by her against this defendant, and is now being carried on by her personal representatives, and this defendant believes that there is no responsible person who is bound or is ready and willing to fulfil said contract on the part of said Hoyt, and that the personal representa- 20

tives of said Mary Miller have no expectation that the same will ever be specifically performed, but they desire and expect to procure from this Court a decree for specific performance against said Hoyt, and on his failure to perform the same they expect to procure a decree of this Court, ordering and declaring that said unpaid purchase money is a lien on said tract of land, and on failure of said Hoyt to pay the same, that said tract of land shall be sold to pay the amount of said purchase money.

10 15. And this defendant says, that under the circumstances of this case, it is inequitable and unjust that complainant should, without the request and consent of this defendant, proceed to compel specific performance of said supposed contract, or to have any relief whatever in the premises. That the complainant and said Mary Miller have delayed the filing of their bill of complaint an unreasonable length of time and have thereby waived their rights, if any they ever had, in the premises.

20 16. And he further says, that if the said John B. Miller ever did enter into said supposed contract with said Hoyt and ever did agree to extend the time for the performance of the same, he was induced so to do at a time when his mind was in an enfeebled condition against his own better judgment and will by the over persuasion and undue influence, fraud and contrivance of the said Charles T. B. Keep and Mary Miller, and without understanding that the result of such contract might be to increase the share which the said Mary would have in his estate at his death.

30 17. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged. Without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant.

40 All which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable Court

shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf, most wrongfully sustained.

PITNEY & YOUNGBLOOD,
Solicitors.

A true copy,
S. H. Little, C'k.

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IN CHANCERY OF NEW JERSEY.

Between
 THEODORE LITTLE,
 20 Administrator of
 JOHN B. MILLER, deceased,
 Complainant, *Answer.*
 and
 DAVID L. MILLER,
 ET ALS.,
 Defendants.

30 The answer of Charles T. B. Keep and Margaret A. Keep, his wife, administrators, &c. of Mary Miller, deceased, widow of John B. Miller, deceased, two of the defendants to the bill of complaint of Theodore Little, administrator, &c. of John B. Miller, deceased, complainant.

These defendants now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained for answer thereto or unto so much and such parts thereof as
 40 these defendants are advised, are material for them to

make answer unto, they answer and say, that they admit all of the material facts stated in said bill of complaint to be true.

And these defendants in answer further say, that the said Mary Miller, after the death of and while she was the widow of said John B. Miller, deceased, and on the twenty-second day of January, eighteen hundred and seventy-three, also died intestate: and afterwards, namely, on the twenty-ninth day of January, in the year eighteen hundred and seventy, did grant and issue unto these defendants, 10 letters of administration, bearing date the day and year last aforesaid, of all and singular the rights and credits, monies and effects, goods and chattels, which were of the said Mary Miller at the time of her death, as by reference to the said letters of administration, ready to be produced by these defendants, and to which they pray leave to refer, will more fully and at large appear.

And these defendants further say, that they have taken upon themselves the burthen of the administration of the estate of the said Mary Miller, deceased, and as such are 20 entitled to receive from the said complainant, the said Mary Miller's distributive share of the personal estate of the said John B. Miller, deceased.

And these defendants respectfully insist and submit that the purchase money of the said tract of land mentioned in the said contract between John B. Miller, and Jehiel K. Hoyt, set out in the said bill of complaint, namely, the sum of thirty-nine thousand three hundred and ninety-two dollars, at and immediately after the death of the said John B. Miller, was a part of the per- 30 sonal estate of the said John B. Miller, and that the said Mary Miller, in her life time and at her death was entitled, and these defendants, as the administrators of said Mary Miller, deceased, are now entitled to receive the one-third part of the sum last named, with such interest as hath accrued, and as shall accrue thereon, as and for part of the distributive share of the said Mary Miller, deceased, of the personal estate of the said John B. Miller, deceased.

And these defendants deny all unlawful combination and 40

confederacy in said bill, charged without that, that any other matter or thing material for these defendants to make answer unto and not herein or hereby, well and sufficiently answered, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of this defendant; all which matters and things these defendants are ready to aver, maintain and prove as this honorable Court may direct, and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully
 10 sustained.

GEO. T. WERTS,

Sol. of Chas. T. B. Keep and wife, Administrators, &c.

EDMUND D. HALSEY,

Of Council with Defts.

A true copy,

S. H. Little, Clk.

Between

THEODORE LITTLE,

Administrator, &c. of

JOHN B. MILLER, deceased,
Complt.

and

DAVID L. MILLER, and

wife, and others,

Defts.

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The joint and several answers of Jehiel K. Hoyt, Henry E. Reddish and Henry C. Ohlen, three of the defendants to the bill of complaint of Theodore Little, administrator 30 of John B. Miller, deceased, complainant.

These defendants, now and at all times hereinafter, saving and reserving unto themselves all and all manner of exceptions unto the many and manifold errors and insufficiencies in the complainant's bill of complaint, contained for answer hereto or to so much thereof, as these defendants are advised, is material for them to make answer unto :

They answer and say :

1. That they admit that the said John B. Miller died 40

intestate on or about the time for that purpose in said bill stated, and that the complainant was duly appointed his administrator, as herein stated.

2. That they admit that the said John B. Miller died seized and possessed of the land and real estate, particularly described in said bill of complaint, and that the said Miller made the agreement with the defendant Hoyt, as set forth in said bill of complaint, and that the said agreement was acknowledged and recorded as therein
10 stated.

3. That they admit that the said Miller and the defendant Hoyt did mutually agree to extend the time for the fulfillment of the terms of the said agreement until the first day of October last, and that before said day and the fulfillment of the terms of said contract, the said John B. Miller had died.

4. That they admit that the said John B. Miller left him surviving his widow, Mary Miller, and that she claimed a right of dower in said land.

20 And these defendants charge that said Mary has since died, leaving no children by the said John B. Miller her surviving. But whether the said Mary Miller was willing and expected, had her said husband continued in life, to have joined with him in executing the conveyance, which by said agreement he had agreed to make and deliver, and to have acknowledged the same in such manner as to have forever barred her dower and right of dower in and to said land, or whether the said Mary Miller at the time of filing the bill of complaint herein was still willing to convey and
30 release her right of dower in said land, as set forth in said bill, these defendants have no personal or other knowledge except by hearsay, and cannot answer and therefore do not admit the same and leave complainant to make such proof thereof as he may be advised.

5. And these defendants further answering admit that on or about the twenty-eighth day of September, 1872, the said Hoyt caused a notice in writing to be served upon one David L. Miller, the only child and sole heir-at-law of John B. Miller, deceased, of the tenor and effect, as charged
40 in the bill of complaint herein, and that these defendants

were willing and desirous, on the first day of October last, of carrying into effect the aforementioned contract, and that to this end they duly tendered to the said David L. Miller, as the sole heir-at-law of the said John B. Miller, deceased, the sum of forty-nine hundred dollars, the amount which the said Hoyt had agreed to pay on that day, in and by said agreement and also duly tendered to him the bond and mortgage, legally executed and acknowledged, which were called for under said agreement, and demanded from the said David L. Miller a proper and sufficient conveyance of said property, and that he, the said Miller, thereupon not making any objection to the tender of the said money or the said bond and mortgage, executed and tendered to these defendants a conveyance of the premises named in said agreement, which conveyance was duly executed by the said David L. Miller and Sophia M. his wife, and duly acknowledged by them, but that these defendants refused to accept such conveyance and to pay over the said money and deliver the said bond and mortgage, unless the said David L. Miller should also deliver to these defendants a good and sufficient release of dower of the said Mary, the widow of the said John B. Miller, and should also cause the lien of the several judgments against him, the said David, and named in the bill of complaint to be satisfied and discharged, and requested that the defendants Reddish and Oblen, the appointees of the said Hoyt, should be seized of a good and perfect title, in and to said premises; but that the said David L. Miller was unable to procure and did not procure or tender to these defendants such release or any release of the dower of the said Mary Miller; nor did he satisfy the lien of said judgments; nor perfect the title to said premises.

6. And these defendants charge that at the very time and place, to wit; on the morning of the first day of October, in the village of Madison, in this State, when these defendants caused the aforesaid tender to be made to the said David L. Miller, the said Mary Miller intending to hinder and delay these defendants and to prevent the fulfillment of the terms of the said contract executed between the defendant Hoyt and the said John B. Miller, purposely de-

parted from her residence in the village of Madison aforesaid, contiguous to and within easy call of the said residence of the said David L. Miller, and immediately left this State, and continued to absent herself from her said residence and from this State for a long time thereafter, and that the said Mary Miller thereupon refused and neglected to release her right of dower in said property, and these defendants charge and insist that the said Mary Miller, by her said conduct, has caused these defendants great vexation and has put them to large pecuniary charges and loss.

7. And these defendants further charge and insist that the said John B. Miller left a large amount of personal property, more than sufficient to pay and discharge all his debts due and owing by him at the time of his death. And that the said Mary Miller in her life-time was the real complaint in this suit and that the said bill of complaint was prepared and filed by her counsel for her benefit only, and not for the benefit of the said David L. Miller; nor at his request.

8. These defendants have no personal or other knowledge whatever, except by hearsay, and cannot answer with certainty, as to whether or not the said Mary Miller made or delivered to the complainant herein the agreement referred to in said bill of complaint, as bearing date the thirtieth day of December last, or any agreement whatever, and these defendants charge that if any such agreement were made, it was long after the time for the fulfillment of the aforesaid agreement between the said John B. Miller and the defendant Hoyt, and that it was only an afterthought and for the purpose of excusing the conduct of the said Mary Miller in preventing the fulfillment of the aforesaid contract on the first day of October last.

9. And these defendants deny that Charles T. B. Keep, named in said bill of complaint is, or has been in any way interested with these defendants in said contract; nor is the defendant Hoyt a trustee for said Keep in respect thereto. But these defendants admit that the defendants Henry E. Reddish and Henry C. Ohlen became interested under an agreement with the defendant Hoyt, in the fulfillment of the agreement hereinbefore named, made between the said Hoyt and John B. Miller.

These defendants deny that either of them had notice or knew on or before the first day of October last, that the complainant herein claimed the right to receive the purchase money and the securities mentioned in the said agreement as part of the personal estate of the said John B. Miller, as set forth in said bill of complaint, or that said David L. Miller held the title to said land as a mere trustee for the purchaser or purchasers.

10. These defendants also deny that either of them since the first day of October, 1872, have declared it to be their purpose or the purpose of either of them, to insist upon the execution and specific performance of the said agreement, or that they, or either of them, have declared that the time of completing the conveyance of said land is not material to them; but on the contrary, these defendants assert that the time for the fulfillment of the said contract of sale and conveyance of said property was an exceedingly important element in the said contract, and that by reason of the non-performance of the terms of the said contract on the part of the heir-at-law and widow of the said John B. Miller, these defendants have been put to heavy expense and great loss and damage. That relying upon the agreement executed between the defendant Hoyt and the said John B. Miller, and supposing that the same would be carried into effect at the time herein stated by the said John B. Miller or his representatives, these defendants spent large sums of money in laying a public road and opening the same up to the premises described in said contract, and these defendants hoped and expected by means of such expenditures and improvements to immediately sell a considerable portion of said premises so to be conveyed to them and thus reap a large pecuniary profit therefrom; but that the aforesaid conduct and refusal of the said Mary Miller, and neglect of the said David prevented these defendants from obtaining a good title to said premises, and from improving and selling said land during the last fall, and that the time for such sale has now gone by.

11. And these defendants insist that they have in good faith done every thing that they could do to have said contract fulfilled according to the terms hereof, and that they

were willing that the said sum of money and said bond and mortgage should be delivered to said David L. Miller, or to the administrator of John B. Miller, provided that the terms of said contract were fulfilled on the said first day of October last.

12. And these defendants further answering say, that in and by said agreement the said John B. Miller agreed that he would open a new road, sixty feet in width, on or before the second day of September last, past from the Upper or
 10 Madison Road to the new road lately laid out through the tract described in said agreement; and that said agreement was a vital part and condition of the aforesaid contract; that said new road so agreed to be opened was not opened by the said John B. Miller, nor by any other persons; and that said agreement still remains unperformed, and whether the complainant is ready and willing to open said road or not, these defendants have no knowledge, and therefore leave him to make such offer or proof thereof as he may be advised. But these defendants insist that the neglect on
 20 the part of the representatives of the said John B. Miller to fulfill said contract in this regard has further diminished the value of the premises named in said contract.

13. And these defendants deny all unlawful combination and confederacy in said bill charged without that that any other matter or thing material for these defendants to make answer unto and not herein or hereby, well and sufficiently answered, confessed, or avoided, traversed, or denied, is true to the knowledge or belief of these defendants, all
 30 which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable Court shall direct, and humbly pray to be here dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

FREDK. G. BURNHAM,
 Sol. and of Counsel with
 Defendants Hoyt, Reddish and Ohlen.

A true copy,
S. H. Little, Cl'k.

IN CHANCERY OF NEW JERSEY.

Between

THEODORE LITTLE,
Administrator, &c. of
JOHN B. MILLER, deceased,
Complainant.

and

DAVID L. MILLER,

and

SOPHIA M. his wife,
JEHIEL K. HOYT,

ET ALS,

Defendants.

On Bill, &c.

It appearing to the Court by affidavit, that since the 30
commencement of the said suit, Mary Miller, one of the
defendants therein, has departed this life intestate, and
that on the twenty-ninth day of January, eighteen hundred
and seventy-three, administration of the effects of said
Mary Miller was by the Surrogate of the County of
Morris granted and issued to Charles T. B. Keep and
Margaret A. Keep, his wife, the said Margaret A. being a
daughter of said Mary Miller and her sole living child and
nearest of kin, and it appearing that the complainant
chooses to make the said Charles T. B. Keep and Margaret 40

A. his wife, defendants hereto as administrators of said Mary Miller, deceased.

It is, on motion of Jacob Vanatta, of counsel with the complainant ordered, that the said Charles T. B. Keep and Margaret A. his wife, administrators of the said Mary Miller, deceased, be made defendants in said suit in the place and stead of said Mary Miller, deceased, and that the said Charles T. B. Keep and Margaret A. Keep as administrators as aforesaid, appear and put in their answer or
 10 signify their disclaimer of this suit and the matter in controversy therein within thirty days from the date hereof, and that the complainant cause a true copy of this order to be served personally on said Charles T. B. Keep and Margaret A. Keep within five days from the date hereof.

THEODORE RUNYON,

Chancellor.

Dated May 3d, 1873.

A true copy,

S. H. Little, Clk.

IN CHANCERY OF NEW JERSEY.

Between

THEODORE LITTLE,

Administrator of

JOHN B. MILLER, deceased,
Complainant,

and

DAVID L. MILLER,

ET ALS.,

Defendants.

Take notice of the examination of witnesses and the offering and making of exhibits in the cause above stated, on the part of the complainant, on Saturday, the 24th day of May, 1873, at 10 o'clock in the forenoon, before George W. Forsyth, a master and examiner in Chancery, at his office at Morristown. 30

JACOB VANATTA,
Solicitor of Complainant.

To PITNEY & YOUNGBLOOD,
Sols. of David L. Miller.
13th May, 1873. 40

STATE OF NEW JERSEY.—MORRIS COUNTY, ss.:

George T. Werts, of said County, of full age, being duly sworn on his oath saith, that on the fourteenth day of May instant, he served true copies of the within notice on Henry C. Pitney and F. G. Burnham personally, in the offices respectively of said Burnham and Pitney.

GEO. T. WERTS.

Sworn and subscribed before me,

May 14th, 1873,

AUGUSTUS W. BELL,

Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
 THEODORE LITTLE,
 Administrator of
 JOHN B. MILLER, deceased,
 Complainant.
and
 DAVID L. MILLER,
 and others,
 Defendants.

Examination of witnesses, &c., on the part of the complainant in a cause depending in the Court of Chancery of New Jersey, wherein Theodore Little, administrator of John B. Miller, deceased, is complainant and David L. Miller, Jehiel K. Hoyt, Henry E. Reddish, Henry C. Ohlen and Charles T. B. Keep are defendants, taken before me, George W. Forsyth, one of the masters and examiners of the said Court, at my office in Morristown, on Saturday, the twenty-fourth day of May, eighteen hundred and seventy-three, in the presence of Jacob Vanatta, Esquire, solicitor and of counsel for the said complainant, of Henry C. Pitney, Esquire, solicitor and of counsel for the defendant David L. Miller, and of Frederick G. Burnham,

Esquire, solicitor and of counsel for the defendants Jehiel K. Hoyt, Henry E. Reddish and Henry C. Ohlen; due notice of the taking of said examination having been given as appears by the notice and affidavit of service hereto annexed.

GEO. W. FORSYTH,
Master in Chancery.

10 Council for complainant offered in evidence an agreement between John B. Miller and Jehiel K. Hoyt, bearing date the tenth day of June, eighteen hundred and seventy-two, and acknowledged on the same day, which I have marked Exhibit A., on the part of the complainant.

The said agreement was produced by Frederick G. Burnham, the solicitor of the defendants Jehiel K. Hoyt, Henry E. Reddish and Henry C. Ohlen, at the request of the solicitor of the complainant.

20 *Frederick G. Burnham*, a witness produced on the part of the complainant, being duly sworn on his oath saith :

I drew that agreement "Exhibit A." I would not dare to say that I was the only attorney of Jehiel K. Hoyt at the time that agreement was drawn. I drew that agreement at the request of the parties concerned, of whom Mr. Hoyt was one. I was attorney for him in that matter.

30 *Question.* Were there any other persons concerned or agreement at with Mr. Hoyt in the land mentioned in that interested the time that agreement was made, and if so, name them?

(Objected to as incompetent.)

