

## I N D E X

|                    |    |
|--------------------|----|
| Statement .....    | 1  |
| First Point .....  | 4  |
| Second Point ..... | 7  |
| Third Point .....  | 8  |
| Fourth Point ..... | 12 |

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NEW JERSEY COURT OF ERRORS  
AND APPEALS

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| <p style="text-align: center;">Between:</p> <p>ROBERT HENDERSON, et als.,</p> <p style="text-align: center;">Complainant-Appellants,</p> <p style="text-align: center;">vs.</p> <p>THOMAS HENDERSON and</p> <p style="text-align: center;">FRANK VAN SYCKLE,</p> <p style="text-align: center;">Defendant-Appellees.</p> | } | <p>On Appeal</p> <p>from the</p> <p>Court of</p> <p>Chancery.</p> | <p>10</p> |
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BRIEF FOR COMPLAINANT-APPELLANTS

STATEMENT

In the year 1911 and for some years prior thereto, Robert Henderson and Thomas Henderson were engaged in the general contracting business as partners. About the month of August in that year, Robert Henderson filed a bill in the Court of Chancery alleging insolvency and praying for the dissolution of the partnership and the appointment of a receiver to wind up the partnership business. On September 6th, 1911, Charles K. Seaman was duly appointed receiver. From the date of his appointment as aforesaid, said receiver has done absolutely nothing towards winding up the affairs of said partnership.

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On June 21st, 1917, Charles K. Seaman, the receiver, Robert Henderson and Evelyn Henderson, his wife, Thomas Henderson and Anna A. Henderson, his wife, signed a contract to convey to

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## Statement

one Emil Stremlau for the consideration of Sixty-Five Hundred (\$6,500.00) Dollars, a certain tract of land fifty feet in front and 99.53 feet in depth on Jefferson Street, Perth Amboy, New Jersey. This Contract, it is claimed, was subsequently assigned to Frank Van Syckle, the defendant-appellee.

The contract contained the following clause:

“The balance of the purchase price to be paid upon delivery of deed upon condition that the sale hereby made upon the part of the receiver aforesaid being confirmed by the Court of Chancery.

It being further understood that application to the Court of Chancery for that purpose be made upon filing the report of the receiver; which said report of the receiver and confirmation of sale of the property are to be made within thirty (30) days from the date hereof.”

State of the Case Page 16.

No action was taken on this contract by any of the parties until on or about the 17th day of September, 1924, when a petition was filed in the Court of Chancery by the said Frank Van Syckle (Pages 11, 12, 13 and 14, State of the Case), alleging that he was ready to take title and praying “that the said receiver Charles K. Seaman be directed and ordered . . . etc., to execute and deliver a deed for the aforesaid premises and that the execution and delivery of said deed be confirmed, etc.”

Upon filing this petition, a rule to show cause was granted directing the said Charles K. Sea-

## Statement

man, Robert Henderson, Evelyn Henderson and Anna Henderson to show cause why an order should not be made in conformity with the prayer of said petition. The hearing on this rule was adjourned from September 23rd to September 30th and then to October 7th. The receiver was represented by counsel on the return of the rule. No one appeared for Robert Henderson or Anna Henderson. No answer was filed to the petition; the only answer being made by two affidavits found on pages 19, 20, 21 and 22 State of the Case. No testimony was taken to support the allegations in the petition. A decree was advised (pages 24, 25, 26 and 27, State of the Case) directing the receiver, Robert Henderson and Evelyn Henderson, and Anna A. Henderson, individually and as executrix of Thomas Henderson, deceased, to convey the premises to the said Frank Van Syckle.

Anna Henderson, individually, and as executrix of the Estate of Thomas Henderson, deceased, thereupon served notice that objection would be made before the Chancellor on November 5th, 1924 to the decree on the ground that the court had no jurisdiction in this proceeding over the said Anna A. Henderson as executrix of Thomas Henderson, deceased, she not being a party to the cause and not having been brought in by proper process and on the further ground that there was no evidence to support any decree against her. A special appearance was entered for this purpose. See notice, State of the Case, page 28.

The receiver likewise served notice that objection would be made on November 5th, 1924, before the Chancellor to the form of the decree, said decree having been entered without counsel consenting to the form thereof, and without notice to counsel for the receiver. See pages 29 to 40,

First Point

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State of the Case.

10 Upon argument of the matters mentioned in these notices on the return day, the Vice-Chancellor refused to change or alter the form or contents of the decree theretofore entered.

The Complainant-Appellants herein will present their argument under the following heads:

1. THAT THE SALE OF SAID LANDS SHOULD NOT HAVE BEEN CONFIRMED WITHOUT NOTICE TO THE CREDITORS.

20 2. THE COURT AT THE TIME OF MAKING SAID DECREE HAD NO JURISDICTION OF ANNA A. HENDERSON AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF THOMAS HENDERSON AND CONSEQUENTLY COULD MAKE NO DECREE EFFECTING HER IN THAT CAPACITY.

