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POSTEA AND JUDGMENT

This case was tried before his Honor, Judge Silzer, to whom it had been referred for trial by Mr. Justice Bergen and a jury on January 30, 1917, and resulted in a verdict for the plaintiff for possession by direction of Court.

Whereupon it is adjudged that the plaintiff recover of the defendant the possession of the premises mentioned in said complaint and also the sum of $49.47 for his costs in said suit expended. Judgment entered February 7, 1917.

WM. S. GUMMERE, C. J.

Notice of Appeal filed Feb'y 7, 1917.

Transcript verified Feb'y 14, 1917.

Transcript filed Mar. 2, 1917.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

Union County.

RAYMOND T. PARROTT, Receiver, *Plaintiff,* vs. JAMES R. NUGENT, *Defendant.*	*Action at Law.*

NOTICE OF APPEAL.

To McCarter & English, Attorneys of Plaintiff:

Take notice that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above entitled cause.

Dated, January 30, 1917.

GEO. W. ANDERSON,
Attorney for the Defendant.

Served and filed February 1, 1917.

SUMMONS.

NEW JERSEY, ss.

(Seal)

The State of New Jersey to James R. Nugent.

You are summoned to answer the annexed complaint of Raymond T. Parrot, as Receiver of The Driggs Drainage Company, a Corporation, in an action of law, in the Supreme Court, wherein the said Raymond T. Parrot, as Receiver, as aforesaid, demands of you the possession of three certain tracts of land, with the appurtenances, situated in the City of Elizabeth, in the County of Union, and State of New Jersey, and particularly described in the said complaint, and take notice that unless you file your answer to the said complaint with the Clerk of the Supreme Court at Trenton wthin twenty days after service upon you of this writ, and of the annexed complaint, judgment will be entered against you, and you will be turned out of possession of the said land.

Witness William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this fifth day of August, Nineteen Hundred and Fifteen.

WM. C GEBHARDT,
Clerk.

M'CARTER & ENGLISH,
Attorneys.

COMPLAINT.

NEW JERSEY SUPREME COURT.

Union.

RAYMOND T. PARROT, as Receiver of The Driggs Drainage Company, a Corporation, *Plaintiff,* vs. JAMES R. NUGENT, *Defendant.*	*Acton at Law.*

COMPLAINT.

The plaintiff, of the City of Elizabeth, in the County of Union, says:

1. On the fifteenth day of June, Nineteen Hundred and Fifteen, by an order of the Court of Chancery of New Jersey, made in a cause wherein Edward J. Grassmann was complainant, and The Driggs Drainage Company was defendant, he was appointed Receiver of the said corporation, and that on the fifteenth day of July, Nineteen Hundred and Fifteen, he filed his bond and oath with the Clerk in Chancery.

2. As such Receiver, he demands of James R. Nugent, the defendant herein, possession of three certain tracts of land with the appurtenances sit-

uated in the City of Elizabeth, in the County of Union, more particularly described as follows:

Tract I. Beginning at a point on the west shore of Newark Bay and in the line of meadow of Aaron W. Burnet and running thence with said line north 48 degrees west 1,522 feet to Stoffel's Creek; thence with said creek north 47 degrees east 146; thence still down said creek north 20 degrees east 65 feet to a stake in the line of John Kean; thence with said line south 47 degrees east 1,412 feet to Newark Bay; thence along said bay and high water mark south 8 degrees 50 minutes west 227 feet to the place of beginning. Containing 6.65 acres, be the same more or less.

Tract II. Beginning at a point on the westerly side of Newark Bay and in the line of meadow of John Kean and running thence with said line (1) north 44 degrees west 1,168 feet to a stake; thence (2) north 47 degrees east 195 feet to Stoffel's Creek; thence (3) down said creek south 33 degrees 23 minutes east 108 feet; thence (4) south 4 degrees west 150 feet; thence (5) south 48 degrees 54 minutes east 208 feet; thence (6) south 86 degrees 30 minutes east 105 feet; thence (7) south 66 degrees 13 minutes east 100 feet; thence (8) south 50 degrees east 85 feet; thence (9) north 88 degrees 44 minutes east 210 feet; thence (10) north 25 degrees 12 minutes east 170 feet to Bound Creek; thence down said creek to its mouth (11) south 25 degrees, east 145 feet; thence along the edge of Newark Bay at high water mark (12) south 17 degrees thirty minutes west 540 feet to the place of beginning. Containing 5.46 acres more or less.

Tract III. Beginning at a pont on the shore of Newark Bay and in the line of meadow late of Elias W. Stiles; thence running with said line (1) north 45 degrees west 2,032 feet to a stake; (2) thence north 28 degrees east 175 feet to a stake; (3) thence south 52 degrees east 95 feet to Stoffel's Creek; thence down said creek (4) south 6 degrees west 100 feet; thence (5) south 62 degrees east 52 feet; thence (6) north 79 degrees 41 minutes east 65 feet; thence still with said creek (7) south 40 degrees 52 minutes east 140 feet; thence leaving the creek (8) south 48 degrees east 1,525 feet to Newark Bay in line of meadow of Enos Woodruff, deceased; thence along said bay (9) south 5 degrees 50 minutes west 301 feet to the place of beginning. Containing 8¾ acres more or less.

3. The right of possession of the same accrued on the fifteenth day of June, nineteen hundred and fifteen.

4. The defendant claims to own said premises and thereby deprives the plaintiff of possession thereof.

Wherefore plaintiff demands possession of the aforesaid premises.

M'CARTER & ENGLISH,
Attorneys of Plaintiff.

ANSWER.

NEW JERSEY SUPREME COURT.

Union County.

RAYMOND T. PARROT, Receiver of the Driggs Drainage Co., *Plaintiff,* vs. JAMES R. NUGENT, *Defendant.*	*Action at Law.*

ANSWER.