Answer. As counsel for the defendants Hoyt, Reddish and Ohlen, I object to the question on two grounds. First, that it is improper for me as the counsel for these parties to answer. And second, because the question is clearly incompetent.

I make this objection for the purpose of putting myself

right on the record, and do not want to open any lines of inquiry which I consider improper without objecting to it. I will now go on and state what I know about it.

I do not remember that at that time I had any knowledge of facts sufficient to show who, if any, were legally interested with Mr. Hoyt in the contract referred to. I got that agreement recorded—at Mr. Hoyt's request and at my own expense—by which I mean I paid the bill and have never been reimbursed.

Q. Did Mr. Ohlen and Mr. Reddish become interested with Mr. Hoyt in that contract, and if so, about what time? 10

(Objected to unless in writing, by Mr. Pitney.)

A. I have no knowledge, that I am aware of, excepting by hearsay, how or when Messrs. Reddish and Ohlen became interested with Mr. Hoyt. My impression is that I prepared some sort of an agreement between the parties, and my impression is that it was executed or entered into; but at what time and in what way, if I ever knew, I have forgotten, as I have long since dismissed the whole subject from my mind. I don't think there was any agreement prepared; there was some sort of association, some sort of arrangement. I may have prepared an agreement; if so, I can certainly find it; but it has escaped my mind if I have. I will just say I remember drawing some papers, but I don't think an agreement was among them. I would suggest to the counsel for the complainant that either one of the three defendants for whom I appear could accurately testify to all the details of this matter; whereas my recollection of all the matters that I once knew is defective.

Q. Do you not remember drawing in the latter part of May, eighteen hundred and seventy-two, an agreement between Henry E. Reddish, Henry C. Ohlen, Jehiel K. Hoyt and Charles T. B. Keep, relative to the land described in that agreement Exhibit A.?

(Objected to by Mr. Pitney as an incompetent mode of proving a written agreement.)

A. I don't wish to shelter myself behind a clearly valid

objection, and will therefore answer that a number of papers, I think, were prepared in my office under my supervision relating to the subject matter of the contract, marked "A."; but I do not recall what they were further than this; that some scheme for an association between the parties named was, I think, one of the papers prepared.

Q. Being shown a paper, witness was asked whether he did not prepare a paper, the provisions of which were exactly like or similar to the papers shown to him?

10 (Objected to by Mr. Pitney as proving the contents of a paper by secondary evidence.)

A. It looks like one of the papers I referred to in my previous evidence, but I did not think it was in the shape of a contract, and executed; I thought, what I prepared was simply a scheme for an association—not a contract to be executed. I do not know now that this is the one. I presume the original of the scheme which I prepared is in the hands of one of the three defendants for whom I appear.
20 I cannot say which one. I cannot say it is not in my hands. I have not seen or thought of it to my knowledge for a year. I will look among my papers for it for the counsel for the complainant with pleasure.

Q. In June, July and August, eighteen hundred and seventy-two, did Mr. Reddish, Mr. Ohlen and Mr. Keep claim to have an interest in that contract, marked Exhibit A.?

(Objected to by Mr. Pitney as immaterial and irrelevant.)

A. I do not remember that in the months named I either saw or had any communication with Mr. Reddish or Mr. Ohlen, and do not know what they claimed from personal knowledge. My impression is that Mr. Keep was tendered an interest in the agreement, which he did not accept; or that he did not make the payments necessary for his acceptance.

Being shown a letter purporting to be a letter from the witness to John M. Miller, dated the twentieth day of August, eighteen hundred and seventy-two, witness was asked; Did you write, sign and send that letter?

A. I did.

Q. Who did you represent and who were you acting for when you wrote and sent that letter?

(Objected to by Mr. Pitney as incompetent and premature.)

A. From the following sentence in the letter "I see no objection on the part of Mr. Hoyt to a postponement of the delivery of your deed to October first, and I hereby consent to it." I was clearly acting for Mr. Hoyt. If at the time he had any associates in his interest under the contract marked "A." I might be said, in a secondary manner, to be acting for them. But, so far as I now remember, any conversation that I had on the subject, was with Mr. Hoyt and Mr. Keep.

Q. Had you authority from Mr. Hoyt to write that letter when you did write it?

A. Strictly speaking I, at that time had not, if my memory serves me right; but I knew it was for his benefit and did not doubt but that he would affirm it, which he afterwards did. I presume he affirmed it at our first interview thereafter; or I may have written him. It was probably within a few days—I judge it was within ten days afterwards. My recollection is I was not authorized to send that letter; I did it on my own responsibility. I had been acting for Mr. Hoyt in this matter from the time the contract was made until I wrote that letter. It is difficult for me to fix the time when I began to act for Messrs. Reddish and Ohlen in this matter, as I was absent 20 at the Mountains in July and at the sea shore in August, and I cannot tell precisely. I think I began to correspond with them for the first in August or September, eighteen hundred and seventy-two, although I probably supposed at an earlier date than that, that there was a proposition on foot for them to be interested in the agreement. My interviews on this subject up to the first of October, eighteen hundred and seventy-two, were almost entirely with Mr. Hoyt and Mr. Keep.

Counsel for complainant offered the letter hereinbefore 40

referred to in evidence, and I have marked the same Exhibit B, on the part of the complainant.

Q. Shortly before you sent this letter marked Exhibit B, did you receive a letter or other written communication from John B. Miller, and if so, please produce it?

A. I did. A letter dated the twentieth day of August, eighteen hundred and seventy-two, which I now produce; and my note just marked Exhibit B, was in answer to this letter. I have never seen Mr. John B. Miller write; am not acquainted with his hand-writing. On receipt of
10 the letter, I assumed it to be from Mr. Miller and acted upon such assumption. Counsel for the defendant, David L. Miller, admitted the signature to the letter to be in the hand-writing of John B. Miller, and the body of the letter to be in the hand-writing of Charles T. B. Keep.

Counsel for complainant offered the said letter in evidence, and I have marked the same Exhibit C, on the part of the complainant.

Q. There is a statement in the bill in this cause that
20 about the twenty-eighth day of September, eighteen hundred and seventy-two, Jehiel K. Hoyt served a notice in writing upon David L. Miller, in which he nominated Henry E. Reddish and Henry C. Ohlen as the persons to receive the conveyance under the contract Exhibit A. Please state whether you had anything to do with the service of such notice, and whether you can furnish us with the duplicate of the notice that was served on Mr. David L. Miller?

A. I don't think that I had anything to do with the
30 service of such a notice; nor am I aware that I have a copy of such notice. I prepared such a notice, and think that I sent it to Mr. Hoyt for service. I had nothing more to do with it than that, that I remember. I may possibly have mailed it direct to David L. Miller, but do not recollect that I did. My clerk may possibly have made a copy.

Counsel for complainant offered in evidence a copy of the notice above referred to, which was admitted by the counsel for David L. Miller, subject to correction when the original notice shall be produced by the said counsel, the
40 copy being in the hand-writing of Charles T. B. Keep

which copy I have marked Exhibit D, on the part of the complainant.

Q. Did Mr. Ohlen and Mr. Reddish direct or consent to the giving of that notice to David L. Miller which we have just been speaking about?

A. I don't think they knew anything about it. So far as I know, I did it on my own responsibility.

The witness here said that he wished to state that if complainant's counsel had called witness' attention to the matters touching any supposed agreements or arrangements between Hoyt, Reddish and Ohlen, prior to this examination, witness could readily have refreshed his memory by examination of his papers, which are not now present. 10

Witness being cross-examined by counsel for David L. Miller, saith :

Mr. Keep, referred to in my evidence is Mr. Charles T. B. Keep, one of the defendants in this suit. I believe he resided in Madison. I do not know what his business is. I am not aware that he was any relation to John B. Miller. I think he married a daughter of Mrs. John B. Miller by a former husband. I had two or three interviews with John B. Miller in regard to this matter. I think Mr. Keep was with him at one of these interviews at my office, and his wife, Mrs. Miller was present at another interview between us at his residence in Madison. At the first interview spoken of, I do not recollect distinctly whether Mr. Keep was present in my office whilst Mr. Miller was there. He either was, or was present just before, I think. 20 30

My impression is, that I received that letter of John B. Miller, of August twentieth, eighteen hundred and seventy-two, through the mail, although Mr. Keep may have brought it. I am not aware that Mr. Keep acted for Mr. Miller. He seemed in all these business transactions to be on exceedingly friendly and confidential terms with Mr. John B. Miller. Mr. Keep took, certainly, a very active part in the matter of the contract marked Exhibit A. He had a great many interviews with me on the subject.

Q. Did he not substantially transact all the business on Mr. Miller's part? 40

A. He seemed in all the transactions to be the confidential adviser of Mr. Miller, and, I think, was the planner of the various transactions. I think he first suggested to me the writing of the letter on the part of Mr. Miller, marked Exhibit C.

Q. Was not the correspondence postponing performance of the original contract got up by prearrangement between you and Mr. Keep?

10 *A.* I think it was suggested by Mr. Keep and accepted by me as manifestly for the interest of my clients or client, however it was. I am not aware that Mr. Keep was the originator and planner of the original contract of sale. He had a good deal to do with it. I don't know, that I am aware what personal responsibility Jehiel K. Hoyt has. I am not aware of his owning any property in his own name. In fact, I don't know anything about it.

Q. Did you settle the details of this contract with John B. Miller, or were they settled by negotiations with or through other parties before you saw him?

20 *A.* I think they were chiefly settled with other parties before I saw him. My recollection is that he came to my office once for a few minutes before the execution of the contract, marked Exhibit A.

So far as I know, Mr. Keep has no interest in the contract as vendee jointly with Hoyt.

Witness being re-examined by counsel for complainant, further saith :

30 I believe Mr. Ohlen and Mr. Reddish are persons of pecuniary responsibility.

Q. Shortly before you drafted the agreement Exhibit A—I mean three or five days before—did not John B. Miller, in company with John W. Hancock, come to your office and deliver to you this map now shown to you, and on the same occasion, did not you and John B. Miller discuss and agree upon the details of the agreement, as now expressed in Exhibit A?

40 *A.* Shortly before the preparation of the contract referred to; exactly how many days I cannot tell, John B. Miller

and Judge Hancock did come to my office, and the terms—some of the terms of the contract—were then discussed, the more important elements of it, however, had been already arranged by Mr. Miller with other parties than myself. My impression is that the map referred to in the question, was not left at my office at that interview, but was sent to me subsequently by Judge Hancock, as then agreed upon. I do not recollect distinctly about that however; the Judge will recollect. My impression is that the Judge was at my office once or twice. I think he was there twice; but have no distinct recollection. I don't recollect that Mr. Miller was there more than once before the contract was prepared; I don't now recollect. These are little details about which I did not burden my mind, and have no very distinct recollection. I think Mr. Hancock was at my office twice on this business before the contract was signed. I do not recollect of seeing Judge Hancock at my office on this business after the contract was signed. My impression is that the interviews at my office with Judge Hancock were prior to the execution of the contract and not subsequent to it; although it may be that the preparation of the map was subsequent to the execution of the contract. If the contract contains a careful description of the property, it came from Judge Hancock's description prepared for me. My impression is very vague as to whether Mr. Miller came with Judge Hancock to my office the first or second time Judge Hancock called. My impression is that he came the first time; though probably on either one of those days twenty people were in my office on matters of business, and as it is not my habit to keep a diary of every body I see and the days I see them on, my memory on the points interrogated, is perhaps a little defective.

Q. On the day Judge Hancock and Mr. Miller were at your office together, was it not agreed between you and those two gentlemen that you would draw out the agreement in full ready for signing, and send it to Mr. Miller to Madison, and that Judge Hancock should attend at Mr. Miller's house to witness the execution and take the acknowledgment?

A. There was an understanding of that sort.

Q. Please state what provisions of that agreement were that day discussed between you and John B. Miller in the presence of John W. Hancock?

A. According to my recollection the conversation on that day turned chiefly on the description, metes and bounds and contents of the property in question. The subject of a small plot of land lying near the tract in question, and said to be owned by Mrs. Mary Miller was mentioned by Mr. Miller, but I informed him that I understood it was not embraced in the preliminary agreement between him and Hoyt, but that whatever the parties would agree upon I would, of course, incorporate in the agreement. The agreement itself, with all its chief parts, had already been fully made between the parties, and nothing then remained for me to do but to put that agreement into shape, and to incorporate into it a proper description of the premises.

Q. Do you remember whether you and Mr. Miller on that occasion did not discuss the length of credit for part of the purchase money and agree to change it from five to seven years, and arrive at some understanding when the interest was to commence?

A. Those points may have been referred to in our conversation at that time, but I do not think that they were discussed in any such way as is suggested by the question, but on the contrary, I think that Mr. Miller had decided all these points previously. He may, however, on that occasion, have finally assented to some such changes. I thought he understood himself very well as regarded the business in hand. I thought the old gentleman understood himself well. He was vigorous in mind and body. He was a little deaf, I believe. I think the preliminary agreement of which I made mention a little while ago, is in the hands of Mr. Hoyt. I have not seen it for many months. I have not examined any of the papers for months, excepting the agreement when I drew the answer, and the letter of John B. Miller. I think that preliminary agreement was in the hand-writing of Mr. Hoyt. I mean the body of it. It was a rough scrawl.

40 Witness here stated that he wished to say in regard to

the pecuniary responsibility of Mr. Hoyt that he had no personal knowledge sufficient to enable him to make any statement.

FRED. G. BURNHAM.

Sworn and subscribed before me,

May 24th. A. D. 1873.

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

John W. Hancock, a witness produced on the part of the complainant, being duly sworn according to law, on his oath saith : 10

I have known John B. Miller about as long as I have know anybody outside of home. I was born about a mile from where he lived, and lived about that distance from him till his death. I am sixty-seven years of age since August last. I have for many years followed the business of a land-surveyor.

Being shown a map which I have marked Exhibit E, on part of the complainant, witness says : 20

I made that map. I think I surveyed a part of the premises and made the map between the thirtieth day of May and the fifth day of June, eighteen hundred and and seventy-two. I surveyed the part which I understood was bargained to Hoyt. Mr. John B. Miller employed me and asked me to make that survey and map. I think he was with us part of the time while we were making the survey, but am not sure he was with us all the time. I think he told me for what purpose he wanted the survey and map made, I think he told me he had had a proposal to sell it to some parties. My impression is that I made the map in part for Mr. Burnham to examine the title by. Mr. Miller gave me what information I had about it. After I prepared the map I took it to Mr. Burnham's office to him. My memorandum that I took at the time of leaving it says the fifth of June, eighteen hundred and seventy-two. Mr. John B. Miller went with me to Mr. Burnham's. I don't remember to have been there with him at any time except on that one occasion. 30 40

Q. Just tell us what occurred after you and Mr. Miller got to Mr. Burnham's office—what was said and done?

A. I don't know that I could remember the particular conversation they had; only a few things. I explained the map Exhibit E to Mr. Burnham. He said the map was what he wanted, or as he wanted it. I think I had Mr. Miller's deeds in my care at the time, and from a memorandum I left them with Mr. Burnham. My memorandum says: left
 10 ten deeds and an old map of J. B. Miller's with F. G. Burnham at his office in Morristown to look up the title, in company with a map of the same containing the connection of the deeds with the old plot. The forty-nine twenty-four hundred acre lot at eight hundred dollars per acre. The two fifty-three hundred acre lot of Mary Miller's not in the agreement. Deed warranty; mortgage seven years; interest yearly, seven per cent. If interest not paid in sixty days, then the whole to be due. Interest to begin six months after the delivery of the deed. Will release all land sold upon the payment of eight hundred dollars per acre for the
 20 land sold. Will open a street at right angles to the new road sixty feet wide, more or less. Self to attend at Mr. Miller's on call to take acknowledgment. I believe that is the end of my notes. I made that memorandum at Mr. Burnham's office on the fifth of June, eighteen hundred and seventy-two, if my date is right.

Q. Were those particulars of the contract which you have noted in your memorandum talked about on that occasion between Mr. Miller and Mr. Burnham?

A. I think they were. I understood on that occasion that
 30 the particulars which I have mentioned were to be in the agreement which Mr. Burnham was to draw.

Q. Just state what your reason was for noting in your memorandum those particulars which were to be inserted in the agreement?

A. I was acting as an agent and friend of Mr. Miller's in getting out the papers, and suppose I made those notes for his assistance and protection. Mr. Miller's health at that time was pretty good. He appeared well and seemed to understand what he wanted. I don't know whether or
 40 not he went home in company with me; I think he did.

Mr. Miller's memory did not appear to be as tenacious as it had been formerly, and I was acting like a clerk to help him to keep the things connected. I afterwards attended at his house for the execution of the agreement. I presume he signed the agreement.

Witness being shown the agreement between John B. Miller and Jehiel K. Hoyt, marked Exhibit A, on the part of complainant says, Mr. Miller signed that agreement in my presence; I saw Mr. Hoyt sign it; They both signed at the same place and at the same time, and I signed it as a witness; I read it over to Mr. Miller before he signed it; The acknowledgment was made as I have certified by him and Mr. Hoyt; I don't remember whether there was more than one copy signed; I thought the price of eight hundred dollars at that time a high price for that land. 10

Witness being cross-examined by Mr. Pitney says, the land I should think in itself was very variable in value; some of the acres of the land were worth two or three times as much as others, I think. 20

Q. What did you think, at the time, of the prudence of the agreement in respect to having only a hundred dollars an acre down, and agreeing to release any acre, without regard to its comparative value upon payment of eight hundred dollars?

(Objected to by counsel for complainant as irrelevant.)

A. That matter was discussed between Mr. Miller and myself, and I didn't express any opinion to anybody but him that I remember; I don't know whether I ought to answer any farther; I said to Mr. Miller in effect that I didn't exactly approve of it; I said to him that I thought it was risky; I think Mr. Miller understood that Mr. Hoyt contemplated running a street through this property and selling lots off. 30

Q. You made the memorandum in your field-book so that you could read over the agreement when it came down to be executed and see that it was all right, didn't you?