3. THERE WAS NOT SUFFICIENT EVIDENCE BEFORE THE COURT TO SUSTAIN THE DECREE.

30 4. THAT IT WAS NOT EQUITABLE AND CONSCIONABLE TO CONFIRM THE SALE MADE BY THE RECEIVER IN 1917 AND TO SPECIFICALLY ENFORCE SAID CONTRACT.

**FIRST POINT**

THAT THE SALE OF SAID LANDS SHOULD NOT HAVE BEEN CONFIRMED WITHOUT NOTICE TO THE CREDITORS.

40 A receiver was appointed for Henderson Brothers because the partnership was insolvent and this was the best means available to protect the credit-

## First Point

ors and insure an equitable division of the assets. A list of the creditors is shown in the affidavit of one William A. Spencer, the Attorney for the receiver, found on pages 30 to 36, State of the Case. Many of the claims of the creditors had been reduced to judgements. The contract entered into by the receiver (Pages 14, State of the Case) was the result of a private sale. The creditors had no notice that such a contract had been signed. Nothing was done towards carrying out the terms of the contract for over seven years. The creditors apparently had no notice that such a contract had ever been made. If they did have such notice, they would be justified in assuming that the contract had been abandoned by the parties who had signed same. No notice was given to the creditors that application would be made to have said private sale confirmed and specifically enforced against the receiver, the surviving partner and the executrix of one of the deceased partners. In the meantime, the property had greatly increased in value. The contract provided for a purchase price of \$6,500.00. The property, at the time the defendant Van Syckle sought specific performance, was valued at \$15,000.00 (See affidavits on pages 19 and 21, State of the Case). According to the affidavits of defendant's own experts, the property was worth \$10,000.00. (See affidavits of defendant's experts, pages 22a, 22b, 22c, etc., State of the Case).

Notwithstanding that the property had greatly increased in value and there had been an elapse of seven years from the date the contract was made to the date of the application for confirmation, no notice was given to the creditors. It is well settled that the creditors have a right to object to confirmation.

See 35 C. J. 45, paragraph 64:

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## First Point

“Thus a judgment creditor has such an interest in the property that he may object the confirmation of the sale of land against which his judgment is a lien.”

10 In the case at bar, the judgment creditors were afforded no such opportunity to object. They had no notice of the sale or of the confirmation, and could not be expected to gain any knowledge or information respecting same except by chance. In disposing of this property, the court was disposing of the assets of the creditors and they should have been afforded an opportunity to object.

20 In the case of **Porch vs. The Agnew Company** 66 Eq. 232, at page 235, Grey, V. C. in declining to confirm a sale by a receiver because the price obtained was far below the market price said:

30 “There is, however, an additional reason, which does not appear in the reported cases to have been considered at all, which should, it seems to me, have the consideration of counsel and of the court in discussing this question. This property was offered for sale by the receiver, not by an ordinary judicial sale made after a hearing and judgment or decree thereon, in which the rights of the parties have been inquired into and established. This sale is made by the receiver under a special statutory order of the court, by which all the liens antecedent to the receivership will be compulsorily whiped off of the premises. If a foreclosure of the mortgage had taken place, the mortgagee could have selected the time and manner of the sale; he could have postponed it if he thought the price offered was unfavorable—in fact he would have had control of the whole trans-

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Second Point

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action.”

No private sale by the receiver without notice to the creditors should be confirmed where it appears that the price obtained by the receiver is less than half the actual value of the property.

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Chancery Rule No. 253 expressly gives creditors the right to object to other claims presented to the receiver. Surely the creditors should be given the right to object when the assets of the estate are being disposed of at private sale.

**SECOND POINT**

THE COURT AT THE TIME OF MAKING SAID DECREE HAD NO JURISDICTION OF ANNA A. HENDERSON AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF THOMAS HENDERSON AND CONSEQUENTLY COULD MAKE NO DECREE EFFECTING HER IN THAT CAPACITY.

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Thomas Henderson, one of the partners, and the principal defendant in the original litigation, died on or about the 28th day of October, 1923. Nothing was ever done to suggest the death of the said Thomas Henderson on the record.

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Upon the death of Thomas Henderson, the action as to him abated. See 1 C. S. 4, paragraph five which states:

“That in every suit or action in the Court of Chancery, in which any bill is or shall be filed, and in which there are or shall be two or more plaintiffs or defendants, and any of them die, and the cause of action doth not survive, but other persons shall become parties in interest, in right or by the death of

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## Third Point

10 such deceased party, such suit shall, by reason of such death, be abated only with respect to such deceased party, and the surviving plaintiff or plaintiffs may proceed against the surviving defendant or defendants, without reviving the suit against the representatives of the deceased party, or any other who may become interested by the death of such party; shall not be bound by any order or decree in such cause to which they are not made parties . . . .”