The defendant, James R. Nugent, of the City of Newark, in the County of Essex and State of New Jersey, answering, says:

1. That he admits the first paragraph.

2. That he admits the second paragraph.

3. That he denies the third paragraph.

4. That he admits the fourth paragarph, and avers that he is the owner of the premises described in the complaint, and that the plaintiff has no right, title or interest therein nor the right of possession thereof.

GEO. W. ANDERSON,

Attorney for the Defendant.

New Jersey Supreme Court

UNION COUNTY CIRCUIT.

JANUARY TERM, 1917.

RAYMOND T. PARROT, Receiver,

vs.

JAMES R. NUGENT,

No. 1 In the List.

Transcript of stenographer's notes of evidence taken in the above entitled matter, before Hon. George S. Silzer, Judge of the Circuit Court, and a Jury, in the Union County Court House, City of Elizabeth, New Jersey, on the thirtieth day of January at 1:30 P. M.

Appearances:

McCarter & English present George W. McCarter, Esq., for the Plaintiff.

George W. Anderson, Esq., for the Defendant.

Mr. McCarter opens the case for the Plaintiff.

Mr. Anderson opens the case for the Defendant.

Raymond T. Parrot, the Plaintiff, being duly sworn on his oath, according to law, saith:

DIRECT EXAMINATION.

By Mr. McCarter:

Mr. McCarter: Before questioning Mr. Parrot, I wish to offer in evidence a certified copy of the order in Chancery of New Jersey between Edward J. Grassman, complainant, and the Driggs Drainage Company, defendant, filed June sixteenth, 1915; order appointing receiver.

Mr. Anderson: If Your Honor please, I wish to interpose an objection to the admission. I do not know whether it is offered now.

Mr. McCarter: I offer it now.

Mr. Anderson: I object unless accompanied by the whole record of the Chancery case. It is only the conclusion of the record. And I object to the decree in the absence of the whole record.

The Court: I do not understand you make any issue of that in your answer.

Mr. Anderson: Whatever may be in the answer does not relieve the claimant of his proof.

Mr. McCarter: There was an admission of appointment.

Mr. Anderson: That does not relieve him.

The Court: I will admit it and allow an exception.

Mr. Anderson: Kindly note an exception.

Exception allowed, signed and sealed accordingly.

Judge.

(Order entered in evidence and marked Exhibit P No. 1.)

Q. Are you the Raymond T. Parrot named in that order as receiver of the Driggs Drainage Company?

A. I am.

Q. You are the plaintiff in this case?

A. Yes, sir.

Q. You are still such receiver?

A. Yes, sir.

Q. You filed your bond and took the oath required by law?

A. Yes.

Q. Do you know what kind of land it is involved in this suit?

A. Vacant meadow land comprising about twenty acres.

Q. Salt meadow land?

A. Salt meadow land, yes.

Mr. McCarter: Cross-examine.

CROSS EXAMINATION.

By Mr. Anderson:

Q. In the posssesion of no person, is it?

A. Well, in the possession of the receiver, I should say.

Q. By virtue of the order—not in the physical possession of the receiver, is it?

A. In the physical possession of the receiver rather than anybody else I should say; yes.

Q. You mean it is in possession of the receiver by virtue of the order appointing you receiver?

A. By virtue of that order, and also by virtue of the fact that receiver caused his agents to go down upon the land.

(Answer repeated by the stenographer.)

Q. That is the only act of possession, isn't it?

A. Since my receivership, yes; that I know of.

Mr. Anderson: That is all.

Mr. McCarter: I offer in evidence defendant's Bill of Particulars of titles, served on the plaintiff's attorneys on December twelfth, 1916.

The Court: What does that show, Mr. McCarter?

Mr. McCarter: That shows the defendant claims under the Driggs Drainage Company.

Mr. Anderson: In other words you offer in evidence the three deeds?

Mr. McCarter: No, I do not offer in evidence three deeds; I offer in evidence your Bill of Particulars.

The Court: You offer deeds in evidence?

Mr. McCarter: No, I have not offered anything in evidence but this as yet.

The Court: It will be admitted.

Mr. Anderson: I wish to note an objection to the ruling, for the reason that does not relieve the plaintiff from proving his case.

The Court: That does not make it inadmissible, however.

Exception allowed, sealed accordingly.

Judge.

(Bill of Particulars entered in evidence, and marked Exhibit P No. 2.)

Mr. McCarter: I also wish to offer in evidence special act of the legislature of New Jersey incorporating the Driggs Drainage Company; same being Chapter CCCXC of the laws of 1870. And I rest.

PLAINTIFF RESTS.

Mr. Anderson: I would ask for a nonsuit, on the ground that the plaintiff has not shown title in himself or to the Driggs Drainage Company. He has not even shown a deed to the Driggs Drainage Company, or any act of possession or ownership of the grantor to the Driggs Drainage Company, nor the possession or act of possession or ownership of the grantee the Driggs Drainage Company. And, therefore, I think his case falls on that ground.

I also move for a nonsuit on the ground that the decree of the Court of Chancery was insufficient proof of the proceedings of the Court of Chancery and that the Court of Chancery had no jurisdiction to appoint the receiver un-

der the existing facts in this case. And because the defendant in this suit was not a party to the suit at the Court of Chancery; and that the appointment of the receiver by that Court was not based upon such facts as would authorize the Court to make the appointment; and that the appointment was unlawful, and if so, the plaintiff in this suit has no standing in this Court.

The Court: What have you to say as to the title in the possession, Mr. McCarter?

Mr. McCarter: As to that, Your Honor, the purpose of offering in evidence the particulars is to show that the defendant claims under the Driggs Drainage Company, and I understand the rule to be you must show either prior possession going back to the proprietors or go back to a common source of title, and that is what I have done. I have gone to a common source of title. I have shown by this that the defendant claims under the Driggs Drainage Company, and it does not lie in his mouth in this suit, under the statute as to Bills of Particulars, to claim under any other title at all than the Driggs Drainage Company. When I was here before Your Honor on the previous trial I went further to prove the prior title of the Driggs Drainage Company. But this is easier; the defendant has admitted in an admission by which he is bound, that it is the Driggs Drainage title under which he claims. And I have therefore shown the Driggs Drainage Company is a corporation and that Mr. Parrot is the receiver.