A. I suppose I did; I don't think anybody went to 40

Morristown with me besides Mr. Miller; I couldn't say who was with Mr. Miller when he first talked to me about this sale, whether there was anybody.

Witness being cross-examined by Mr. Burnham, says:

10 *Q.* On your direct examination you gave in evidence various items and particulars from your memorandum book which you said were to be incorporated into the agreement to be prepared by me, you did not mean to say I suppose, that these particulars were also agreed upon on that occasion for the first time, but merely that they were spoken of as things agreed upon between the parties?

A. I think I said they were not agreed upon the first time in my answer; I don't think I understood these points before I went to your office; I think I took the notes at your office.

Witness being re-examined by counsel for complainant, further saith:

20 *Q.* When you told Mr. Miller that you doubted or didn't approve of releasing portions of the premises on payment eight hundred dollars for an acre to be released, what, if anything, did he say, in reply to what you said on the subject?

30 *A.* My talk with Mr. Miller went further than the releasing of the lots; I think I told Mr. Miller that he didn't receive money enough to begin with to make it sure and safe to him, that the value of the trade would turn with him upon the amount of payments which he received; that he might have to let the thing go as some other properties had that he and I knew of, and have to buy it back again. I think Mr. Miller agreed with me in that, and remarked to me that if they paid him the interest he would have more money than they had; my reason for saying that I thought it was risky to him was that they might select choice parts of the property, sell them, and then leave the poorer parts unsold or to fall back on him; I don't think I knew at that time that the conveyance was to be made to Mr. Reddish and Mr. Ohlen; that I knew who; I don't know what Mr.
40 Miller understood about the title being to be taken by some

man to be named by Hoyt rather than by Hoyt himself; I think Mr. Miller named to me that Mr. Burnham was cashier, but that he didn't know who stood behind it.

JOHN W. HANCOCK.

Sworn and subscribed before me, May 24th, A. D. 1873.

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

The further examination of witnesses in this cause was here adjourned by consent of the respective counsel to Saturday morning next, May 31st, inst., at the hour of ten, at my office : 10

GEO. W. FORSYTH,

Master &c.

On the thirty-first day of May, eighteen hundred and seventy-three, the parties and their respective solicitors met before me pursuant to adjournment: and the further examination of witnesses was proceeded with. 20

Charles T. B. Keep, a witness produced on the part of the complainant, being duly sworn, on his oath saith :

Being shown a paper purporting to be a letter from Mary Miller to Theodore Little, administrator of John B. Miller, deceased, dated the thirteenth day of December, eighteen hundred and seventy-two.

Witness says :

I am the subscribing witness to that paper; I saw Mary Miller sign it; she signed it on the day of the date of the letter between the hours of five and seven o'clock in the evening; I then forwarded it to Mr. Vanatta, the complainant's counsel. 30

Witness being cross-examined by Mr. Burnham, further saith :

I should say the body of that letter was in the handwriting of the complainant's counsel; I witnessed it because it was sent to me by the complainant's counsel with the request to procure her signature if she thought proper to sign it, and of course as a witness was required, I wit- 40

nessed it; I think it was sent to me by complainant's counsel by post; the reception of the letter was the first I knew of the subject; I think I have the letter he wrote me at the time, but not with me; I will bring it with me at our next examination.

Witness being cross-examined by Mr. Pitney, says:

10 I had consulted frequently with complainant's counsel concerning this Hoyt contract previous to the thirteenth day of December, eighteen hundred and seventy two. I had frequent interviews with Mr. Vanatta about that and other matters: Mrs. Miller went to see Mr. Vanatta a very few times—hardly at all, once or twice, two or three times; she was a woman advanced in years, seventy-five, and I as her daughter's husband looked after her affairs; I went to see Mr. Vanatta on her behalf; I retained Mr. Vanatta as Mrs. Miller's counsel and paid him a fee, but not with especial reference to any particular matter; under that fee I consulted him about this Hoyt contract.

20 Witness being re-examined in chief by counsel for complainant, further saith:

The retainer I speak about from Mrs. Miller was after Mr. Miller's death.

Q. Was not the question then submitted to me, and in respect of which the retainer was paid, the question as to who should be the administrator of John B. Miller?

30 (Objected to as leading) by Mr. Pitney and Mr. Burnham.

A. Certainly.

Q. Before the administrator was appointed did you or Mrs. Miller mention, or in any way bring to my notice the existence of the contract between Mr. Miller and Mr. Hoyt?

(Objected to as leading) by Mr. Pitney and Mr. Burnham.

A. We did.

40 Q. Who brought it to my notice, and what led to it being done?

A. I think I did on account of the near approach of the time for completion of the contract.

Q. Before you consulted me about that contract between Hoyt and Miller, but after the death of John B. Miller, did you have any communication with Mr. Burnham as to whether that contract had survived Mr. Miller, and if so, state it?

(Objected to as irrelevant and immaterial by Mr. Pitney and Mr. Burnham.

A. The day after Mr. Miller's death I was in Mr. Burnham's office to tell him of the death. He showed me a telegram from Hoyt desiring him to record the deed (contract) as Mr. Miller was dead. I asked him how the contract would be, or was affected by J. B. Miller's death. He referred to Nixon and told me that having been witnessed by only one witness it would probably be a question. Leaving his office, I met a professional friend not engaged in this cause, who, in conversation told me that the contract could be enforced, and that the proceeds became personal property. He referred me to a case reported in the books, of which I took a note and handed it to Mr. Burnham. Until that day I never knew that the contract could be enforced or that a contract made in the life-time of an owner of land, if completed after death became personal property.

Q. Prior to that occasion had you ever had any communication with me in relation to the contract between Hoyt and Miller?

A. Never.

Q. After that interview with Mr. Burnham which you have just mentioned, did you or not submit to me the question, whether the contract was enforceable after Mr. Miller's death and whether the effect of the contract was to convert the vendor's interest into personal estate?

A. I did.

Q. Do you mean to say that prior to the information which you have just mentioned, that you were entirely ignorant of the rule of equity which converts purchase money into personal estate?

A. I am not acquainted with equity practice of the state of New Jersey, and therefore know nothing about it.

Witness being again cross-examined by Mr. Pitney, says :

I have no other knowledge of the law than a gentleman of liberal education should have. I was educated at Christ's Hospital in London.

Q. Did you not ask Mr. Burnham at your first interview with him after Mr. Miller's death, whether or not, if the contract was completed, Mrs. Miller would be entitled to one-third of the purchase money?

A. I think not. I think my question related solely to the completion of the contract; the professional friend I met was my friend Mr. DeMott.

Counsel for complainant here offered the letter referred to in witnesses' testimony in evidence, and I have marked the same Exhibit F on part of complainant.

CHAS. T. B. KEEP.

Sworn and subscribed before me, May 31st, A. D. 1873

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

20

Edgar D. Keyes, a witness produced on the part of the complainant, being duly sworn, on his oath saith :

Being shown an agreement purporting to be signed by John B. Miller, bearing date the twenty-fifth day of April, eighteen hundred and seventy-two—

Witness says :

I signed that paper as a witness at the bottom on the left hand side; the other signature at the bottom is that of John B. Miller; I saw him write it; I signed it as a witness immediately after he signed it; I think it was signed on the day it bears date; I was very well acquainted with Mr. Miller; I knew him all my life; I think the body of the paper is in the hand-writing of Mr. Hoyt.

30

Counsel for complainant offered the said paper in evidence, and I have marked the same Exhibit G on the part of the complainant. The said paper was produced by Frederick G. Burnham, Esq., solicitor of the defendants, Reddish, Ohlen and Hoyt, at the request of the solicitor of complainant.

40

On cross-examination by Mr. Pitney, witness says : I am twenty-eight years of age ; I am a grand-son of Mrs. Miller

EDGAR D. KEYES.

Sworn and subscribed before me, May 31st, 1873.

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

Mr. Frederick G. Burnham at the request of the counsel of the complainant produces an agreement in writing between Henry E. Reddish, Henry C. Ohlen, Jehiel K. Hoyt and Charles T. B. Keep, the execution of which is admitted by the counsel of David L. Miller, and also by the counsel of the defendants, Reddish, Ohlen and Hoyt, but both of said counsel object to its introduction in evidence on the ground of irrelevancy. I have marked the said agreement Exhibit H on the part of complainant.

GEO. W. FORSYTH,

Master.

Charles T. B. Keep being recalled as a witness by the counsel for the complainant, says :

Being shown Exhibit H. witness says : I am one of the parties who signed that agreement ; it was executed on the twentieth day of August, eighteen hundred and seventy-two. I offered to abandon my interest in that agreement on the thirteenth day of November, eighteen hundred and seventy-two ; I made that offer by letter to Mr. Hoyt and his associates Reddish and Ohlen ; I received no reply from them and accidentally meeting Mr. Reddish on the first of January, eighteen hundred and seventy-three, I spoke to him of the discourtesy of not replying to me, and on the evening of that day or the next morning, I received a letter signed J. K. Hoyt, secretary *pro. tem.*, stating that Messrs. Reddish and Ohlen had assumed my liabilities as a shareholder ; I have regarded myself as out since that time.

Witness being cross-examined by Mr. Burnham says ;

I consider myself out of this arrangement ; I consider my hands washed of the whole matter ; I have no claim

other than money paid out of pocket; I have no interest in the land purchased:

CHARLES T. B. KEEP.

Sworn and subscribed before me, May 31st, 1873.

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

Counsel for complainant here announced that the evidence on the part of the complainant was closed.

10

GEO. W. FORSYTH.

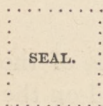
Master in Chancery of New Jersey.

By consent of the respective counsel in this cause, the further examination of witnesses therein was adjourned until Saturday the seventh day of June next, at the hour of half-past nine in the forenoon, at my office in Morristown. May 31st, 1873.

GEO. W. FORSYTH,

Master &c.

20



NEW JERSEY, to-wit:—*The State of New Jersey to Jehiel K. Hoyt and Henry E. Reddish:*

30 GREETING: We command you and each of you that you personally appear before Geo. W. Forsyth, Esq., a Master and Examiner in our Court of Chancery, at his office in Morristown, in the County of Morris, on Saturday the thirty-first day of May, instant, at ten o'clock in the forenoon, to testify what you know in a certain cause now depending and undetermined in our Court of Chancery, between Theodore Little, Administrator of John B. Miller, deceased, complainant, and David L. Miller, Jehiel K. Hoyt, Henry E. Reddish, Henry C. Ohlen and others, defendants, on the part of the complainant. And also, that you do diligently and carefully search for, examine and enquire after and bring with you and produce, at the time and place aforesaid, a certain agreement in writing bearing date the twenty-eighth day of May, eighteen hundred and
40 seventy-two, between you the said Jehiel K. Hoyt Henry

E. Reddish, and Henry C. Ohlen and Charles. T. B. Keep, in relation to the purchase of certain land of John B. Miller ; and also a certain other agreement in relation to the purchase of the same land, made between you said Jehiel K. Hoyt and John B. Miller, in the year 1872, together with all copies, drafts and vouchers relating to the said documents, and all other documents, letters and paper writings whatsoever that can or may afford any information or evidence in said cause, then and there to testify and show those things which you or either of you know, or the said documents, letters, or instruments in writing do import of and concerning the said cause now depending. And this you are in no wise to omit under the penalty of one hundred dollars. 10

Witness, his Honor Theodore Runyon, Chancellor of our said State, at Trenton, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

H. S. LITTLE, Clerk. 20

JACOB VANATTA, Sol.

STATE OF NEW JERSEY.—MORRIS COUNTY : ss.

Edgar D. Keyes, of Chatham Township in said County, of full age, being duly sworn, on his oath saith that on the 29th day of May, 1873, he did serve the within writ on Jehiel K. Hoyt and Henry E. Reddish, by showing said writ to each of them, and at the same time leaving with each one of them a subpoena ticket addressed to the one to whom the ticket was delivered, and at the same time paying to each of them the sum of fifty cents. 30

EDGAR D. KEYES.

Sworn and subscribed before me, 31st May, 1873.

AUG. C. CANFIELD,

Master of the Court of Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

THEODORE LITTLE,

20 Administrator, &c. of

JOHN B. MILLER, deceased,
Complt.*and*DAVID L. MILLER, *et als.*
Defts.

30 Examination of witnesses on the part of the defendants Hoyt, Reddish and Ohlen in the above stated cause taken pursuant to adjournment before me at my office in Morris-

40 town, on Saturday the seventh day of June, eighteen hundred and seventy-three, in the presence of Frederick G. Burnham, the solicitor of the said defendants, the counsel for the complainant and the counsel for the defendant David L. Miller, being absent. The said examination was taken by Mr. Burnham subject to the right of the respective counsel for the complainant and David L. Miller, to cross-examine the witness at some future day and also subject to the right of said counsel of complainant, and also of the

40 counsel of David L. Miller to object to any evidence given

the same as though they were here personally present and objected thereto when given.

GEO. W. FORSYTH,
Master &c.

June 7, 1873.

Henry E. Reddish, a witness produced on the part of the defendants Reddish, Ohlen and Hoyt, being duly sworn on his oath saith: I am one of the defendants in this suit, There was an arrangement entered into between myself, Mr. Ohlen and Mr. Hoyt, whereby Mr. Ohlen and I myself were to be the grantees of John B. Miller of the property referred to in the bill of complaint. Mr. Ohlen and myself directed you to carry out the terms of the agreement entered into between Mr. John B. Miller and Mr. Hoyt and have a conveyance made from Mr Miller to use in pursuance of the nomination. Mr. Ohlen and myself met you and together we proceeded to the house of Mr. David L. Miller on the morning of the first day of October last; his residence is in the village of Madison; nearly opposite the late residence of John B. Miller; the widow of John B. Miller was at that time residing in the old residence of John B. Miller; we met David L. Miller on that occasion; he was the only heir-at-law of John B. Miller, his father shortly before deceased; Mr. Ohlen and myself went there for the purpose of making a tender of forty-nine hundred dollars due under the agreement, and for the purpose of fulfilling on our part all that was required to be done under the agreement; we told him we had the money to make the tender and demanded of him the fulfillment of the contract; our money consisted of legal tenders; we informed Mr. David L. Miller that we looked to him as the sole heir-at-law of his father to perform this agreement; we called his attention to the terms of the contract existing between his father and Mr. Hoyt; Mr. Ohlen and I then informed him that we were ready, willing and desirous of performing the part of the contract to be performed by Mr. Hoyt; we thereupon tendered him the sum of forty-nine hundred dollars in legal tender notes; we also tendered him our bond and mortgage executed by

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myself and Mr. Ohlen, properly acknowledged, for the amount and terms called for under the contract; we also stated that we were willing to fulfill any other conditions called for by the contract and to perform everything required to be performed under the contract; we then requested from him a fulfillment of the engagements made by his father under the contract, and that he make to us a perfect title; he made no objection to the tender of the money or anything else that we offered to do, but he said if

10 we would meet him in Morristown at two o'clock that afternoon at the office of Mr. Pitney, his counsel, he would give us a deed; Mr. Burnham told him that he would meet him at the place appointed, for us; Mr. Ohlen, Mr. Burnham and myself then went to the depot in Madison and took the nine o'clock morning train for New York; Mrs. John B. Miller got on the same train at Madison; I think she went to Newark; I handed Mr. Burnham that forty-nine hundred dollars to bring up to Morristown that afternoon in order to meet Mr. David L. Miller; in consequence of this

20 contract with Mr. John B. Miller, Mr. Ohlen and myself had laid out a considerable sum of money in getting that road through Madison, which would open up and render available the tract agreed to be sold by Mr. John B. Miller to Mr. Hoyt; this expenditure of money was made during the summer of the year eighteen hundred and seventy-two—subsequent to the execution by John B. Miller of the contract with Mr. Hoyt, and in the reliance placed by us in the fulfillment of that contract by John B. Miller; that contract contained a provision for opening a side street at

30 right angles to the street already referred to and leading out towards John B. Miller's house; we looked upon that as an essential and important part of the contract to be performed by John B. Miller; it was in our opinion necessary for the full development of the value of the lands bought from John B. Miller that that side street should be opened; the time for the fulfillment of the contract, (viz. the first day of October eighteen hundred and seventy-two) was a very important element in the transaction; it was important in reference to getting the property ready for

40 sale the next spring; I never extended the time for the ful-

fillment of that contract from the first day of October, nor did Mr. Ohlen, so far as I know, but on the contrary, we were very desirous of having the contract fulfilled at that time.

Q. On a previous part of this examination the complainant introduced a letter purporting to be signed by Mrs. John B. Miller at a period some time after October, in which she expressed her willingness to convey and release her right of dower in these lands, when did you hear of such letter or agreement?

A. I have no knowledge of it before this morning. I have no knowledge respecting Mrs. John B. Miller's willingness to execute a release of her right of dower in those lands either from herself or from any other quarter. The plans of Mr. Ohlen and myself were very much deranged by the failure of the heir-at-law of John B. Miller to fulfill this agreement; and in consequence of such failure we have been laying out of the use of the moneys we have advanced in opening that road; the side street I before referred to has never been opened or in any manner worked; neither the complainant in this suit nor Mr. David L. Miller, nor any other person has ever offered to complete this agreement.

Q. Did you or Mr. Ohlen, so far as you know, know on or before the first day of October, eighteen hundred and seventy-two, that the administrator of John B. Miller, deceased, claimed the right to receive the purchase money and the securities mentioned in the agreement?

A. No, sir; the widow of John B. Miller is now dead; the lots comprising the tract agreed to be sold by John B. Miller could not be sold so readily now, or next autumn, as they could have been the past spring—owing to the stringency in the money market the sale of property of that sort is becoming more difficult. Mr. David L. Miller has been in possession of the tract referred to in the contract, since the death of John B. Miller; Mr. David L. Miller is in such possession now; the same possession he has of the rest of his father's real estate; he is raising crops on the greater part of it; neither David L. Miller nor the administrator, nor any other person has ever offered to make this side

street through there or expressed their willingness to do it so far as I know.