20 The statute then proceeds and prescribes the method by which the persons who become interested in litigation by reason of the death of one of the parties may be brought in and made parties to the suit.

30 In the case at bar, no attempt was made to comply with the provisions of the statute or with the provision of Chancery Rule No. 61 covering this subject. It is therefore respectfully submitted that the Court had no jurisdiction over Anna A. Henderson, executrix of the Last Will and Testament of Thomas Henderson, deceased to make any binding order or decree effecting her for the reason that she was not a party to the litigation and by virtue of the statute above quoted, could not be bound by any order or decree made in this cause. The court therefore committed error in declining to vacate the decree as to this defendant upon motion being made therefor by her Solicitor.

**THIRD POINT**

40 **THERE WAS NOT SUFFICIENT EVIDENCE BEFORE THE COURT TO SUSTAIN THE DECREE.**

The court cannot make a decree in any cause

## Third Point

wihtout having some evidence before it to justify the findings in the decree. In the case at bar, we must look to the petition filed by the defendant, Frank Van Syckle, to support the decree. By numerous cases in this State, it has been held that: 10

“A petition, though sworn to, is no evidence of the facts contained in it, and is not, standing by itself, sufficient proof upon which to found a decree. Its truth must be established by affidavits and other evidence taken according to the rules and practice of the court.”

Coxe vs. Halstead 2 E. 311. 20

“The regular course for showing cause would have been by affidavits taken on two days notice, or taken ex parte and served four days before the day for argument.”

Crane vs. Brigham 3 Stock 29, 33  
Philadelphia & Reading R. R. vs. Little  
41 E. 519, 525.

The rule laid down in the above case has been changed by Chancery Rule No. 91 to the following effect: 30

“Verified petitions and affidavits accompanying such petitions, on which orders to show cause may be granted, if served, may be used on the hearing to show cause.”

Chancery Rule No. 91, however, does not go to the extent of making evidence of matters stated in the petition and affidavit which are of necessity not within the personal knowledge of the petitioner, and to prove which the oath of the peti- 40

## Third Point

10 tioner is not competent evidence. See *In re Trenton Street Railway Co.* 58 E. 533. In this case, the complainants attempted to set up by affidavit certain facts, to confer jurisdiction, that were not within the personal knowledge of the affiant, and the court held that these matters could only be proved by legal proof.

In *Cox vs. Halstead* 1 Gr. Ch. 311, it was held:

“The material facts alleged in the petition must be proven, and that the affidavit of the party, except as to facts peculiarly within his knowledge, must be supported by other evidence.”

20 Applying these rules to the case at bar, let us see whether or not there is sufficient foundation in the petition of the defendant, Van Syckle, to support findings in the decree. The decree recites (page 25 State of the Case):

“AND IT FURTHER APPEARING that on the 21st day of June, 1917, the said Emil Stremlau assigned said contract to Frank Van Syckle.”

30 There was no proof before the Court that there was any such assignment. There is an allegation to this effect (paragraph seven, page 13 of the State of the Case) in the petition, but the statement that the contract was “assigned” is a legal conclusion and was not a matter within the personal knowledge of the petitioner.

The decree recites (Page 25 State of the Case):

40 “AND IT FURTHER APPEARING that on October 28, 1923, Thomas Henderson died leaving a last will and testament which was duly probated on November 20, 1923, in

## Third Point

Book 40 of Wills, page 112, of Middlesex County, in which he devised the residue of his estate including the above described premises to his wife, Annie A. Henderson and in which he appointed her his executrix."

The only support for this statement is found in paragraph eight of the petition, page 13, State of the Case. Surely, these matters were not within the personal knowledge of the petitioner, Frank VanSyckle. His testimony on the witness stand would not be competent to prove the allegations so made by him in his petition and the Court under the above decisions could not base a finding to this effect without proper proof.

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The decree further recites:

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"And it further appearing that the said

Frank VanSyckle after the execution of said contract went into possession of the premises above described which premises consists of two vacant lots and has from that time on had possession of said premises."

This finding in the decree is not only not supported by the petition, but is absolutely contradicted because the petition recites (Paragraph 9, page 13, State of the Case):

30

"Soon after the execution of said contract the said receiver, Charles K. Seaman, petitioner went into possession of the premises in question and from that time on has had possession of said premises, which consists of two vacant lots above described."

The lots are not vacant, for the reason that it appears affirmatively, (page 22 State of the Case) in the affidavit of Hans Nielson, that there is a

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## Fourth Point

small stucco building on the property.