By virue of the sixty-eighth section of the Corporation Act, Mr. Parrot is vested with whatever title the Driggs Drainage Company has and it is on that title on which I seek to recover. It seems to me it is a-b-c matter, but I did find a case of Tindel against Conor (?), twenty New Jersey Law. In that case the plaintiff produced in evidence an agreement signed by the defendant admitting its title; and it was held a nonsuit was rightly refused. I think our case is stronger because that was not the ordinary admission in the Bill of Particulars but merely an admission in pais. I think, therefore, that the Driggs Drainage title—

The Court: Is the common title here?

Mr. McCarter: Yes.

The Court: I will deny the motion.

Mr. Anderson: Do you rest?

Mr. McCarter: Yes.

Mr. Anderson: The only thing the defendant has to do is offer in evidence the deed on which he bases his title, which deed you are familiar with, made by William J. Merril, the oldest son of the late surviving director of the Driggs Drainage Company, to James R. Nugent, dated April fifth, 1915, which I offer in evidence.

Mr. McCarter: I object to the acceptance of that deed in evidence because the recitals in the deed have not been proved. There is

nothing in the case yet to connect William J. Merril, grantor in that deed, with the Driggs Drainage Company. The deed recites he is the oldest son of the last surviving director. But even assuming that gave him any connection, it has not been proved he is the oldest son of the last surviving director.

Mr. Anderson: The rule of law is where the deed is regular on its face the rebuttal of its contents or its denial is on the other party. I submit it on that theory.

The Court: Is that all the evidence you have?

Mr. Anderson: That is all I have with the exception of the payment of taxes by Mr. Nugent. Perhaps the gentleman will admit that. If he does not I will testify myself.

Mr. McCarter: I do not want to admit the fact because I wish to object to the testimony but if Mr. Anderson said the taxes were paid—

The Court: You object to the relevancy.

Mr. McCarter: I object to the relevancy; not to the mode of proof.

The Court: What taxes do you claim were paid?

Mr. Anderson: Since the making of this deed?

The Court: Since the making of this deed.

Mr. Anderson: Since the making of this deed. Part of them were paid through me.

The Court: I will admit the deed, and I will admit the testimony as to the taxes.

(Deed entered in evidence and marked Exhibit D No. 2.)

Mr. McCarter: Note my objection?

The Court: That is all. You rest?

Mr. Anderson: Yes.

Mr. McCarter: I move for a direction of a verdict.

The Court: I will hear you.

Mr. Anderson: I think it is hardly worth while to waste the time of the Court in arguing this case. The question of the appointment of the receiver is now involved in a suit in the Court of Errors. In a similar case. I put in the deed because I believe under the rule of law it is incumbent upon the other side to disprove the statements contained in that deed. I refer to the rule laid down in thirteen CYC, which is in the following words: "Where a deed, regular on its face, is attacked as invalid, the burden of proof rests on the person making that attack to establish its invalidity." That is the rule laid down in thirteen CYC, on page 287. If they attack the statements contained in that deed the burden, in my mind, is upon them to prove those statements are not true. If the deed is admissible, then, of course, the question arises: does the deed pass title? That question, as Your Honor well knows, has been before the Supreme Court

and remitted back. On the brief submitted before the Supreme Court I contended it did. And the Supreme Court, up to this time, has left it undetermined.

The Court: Does not seem to be in any better position than it was before.

Mr. Anderson: Does the deed pass title? We contend it does; the plaintiff contended it does not. Your Honor can review the brief and come to such a conclusion as you see fit. Your Honor is probably as familiar as you could be without examination of the brief.

The Court: I will grant the motion. You take an exception as I understand it. I will allow an exception.

Mr. Anderson: I would like to note an exception.

Exception allowed; signed and sealed accordingly.

Judge.

EXHIBIT P 1.

Between EDWARD J. GRASSMAN, *Complainant,* *and* THE DRIGGS DRAINAGE COMPANY, *Defendant.*	*On Bill, Etc.*

ORDER APPOINTING RECEIVER.

This matter being opened to the Court by McCarter & English, solicitors of the complainant, in the presence of William T. Day, Esq., solicitor of Robert S. Green Estate; James W. Anderson, Esq., solicitor of James R. Nugent, and John Francis Cahill, solicitors of Estate of James Moore, and due proof being made of the service of the order to show cause heretofore granted herein on the twenty-second day of May, nineteen hundred and fifteen, and notice of said order to show cause in the manner required by said order to show cause, and it appearing to the Court that the Driggs Drainage Company has suspended its ordinary business for want of funds and has been altogether inactive for many years, and that the objects and purposes of the incorporation of said company have failed, and that its business had not been conducted for many years, and cannot be conducted with safety to the public and advantage to the stockholders, and that the present condition cannot continue without great loss and without

great prejudice to the interests of its creditors, if any, and its stockholders, and it appearing to the Court that the prayer of the bill of complaint should be granted and a receiver appointed for The Driggs Drainage Company with the usual powers of such a receiver.

It is on this fifteenth day of June, nineteen hundred and fifteen, ORDERED, that the said order to show cause be made absolute and that Raymond T. Parrot be and he is hereby appointed receiver of the said, The Driggs Drainage Company with full power to demand, sue for, collect and receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any description belonging to the said The Driggs Drainage Company with full power to undertake such proceedings at law or in equity that may be necessary for the collection and protection and the quieting of the title of all such property of the said corporation, and to do and perform all the duties imposed upon him and required by law and by the statutes and the rules of this Court made and provided.

And it is FURTHER ORDERED that said Raymond T. Parrot before entering upon his duties, take the oath prescribed by law and give a bond to the Chancellor in the sum of One Thousand Dollars, conditioned for the faithful performance of his duties, to be approved as to the form and security thereof, by one of the Special Masters of this Court. The amount of said bond to be increased in the discretion of the Court upon application of any stockholder.