HENRY E. REDDISH.

Sworn and subscribed before me June 7th, 1873.

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

THEODORE LITTLE,

Administrator of

JOHN B. MILLER, deceased,
Complainant.

and

DAVID L. MILLER

and others,
Defendants.

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JACOB VANATTA, Esq.,
Sol'r for Compl't's.PITNEY & YOUNGBLOOD,
Sol'r for Def't. Miller.

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GENTS: Take notice of the examination of witnesses and the offering and making of exhibits in the above named cause on the part of the defendants Reddish and Ohlen, on Wednesday the 24th instant at ten o'clock in the forenoon, before Geo. W. Forsyth, Esq., a Master and Examiner in Chancery, at his office in Morristown.

Dated Morristown, September 11th, 1873.

FRED. G BURNHAM,
Sol'r for Def'ts Reddish and Ohlen.

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IN CHANCERY OF NEW JERSEY.

Between
THEODORE LITTLE,
20 Administrator of
JOHN B. MILLER, deceased,
Complainant,
and
DAVID L. MILLER,
ET ALS.,
30 Defendants.

30 Examination of witnesses on the part of Jehiel K. Hoyt,
Henry E. Reddish and Henry C. Ohlen, three of the de-
fendants in the above cause, taken pursuant to notice here-
to annexed, before me one of the Masters and Examiners of
the Court of Chancery of New Jersey, at my office in
Morristown, on Wednesday, the twenty-fourth day of Sep-
tember, eighteen hundred and seventy-three, in the pres-
ence of Frederick G. Burnham, Esq., the solicitor of the
40 the complainant, and of Jacob Vanatta, Esq., the solicitor of
the

defendant David L. Miller although served with notice of the taking of this examination as appears by the acknowledgement of service of said notice by his solicitors endorsed thereon.

GEO W. FORSYTH,
Master in Chancery of New Jersey.

Frederick G. Burnham, a witness produced on the part of the defendants Henry E. Reddish, Henry C. Ohlen and Jehiel K. Hoyt, being duly sworn, on his oath saith :

On the morning of the first day of October, eighteen hundred and seventy-two, I met Mr. Reddish, one of the defendants, by appointment in Madison, and proceeded with him to the residence of Mr. David L. Miller. We asked to see Mr. Miller and saw him. We then informed him that we had come for the purpose of carrying out the agreement made between his father, John B. Miller, deceased, and Mr. Hoyt, and in pursuance of a notice that Mr. Hoyt had sent him (David L. Miller), which notice or a copy thereof, is now in evidence in this cause ; we then asked from him as the heir-at-law of John B. Miller, deceased, the fulfillment of the agreement already referred to and stated our readiness to fulfill the conditions to be performed by Mr. Hoyt ; we tendered him four thousand nine hundred dollars (\$4,900) in legal tenders ; he made no objection to the tender of the money, nor to our offer to execute and deliver the bond and mortgage called for in the agreement, but said he was not then prepared to execute the deed and give title, but desired us to meet him in the after part of the day at the office of his counsel, Mr. Pitney, in Morristown ; I consented to meet him there, although at great inconvenience to myself ; on our way to the cars Mr. Reddish and myself met Mrs. John B. Miller, the widow of John B. Miller ; we found that she entered the same train, the nine o'clock train for New York ; I returned to Morristown in the afternoon according to my appointment, and went to Mr. Pitney's office ; I there found Mr. and Mrs. David L. Miller and Mr. Pitney ; Mr. Pitney presented me a paper purporting to be a conveyance of the premises referred to in the contract, which was signed,

- sealed and acknowledged by David L. Miller and wife; I immediately called Mr. Pitney's attention to the fact, that he produced no release of the right of dower of the widow of John B. Miller; some conversation then ensued respecting the impossibility of procuring a release on their part, when I again tendered the four thousand nine hundred dollars of legal tenders, to Mr. Pitney or Mr. Miller, I forget which, or both—they were both there, and also a bond executed by Mr. Reddish and Mr. Ohlen and a mortgage securing the payment of the bond duly executed and acknowledged, which bond and mortgage were drawn in fulfillment of the clause in the contract relating to the same. No objection was made either to the tender of the money or of the bond and mortgage—but our demand for a conveyance called for by the contract was not complied with; I also called Mr. Miller's attention to certain judgments against him, which were liens of record on this real estate; I am under the impression that at the same time on that same occasion, I referred to a question which had arisen in regard to the title under the will of John B. Miller's father;
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- 20 I was not, however, very particular as to defects of title because I saw the impossibility of their making and conveying a good title; some months prior to this, the defendants Reddish, Ohlen and Hoyt, or some of them had, relying upon the contract for sale, advanced considerable sums of money for the purpose of laying and opening a road, from the main road near the depot in Madison, across the property in question, as will be seen by the map made by Mr. Hancock; the defendants referred to, also exhibited considerable anxiety in regard to the opening of a cross street
- 30 that was called for by the contract; they called my attention to this subject several times. I wish now to say a few words in regard to a matter spoken of by Keep on his examination; I recollect Mr. Keep just about the time of the death of John B. Miller proposing some question, which would arise under the contract in consequence of the death of John B. Miller; Mr. Keep was very frequently in my office, and as I never had been retained in any way by him, and as I could see that the consideration of such questions might be very likely to interfere with the rights of Reddish
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Hoyt and Ohlen, I paid almost no attention whatever to the subject, and in fact considered the thing rather in the light of a " bore."

Witness being cross-examined by counsel for complainant, further says :

Q. In the answer of David L. Miller, he states that previous to the first of October, eighteen hundred and seventy-two, he by his counsel, Mr. Pitney, notified you that he, Miller, preferred to transact any business with regard to said tract of land or its conveyance, or the payment of any money, at Mr. Pitney's office ; is that allegation according to the truth ? 10

A. He never notified me personally of any such preference, and I don't recollect of Mr. Pitney ever notifying me, although he may have done so and I forgotten it ; the first that I remember of any such notification was, as I have already stated, by Mr. Miller at his house on the morning of the first of October.

Q. Did you and Mr. Reddish and Ohlen, or any of you, call at the residence of Mrs. John B. Miller on the morning of the first of October, eighteen hundred and seventy-two? 20

A. I did not, and do not know anything about their calling.

Q. Had you sent her any word that you wanted her to execute a release, and would call on her to receive it, and if so, when did you send it and in what way ?

A. I had sent her no such word ; I was under the impression that she would not execute any such release, that she was inimical to Mr. David L. Miller ; my interview in the afternoon of the first of October, with her counsel, Mr Vanatta, only strengthened me in such impression. 30

Q. At what time did you take the train at Madison for New York on the morning of the first of October ?

A. About nine o'clock ; the train was what was called the nine o'clock express ; I do not know what the train was called ; I am not aware it was the train called the Easton Express ; I seldom consult a time-table and do not know the time-table names of the trains ; I suppose it was a regular train ; I did not say anything to Mrs. John B. Miller 40

about a release that day ; so far as Mr. Reddish is concerned I don't know whether he spoke to her about a release ; he had an interview with her on the cars on that occasion ; I returned home to Morristown from New York that day, I think, on the train that reached Morristown about half-past one in the afternoon.

Q. Did I call at your office before you had met Mr. David L. Miller at Mr. Pitney's office on that first day of October?

10 *A.* I remember your calling, distinctly, on the afternoon of that day, whether before or after I had seen Mr. Miller, I now forget ; I probably told you at the time and you will know better than I will ; my impression is it was after.

Q. Please state what I said to you on that occasion about the payment of the purchase money for this tract of land?

20 *A.* You stated in effect this ; that you looked upon David L. Miller as not the person to receive the consideration mentioned in the agreement for sale, that you desired that I should not make the payment called for by the contract, to him, that you looked upon him simply in the light of a trustee, and that your client, Mrs. John B. Miller, claimed not only a right of dower in the land, but also her rights to a share of the personalty of her husband, and that if we made any payment to David L. Miller which imperiled her rights, she would hold us responsible.

Q. Are you sure that I named Mrs. John B. Miller as my client, or as the person on whose behalf I called upon you ?

30 *A.* The whole point of the conversation related to the rights of Mrs. John B. Miller. I doubt whether you distinctly announced that you had been retained by any body.

Q. Did I not tell you that my interest in the matter was as the attorney or counsel of Mr. Little, the administrator, that I regarded that purchase money as personal property, and that being such, it was not only his right, but his duty to demand it, and that I wanted to notify you that it was not paid to him as administrator, your clients would be called upon to pay it to him, and that he would not re-

40 cognize the payment to David L. Miller ; that he was quite

willing the conveyance should be completed; the only condition was that he should have the purchase money?

A. The interview between us you have referred to, was exceedingly hurried; it did not occupy, I am confident, more than three or four minutes, and on that occasion I do not think Mr. Little's name was mentioned by either of us. At a subsequent interview in the afternoon of the same day and upon one or two other subsequent occasions more especially you did refer to Mr. Little, and did express a willingness that Mrs. John B. Miller should execute the release if proper arrangements were made in regard to the payment of the money and the delivery of the mortgage. 10

Q. In the interview at your office that first of October, did I not specially and distinctly designate the person who, in my apprehension, was entitled to receive that consideration money?

A. So far as I remember, you did designate the person to whom a portion of the consideration money should go and that person was Mr. John B. Miller. The interview was as I say, very short. You did not go into the particulars and merits of the thing as you did afterwards. The impression left in my mind by the interview is this; that you desired in that hurried manner to notify my clients that David L. Miller was not the proper person to make the payment to or to deliver the mortgage to. 20

Q. Will you say that I at any time or at any place ever said or pretended that Mrs. John B. Miller had a right to receive one cent of that money from anybody other than the administrator of her husband?

A. I don't think you ever did say that she was to receive it directly. You did speak at subsequent interviews about her willingness to execute a release of her dower, provided her rights in the estate of her husband were protected, and I wish here to say, that upon your notifying me on the afternoon of the first of October, that I certainly would not allow my clients to make any further payment or delivery of the bond and mortgage, unless Mrs. John B. Miller released her right of dower. 30

Q. Did I not tell you at your office that afternoon, that if the purchase money were paid and secured to Mr. 40

Little that there was no reasonable doubt but that in a very short time he could procure the release of Mrs. Miller?

A. I don't think that you mentioned Mr. Little's name at that interview. You did, however, say that Mrs. Miller would be willing to execute the release of dower upon such a payment as would secure her rights.

Q. In your office that afternoon, did I ask you whether it was material to your clients that the conveyance should be speedily completed; and if I did, what answer did you make?

A. Nothing of the sort was spoken of between us on that afternoon at that place, according to my recollection; which is quite distinct on that point; but on a subsequent occasion, and at your own office, I distinctly remember you mentioning this subject of time, and in answer I stated in a general way that I did not think there was any necessity for immediate haste. But in this connection I wish to say that some time after that interview and after the appointment of Mr. Little as administrator, I saw him and stated to him the then desire of my clients to have the matter immediately consummated; that if not, we should hold the estate liable for damages.

Q. When and where did you make that communication to Mr. Little?

A. I saw Mr. Little on two or three occasions. Once or twice I called upon him at his office in the Bank, and on one occasion on the sidewalk near the entrance to my office. On the first occasion at the Bank we talked the thing over to some extent, and discussed the question of his making a conveyance as administrator under the statute, but I think at that time he stated that the discussion was somewhat premature as something remained still to be done in the way of filing security or issuing letters, which I have now forgotten. I think the first interview with Mr. Little was within a few days or very shortly after my interviews with Mr. Vanatta; it may have been within a day or two after, but the interview on the sidewalk occurred some time subsequently. Those things occurred in the month of October, excepting, perhaps, the last interview, which may have been after.

Q. What I want to get is the time and place, when and where, you notified Mr. Little that your clients would look to him for damages for the non completion of this contract?

A. I did not look upon what passed between us as a legal notification on my part; it simply occurred in a conversation and this conversation was, I think, the last one that occurred between us, to which I have referred. I wish to add here, in regard to the question asked me some time ago, whether Mr. Vanatta said to me distinctly that he had been employed as counsel for the widow of John B. Miller, prior to seeing Mr. Vanatta in the afternoon of the first day of October, Mr. Keep informed me that he had seen Mr. Vanatta about this matter, and that before I saw Mr. Pitney or Mr. David L. Miller, he was very anxious that I should see Mr. Vanatta. He expressed great anxiety about it and exhibited much excitement and informed me then or before that, that as the husband of the widow Miller's daughter, he must protect the widow Miller's interest. 10

Q. Was this last interview you had with Mr. Little before or after you filed your answer in this cause? 20

A. It was some time before the commencement of this suit.

Q. Why did you make no allusion to it in your answer?

A. Probably because I thought it immaterial to do so.

Q. At the interview at your office on the first of October; after I had notified you not to pay the consideration money to David L. Miller, did you not tell me that you was to meet Mr. Miller that afternoon at Mr. Pitney's office; that you were going to make a tender of money and a bond and mortgage to him, but that you didn't expect to give him either the money or the bond and mortgage because you were aware that he could'nt make a clear title and you would'nt accept an encumbered one, and that you were only going through the formality of a tender to preserve the rights of your clients, and that your clients were not particular about having the conveyance immediately completed, and that immediate completion was not material to them? 30

A. At the interview on the first of October, I am now 40

quite confident, that it was before I called to see Mr. Miller and Mr. Pitney and not after. There was nothing said between us, so far as my memory goes, and I am quite sure in regard to the time of the performance of the terms of the contract. I distinctly remember this matter of the time of performance to have been spoken of at a subsequent interview at Mr. Vanatta's office. In the morning, at Mr. Miller's house, Mr. Miller had informed Mr. Reddish and myself that the widow of John B. Miller (his stepmother) would not execute any release of dower; from this fact and from seeing Mrs. Miller go down in the cars that morning, and from my interview with Mr. Keep, the son-in-law of the widow Miller, I felt satisfied that the interview at Mr. Pitney's office with David L. Miller would not result in my clients obtaining a good title to the property, but in their behalf, I intended to make the tender and to carry out, so far as they were concerned, every thing to be done by them, and if possible, to obtain a good title to the property. I stated to Mr. Vanatta on the occasion referred to, that I did not expect that Mr. Miller would be ready to give us proper conveyances for the property.

FRED. G. BURNHAM.

Sworn and subscribed before me,
September 24th. A. D. 1873.

GEO. W. FORSYTH,
Master in Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY.

Between

THEODORE LITTLE,

Administrator of

JOHN B. MILLER, deceased,
Complainant,

and

DAVID L. MILLER,
ET ALS,

Defendants.

Examination of witnesses, &c. on the part of the defendant, David L. Miller, in the above stated cause, taken before me, at my office in Morristown, on Saturday, the eleventh day of October, eighteen hundred and seventy-three, in the presence of Henry C. Pitney, the solicitor of the said defendant David L. Miller, and also in the presence of Jacob Vanatta, the solicitor of the complainant, and of Frederick G. Burnham, the solicitor of the defendants Reddish, Hoyt and Ohlen.

GEORGE W. FORSYTH,

Master and Examiner in Chancery of New Jersey

October 11th, 1873.

Mary Frances Young, a witness produced on the part of the defendant *David L. Miller*, being duly sworn on her oath saith :

I lived in the family of *Mr. John B. Miller*. I did not live there last fall. I have not lived there in ten or eleven years. I was visiting there last fall. I was there the last of September and the first of October last year. I went with *Mrs. Miller* to *Orange* one day about the first of October last. We left in one of the early trains. I do not know which one. *Mrs. Miller* did not think of going at all that morning till just before we started. *Mr. Keep* came over, I believe, and advised her to go down that morning. He said he wanted her to go away so as not to sign some paper until she saw a lawyer. That was the purport of it, I believe. I think he made the remark that there were some gentlemen over at *David L. Miller's* at that time. *Mr. Keep* nor *Mrs. Miller* did not say what those gentlemen were doing over there. I did not know what they were doing till afterwards. I did not hear what the papers were for until some time afterwards. I did not afterwards learn from either *Mrs. Miller* or *Mr. Keep* what the nature of the business was that those gentlemen were transacting at *Mr. David L. Miller's* that morning. I did not understand who the gentlemen were who were at *Mr. David L. Miller's* that morning, only, I saw *Mr. Reddish* at the door. I do not know who any of the others were. I did not, nor did *Mrs. Miller* go to *Orange* on any morning train about the first of October, excepting on that occasion. *Mr. David L. Miller's* home is but a short distance from that of *John B. Miller's*; it is in sight; it is just across the road. I mean by *Mr. Keep*, *Mr. Charles T. B. Keep*. I don't know but one other, a *Mr. Henry Keep*, of *Madison*.

MARY F. YOUNG.

Sworn and subscribed before me,

October 11th, 1873.