Exhibit P 1

And it is further ORDERED that the said The Driggs Drainage Company, its officers and agents, refrain from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to the said receiver appointed by the court, until the court shall otherwise order.

Respectfully advised,
E. R. WALKER, C.

FREDERICK W. STEVENS, M. C.

I, ROBERT H. McADAMS, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, Do Hereby Certify, that the foregoing is a true copy of the order appointing Receiver, filed June 16, 1915, in a cause wherein Edward J. Grassman is complainant and The Driggs Drainage Company is defendant, now on the files of my office.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal (Seal) of said Court, at Trenton, this 2nd day of October, A. D., Nineteen hundred and fifteen.

ROBERT H. McADAMS,
Clerk.

Exhibit P 2

EXHIBIT P 2.

NEW JERSEY SUPREME COURT.

RAYMOND T. PARROTT,
Receiver,
vs.
JAMES R. NUGENT.
Action at Law.

DEFENDANT'S PARTICULARS OF TITLE UNDER PLEA OF GENERAL ISSUE.

The following is the defendant's bill of particulars of title under his plea of general issue in the above entitled cause:

1. Incorporation of Driggs Drainage Company. General Statutes of New Jersey, page 815, &c.

2. Deed of Jemima A. Woodruff, executrix, and Ogden Woodruff, executor of Enos Woodruff, deceased, to Driggs Drainage Co., dated November 7, 1872, acknowledged the same date and recorded January 28, 1874, in the Union County Register's office in Liber 85 of Deeds, on pages 520, &c.

Deed Francis Woodruff and Mary, his wife, to Driggs Drainage Co., dated November 7, 1872. Acknowledged November 8, 1872. Recorded in Union County Register's office January 28, 1874, in Liber 85, pages 522, &c.

Exhibit P 2

Deed Aaron W. Burnett and Charlotte, his wife, to Driggs Drainage Co. Dated and acknowledged November 9, 1872. Recorded January 28, 1874, in Union County Register's office in Liber 85, pages 524, &c.

3. Dissolution of the company in or about the year 1883.

4. The statute of New Jersey relating to corporations vesting the property of a dissolved corporation in the directors or survivor of them, as trustees, with powers of sale, Sec's 54 and 55, Com. Stat. of N. J., Vol. 2, p. 1635, &c.

5. Death of the incorporators and of the surviving directors, naming the following, viz.:

Spencer W. Driggs, on or about January, 1883.
John McGregor, on or about July, 1890.
Lewis B. Brown, on or about June, 1900.
John S. G. Burt, on or about August, 1881.
John S. Harberger, or or about October, 1880.
Robert S. Green, on or about May, 1895.
Henry W. Merrill, on or about March, 1912.

6. Deed by William J. Merrill, oldest son of Henry W. Merrill, the last surviving director of the Driggs Drainage Co., to James R. Nugent, the defendant, for the lands conveyed by said deeds, dated April 5, 1915; acknowledged, April 12, 1915; recorded in said Register's office April 15, 1915.

GEO. W. ANDERSON,
Attorneys for Defendant.

To McCARTER & ENGLISH,
Attorneys for Plaintiff.

Exhibit D 1

EXHIBIT D1.

THIS INDENTURE, made the fifth day of April in the year of our Lord, One thousand nine hundred and fifteen, between WILLIAM J. MERRILL, of the City of New York, in the County of New York, and State of New York, of the First Part, and JAMES R. NUGENT, of the City of Newark, in the County of Essex and State of New Jersey, of the Second Part:

WITNESSETH, That the said party of the first part, in consideration of the sum of one dollar and other considerations, lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Elizabeth, in the County of Union, and State of New Jersey, on the Elizabeth Town Great Meadows:

FIRST TRACT, Beginning at a point on the west shore of Newark Bay and in the line of meadow of Aaron W. Burnet and running thence with said line north 48 degrees west 1,522 feet to Stoffel's Creek; thence with said creek north 47

degrees east 146 feet; thence still down said creek north 20 degrees, east 65 feet to a stake in the line of John Kean; thence with said line south 47 degrees east 1,412 feet to Newark Bay; thence along said bay at highwater mark south 8 degrees 50′ west 227 feet to beginning. Containing 6 65/100 acres, more or less.

SECOND TRACT. Beginning at a point on west side of Newark Bay and in the line of meadow of John Kean and running thence with said line north 44 degrees west 1,168 feet to a stake; thence north 47 degrees east 195 feet to Stoffel's Creek; thence down said creek south 33 degrees 23′ east 108 feet; thence south 4 degrees west 150 feet.

Thence south 48 degrees 54′ east 208 feet;

Thence south 86 degrees 30′ east 105 feet;

Thence south 66 degrees 13′ east 100 feet;

Thence south 50 degrees east 85;

Thence north 88 degrees 44′ east 210 feet;

Thence north 25 degrees 12′ east 170 feet to Bound Creek; thence down said creek to its mouth south 25 degrees east 145 feet; thence along the edge of Newark Bay at high water mark south 17 degrees 30′ west 540 feet to beginning. Containing 5 46/100 acres.

THIRD TRACT. Beginning at a point on the shore of Newark Bay and in the line of meadow

now or late of Elias W. Stites; thence with said line north 45 degrees west 2,032 feet to a stake; thence north 28 degrees east 175 feet to a stake, south 52 degrees east 95 feet to Stoffel's Creek; thence down said creek south 6 degrees west 100 feet; thence south 68 degrees east 52 feet north 79 degrees 41′ east 65 feet; thence still with said creek south 40 degrees 52′ east 140 feet; thence leaving the creek south 48 degrees east 1,525 feet to Newark Bay in line of meadow of Enos Woodruff, deceased; thence along said bay south 5 degrees 50′ west 301 feet to the place of beginning. Containing 8¾ acres.

Being the same tracts conveyed to Driggs Draining Company by three several deeds duly recorded in Union County Clerk's office, now Register's Office, on January 28, 1874, and recorded in Book 85 of deeds, page 520, 522 and 524; the said William J. Merrill being the eldest son of Henry W. Merrill, one of the incorporators and directors of said Driggs Drainage Company, who died March 9, 1912, he being the last surviving director.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, or the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

Exhibit D 1

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his (Seal) hand and seal the day and year first above written.

WILLIAM J. MERRILL.

Signed, Sealed and Delivered in the presence of

WM. H. WALLACE.

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

BE IT REMEMBERED, that on this thirteenth day of April, A. D. Nineteen hundred and fifteen, before me, a Master in Chancery of New Jersey, personally appeared William H. Wallace, personally known to me to be the subscribing witness to the signature of William J. Merrill in the within instrument; who being by me duly sworn, stated that he saw the said William J. Merrill subscribe the same, and he having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes there-

in expressed, and that deponent signed the same as a subscribing witness at his request.

WM. H. WALLACE.

Sworn to and subscribed before me this thirteenth day of April, A. D. 1915.

GEO. W. ANDERSON,

Master in Chancery of N. J.

Received in the Register's Office of the County of Union, on the 13th day of April, A. D. 1915, at 9:23 o'clock in the forenoon and recorded in Book 560 of Deeds for said County, on pages 21, &c.

FRANK H. SMITH,

Register.

NEW JERSEY COURT OF ERRORS AND APPEALS.

RAYMOND T. PARROTT, Receiver of Driggs Drainage Co., *Plaintiff-Respondent,* vs. JAMES R. NUGENT, *Defendant-Appellant.*	*On appeal from Supreme Court.*

GROUNDS OF APPEAL.

The appellant states the following grounds of appeal.

1. The trial Court admitted in evidence on the part of the plaintiff a certified copy of the order of the Court of Chancery appointing the plaintiff receiver of the Driggs Drainage Co.

2. The trial Court refused the defendant's motion for non-suit.

3. The trial Court directed a verdict for the plaintiff.

GEO. W. ANDERSON,
Attorney for Defendant and Appellant.

Served and filed February 28, 1917.

PER CURIAM.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1916.

RAYMOND T. PARROTT, Receiver,

vs.

JAMES R. NUGENT,

DEFENDANT'S RULE TO SHOW CAUSE.

Argued before Gummere, Chief Justice, and Justices Trenchard and Black.

For the rule, G. W. Anderson.

Contra, George W. C. McCarter.

Per Curiam:

This was an action of ejectment brought by the receiver of the Driggs Drainage Company against the defendant, to recover possessison of certain meadow lands adjacent to Newark Bay. The case went to trial in the absence of the defendant, and resulted in a verdict against him. Application is now made for a new trial, and it is agreed by counsel that if the proofs taken in support of the rule to show cause exhibits a meritorious defense the rule shall be made absolute.

The legal questions which the pleadings in the case, and the proofs taken in support of the rule, present for determination, are of unusual importance. We feel that when decided by this court, our determination should be put in such shape that it may be reviewed by the court of last resort. Such review cannot be had if the questions raised are disposed of by us on this rule. We think, therefore, that a new trial should be ordered for the purpose of enabling the parties to put the record in such shape that when final judgment is entered the important questions to which we have adverted may, if the parties desire, be considered and finally determined by the Court of Errors and Appeals.

The rule to show cause will be made absolute.

Filed, November 22, 1916.

The Evening Post Job Printing Office, 156 Fulton St., N. Y.

New Jersey Court of Errors and Appeals.

RAYMOND T. PARROT, as Receiver of The Driggs Drainage Company, a corporation, Plaintiff-Respondent,

vs.

JAMES R. NUGENT, Defendant-Appellant.

On Appeal from Supreme Court.

Brief for Plaintiff-Respondent.

The denial of the defendant's motion for a non-suit was right.

The issue in this action of ejectment, in the very language of the fourth paragraph of Section 40 of the Ejectment Act, Comp. Stat. 2061, was:

> "If both parties appear, the question at the trial shall be (except as hereinafter provided), whether the plaintiff or plaintiffs, or either, or each of them, is entitled to recover the possession of the premises, and whether of the whole or part, and if of part, then what part."

The exceptions set forth in the 41st, 42nd and 43rd sections of the Ejectment Act are foreign to this case. More acurately stated, the question is, whether the plaintiff is entitled to recover the possession of the premises from the defendant. In

Mt. Pleasant Cemetery Company v. *Erie R. R. Co.*, 45 Vr. 100, Pitney, *J.*, said for the Supreme Court at page 103:

> "Manifestly, the purpose of the act is to bring on a speedy trial of the simple issue whether plaintiff is entitled to recover the possession as against the defendant."

The issue between the parties was narrowed by certain judicial admissions. The first count of the complaint alleged (Case, p. 5):

> "On the fifteenth day of June, Nineteen Hundred and Fifteen, by an order of the Court of Chancery of New Jersey, made in a cause wherein Edward J. Grassmann was complainant, and The Driggs Drainage Company was defendant, he was appointed Receiver of the said corporation, and that on the fifteenth day of July, Nineteen Hundred and Fifteen, he filed his bond and oath with the Clerk in Chancery."

This is admitted in the answer (Case, p. 8). The plaintiff put in evidence the defendant's particulars of title (Case, p. 13). This bill of particulars is printed at Case, pages 22 and 23. These particulars were served pursuant to Sections 25, 26 and 27 of the Ejectment Act, Comp. Stat. 2058. Section 27 provides in part:

> "But in all cases the evidence of title shall at the trial be confined to the matters contained in the bill of particulars."