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

David L. Miller, one of the defendants, being duly sworn in his own behalf, on his oath saith :

I suppose I am one of the defendants in this case. I am the only son and heir-at-law of John B. Miller. He had one other child besides me. It was younger and by his second wife. I think she was about eight years old when she died. He left other real estate besides the real estate in question in this suit. There was about one hundred and seventy-five acres, I should think, besides that. All of it is valuable. There were some judgments standing of record against me at my father's death which were unpaid. Others were paid but unsatisfied. The judgment of John C. Littell was unpaid. There were two others unpaid. I recollect which those were; one was Harvey DeHart's. I believe his name is John H. DeHart. The small one was Harvey Genung's. Mr. John C. Littell is my brother-in-law. My father was in debt some at the time he died; a very little. The personal property was considerably more than sufficient to pay the debts. I never made any request of the administrator to bring or prosecute this suit. I never spoke to him on the subject. I never had anything to say about it one way or the other and hardly know what position I stand in in that respect. He never consulted me about it. My father was eighty-eight years and nearly six months old at the time he died. The last month of his life he was confined to his bed the most of the time. He was sick about a month from the time he was first taken, I think. Previous to that he didn't do his business as he had been in the habit of doing it. That is, he didn't attend to it himself. It was on account of his age, I suppose. I don't know of any other cause. He was a man who always had a desire to do his business up to a year, perhaps, before his death. And he did do some business, although you could see a decided change in him. That change was what you might call a neglect to do business. He wanted to get some one else to do business for him. His bodily health up to the time he was taken sick, I should consider very good for a man of that age. He was a man who always went out in the open air when he was not on the bed. I do not think his body and mind were as strong the last year of his life as it had been in previous years. I think I could see a decided change in them. He had differ-

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ent ones to attend to his business. Some times I did. Whenever he asked me to do anything I did it, of course. I did a very little part of his business. Mr. Keep done a considerable of his business. Mr. Edward Keyes did a considerable of his business. He lived with my father, and I guess, kept his books a considerable time previous to his death. Mr. Keep lived near by. You might say he was at my fathers house all the time ; nearly all the time when he was at home. When he was in the neighborhood he was there the most of the time. My father had very little business away from home ; the principal part of his business was in the cider business, keeping the cider books and work on the farm. I know Jehiel K. Hoyt by sight. I believe his reputation as to pecuniary responsibility is bad.

Witness being cross-examined by counsel of complainant, further saith :

I can't tell when my father was married to his second wife ; they had been married for twenty-five or thirty years prior to his death.

Q. Up to the month of August, eighteen hundred and seventy-two, did your father not go about his work and business every day as he had been accustomed to do for many years ?

A. No, sir. He called on me about the first of July. I think a little previous to that, too ; the latter part of June to the first of July. He wished me to go into the meadow with the hands. He said he was not able to go. That was when we first commenced haying ; I think the latter part of June. This was something new entirely. He never asked me before to go into the meadow with his hands ; I did so ; I went into the meadow ; he said he was not able to go into the meadow and wanted me to go, which I did. He did not go into the meadow at all ; I don't know as I can recollect, what he complained of ; I think, about the house--the meadows that were right in the immediate neighbourhood of the house--he was with the hands a small part of the time. He went out and was with the hands a few moments ; probably half an hour.

Q. Even as late as August, if any one called to see him at his house; he would talk with them intelligently about the business they had with him; would he not?

A. Of course. He was not confined to his bed all the time, and when he was confined to his bed he was intelligent.

Q. On the first of October, eighteen hundred and seventy-two, when Mr. Burnham threatened you with some greenbacks and talked about a mortgage—perhaps showed one—would you have been willing to have given him a deed of conveyance of the property in question in this cause upon the understanding that instead of making the cash payment to you he should make it to your father's administrator, and instead of making the bond and mortgage to you to secure the residue of the consideration money, he should make it to your father's administrator? 10

(Objected to as irrelevant and incompetent by David L. Miller's counsel, on the ground that what the witness was willing to do, or would be willing to do upon a hypothetical case has nothing to do with this cause.) 20

(Objected to also by the counsel of the defendants Reddish, Ohlen and Hoyt, upon the same grounds, that is, irrelevant and hypothetical.)

A. I do not know what I should have done in such a case. That is altogether foreign.

Q. Were you then ready or willing to deliver to Mr. Burnham for Messrs. Ohlen and Reddish a conveyance of the land in question, without any part of the purchase money being paid or secured to you? 30

(Objected to by counsel of defendant David L. Miller, upon same grounds as former question.) Objected to by counsel of defendants Ohlen, Reddish and Hoyt upon the same grounds as former question.)

A. I was not.

Q. Have you been at any time since?

(Objected to by Mr. Burnham as immaterial and irrelevant.)

A. No, sir.

Q. State about how much was owing on the judgment of John C. Littell against you on the first of October, eighteen hundred and seventy-two?

- A. Something like three thousand dollars, I think—a little short of that. That judgment has not been paid.
- 10 About the same amount is owing on it. It has not been reduced. The judgment in favor of John H. De Hart has been wholly paid off. I do not think it has been canceled. Mr. Voorhees' judgment was wholly paid off at the time my father died. It was paid ten years ago. The judgment in favor of Appollos, David and George Wetmore was wholly paid in my father's life-time. It was paid so long ago I do not remember when I paid it. Harvey C. Genung's judgment has been wholly paid off. There had been nothing paid on the DeHart judgment on the first day of October
- 20 of last year. I paid that to the present sheriff, I think.

Witness being cross-examined by counsel for the defendants Reddish, Ohlen and Hoyt, says: I believe the judgments I have referred to are not yet cancelled of record. That seemed a very difficult thing to get done.

- Q. Are you so acquainted with the affairs of the administration of John B. Miller, deceased, as to be quite positive that his personal property at the time of his death
- 30 was much more than sufficient to pay his debts?

A. I am.

Q. I wish to call your attention to the clause in the contract between your father and Mr. Hoyt referring to the opening of a side street, which in that contract your father agreed should be opened by the first of September, eighteen hundred and seventy-two. Has that street ever been opened, or any attempt or beginning made in opening it?

- 40 (Objected to by counsel of complainant as an erroneous construction of the contract.)

A. I think not. It is a matter of considerable expense to open it.

Q. Does not the value of the land agreed to be purchased depend to a considerable extent upon the fulfillment of that part of the contract?

A. I should think it did.

Witness being again examined by his counsel, says :

Q. How much of the time of the last summer of his life did your father abstain from attention to his business, or any part of it? 10

A. I think the most of the time. Of course, he had an eye to it, but I know when he called on me he had a desire to get rid of it.

DAVID L. MILLER.

Sworn and subscribed before me,

October 11th, 1873.

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

Henry C. Pitney, a witness produced on the part of the defendant, being duly sworn, on his oath saith : 20

Shortly before the first day of October, eighteen hundred and seventy-two, Mr. David L. Miller consulted me respecting the claim for performance of the contract in question made upon him by notice to fulfill the contract entered into by his father. I arranged with him to come to my office on the first day of October with his wife, and in the mean time notified Mr. Burnham, in whose hand-writing the notice served upon Mr. Miller was, that if he had any demand to make on Mr. Miller he would find him at my office, at an hour named, on the first day of October. Mr. Burnham consented that whatever business was transacted should be done at my office on that day. I am not sure, however, that he did not say something about going to Madison early on the morning of the first of October to take acknowledgments or something of that kind. At any rate, on the first day of October, about two o'clock, Mr. David L. Miller and his wife appeared in my office, and I had a deed already prepared, which Mr. Miller and 40

his wife executed which I hold in my hand and now offer as an exhibit.

Which deed I have marked Exhibit No. 1, on the part of the defendant David L. Miller.

Mr. Burnham appeared there and tendered some money and bonds and mortgages, which neither I nor Mr. Miller examined, but assumed to be correct, and on behalf of Mr. Miller, I then and there tendered ourselves ready and willing to deliver the deed upon payment of the money and delivery of the mortgages, provided Mr. Burnham would satisfy me that there was a valid and existing agreement which would have compelled John B. Miller to have conveyed, were he alive; I referred of course in this proviso to the circumstance that the time for the performance of the contract mentioned in it had passed, and no evidence appeared of any valid extension of the time for the performance; Mr. Burnham, as near as I can now recollect, stated that there had, he thought, been some agreement for extension, but did not produce any evidence of it on that day or at any other time; Mr. Burnham declined to accept the deed tendered unless the widow Miller executed a release of her dower, and on that ground the business failed that day. With regard to the judgments standing unsatisfied against Mr. Miller, no point was made by Mr. Burnham about them; they were mentioned but the fact that Mr. Miller had abundance of other property from which to satisfy them, and that the amount of cash tendered was sufficient to cover them or so much of them as were unpaid, was mentioned as providing a means of avoiding all difficulty, on the score of the judgments; it was distinctly understood that the judgments formed no obstacle to the passing of the title; we consented on our side that they might be satisfied out of the purchase money and Mr. Burnham was satisfied with that; and the whole ground of the sale going off was the absence of the widow's release of dower, that was so far as Mr. Burnham's clients were concerned; we on our side claimed proof of the existence of the contract as before stated; I have here the notice served Mr. Miller by Mr. Hoyt, the body in Mr. Burnham's hand-writing, the signature in Mr. Hoyt's hand-writing—I now

produce it; I am acquainted with Hoyt and somewhat with his pecuniary responsibility; he has, as I understand, no property in his own name and our office has a judgment against him, which we have been unable to collect.

Witness offered in evidence the notice from Jehiel K. Hoyt to David L. Miller, referred to in his testimony above and I have marked the same Exhibit No. 2 on part of defendant David L. Miller.

HENRY C. PITNEY.

Sworn and subscribed before me October 11th, 1873. 10

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

Mr. Frederick G. Burnham being called by the defendant David L. Miller for cross-examination, says on cross-examination by Mr. Pitney:

Q. When cross-examined by Mr. Vanatta in my absence on the twenty-fourth of September, you gave some evidence about a remark made by you to Mr. Vanatta, that you did not think there was any necessity for immediate haste in completing the contract. Please state the circumstances under which that remark was made, the time when that remark was made, and what authority if any, you had from your clients for making it? 20

A. After my interview with you and Mr. and Mrs. David L. Miller at your office on the afternoon of the first day of October, 1872, I called at Mr. Vanatta's request at his office; we then had a more lengthy conversation about the matter of the fulfillment of the contract than had taken place earlier in the afternoon when he first called on me, the first interview being quite hurried. It was at this second interview that in answer to a question from him, I spoke in, as I suppose a casual manner of there being no necessity for immediate haste in the fulfillment of the contract; this answer I made without any consultation with or direct authorization from my clients Hoyt, Reddish and Ohlen, but I spoke judging from what I supposed to be their interest; in saying what I did, however, I did not contemplate any extended delay, but rather one which would en- 40

able Mrs. John B. Miller time sufficient to arrange for the execution and delivery of her release of dower. I will state here that since my attention has been called particularly to this incident, I am confident that this interview occurred as I have stated, on the afternoon after my interview with Mr. Pitney.

FRED'K G. BURNHAM.

Sworn to September 24th, 1873, and subscribed October 15th, 1873, before me.

10

GEO. W. FORSYTH,

Master in Chancery of New Jersey.

I certify that in the taking of the examination in this cause, I have taken down the same by entering both question and answer in such cases as in my opinion it was necessary from the subject matter to obtain a correct understanding of the evidence.

GEO. W. FORSYTH,

Master in Chancery.

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Exhibits on Part of Complainants.

EXHIBIT A.

Cancelled Int. Rev. Stamp.	Cancelled Int. Rev. Stamp.	Cancelled Int. Rev. Stamp.
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This agreement made this tenth day of June, A. D., eighteen hundred and seventy-two, between John B. Miller of the Township of Chatham, in the County of Morris, and State of New Jersey, of the first part, and Jehiel K. Hoyt of the same place of the second part, Witnesseth, that the said Miller for and in consideration of the sum of thirty-nine thousand three hundred and ninety-two dollars to be paid as hereinafter mentioned, doth agree with the said Hoyt that he will well and sufficiently convey to the said Hoyt,

his heirs and assigns, or to such person or persons as the said Hoyt may designate on or before the first day of September next ensuing, by a full covenant warranty deed free and clear from all incumbrances, all that tract or lot of land and premises situate lying and being in the Township of Chatham, in the County of Morris and State of New Jersey, butted and bounded as follows, to-wit: Beginning at a stone monument marked "W. B. 1855" at the south-west-
 10 erly corner of the old Jonathan Harris lot, and also a corner to land owned by William Bryce at the date hereof; running thence (1) along said Bryce's land north forty-nine degrees and thirty minutes, east fifteen chains and six links to another stone monument marked "W. B. 1855" another corner of said Bryce's land; thence (2) south forty-one degrees and fifteen minutes, east seven chains to a corner of the Daniel Genung and Abraham Cory lot; thence (3) along the same north sixty-three degrees and thirty minutes, east twelve chains and sixty-four links to another corner of said Genung and Cory lot, also corner to a lot now owned
 20 by Mary Miller, thence (4) along the line between the said last mentioned two lots north fifteen degrees and thirty minutes, west seven chains and forty-four links to another corner of said Genung and Cory and Mary Miller lots; thence (5) along line of said Genung and Cory lot and partly along the Calvin Genung lot north eighty-five degrees and thirty minutes, west six chains and thirty-nine links to a stone for a corner; thence (6) north seventy-three degrees and fifteen minutes west two chains and forty-one
 30 links to a corner in the pond; thence (7) south forty-five degrees and thirty minutes, west three chains and ninety links; thence (8) north thirty-eight degrees and fifteen minutes, west thirteen chains and sixteen links; thence (9) south fifty-three degrees and thirty minutes, west nineteen chains and eighty-three links to a stone for a corner; thence (10) south forty-one degrees and ten minutes, east ninety-eight and one half links to a stone, corner of lands of Margaret A. Keep; thence (11) south fifty-one degrees and forty-five minutes west one chain and eighty-six links to another corner of said Margaret A. Keep's land, thence (12) south
 40 forty-one degrees and ten minutes east, sixteen chains and

fifty-three links to the place of beginning ; containing forty-nine acres and twenty-four hundredths of an acre of land. The above description is taken from a map recently made by John W. Hancock for the said John B. Miller.

And the said Miller agrees that he will open a new road sixty-feet in width on or before the second day of September next from the Upper Madison Road to the new road lately laid out through the above described premises and marked on the map thereof recently made by John W. Hancock as aforesaid.

And the said Hoyt, for himself, his executors and administrators doth covenant, promise and agree to and with the said Miller, his executors and administrators, that he the said Hoyt, will pay or cause to be paid to the said Miller his heirs or assigns, the consideration of said purchase in manner as follows :—the sum of one hundred dollars on the execution of this agreement ; and on the day of the execution and delivery of said conveyance, the further sum of four thousand nine hundred dollars and that upon the last above named day he or such person or persons to whom said conveyance shall be delivered, shall execute and deliver to the said Miller his or their bond and mortgage upon said premises to secure the sum of thirty-four thousand three hundred and ninety-two dollars, being the residue of the purchase money aforesaid, which said sum secured by said bond and mortgage shall be payable at the termination of seven years from the date thereof ; and that the interest thereon shall be payable annually, and shall begin to run only six months after the date of the delivery of said conveyance.

It is also agreed that said bond shall contain the usual sixty day interest clause.

It is further agreed between the parties hereto that the said mortgage shall contain an agreement whereby the said Miller, his executors, administrators or assigns shall release to the said Hoyt, his heirs, executors, administrators or assigns, any portion of said premises on the payment to him the said Miller of such sum as shall be equivalent to the rate of eight hundred dollars per acre for such part to be released ; and such sum so paid shall thereupon be en-

dorsed upon the said bond as a payment on account thereof.

In Witness Whereof, the parties to this agreement have hereunto set their respective hands and seals the day and year herein first above written.

JOHN B. MILLER.

SEAL

10

JEHIEL K. HOYT.

SEAL

Executed and delivered in the presence of

JOHN W. HANCOCK.

Received this tenth day of June, 1873, from J. K. Hoyt, one hundred dollars, being the first payment named within the foregoing agreement.

20

JOHN B. MILLER.

STATE OF NEW JERSEY.—MORRIS COUNTY, ss :

Cancelled
Int. Rev.
Stamp.

Be it remembered, That on the tenth day of June, A. D., one thousand eight hundred and seventy-two, before me
30 John W. Hancock, a Commissioner of Deeds in and for said county, personally appeared John B. Miller and Jehiel K. Hoyt, who, I am satisfied, are the grantors named in the within instrument of writing, to whom I first made known the contents thereof, whereupon they each acknowledged that they signed, sealed and delivered the same for the uses and purposes therein expressed, as their voluntary act and deed.

JOHN W. HANCOCK,
Commissioner.

40

EXHIBIT B.

LAW OFFICE OF F. G. BURNHAM,
MORRISTOWN, NEW JERSEY,)
August 20th, 1872. }

Mr. John B. Miller :

DEAR SIR.—I have rec'd your note of to-day. I see no objection on the part of Mr. Hoyt to a postponement of the delivery of your deed to October first, and I hereby consent to it.

10

You will thus save the stamps, which will be quite a large amount.

The deed can be prepared in the early part of September and executed, but not fully delivered till Oct. 1st.

Very truly yours,

F. G. BURNHAM.

EXHIBIT C.

20

MADISON, N. J.,)
20 Aug., 1872. }

F. G. Burnham Esqr.

DEAR SIR.—If you see no objection, it will be a convenience to me, if the completion of the conveyance of the lands agreed to be sold to Mr. Hoyt or his nominee be postponed until the first of October next ensuing.

Yours faithfully,

JOHN B. MILLER. 30

EXHIBIT D.

MADISON, Sept. 23rd, 1872.

Mr. David L. Miller :

SIR.—It becomes my duty to make the following statement to you :

On the 10th day of June last, the late John B. Miller, 40

10 your father, and I, executed a contract for the sale by him to me or to such person or persons as I should designate, of certain lands lying near Madison and consisting of forty-nine and twenty-four one hundredths acres for the price of \$39,392 (thirty-nine thousand three hundred and ninety-two) to be paid as follows: One hundred dollars on the execution of the agreement, and on the day of the execution and delivery of the conveyance, the sum of four thousand nine hundred dollars; the balance to be paid by mortgage to be executed by the grantee or grantees in said lands. On the execution of the agreement I paid John B. Miller one hundred dollars, and on the 1st September stood ready to fulfill the agreement, but at his written request, postponed the day for the payment of the sum of \$4,900 and the delivery of the deed and mortgage and fulfillment of the contract to October 1st, 1872. Your father in the meantime has died. I stand ready and am desirous of completely fulfilling the contract which was recorded in the office of the clerk of this County on September 5th, 1873. As your father died intestate and you are his sole heir-at-law, I look to you for the fulfillment of the contract on his part. On the first day of October next I shall request from you and I now request you to deliver on that day a deed of said premises in conformity with said contract.