It was held by this court in *Lee* v. *Heath*, 32 Vr. 250, that a bill of particulars delivered by one party in a cause to the other, is legitimate evidence for the latter on the trial of the issue to which it relates, not only for the purpose of limiting the proofs to be offered by the party who delivered the bill, but also as an admission by him. The important admission in these particulars is the fact that the defendant claimed under the title of The Driggs Drainage Company. It was not necessary, therefore, for the plaintiff to do anything except devolve

his title from The Driggs Drainage Company. It was not necessary for him to prove prior possession nor for him to trace the title of The Driggs Drainage Company back to the proprietors. The defendant, in an admission by which, both according to the common law and the express provisions of Section 27 of the Ejectment Act, he was bound, had shown his colors and had made the meritorious question between the parties: which of them was now vested with the title of The Driggs Drainage Company?

Tindall ads. Conover, Spencer, 214. This was an action of ejectment, in which the plaintiff produced in evidence a written agreement between the parties, by which he covenanted to deliver to the defendant, who was in possession, a good and sufficient deed with covenants of warranty for the premises in question, and by which agreement the defendant covenanted to pay a certain price per acre for the land. The plaintiff also proved a tender of performance on his part and a demand of possession, and then rested without further evidence of title. Whereupon the defendant moved for a non-suit because the agreement was no evidence of title. It was held, however, by the Supreme Court that the plaintiff need give no other evidence of title. Nevius, *J.*, for that court, said at page 215:

> "The defendant insists that the court erred in refusing to non-suit, as the agreement was no evidence of title; and afterwards in overruling his offer as the agreement contained no admission on his part of title in the plaintiff. It is important therefore to inquire, what is the true meaning and legal construction of this contract, for it will not be denied, that where a defendant in ejectment has admitted the plaintiff's title without fraud practised upon him, he shall not afterwards be permitted to deny it."

and again at page 218:

> "If I am right in this view, it will follow that by the execution of this agreement, the

> defendant admitted the plaintiff's title and cannot in this action gainsay or deny it. The plaintiff therefore was not bound to show any further title to the lands and the court was right it refusing to non-suit."

If that is the effect of a mere agreement between the parties how much more so is it the effect of a solemn judicial admission. Dixon, *J.*, said in *Lee* v. *Heath*, *supra*, at page 252:

> "It would seem to be unreasonable that, while a statement casually made by a party is receivable as evidence against him a statement deliberately made, in response to a demand for the exact truth, should be deemed incapable of probative force."

It must be taken as established, therefore, that all the plaintiff need to have proved to prevent a non-suit was that the title of The Driggs Drainage Company was vested in him.

The defendant argues, however, that the plaintiff failed to show that The Driggs Drainage title was at the time of the commencement of this suit vested in him. While I maintain that the case shows that the title of The Driggs Drainage Company is duly vested in the plaintiff, still I submit that the aforesaid contention of the defendant is too broad. All that the plaintiff need show to entitle him to a denial of non-suit is that he, as the duly appointed Receiver of The Driggs Drainage Company is as such entitled to take possession of lands formerly owned by that corporation. That the plaintiff is the duly appointed and qualified Receiver of The Driggs Drainage Company, and that he was appointed by the Court of Chancery is admitted on the pleadings. It follows, therefore, that although the admitted portion of the complaint does not expressly allege that the plaintiff's appointment as Receiver was after an adjudication under Section 65 of the Corporation Act as amended by Chapter 300 of the Laws of 1912, so that by virtue of Section 68

of the Corporation Act, title to all of the property of the corporation is vested in him, nevertheless whether title be in him or still in the corporation, he is certainly, as the duly appointed Receiver, entitled as against the defendant (unless the latter has previously to the appointment of the Receiver, acquired The Driggs Drainage Company title) to recover possession of the premises in dispute. It will be noted that in this argument I have made no use of the order appointing the Receiver, the admission in evidence of which is one of the defendant's grounds of appeal.

The defendant further argues, however, that on the plaintiff's own case it appeared that The Driggs Drainage Company's title had passed from that company to the defendant. His contention is based on the startling argument that because the plaintiff put the defendant's bill of particulars of title in evidence all the facts stated in the particulars must be taken to have been proved by the plaintiff. Not a single authority is cited for this extraordinary contention plainly contrary to all principle. The plaintiff had to offer the particulars in evidence if he wished to make any use of them at the trial, for they were no part of the circuit record. In *Lee* v. *Heath*, *supra*, Dixon, *J.*, said at page 252:

> "But, since a bill so furnished on demand does not form part of the record or files in the cause, it can serve its purpose only by being put in evidence at the trial."

By Section 26 of the Ejectment Act, Comp. Stat. 2059, it is provided:

> "That the bill of particulars shall include an abstract of such documentary evidence of title as the party may intend to give in evidence. * * *"

The defendant would have us believe that if a party to an action of ejectment is to make any use of his adversary's bill of particulars of title, he must,

by the only act which will enable him to make use thereof, namely, offering them in evidence, be held to prove against himself each and every allegation set forth in the adversary's bill of particulars. Indeed the defendant's argument, unsupported as it is by a single authority, carries its refutation upon its face. The bill of particulars show what the defendant *claims* and the plaintiff by using them, puts in evidence that the defendant *claims* so and so. The plaintiff does not put in evidence, however, that so and so is true. The defendant, by limiting his claim to The Driggs Drainage title, has, as I have shown, narrowed the scope of the plaintiff's necessary proof, but that is only because the law attaches such a consequence to the limitation of the defendant's *claim*. That The Driggs Drainage Company has been dissolved, that the gentlemen named in the bill of particulars were its directors, and that they died at the dates stated in the particulars, etc., are not proven by the mere fact that the defendant claims them to be so.

Upon the close of the plaintiff's case, the following facts were admitted or proved: That the plaintiff was the duly appointed, qualified and acting Receiver, appointed by the Court, of The Driggs Drainage Company; that the land in question was vacant meadow land which the defendant claimed to own because he claimed that The Driggs Drainage Company's title had vested in him by reason of the happening of the several events alleged in paragraphs 3, 5 and 6 of his particulars of title (Case, p. 23). None of the claims of the defendant were proved to be well founded in fact. At this state of the record, even though assuming the defendant should subsequently prove his claims, the plaintiff was certainly entitled to recover from him possession of the premises in question. A non-suit, therefore, was rightly refused.