I designate as the persons to whom said conveyance shall be made and delivered, Henry E. Reddish and Henry C. Ohlen, both of Madison, and on that day the second payment of forty-nine hundred dollars will be ready for you.

The bond and mortgage for the balance of the purchase money as contemplated in the agreement will be ready for delivery on that day.

Very respectfully,
(Signed,) JEHIEL K. HOYT.

EXHIBIT F.

MADISON, NEW JERSEY, }
Dec. 13 1872. }

Theodore Little, Esq.,

Administrator of John B. Miller, Deceased.

Sir.—My late husband John B. Miller, deceased on or about the 10th of June. 1872, made an agreement with Jehiel K. Hoyt, by which he agreed to convey to Hoyt, or his appointee, free of incumbrances, a tract of land at or near Madison, containing forty-nine 24-100 acres for the price of thirty-nine thousand three hundred and ninety-two dollars. I expected to join with my husband in the conveyance of that land so as to release to the purchaser my right of dower therein, but before any conveyance was executed, my husband died.

I am still ready and willing to do what and all I can to perform that agreement, and I am ready to deliver to any person, or persons who may become the purchaser of said land under and pursuant to said agreement, a release duly executed of my dower and right of dower in and to said land, provided the purchase money be paid so far as paid and secured, (so far as time is given on any part of it for payment,) to you as Administrator of John B. Miller, deceased. I being willing to take for my interest in said land or for my share of the said purchase money such share or portion thereof, as the courts in New Jersey shall adjudge to be my right. And in consideration of the premises, I do hereby offer to and agree with you that if you will, by judicial proceedings, or otherwise, cause, or procure the said agreement to be specifically performed and the purchase money therein named to be paid and secured to be paid to you as administrator as aforesaid, that I will whenever the said purchase money is so to be paid and secured, at your request, deliver to the purchaser or purchasers receiving the conveyance, a full release of my dower and right of dower in said land, I, in that case, being willing to receive from you as administrator as aforesaid, such portion of said purchase money as shall be adjudged to belong to me.

I am not willing and do not consent that said purchase

money shall be received by or for David L. Miller, as heir
of John B. Miller, deceased or otherwise.

Respectfully yours &c.,

MARY MILLER.

Witness present—CHAS. T. B. KEEP.

— — —
EXHIBIT G.

10

AGREEMENT TO SELL.

MADISON, April 25, 1872.

For and in consideration the sum of one dollar, to me in
hand paid by J. K. Hoyt, the receipt of which is hereby
acknowledged, I agree to sell to him, or to such a company
of individuals as may be named by him, on he or their
paying to me the further sum of one hundred dollars, and
agreeing to buy all the land held by me in fee simple lying
20 between the Village of Madison, and the East Madison
Road (except the lot or lots of land lying on the Columbia
road and immediately contiguous thereto which are re-
served and not bound by this agreement) the said land
measuring forty-five acres or thereabouts more or less, no-
tice to me being given of the intention to close such sale
on or before the first day of June next ensuing, the general
terms of such sale are to be eight hundred dollars per acre
for the land, of which five thousand dollars is to be paid in
cash, the balance to be secured on the property in the form
30 of a bond and mortgage, and I agree on the proper stipu-
lations being fulfilled, to give a good and valid warrantee
deed for the property so disposed of, the said bond and
mortgage shall be for five years, and interest thereon shall
commence at six months from the date of its execution. I
also agree to open a road between the house now occupied
by David Miller and my barn, extending to the land now
sold, not less than three rods wide.

JOHN B. MILLER.

Witness—EDGAR D. KEYES.

40

EXHIBIT H.

Agreement made this 28th day of May, 1872, between Henry E. Reddish, Henry C. Ohlen, Jehiel K. Hoyt and Charles T. B. Keep, all of the village of Madison, in the Township of Chatham, in the County of Morris and State of New Jersey.

Whereas, these parties are desirous of having opened and worked a new road in the village of Madison, which has been this day laid by the surveyors of the highways of the County of Morris, as appears by their return thereof, and in order to open said road it is necessary to purchase the lot now owned by Henry Bardon and remove therefrom his residence, and also to purchase certain lands now owned by John B. Miller, containing forty-nine twenty-fourths one-hundredths acres; and whereas it is desirable to remove said Bardon House to some other lot and to repair and sell it; and also to prepare and sell lands and to do all acts necessary to either of the above objects.

Now, therefore, it is agreed by and between the persons above named, as follows :

First. They hereby assume two certain agreements and all the covenants and responsibilities therein contained, made on the 26th April, 1872, the said Hoyt, Reddish & Ohlen of the second part, one of which agreements was to Mrs. J. Brittin of the first part and the other with Henry Bardon of the first part, and they hereby promise to perform said agreements as far as they were to be performed by said parties of the second part, and to accept their responsibilities.

Second. They hereby assume that certain agreement of sale of said land made by said Hoyt with said John B. Miller, dated April 25th, 1872; it being understood that upon a survey of said lands by John W. Hancock, said Hoyt shall enter upon a further and more particular agreement with said Miller for the purchase of said forty-nine twenty-four one-hundredths acres of land for the price of \$39,392, and that said agreement shall issue to the benefit of the parties hereto, and its covenants and liabilities shall be performed

by said parties as far as they are to be performed by said Hoyt.

10 Third. When the title to the lands named in said three contracts is acquired thereunder, said title shall be vested in said Reddish and Ohlen as joint tenants and not as tenants in common, and they shall hold the same for the purposes herein named and for none other, and they shall make, execute and deliver good and sufficient deeds therefor, or for any part thereof, when and only when directed to do so as is hereinafter set forth, without any delay or excuse, and without making or exacting any charge for their services in holding said premises or in executing said conveyances.

20 Fourth. The title to said land shall be acquired and vested in said Reddish and Ohlen as above stated, for the purpose of holding, improving and selling or leasing the same under and in compliance with the directions herein contained. The parties hereto shall pay for said property and for all the charges and expenses contemplated by this agreement in manner following: Eighth-twentieths by said Ohlen, four-twentieths by said Reddish, four-twentieths by said Hoyt, and four-twentieths by said Keep, and in like proportions shall the said parties be interested in the avails of said lands. The said parties shall meet, if not before, on the 20th August, at the residence of said Ohlen, near the village of Madison, at the hour of eight in the evening, and organize by the appointment of a chairman, secretary and treasurer, who shall serve until displaced and without salary, commissions or charges. It is understood also that
30 no salary fee, or commission be charged by or allowed to either of the trustees herein named.

Fifth. The secretary shall keep a book in which shall be entered the names of the parties interested herein and the extent of their interest and their usual post-office address, and all questions at any meeting shall be decided by a majority of the ballots cast, eleven ballots being necessary in all cases to constitute a majority, each
40 twentieth part or share herein being entitled to cast one share or more of interest herein at any meeting, such per-

son may appoint by instrument duly executed any other owner of at least one share to vote in his stead. Said shares may be assigned and upon due notice to said secretary of such assignment and of the name and post-office address of such assignee, he shall enter a memorandum of such transfer, and if the name and address of the assignee in said book, and only such shares that are entered in said book shall be entitled to be voted upon; any assignment however of any share or of any part of the interest of any person in said shares, shall be subject to the terms and conditions of this agreement, and subject to any unpaid dues or assessments upon such share or interest. The secretary shall, after any measure requiring the expenditure of money in the manner above stated, serve a written notice upon the person who shall appear in said book to be the owner of one share or more by mailing the same to such person at the post-office in the village of Madison, directed to him at his post-office address, with the postage thereon prepaid, stating the proportionate amount due on the share or shares of such person, and the date and place at which the same is payable, which shall not be less than ten days from the time of mailing such notice; and if after the elapse of such time said payments shall not be made, then it may be lawful for said secretary to notify said person and all others interested herein by mailing notices thereof as aforesaid; that said payment has not been made and that said share or interest will be sold to the highest bidder therefor, at same time and place in the village of Madison, to be definitely stated in said notice, but said time of sale shall not be earlier than thirty days after the mailing of said last named notices. Upon such sale the party bidding and paying the highest price therefor shall be the owner of such share or shares, and from the amount so paid shall be first deducted all moneys at that time due thereon, together with any arrearage of interest thereon, and the balance, if any, shall be paid over to the former owner of share or interest.

The secretary shall keep a book of minutes, in which shall be entered all the proceedings had at any and every meeting and all the proceedings had on any sale of any share.

Sixth. If it be decided at any meeting that any loan or loans be procured on the real estate held by said Ohlen and Reddish as trustees as aforesaid, they shall thereupon execute their bond and mortgage on said property to secure such loan but to no extent shall they be asked to secure by such loan, more than one-half of the value of the land embraced in such mortgage, and all the parties hereto shall execute such bond or be personally liable for the amount secured thereby.

- 10 Seventh. Said Ohlen and Reddish shall not in any manner encumber said property, or permit the same to be encumbered; nor shall they or either of them convey the same nor any part thereof, except in obedience to a resolution passed by a vote of a majority of said ballots cast at some meeting called as aforesaid.

20 The title to so much of said premises as remains unsold shall at any time be conveyed to some other trustee or trustees who shall hold the same under the same trusts and conditions as are herein stated, provided a resolution to that effect be first passed by a majority of the ballots at a meeting regularly called (it being intended that said majority shall in all cases amount to at least eleven ballots.)

- 30 Eighth. Upon the lapse of seven years, from the first day of September next, all the property remaining unsold shall be sold at public sale to the highest bidder, and all the interests and liabilities created by or arising under this agreement shall then be terminated; but no final adjustment shall be made till all liabilities and responsibilities on the part of either of the parties hereunto arising or assumed under or by virtue of this agreement, shall be paid off and discharged.

Ninth. All the books of accounts and of minutes and proceedings shall be at all times open to the inspection of any of the parties interested herein. It is understood that the heirs, executors, administrators and assignees of the parties hereto are bound by this agreement.

In witness whereof the said parties hereto have hereunto set their respective hands and seals, the day and year first aforesaid.

(Signed)

HENRY E. REDDISH.

SEAL.

HENRY C. OHLEN.

SEAL.

JEHIEL K. HOYT.

SEAL.

10

CHAS. T. B. KEEP.

SEAL.

Executed in the presence of

S. V. OHLEN,

Witness for Henry E. Reddish, Henry C. Ohlen, Jehiel K. Hoyt and Chas. T. B. Keep.

Although dated 28th of May, 1872, not executed until 20th August, 1872.

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Exhibits on Part of Defendants.

20

EXHIBIT No. 1.

30 This Indenture made the first day of October, in the year of our Lord one thousand eight hundred and seventy-two, between David L. Miller and Sophia his wife, of the Towaship of Chatham, in the County of Morris and State of New Jersey, parties of the first part, and Henry E. Reddish and Henry C. Ohlen, of the Township of Chatham, in the County of Morris and State of New Jersey, parties of the second part :

40 Witnesseth, that the said party of the first part, for and in consideration of thirty-nine thousand three hundred and ninety-two dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and

confirmed, and by these presents do give, grant, bargain
sell, alien, release, enfeoff, convey and confirm to the said
party of the second part, and to their heirs and assigns
forever, all that tract or lot of land and premises situate,
lying and being in the Township of Chatham, in the Coun-
ty of Morris and State of New Jersey: Butted and bound-
ed as follows, to-wit: Beginning at a stone monument
marked "W. B. 1855" at the southwesterly corner of the
old Jonathan Harris lot, and also a corner to land owned by
William Bryce at the date hereof, running thence (1) along
said Bryce's land North forty-nine degrees and thirty min- 10
utes east fifteen chains and six links to another stone mon-
ument "marked W. B. 1855," another corner of said Bryce's
land; thence (2) south forty-one degrees and fifteen min-
utes east seven chains to a corner of the Daniel Genung
and Abraham Cory lot, thence (3) along the same North
sixty-three degrees and thirty minutes east twelve chains
and sixty-four links to another corner of said Genung and
Cory lot; also corner to a lot now owned by Mary
Miller, thence (4) along the line between the said last 20
mentioned two lots north fifteen degrees and thirty min-
utes, west seven chains and forty-four links to another
corner of said Genung and Cory and Mary Miller lots;
thence (5) along line of said Genung and Cory lot and
partly along the Calvin Genung lot north eighty-five de-
grees and thirty minutes, west six chains and thirty-nine
links to a stone for a corner; thence (6) north seventy-three
degrees and fifteen minutes west two chains and forty-one
links to a corner in the pond; thence (7) south forty-five 30
degrees and thirty minutes, west three chains and ninety
links; thence (8) north thirty-eight degrees and fifteen min-
utes, west thirteen chains and sixteen links; thence (9)
south fifty-three degrees and thirty minutes, west nineteen
chains and eighty-three links to a stone for a corner; thence
(10) south forty-one degrees and ten minutes, east ninety-
eight and one half links to a stone, corner of lands of Mar-
garet A. Keep; thence (11) south fifty-one degrees and forty-
five minutes west one chain and eighty-six links to another
corner of said Margaret A. Keep's land, thence (12) south
forty-one degrees and ten minutes east, sixteen chains and 40

fifty-three links to the place of beginning ; containing forty-nine acres and twenty-four hundredths of an acre of land. The above description is taken from a map recently made by John W. Hancock for John B. Miller.

Being the same premises of which John B. Miller, late of said Township of Chatham, lately died seized. The said David L. Miller being the sole heir-at-law of said John B. Miller.

10 This conveyance is made subject to the right of dower if any, of the widow of said John B. Miller in said premises.

20 And also subject to all assessments for benefits or otherwise heretofore made and levied on said premises by any surveyors of the highways for the opening of any highway or highways through the same, all which assessments said parties of the second part hereby assume and agree to pay over and above the consideration money above expressed. Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof : To Have and to Hold, all and singular the above described land and premises, with the appurtenances, unto said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever ; and the said David L. Miller does for himself, his heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that he the said David L. Miller is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging ; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended

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to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever; except as hereinbefore mentioned. And also, that the said party of the first part now hath good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid; and also that he the said David L. Miller will warrant, secure, and forever defend the said land and premises unto the said Henry E. Reddish and Henry C. Ohlen, heirs and assigns, 10 forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

DAVID L. MILLER. : SEAL. : 20

SOPHIA M. MILLER. : SEAL. :

Signed, Sealed and Delivered in the presence of
H. C. PITNEY.

STATE OF NEW JERSEY.—COUNTY OF MORRIS, SS :

Be it Remembered, That on this first day of October, in 30 the year of our Lord one thousand eight hundred and seventy-two, before me, Henry C. Pitney, Master in Chancery of N. J., personally appeared David L. Miller and Sophia his wife, who I am satisfied, are the grantors in the within deed of conveyance named, and I having first made known to him the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Sophia Miller being by me privately examined, separate and apart from her husband, did further acknowledge that she signed, sealed, and de- 40

livered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

H. C. PITNEY,

M. O. C.

EXHIBIT No. 2.

10

MADISON, Sept. 28th, 1872.

Mr. David L. Miller :

SIR.—It becomes my duty to make the following statement to you :

On the tenth day of June last, the late John B. Miller, your father and I executed a contract for the sale by him to me, or to such person or persons as I should designate, of certain lands lying near Madison and containing forty-nine 24-100 acres for the price of thirty-nine
 20 thousand three hundred and ninety-two dollars (\$39,392), to be paid as follows : One hundred dollars on the execution of the agreement, and on the day of the execution and delivery of the conveyance the sum of four thousand nine hundred dollars, the balance to be paid by a mortgage to be executed by the grantee or grantees on said lands. On the execution of the agreement I paid John B. Miller one hundred dollars and on the first of September stood ready to fulfill the agreement, but at his written request postponed
 30 the day for the payment of the sum of \$4,900, and the delivery of the deed and mortgage and fulfillment of the contract, to October first, 1872. Your father in the meantime has died. I stand ready and desirous of completely fulfilling the contract, which was recorded in the office of the Clerk of this County on September 5th, 1872. As your father died intestate and you are his sole heir-at-law, I look to
 40 you for the fulfillment of the contract on his part. On the first day of October next I shall request from you, and I now request you to deliver on that day, a deed of said premises in conformity with said contract. I designate as the persons to whom said conveyance shall be made and
 40 delivered, Henry E. Reddish and Henry C. Ohlen, both of

Madison, and on that day the second payment of forty-nine hundred dollars will be ready for you. The bond and mortgage for the balance of the purchase money as contemplated in the agreement will be ready for delivery on that day.

Very Respectfully,

JEHIEL K. HOYT

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In Chancery of New Jersey.

OCTOBER TERM, 1874.

THEODORE LITTLE, *adm.*, &c., OF

JOHN B. MILLER, *dec'd.*

vs.

DAVID L. MILLER, *et als.*

10

On bill for specific performance, &c. On final hearing.
Reading and proofs.

Mr. JACOB VANATTA for *Complainant*.

Mr. H. C. PITNEY for David L. Miller.

Mr. F. G. BURNHAM for Hoyt, Reddish & Ohlen.

THE CHANCELLOR:

On the tenth day of June, 1872, John B. Miller, now deceased, being the owner in fee of a tract of land of forty-nine acres and twenty-four hundredths of an acre, situated in the township of Chatham in the County of Morris, in this State, entered into an agreement with Jehiel K. Hoyt for the sale of those premises to the latter for the price of \$39,392. The agreement was in writing, and was signed by both parties.

By it Miller, for the consideration of that sum, agreed with Hoyt that he would well and sufficiently convey the land to Hoyt, his heirs and assigns, or to such person or persons as Hoyt might designate, on or before the first day of September then next, by a full covenant warranty deed, free and clear from all encumbrances, and that he would open a new road sixty feet in width on or before the second day of the last mentioned month, from the upper Madison road to a new road then lately laid out through the property. On his part

10 Hoyt covenanted with Miller to pay or cause to be paid to the latter, his heirs or assigns, the consideration money, as follows: One hundred dollars on the execution of the agreement, and on the day of the execution and delivery of the deed of conveyance the further sum of \$4,900; and that on the last named day he, or the person or persons to whom the deed of conveyance should be delivered, should execute and deliver to Miller, his or their bond and mortgage upon the premises to secure the sum of \$34,392, the residue of the purchase money, which sum secured by the bond and mort-

20 gage should be payable at the termination of seven years from the date of the bond and mortgage, the interest to be payable annually and to begin to run six months after the date of the delivery of the deed of conveyance. It was also thereby agreed that the bond should contain the usual sixty days interest clause, and that the mortgage should contain an agreement whereby Miller, his executors, administrators or assigns, should release to Hoyt, his heirs, executors or assigns, any portion of the premises on the payment to Miller of such sum as should be equivalent to the rate of

30 \$800 per acre for such part to be released, and that such sum so paid should thereupon be indorsed on the bond as a payment on account thereof. On or about the 20th August, 1872, it was agreed between Miller and Hoyt that the time for the delivery of the deed should be extended to the first day of October then following. Before the last mentioned day, Miller died. The deed had not yet been delivered.

Miller died intestate, leaving a widow and one child, the defendant, David L. Miller, his sole heir at law. John B. Miller on the 25th April, 1872, had made an agreement in writing with Hoyt, by which for consideration of one dollar he agreed to sell the premises in question to Hoyt, or to such company or individuals as might be named by him, on his or their paying Miller the further sum of \$100 and agreeing to buy the property; notice of intention to close the sale to be given to him before the first of June then next. The general terms of the sale were to be \$800 per acre, of which 10 \$5,000 were to be paid in cash and the residue to be secured by bond and mortgage on the property, payable in five years, interest to commence six months from the execution of the bond and mortgage. Miller thereby agreed that on the fulfillment of the proper stipulations he would give a good and valid warranty deed for the property. He also agreed to open a road between the house then occupied by David Miller and his, John B. Miller's barn, extending to the land in question, and not less than three rods wide. This was the preliminary agreement between Miller and Hoyt. On the 20 28th May, 1872, Hoyt entered into an agreement with Henry E. Reddish, Henry C. Ohlen and Charles T. B. Keep, by which among other things he and they assumed the last mentioned agreement between Miller and Hoyt, and it was agreed that it should enure to their benefit, and its covenants and liabilities be performed by them as far as they were to be performed by Hoyt; and also that when the title to the land should be acquired thereunder such title should be vested in Reddish and Ohlen as joint tenants and not as tenants in common, and that they should hold the same for the 30 purposes named in the agreement between them and Hoyt and Keep. On or about the 23d day of September, 1872, after the death of John B. Miller, Hoyt wrote to David L. Miller declaring his readiness to fulfill the contract of June 10, 1872, between Hoyt and John B. Miller, and notifying David L. Miller, as sole heir at law of the latter, that he

looked to him for the fulfillment of that contract on his part, and that on the first day of October then next he would request him, and he thereby then requested him, to deliver on the last mentioned day a deed for the premises according to the contract. By the letter he designated Reddish and Ohlen as the persons to whom the conveyance should be made. On the first day of October, 1872, Reddish and Ohlen made a tender to David L. Miller of the money which by the contract of June 10, 1872, for the sale of the land was to be

10 paid on the delivery of the deed, and they tendered also the bond and mortgage, which were to be delivered for the residue of the purchase money. David L. Miller then offered to convey the property to them on receipt of the money and the bond and mortgage, and tendered a warranty deed for the property with the usual full covenants executed by himself and wife, and duly acknowledged. They however refused to receive the deed and pay the money and deliver the bond and mortgage, unless Miller would deliver to them at the same time a duly executed release of the dower of the

20 widow of John B. Miller, and would cause to be canceled of record certain judgments of large amount in the aggregate which were of record against him. So far as the Judges were concerned he offered to indemnify them out of the money which was to be paid by them, which was sufficient for the purpose.

They refused, however, notwithstanding his offer, to accept the deed and pay the money and deliver the bond and mortgage, because of the want of the release above mentioned. On the 1st of October, 1872, letters of administration of the

30 goods, chattels and credits of John B. Miller, deceased, were issued to the complainant by the Surrogate of Morris County, and on the 20th of December following the complainant filed his bill in this court against D. L. Miller and his wife, Hoyt, Reddish, Ohlen and Keep, and the widow of John B. Miller, deceased, and the judgment creditors of D. L. Miller, praying that the agreement of June 10, 1872, between his

intestate and Hoyt may be specifically performed, and particularly that it may be decreed that D. L. Miller is seized of legal title to the land as trustee of and for Hoyt or his appointees, and is bound to and do convey the legal title to the land with the appurtenances to Hoyt or his appointees, upon his or their paying and securing the purchase money to the complainant as administrator, pursuant to the agreement, and that the land may be conveyed free and clear of all incumbrances real or apparent, made, caused or suffered by David L. Miller, and that it may be decreed that the wife of David L. Miller is not entitled to any dower or right of dower, inchoate or otherwise, in the land, and that the land be conveyed by David L. Miller and held by the purchaser or purchasers forever thereafter free and clear of any dower or right of dower, inchoate or otherwise, of the wife of D. L. Miller, and that Hoyt, Reddish, Ohlen and Keep may be decreed and required to perform that agreement in all things thereby by the purchaser or purchasers to be performed, and particularly that they or some of them may be required to pay and secure to the complainant as administrator the purchase money mentioned in the agreement, according to the terms of the agreement, on the complainant's delivery or procuring to be delivered to them a release of dower of the widow of John B. Miller in the land; and also that the rights of the widow in and to the purchase money may be ascertained, and the time and manner of paying to her what may be due to her in that respect may be ordered and decreed; and that the judgments against David L. Miller and every of them may be declared and decreed to be no liens on the lands, and that the land be conveyed by D. L. Miller to the purchaser or purchasers free and clear of the judgments and of every of them, and that the purchase money be decreed to be personal assets of the estate of John B. Miller, deceased, and as such payable to and receivable by the complainant as administrator.

After the filing of the bill the widow died, and adminis-

tration of her estate was on the 29th January, 1873, granted to Keep and his wife, the latter being her daughter by a former husband.

On the 13th of December, 1872, before the filing of the bill, the widow, by a letter addressed by her to the complainant, as administrator, referring to the agreement of June 10, 1872, stated that she had expected to join with her husband in the conveyance of the land so as to release to the purchaser her right of dower therein, and that she was still
 10 ready to do what and all she could to perform that agreement, and was ready to deliver to any person or persons who might become the purchaser or purchasers of the land, under and pursuant to the agreement, a release duly executed of her dower and right of dower in and to the land, provided the purchase money be paid and secured (so far as time was given on any part of it for payment) to the complainant, as administrator of John B. Miller, deceased. She further thereby declared her willingness to take for her interest in
 20 or portion thereof as the courts in this State should adjudge to be her right.

And in consideration of the premises she thereby offered to and agreed with the complainant, that if he would by judicial proceedings or otherwise cause or procure the agreement to be specifically performed, and the purchase money to be paid and secured to be paid to him as administrator, she would, whenever the purchase money should be so paid and secured, at his request deliver to the purchaser or purchasers receiving the conveyance, a full release of her dower
 30 or right of dower in the land, she declaring herself willing to receive from the complainant as administrator such portion of the purchase money as should be adjudged to belong to her. She added that she was not willing and did not consent that the purchase money should be received by or for D. L. Miller as heir of John B. Miller, deceased, or otherwise. David L. Miller, Keep and his wife, as administra-

tors, and Hoyt, Reddish and Ohlen answered the bill. Miller, by his answer, admits that the land descended to him as sole heir at law of his father, subject to the dower of the widow therein, and that she was entitled to a distributive share of the personal estate of his father. He states that he declared himself ready to convey the premises in question according to the agreement of June 10, 1872, provided he were satisfied of the existence and validity of that agreement, and that he tendered a deed for the property to the attorney of Reddish and Ohlen on October 1, 1872, and that it was refused only on the ground that the widow's dower had not been released. He alleges that the personal estate of his father was ample for the payment of all his debts, and he denies that under the circumstances the complainant as administrator is entitled to receive the purchase money of the land on the rate thereof under the agreement, and he claims that the land is his individual property by descent from his father, and is not subject to any trust. He alleges that the agreement was obtained from his father by Keep through Hoyt, in the interest of his mother-in-law, the widow, in order by that means to covenant the property into personalty with a view to her obtaining a distributive share thereof accordingly as personal property, on the death of his father, who was then very old and infirm; that Keep obtained the extension of the time for carrying out the contract to the first of October, 1872, and that on that day there was in fact no one ready to take the property under the agreement, but that the tender was a mere pretence. He alleges besides that Keep arranged with Hoyt that the widow should absent herself on 1st October, so that she might not be in the way of executing a release of dower, and that so the tender might be made with safety, and that she did so absent herself on that day accordingly; and he alleges that by such conduct she forfeited, abandoned or waived all right, if she ever had any, to have the land decreed to be personalty, or to any part of the proceeds of the sale of the property if the con-

tract should be established and specifically performed. He further alleges that the proceedings in this suit are really carried on in the interest of the personal representatives of the widow, and that they were in fact instituted by her or in her behalf. The answer alleges laches on the part of the complainant and the widow in filing the bill for specific performance, and alleges that if John B. Miller entered into the contract in question and did indeed extend the time for performance of it, he was induced to do so at a time when
 10 his mind was in an enfeebled condition, against his own better judgment and will, by the over persuasion and undue influence, fraud and contrivance of his wife and Keep, and without understanding that the result of the contract might be to increase the share which his wife would have in his estate at his death.

Hoyt, Reddish and Ohlen, by their answer, admit the agreement of June 10, 1872, and their liability to take the property thereunder, and allege that they were ready to do so on the 1st October, 1872, and that their tender was bona
 20 fide. They allege that the widow, in order to hinder and delay them and to prevent the fulfillment of the terms of the contract, designedly, on the 1st of October, 1872, departed from her residence in the village of Madison, contiguous to the dwelling-house of David L. Miller, and immediately left this State and continued to absent herself from her residence and from this State for a long time thereafter, and thereupon neglected and refused to release her dower in the property; and they charge and insist that she by her conduct in this respect caused them great vexation, and put them to large
 30 pecuniary charges and loss. The answer further alleges that the time for the fulfillment of the contract was an exceedingly important element therein, and that by reason of the non-performance of the agreement by David L. Miller and the widow, Hoyt, Reddish and Ohlen have been put to heavy expense and great loss and damage; that relying on the agreement, and supposing that it would be carried into

effect by John B. Miller or his representatives, they spent large sums of money in laying a public road and opening the same up to the premises, and they hoped by such expenditures and improvements to immediately sell a considerable portion of the land to be conveyed to them by John B. Miller or his representatives under the agreement, and thus reap a large pecuniary profit therefrom, but that the conduct and refusal of the widow and the neglect of the heir at law prevented them from obtaining a good title to the premises, and from improving and selling the land during 10 the fall of 1872, and that the time for such sale had, when the bill was filed, December 20, 1872, gone by. They further allege that the agreement to open the road was a vital part and condition of the contract, and that the road has not been opened, and that this fact further diminishes the value of the premises.

The complainant is properly before the court seeking, as administrator, to compel specific performance of the contract of June 10, 1872, between his intestate and Hoyt. That contract was valid when it was made, and was so still when 20 John B. Miller died. Though the answer of the heir at law sets up fraud and undue influence on the part of Keep and John B. Miller's wife, alleging that they induced Miller to enter into it with the sinister design on their part of obtaining by that means for the wife, through the equitable conversion which might result from the contract, a larger portion of the estate of John B. Miller at his death than she otherwise would have been entitled to, yet there is no proof whatever to sustain the charge. On the other hand, the evidence shows that when the contract was made John B. Miller 30 was not only capable of making it, but possessed sagacity and shrewdness and acted independently. He employed John W. Hancock, the surveyor, to make a survey and map of the property, after the preliminary agreement of the 25th of April, 1872, had been made. He was with the surveyor part of the time, at least, while the survey was in progress. The

surveyor testifies that he thinks that Miller told him for what purpose he wanted the survey and map made, and adds that he thinks he told him that he had had a proposal to sell the property to some parties. He says his impression is he made the map in part for Mr. Burnham, who was attorney for the purchaser, to examine the title by; that Mr. Miller gave him what information he had about it; that after he prepared the map he took it on the 5th of June, 1872, to Mr. Burnham's office to Mr. Burnham, and that Mr. Miller went with him
10 there. While there the witness made a memorandum of the particulars of the bargain, and says he understood on that occasion that those particulars were to be in the agreement which Mr. Burnham was to draw. When inquired of as to his reason for noting those particulars in his memorandum, he answered that he was acting as an agent and friend of Mr. Miller in getting out the papers, and supposed that he made those notes for Mr. Miller's assistance and protection. He says that Mr. Miller's health at the time was pretty good, and that he appeared well and seemed to understand what
20 he wanted. He says that Mr. Miller's memory did not seem to be as tenacious as it had been formerly, and the witness was acting like a clerk to help him keep the things connected. In answer to an inquiry as to what he thought at the time of the prudence of the agreement in providing for payment of only one hundred dollars in cash at the time of its execution, and the provision for release of any acre without regard to its comparative value, on payment of eight hundred dollars, he says: "That matter was discussed between Mr. Miller and myself, and I didn't express any opinion
30 to anybody but him that I remember. I don't know that I ought to answer any further. I said to Mr. Miller that I didn't exactly approve of it. I said to him that I thought it was risking. I think Mr. Miller understood that Mr. Hoyt contemplated running a street through this property and selling lots off. My talk with Mr. Miller went further than the releasing the lot. I think I told Mr. Miller

that he didn't receive money enough to begin with to make it sure and safe to him; that the value of the trade would turn with him upon the amount of payments which he received; that he might have to let the thing go as some other property had that he and I knew of, and have to buy back again. I think Mr. Miller agreed with me in that, and remarked to me that if they paid him the interest he would have more money than they had." The witness says he does not know what Mr. Miller understood about the arrangement that the title was to be taken by some man to be named by Hoyt, and not by Hoyt himself, but that Mr. Miller said to him that Mr. Burnham was cashier, but that he did not know who stood behind it. This witness was at the time, when he testified, over sixty-seven years of age, and he says he had known John B. Miller all his life. He was therefore capable of judging as to the capacity of the latter to transact business. Mr. Burnham, the attorney of Hoyt, testifies that he thought Miller understood himself very well as regarded the business in hand; that he was vigorous in mind and body.

David L. Miller, in his cross-examination, admits that even as late as August, 1872, his father would talk intelligently to any who came to him on business, and that even when he was confined to his bed, as he was then part of the time, he was intelligent. There is no proof of want of capacity, and indeed want of capacity is not distinctly set up in D. L. Miller's answer. Though on the hearing it was insisted on behalf of D. L. Miller that the contract was an improvident one, yet this defence is not set up in his answer.

For obvious reasons he should have set it up there if he expected to rely upon it as a defence.