The Verdict was Rightly Directed for the Plaintiff.

The only evidence offered by the defendant was the deed to him from William J. Merrill, Exhibit D–1 (Case, p. 24), and the fact that the defendant had paid the taxes on the premises since the date of that deed. The deed would be interesting if its recitals had been proved, but they were not; and as the deed itself bears date April 5th, 1915, it cannot possibly be considered an ancient deed whose recitals prove themselves. There being no proof, therefore, that The Driggs Drainage Company had ever been dissolved, that Henry W. Merrill was its last surviving director, and that William J. Merrill, the grantor in the deed, Exhibit D–1, was the eldest son, the defendant's case on its own theory falls flat.

The payment of taxes proves nothing but that the defendant claims to own the premises and has since 1915 exercised acts of dominion over them—all of which is without legal effect in this case. When the case was closed, therefore, the situation was unchanged from what it was when the plaintiff rested. The direction of the verdict, therefore, was proper.

A Word as to the Admission in Evidence of the Order Appointing Receiver.

The admission in evidence of this order, Exhibit P–1 (Case, p. 19), is the plaintiff's first ground of appeal. If the plaintiff had been put to the proof of his appointment as Receiver, it would, no doubt, have been the safer course to have put in evidence the bill, the order to show cause made thereon, the order of continuance, as well as the decree appointing the Receiver. But as we have seen the plaintiff's appointment being admitted on the record, and

that being in and of itself sufficient to entitle him to recover posseession of the premises, the decree is not necessary to support the plaintiff's right to recover, nor indeed was it put in evidence for any such purpose. The object in offering Exhibit P-1 in evidence was simply to show that the decree was made in the presence of the defendant, and was anticipatory of an attempt on his part to prove the dissolution of The Driggs Drainage Company, and to that end, to negative the inference that might possibly be drawn that the Receiver, whose appointment was alleged in the complaint and admitted in the answer, was not a Receiver in dissolution. An inspection of the decree, Exhibit P-1, would show that, and could not be limited or helped by the addition of the bill.

The judgment is right and must be affirmed.

Respectfully submitted,

G. W. C. McCarter,
Of Counsel with the Plaintiff-Respondent.

June Term, 1917.

New Jersey Court of Errors and Appeals

BRIEF FOR APPELLANT.

RAYMOND T. PARROT, Receiver, *Plaintiff-Respondent,* *vs.* JAMES R. NUGENT, *Defendant-Appellant.*	*On Appeal from Supreme Court.*

ABSTRACT OF THE CASE.

This is an appeal from a judgment entered in the Supreme Court on the verdict of a jury in an action of ejectment brought by Raymond T. Parrot, as Receiver of the Driggs Drainage Company, a corporation, against the appellant.

The complaint alleges that the plaintiff was appointed Receiver on June 15, 1915, and demands of the defendant possession of three certain tracts of land situated in the City of Elizabeth, and alleges that his right of possession accrued on June 15, 1915.

The defendant in his answer admits the appointment of the Receiver, and admits the demand of possession, but denies that the plaintiff's right of

possession accrued on June 15, 1915, and contends that he is the owner of the premises, and that the plaintiff has no right, title or interest therein or any right of possession.

At the trial, the court admitted in evidence a certified copy of the order appointing the Receiver, over the objection of the defendant, which objection was that the order must be accompanied by the whole record of the chancery case.

The court ruled, that the defendant having in his answer admitted the appointment of the Receiver, that the order was admissible in evidence. But the objection goes deeper than that, as will be shown in the discussion of the point hereafter.

The plaintiff put in evidence a bill of particulars, which had been served on the plaintiff by the defendant on the plaintiff's demand.

The plaintiff also offered in evidence a special act of the Legislature of New Jersey, incorporating the Driggs Drainage Company; Laws of 1870, Chap. CCCXC.

A motion was made to non-suit the plaintiff, upon the ground that the plaintiff had not shown any title in himself, or in the Driggs Drainage Company, and also, on the ground that the decree of the Court of Chancery was insufficient proof of the proceedings of the Court of Chancery, and that the Court of Chancery had no jurisdiction to appoint the Receiver under the existing facts in this case.

The theory of the plaintiff at the trial seems to have been that the Receiver, by virtue of section 68 of the Corporation Act, is vested with whatever

title the Driggs Drainage Company had in the land, p. 15. Upon that theory, it appeared from the defendant's bill of particulars, that the defendant and the plaintiff derived title from a common source. The motion to non-suit being denied, the defendant offered in evidence a deed of conveyance made to him by William J. Merrill, the eldest son of the last surviving Director of the Driggs Drainage Company, dated April 5, 1915, and recorded in Union County on April 13, 1915.

The court, on motion of the plaintiff, directed a verdict for the plaintiff.

It appeared in addition to the conveyance to the defendant, that the defendant had paid taxes on the land, p. 16.

In making the motion for direction of a verdict, counsel did not state the reason, or any reason.

It was insisted by the defendant that the deed of conveyance, regular on its face, was prima facie evidence of the statements contained in it which, of course, would include the statement in the deed, p. 26, l. 20, that: "The said William J. Merrill, being the eldest son of Henry W. Merrill, one of the incorporators and directors of Driggs Drainage Company, who died March 9, 1912, he being the last surviving director."

GROUNDS OF APPEAL.

1. The admission in evidence of a certified copy of the order appointing the Receiver.

2. The denial of the motion for a non-suit.

3. The direction of a verdict for the plaintiff.

BRIEF OF ARGUMENT.

POINT 1.

THE ORDER APPOINTING THE RECEIVER WAS INADMISSIBLE IN EVIDENCE WITHOUT THE WHOLE RECORD IN THE CASE.

Wigmore Evidence, par. 2110.
Saunders Pleading and Evidence, p. 353.