The evidence of improvidence, is, it is insisted, to be found in the agreement for release of any acre of the land on receipt of \$800. Whether this was an improvident bargain or not, must depend on the value of the land. That Mr. Miller considered the property well sold, is evident by

his remark to Hancock, above quoted, when the latter spoke to him of the future of this contract. The contract was a valid one, and it worked an equitable conversion of the land into personalty from the time when it was made. See the cases cited in the notes to *Fletcher vs. Ashburner*, 1 W. and T. Sea. case in Eq. 546. *Smith vs. Hubbard*, 2 Dick., 730, Story's Eq. Jur., § 790. *Champion vs. Brown*, 6 John. C. R., 348. *Mulford vs. Heyers*, 2 Beas., 1; *King vs. Ruckman*, 5 C. E. G., 599; and on the principle of equitable conversion, the purchase money became a part of John B. Miller's personal estate, and as such was distributable to his widow and next of kin. Bubb's case, Freem. Ch. R. 41; *Beden vs. Countess*, of Pembroke, 2 Ves. 215. *Hawley vs. James*, 5 Pai. 323, 456. *Drenkle's estate*, 3 Barr, 377; Snyd. on Vend, 11 Amr. Ed. 177. In *Lawes vs. Burnett*, 1 Cox, 167, it was held that when an estate is contracted to be sold it is, in equity, considered as converted into personalty from the time of the contract, and that this notional conversion takes place, although the election to purchase rests merely with the purchaser. See also *Ripley vs. Waterworth*, 7 Ves., 425, 437. *Townly vs. Bedwell*, 14 Ves., 591. *Daniels vs. Davidson*, 16 Ves., 249. *Collingwood vs. Row*, 3 Jur. N. S., 785. *Goold vs. Teague*, 5 Jur. N. S., 116. *Farrar vs. Earl of Winterton*, 5 Beav., 1. And in *Curre vs. Bowyer*, repeated in a note to *Farrar vs. Earl of Winterton*, it was held that where the contract is binding at the death of the vendor, although the purchaser, by subsequent laches, loses his right to a specific performance, yet the estate will belong to a next of kin and not to the heir-at-law. In *Atty. Gen. vs. Day*, 1 Ves., Sen., 220, it was held, however, that such conversion will not take place when the Court holds that the contract cannot or ought not to be performed. This contract is not within either of those exceptions. It can and ought to be performed. As the case stood at the filing of the bill, a complete title could have been made to the purchasers. The judgments against David L. Miller, would

have been decreed to be no liens upon the property, for in equity on the execution of the contract, John B. Miller became trustee of the property for the purchasers, and at his death, David L. Miller became such trustee in his stead. The complainant by the bill tenders a release of the widow's dower, on the performance of the agreement, and David L. Miller could have opened the road provided for in the contract. But if it is urged in behalf of David L. Miller, that the Court ought not to decree performance, because the agreement for a release of the property on payment of eight hundred dollars per acre is inequitable, and he and the purchasers object also to such decree, because the widow, as they allege, by her conduct after the death of John B. Miller, and before the filing of the bill, precluded herself from the benefit of the contract. The purchasers further object because of laches on the part of the complainant. No objection is made by the purchasers that if a conveyance be decreed, the deed to be made by the heir-at-law cannot be a compliance with the agreement, so far as the covenants stipulated for are concerned. Nor is any question raised on that score, or on the ground of any uncertainty as to the road. As to the first of these objections: As already remarked, it does not appear that the provisions for release on payment at the rate of eight hundred dollars per acre is inequitable, and if it were, this Court would not decree performance of it except on such terms and with such restrictions as to secure equity in the premises. *Emmons vs. Hinderer*, 9 C. E. G., 39. *Ensign vs. Colburn*, 11 Pai., 503. The second objection is not sustained by the evidence. The widow does not appear to have refused to release her dower; indeed she does not appear to have even been requested to do so. David L. Miller did not ask her to release, nor did the purchasers. It is alleged that on the morning of the first October, 1872, she left her residence in Madison in order to avoid an application for a release, but David L. Miller neither made nor sent to her any request to release,

and although one of the purchasers, Mr. Reddish, with Mr. Burnham, left Madison in the same railroad car with her, they neither of them said anything to her on the subject, although Mr. Reddish had an interview with her in the car. If it be admitted that the witness, Mary F. Young, refers to this occasion, she contradicts the statement of the answer of Hoyt, Reddish and Ohlen, that the widow left this State, for she says she went to Orange. It does not appear from the testimony of this witness that on the occasion to which

10 she refers, the widow remained away from home for more than the day, and indeed the testimony of this witness is by no means sufficient to induce the conclusion that the widow was at any time unwilling to release her dower in order to prevent the performance of the contract. It is not to be forgotten in this connection, that it appears by the evidence of Mr. Burnham that he had notice on the afternoon of the first of October, 1872, that the widow was willing to release her dower on such a payment as would secure her rights. It remains to consider the last objection. There is nothing

20 in the terms of the contract itself in the nature of the property, or of the attendant circumstances which would make it inequitable for this covert to interfere and decree performance of this contract, although the heir-at-law was on the first day of October, 1872, unable, fully, to perform the contract. It seems evident from the testimony that the purchasers, when that demand was made, did not expect performance.

It would perhaps not be too much to say that they did not desire it. They expected that the heir-at-law would not

30 be able to give them a title free of the widow's dower. Had they desired performance, they would probably have taken some step to ascertain at least whether she would be willing to release. Yet, although as before mentioned, Messrs. Reddish and Burnham saw her in the railroad car, and the former had an interview with her there immediately after her interview that morning with David L. Miller, in which

Messrs. Reddish and Ohlen made the tender, and demanded performance, and Miller with their consent deferred his reply until the afternoon of that day. Yet neither Burnham nor Reddish appears to have made any reference to the subject.

If, as Mr. Reddish testified, he and his associates were very anxious that the agreement should be performed on the 1st day of October, when they made the tender, it seems strange that they should not even have inquired of the widow on that day as to her willingness to release her dower, and that they took no action whatever upon the assurance given to Mr. Burnham by the complainant's solicitor on the first day of October, that the widow was ready to sign a release on such payment being made as would secure her rights. Besides it is in evidence that Mr. Burnham, the attorney for the purchasers, subsequently to the first day of October, 1872, and after the demand made upon David L. Miller in the afternoon of that day, in answer to something said to him by the solicitor of the complainant on the subject of time, said that he did not think there was any necessity for immediate haste. Mr. Burnham acted for the purchasers from the beginning, and was their agent in the matter.

It was he to whom John B. Miller applied for an extension, and it was by him that the desired extension was accorded. His acts and declarations in the matter were binding on the purchasers.

I see nothing in the answer or evidence to lead me to conclude that the delay in filing the bill from the first of October to the 20th of December following, should bar the complainant from a decree for performance of the contract. He is entitled to a decree accordingly. There will be a decree, therefore, that David L. Miller convey in fee simple to Reddish and Ohlen the premises in question, and that he open (that is, lay out to public use), the road provided for in the contract according to the agreement. Miller's wife will be decreed to be entitled to no dower in the property.

Hoyt, Reddish and Ohlen will be decreed to pay to the complainant the purchase money remaining unpaid, that is to say, the sum of \$4,900, with interest thereon from the filing of the bill, December 20, 1872, and to execute and deliver to the complainant their bond for the residue of the purchase money, \$34,392, payable on the 20th of December, 1879, seven years from the date of the filing of the bill, with interest from June 20th, 1874, payable annually, with provision that if any payment of interest shall be in arrear
10 and unpaid for sixty days after the day on which it shall become due, the whole of the principal shall, at the option of the obligee and mortgagee, or his legal representatives, be at once due and payable; the payment of the bond to be secured by their mortgage upon the premises, to be duly executed and acknowledged and delivered by them; and that Hoyt, Reddish and Ohlen pay the complainant interest on the sum of \$34,392, from June 20th, 1873, six months from the time of filing the bill to the 20th day of June, 1874. The money and securities which shall thus come to
20 the hands of the complainant, are to be administered by him in a due course of administration, and the administrators of the widow will be entitled to receive from him the amount of her distributive share thereof. The complainant is entitled to costs, as against all the defendants, except the administrators of the widow.

H. DeHart, deceased, and Harvey C. Genung, were duly served with process to answer, have not appeared, demurred, pleaded or answered to the said bill of complaint, within the time limited by law for that purpose, or at any other time, and the pleadings and evidence in the cause having been read and the arguments of the said counsel of the said parties, respectively, having been heard and the Chancellor having taken time to consider thereof, and having duly considered thereof, and being of opinion that the complainant
 10 has established the case made in, and is entitled to the relief prayed for in his bill of complaint, and it satisfactorily appearing that the defendant, Jehiel K. Hoyt, made the agreement, performance of which is prayed for in the bill of complaint, as the trustee and agent of the defendants, Henry E. Reddish and Henry C. Ohlen ;

It is on this twenty-fourth day of April, eighteen hundred and seventy-five, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this
 20 Court, doth order, adjudge and decree that the said articles of agreement between John B. Miller and Jehiel K. Hoyt, bearing date the tenth day of June, eighteen and seventy-two, in the bill of complaint in this cause mentioned and set forth, be in all things specifically performed by the said David L. Miller, on the part of the said John B. Miller, deceased, and by the said Henry E. Reddish and Henry C. Ohlen, on the part of said Jehiel K. Hoyt, respectively, and that the said David L. Miller do, on the fifteenth day of
 30 May, eighteen hundred and seventy-five, at ten o'clock in the forenoon, at the office of Alfred Mills, Esq., one of the Masters of this Court, in Morristown, in the county of Morris, as soon as said defendants, Reddish and Ohlen, shall make the money payments and deliver the bond and mortgage hereinafter mentioned, sign, seal and deliver unto said Henry E. Reddish and Henry C. Ohlen, and acknowledge in due form of law, and so as to be approved of by said

Master, a good and sufficient, full covenant, warranty deed of conveyance, conveying to said Reddish and Ohlen, their heirs and assigns, all that tract of land and premises in said agreement, and in said bill of complaint particularly described, free and clear from all incumbrances; but said covenants or any of them shall impose the same, but no greater or further obligations or liabilities upon the said David L. Miller, his heirs, executors or administrators, than would like covenants have done had they been contained in a deed of conveyance of said land, executed and delivered by the said John B. Miller in his lifetime to the said Henry E. Reddish and Henry C. Ohlen, and this qualification and limitation of said covenants shall be inserted in the deed required by this decree to be made and delivered.

And further, that as soon as the said defendants, Reddish and Ohlen, shall have made the cash payments and given the bond and mortgage hereinafter mentioned and directed, that the said defendant, David L. Miller, do lay open to the public use the said new road in the said agreement mentioned, sixty feet in width, extending from the upper Madison road to the new road, then lately laid out through the above described premises and marked on the map thereof, then recently made by John W. Hancock.

And it is further ordered, adjudged and decreed, that the said Henry E. Reddish and Henry C. Ohlen do, on the said fifteenth day of May, eighteen hundred and seventy-five, at ten o'clock in the forenoon, at the said office of said Master, Alfred Mills, Esq., pay unto the said complainant, as administrator of John B. Miller, deceased, in lawful money, the sum of four thousand nine hundred dollars, with interest thereon, at the rate of seven per cent. per annum, to be computed from the twentieth day of December, eighteen hundred and seventy-two, to the said fifteenth day of May, eighteen hundred and seventy-five, amounting to the sum of five thousand seven hundred and twenty-four dollars and four cents.

And further that the said defendants, Reddish and Ohlen, do then and there also make, sign, seal and deliver unto the said complainant, as administrator of John B. Miller, deceased, to the satisfaction and approval of said Master, their joint and several bond, in the penal sum of sixty-eight thousand seven hundred and eighty-four dollars, bearing date the twentieth day of December, eighteen hundred and seventy-two—conditioned for the payment of the sum of thirty-four thousand three hundred and ninety-two dollars, 10 in seven years from the date thereof, with interest on the last mentioned sum, at the rate of seven per cent. per annum, from the twentieth day of June, eighteen hundred and seventy-four—payable annually after the last mentioned date, with proviso in the condition of said bond, that if any payment of interest on said bond shall be in arrear and unpaid for the space of sixty days after the same shall become due and payable, the whole of the principal money named in the condition of the said bond shall, at the option of the lawful owner of said bond, be at once due and payable, not- 20 withstanding the period of seven years named in the condition of said bond shall not have elapsed.

And further, that at such time and place hereinbefore named for the delivery of said deed and said bond, that said Reddish and Ohlen, for the purpose of securing the payment of said bond, do then and there make, sign, seal and deliver unto the said complainant, as administrator of John B. Miller, deceased, and duly acknowledge to the satisfaction and approval of said Master, in the form generally in use in Morris county, a deed of mortgage conveying the 30 same land and premises described in and to be conveyed by the aforesaid deed of conveyance, conditioned for the payment of the moneys secured to be paid in and by the said bond, according to the conditions of said bond, but said mortgage shall contain an agreement whereby the said complainant, as administrator as aforesaid, his executors, administrators or assigns, shall release to the said Reddish and

Ohlen, their heirs, executors, administrators or assigns, any portion of said premises on the payment to him or them—said complainant, or his assigns, of such sum of the principal money named in said bond as shall be equivalent to the rate of eight hundred dollars per acre for such part to be released, and such sum so paid shall thereupon be endorsed upon the said bond as a payment on account thereof.

And it is further ordered, adjudged and decreed, that said Henry E. Reddish and said Henry C. Ohlen, on the said fifteenth day of May, eighteen hundred and seventy-five, 10 at the office of said Master, at the time of making the money payment and delivering the bond and mortgage aforesaid, do pay, in lawful money, to the said complainant, as administrator as aforesaid, the further sum of two thousand four hundred and seven dollars and forty-four cents, as and for the interest for one year, from the twentieth day of June, eighteen hundred and seventy-three, on the aforesaid sum of thirty-four thousand three hundred and ninety-two dollars—parcel of the said purchase money.

And it is further ordered and decreed, that the said bill 20 be taken as confessed against the said Charles T. B. Keep, the said Sophia M. Miller, wife of David L. Miller, and John C. Littell, George E. Voorhees, and Charles H. Dalrymple, executors of John F. Voorhees, deceased, Appollas R. Wetmore, George C. Wetmore and David Wetmore, Eliza J. DeHart, administratrix of Charles H. DeHart, deceased, and Harvey C. Genung.

And it is further adjudged and decreed, that the said David L. Miller, at and ever since the death of the said John B. Miller, hath been and now is seized of the said 30 land in said agreement and in said bill of complaint particularly described, as a trustee to and for the use of said Henry E. Reddish and said Henry C. Ohlen, and not otherwise, and that the said Sophia M. Miller, the wife of the said David L. Miller, is not and hath not been entitled to any dower or right of dower in or to the said lands; and

further that the defendants, Eliza J. DeHart, administratrix of John H. DeHart, deceased, John C. Littell, George E. Voorhees and Charles H. Dalrymple, executors of John F. Voorhees, deceased, Appollas R. Wetmore, George C. Wetmore and David Wetmore, and Harvey C. Genung, are not, nor is any of them, entitled to any lien to or claim upon or against the said land, by virtue of the judgments mentioned in said bill of complaint or by virtue of any of them.

10 And it is further ordered, adjudged and decreed, that the said defendants, Henry E. Reddish, Henry C. Ohlen and David L. Miller, do pay to the complainant his costs in this cause to be taxed.

And it is further ordered, adjudged and decreed, that the moneys so as aforesaid decreed to be paid, and the bond and mortgage so as aforesaid decreed to be made and delivered to the said complainant, are and shall be personal assets in the hands of the said complainant, and shall be by him administered as personal property, in due and legal course of
 20 administration, and he shall pay to the said administrators of Mary Miller, widow of John B. Miller, deceased, said Mary's distributive share thereof.

And any of the parties to this decree, on the footing thereof, shall be at liberty to apply to the Court as occasion may require, for such further orders and directions as may be necessary to fully execute this decree.

THEODORE RUNYON, *C.*

In Chancery of New Jersey.

<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">THEODORE LITTLE, <i>Administrator of</i> JOHN B. MILLER, <i>deceased,</i> <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">DAVID L. MILLER, AND WIFE, JEHIEL K. HOYT, HENRY E. REDDISH, AND HENRY C. OHLEN, AND OTHERS, <i>Defendants.</i></p>	}	<p style="text-align: center;"><i>On Bill, &c.</i></p> <p style="text-align: center;"><i>Appeal.</i></p>
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The defendants, Henry E. Reddish and Henry C. Ohlen, hereby appeal from so much of the final decree made in this Court, in the above stated cause, as orders, adjudges and decrees that the articles of agreement in the said decree mentioned, between John B. Miller and Jehiel K. Hoyt, bearing date the tenth day of June eighteen hundred and twenty-two, be in all things specifically performed by the said David L. Miller, on the part of the said John B. Miller, deceased, and by the said Henry E. Reddish and Henry C. Ohlen, on the part of the said Jehiel K. Hoyt, respectively, and that the said David L. Miller, do at the time and place in the said decree stated, as soon as these defendants, Reddish and Ohlen, shall make the money payment and deliver the bond and mortgage thereafter mentioned, sign, seal and deliver to these defendants, Reddish and Ohlen, and acknowledge in due form of law, and to the approval of Alfred Mills, Esq., Master in Chancery, a good and suffi-

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cient, full covenant, warranty deed of conveyance, conveying to said Reddish and Ohlen, their heirs and assigns, a tract of land in said agreement, and in the bill of complaint in said cause particularly described, in manner and form as the said deed is by said decree directed and adjudged to be executed, acknowledged and delivered, and also from so much of said decree as orders, adjudges and decrees that these defendants, Reddish and Ohlen, do, on the said fifteenth day of May, eighteen hundred and seventy-five, at
 10 ten o'clock in the forenoon, at the said office of Alfred Mills, Esq., pay to the complainant, as administrator of John B. Miller, deceased, in lawful money, the sum of four thousand nine hundred dollars, with interest thereon at the rate of seven per cent. per annum, to be computed from the twentieth day of December, eighteen hundred and seventy-two, to the said fifteenth day of May, eighteen hundred and seventy-five, amounting to the sum of five thousand seven hundred and twenty-four dollars and four cents.

And also from so much of said decree as adjudges and
 20 decrees that the said defendants, Reddish and Ohlen, do then and there make, sign, seal and deliver unto the said complainant, as administrator of John B. Miller, deceased, to the satisfaction and approval of said Master, their joint and several bond, in the penal sum of sixty-eight thousand seven hundred and eighty-four dollars, bearing date and conditioned as in said decree mentioned, set forth and directed.

And also from so much of said decree as adjudges and
 30 decrees that these said defendants, Reddish and Ohlen, shall, at the time and place in the said decree mentioned, make, sign, seal and deliver unto the said complainant, administrator as aforesaid, a deed of mortgage for the purpose of securing the said bond, conditioned according to the condition of said bond, and in other respects in manner and form as the same is by the said decree adjudged and decreed to be executed, acknowledged and delivered.

And also from so much of said decree as orders, adjudges and decrees that said defendants, Reddish and Ohlen, do, on said fifteenth day of May, eighteen hundred and seventy-five, and at the place in said decree mentioned, pay in lawful money to the complainant, as administrator as aforesaid, the further sum of two thousand four hundred and seven dollars and forty-four cents, as and for the interest for one year from the twentieth day of June, 1873, on the aforesaid sum of thirty-four thousand three hundred and ninety-two dollars.

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And also from so much of said decree as adjudges and decrees that the said David L. Miller, at, and ever since the death of said John B. Miller, hath been and now is seized of the said land in said agreement and said bill of complaint mentioned, as a trustee for the use of said Henry E. Reddish and Henry C. Ohlen.

And also from so much of said decree as adjudges and decrees that the said defendants, Henry E. Reddish and Henry C. Ohlen, do pay to the complainant his costs to be taxed, to the Court of Appeals, in the last resort of all 20 causes at law.

McCARTER, COULT & KEEN,

Solicitors of Defendants, Henry E. Reddish and Henry C. Ohlen.

THOMAS N. McCARTER, *of Counsel*.

Dated Newark, May 4th, 1875.

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

THOMAS N. McCARTER,

Of Counsel with Defendants. 30