The statement in Saunders is as follows:

"The rule generally laid down seems to be that where a party intends to avail himself of the contents of a decree, and not merely to prove an extrinsic fact (as that the decree was made by the court) he ought regularly to give in evidence the whole proceeding on which the decree is founded." "The whole record says C. B. Comyn, which concern the matter in question ought to be produced." Com. Dig. Ev. A. 4.

In this case, something more was required to be proved than the mere fact that a Receiver had been appointed. The decree on its face, shows that probably there are no creditors so that the decree was not based on insolvency. There is no adjudication in the decree, of insolvency and no adjudication of dissolution and no adjudication so as to bring the case within the Act of 1912, P. L. 1912, p. 535.

Counsel for the plaintiff evidently assumed that the decree appointing the Receiver was based upon

insolvency of the corporation as he claimed at the trial (p. 15) that the title of the corporation vested in the Receiver by virtue of Section 68, Corporation Act.

Section 68 provides that all the real and personal property of an insolvent corporation shall vest in the Receiver. There is not any proof whatever in the case to show that this corporation was insolvent. It is manifest that the whole record of the proceedings in the Court of Chancery should have been before the court so as to enable the court to pass upon the admissibility of the decree appointing the Receiver, and the right and the estate of the Receiver in the land. It may be said that the appellant was a party to the Chancery proceedings under which the order appointing the Receiver was made by reason of the recital in the order, of its having been made in the presence of "George W. Anderson, solicitor for James R. Nugent."

The whole record would have shown that Mr. Nugent was NOT a party to the Chancery proceedings, and so he is not bound thereby.

The fact being that George W. Anderson was in the Court of Chancery when the order was made, and being known as the acting attorney for Mr. Nugent in different matters he was called upon in the case; that he then stated to the court that Mr. Nugent was not a party and had no standing in the matter, but nevertheless, from what occurred, the words "George W. Anderson, solicitor for James R. Nugent," as appearing for Mr. Nugent, were inadvertantly interlined in the order.

POINT II.

THE PLAINTIFF SHOULD HAVE BEEN NON-SUITED.

The order appointing the Receiver admitted in evidence does not on its face give any title to the land in question, p. 19.

The plaintiff put in evidence the bill of particulars served by the defendant, and that operates as proof of the facts stated in the bill of particulars. The bill of particulars, p. 22, sets forth the incorporation of the Driggs Drainage Company three deeds of conveyance to Driggs Drainage Company; and alleges (p. 23) dissolution of the Company in or about the year 1883, and the death of the incorporators and of the surviving directors, naming them; and of deed of conveyance by William J. Merrill, oldest son of Henry W. Merrill, the last surviving director of the company, to James R. Nugent, the defendant, which deed is dated April 12, 1915, and recorded April 13, 1915. The facts stated in the bill of particulars having been proved by the plaintiff, must be taken as evidence in the case.

They establish, therefore, that prior to the appointment of the plaintiff as Receiver, the defendant had acquired title to the land and that his title came through the eldest son of the last surviving director of the Driggs Drainage Company, a corporation, which had been dissolved in 1883.

Section 54 of the Act Concerning Corporations, provides "Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, and divide the moneys and other property among the stockholders after paying its debts, as far as such moneys and property shall enable them. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequent thereto, the surviving director or directors shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, etc."

The statute puts the title to the property of the corporation in the directors as trustees upon dissolution of the corporation.

Dissolution is an admitted fact in the plaintiff's case. Death of all the directors is also an admitted fact in the plaintiff's case. It is an admitted fact that Henry W. Merrill was the eldest son of the last surviving director. It is an admitted fact that he conveyed the land in question to the defendant. The question arises whether he conveyed any title to the land. The legal title being in the trustees and not held by them in their own right, descended upon the death of the last surviving trustee according to the rules of the Common Law to the eldest son.

Wills vs. *Cooper*, 25 Law 137.
See also *Schenck* vs. *Schenck*, 16 Eq. 174.
Franklinite Co. vs. *Condict*, 19 Eq. 395.

The legal title having therefore passed into the defendant before the appointment of the Receiver, the Receiver had no title to the land and no right of possession. Therefore, the plaintiff should have been non-suited.

POINT III.

THE COURT ERRED IN DIRECTING A VERDICT FOR THE PLAINTIFF.

The same argument is applicable on this point that was made under Point II. The evidence on the part of the defendant consisted of the deed of conveyance, Ex. D. 1, l. 24, and of the fact that the defendant had paid taxes on the land. Bottom of p. 16, top of p. 17. The deed of conveyance was objected to as irrelevant only. The plaintiff having put in evidence the defendant's bill of particulars, the deed of conveyance was competent evidence to prove the defendant's title and right of possession. Both parties relied upon the fact of dissolution of the corporation at some previous time. While it is true that the Court of Chancery under Section 56 has the power to either continue directors, trustees or appoint a receiver, the facts so far as they appear in this case, show that all the directors were deceased, and that the title to the land had been conveyed by the eldest son as heir at law of last surviving director. There does not seem to have been any dispute as to the facts, and no dispute as to the recitals in the deed of conveyance, and therefore, it was purely a question of law as to whether the deed of conveyance passed any title.

As before contended, it is now contended by the appellant that a verdict should have been directed in favor of the defendant. Under the statute, it is the duty of Mr. Merrill, the grantor in this deed of conveyance, to divide the money that he received among the stockholders. If the Receiver has been properly appointed, it is the duty of the Receiver to collect the money from William J. Merrill, and divide it among the stockholders.

There is no proof in the case of the amount actually paid by the defendant for the land. There is no evidence to show bad faith in any respect. It must be assumed that Mr. Merrill acted in good faith, believing that he had the legal title to the land, holding it in trust, and he conveyed the legal title to the appellant. It is his duty to dispose of the money as directed by the statute.

It is therefore respectfully submitted that there should be a reversal in this case. Appellant claims that there should be a new trial, so that the entire record of the proceedings in the Court of Chancery may be brought before the court.

GEORGE W. ANDERSON,

FRANK E. BRADNER,

Of Counsel with Appellant.