10 From a reading of the petition, it will appear that practically all the matters set forth in the petition are absolutely without the knowledge of the said Frank Van Syckle and he would not be competent to prove the facts stated in the petition if he were on the witness stand. The decree in the case at bar cannot be supported by any evidence that was before the Chancellor on the return of the rule to show cause.

**FOURTH POINT**

20 THAT IT WAS NOT EQUITABLE AND CONSCIONABLE TO CONFIRM THE SALE MADE BY THE RECEIVER IN 1917 AND TO SPECIFICALLY ENFORCE SAID CONTRACT.

30 The contract to sell the property involved in this suit was made June 21st, 1917. No action was taken by either of the parties to compel each other to carry out the terms of the contract until the defendant Frank VanSyckle filed a petition in this cause in the month of September, 1924. The price mentioned in the contract was \$6,500.00 (Page 15, State of the Case). The value of the property in September, 1924, according to appellant's experts was \$15,000.00 (Pages 19 and 21, State of the Case), and according to the defendant's experts (Pages 22a to 22c, State of the Case) was \$10,000.00.

40 The property in question was encumbered by a mortgage in the amount of \$3,000.00 (P. 13, State of the Case). The receiver has been paying interest on this mortgage and taxes since the year 1911. The receiver was, and always has been in actual possession of the property.

## Fourth Point

It is well settled that:

“Mere inadequacy of price is not ground for setting aside a sale made regularly and without fraud, where no accident or mistake has intervened to prevent fair competition, the policy of our law respecting official sales not admitting the notion that such sales must be opened because a greater sum can be obtained for the property.”

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**Porch vs. Agnew Co. 66 Eq. 232.**

**Morrise vs. Inglis, 46 Eq. 306.**

There are numerous other cases in this state to the same effect. A reading of these cases will reveal that in almost every instance where the court has laid down this rule it was a case where there was a public sale under direction of the court. A public sale is widely advertised, and open bidding is encouraged.

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In the case at bar, there was a private sale. No application for confirmation was made until after the elapse of a seven year period, and until the purchaser had an opportunity to determine that it was to his advantage to buy on a rising market.

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Where the price obtained at a judicial sale is below the actual value of the property and there is an equitable reason for not confirming the sale, the courts have shown a disposition to refuse confirmation when such action would work a severe hardship on creditors.

In the case of **Strong vs. Smith, 68 E. 650**, the property was sold on foreclosure for \$70,150.00. This price was just about sufficient to protect the

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## Fourth Point

10 first and second mortgagees and entirely wiped out the interests of the third and fourth mortgagees. The holders of the third and fourth mortgage had relied upon their broker to inform them of the date of the sale. The broker learned of the sale too late to do this, and the property was sold without them being afforded an opportunity to protect themselves. Subsequently, an offer of \$82,000.00 was made for the property, and the court refused to confirm the sale.

20 In the case of **Rowan vs. Congdon, 53 Eq. 385**, the property was bought in on foreclosure for \$10,041.06, being the balance due on the decree. There was a purchaser who was willing to pay \$25,000.00, but who was not present, due to a misapprehension of the time of the sale. The court refused to confirm the sale.

See also the case of **Adams vs. Lambertville Light, Heat and Power Co., 84 Eq. 96**, where the court declined to confirm a sale because it would work a considerable hardship upon the creditors.

30 The defendant, Frank Van Syckle, was guilty of such laches in this case, that should, under the circumstances, bar him from enforcing the contract. It is well settled that the mere lapse of time of itself will not bar equitable relief, but the courts in this state have repeatedly declined to grant specific performance where the party seeking relief had delayed a shorter time than that of which the defendant, Van Syckle, was guilty in this case.

See **Cooper vs. Carlisle, 17 Eq. 525** where there was a delay of fifteen years.

40 See **Houghwout vs. Murphy, 21 Eq. 118**, where there was a delay of two and a half years.

## Fourth Point

See **Merrill vs. Brown, 21 Eq. 40** where there was a delay of two years.

The remedy by specific performance is discretionary. The question in such cases, is not what must the court do, but what, in view of all the circumstances of the case in judgment, should it do to further justice. **Plummer vs. Keppler and Scanlan, 26 Eq. 481.** 10

Wherefore, it is respectfully submitted that the Court of Chancery should not lend its aid in the enforcement of a judicial sale where the price is far below the market value of the property, where the purchaser at a private sale made no attempt to enforce same for a period of over seven years; where there was no notice to the creditors at the time of making up the contract of sale and no notice to them at the time of confirmation; where the receiver had been paying interest on a \$3,000.00 mortgage on the property and paying taxes for a period of over thirteen years; where the enforcing of the contract, after charging the moneys received from such sale with the amount of interest and taxes paid during said period, will leave very little, if any, money for distribution among the creditors. 20

Respectfully submitted, 30

JOHN E. TOOLAN,

Solicitor for and of Counsel with  
the Complainant-Appellants.

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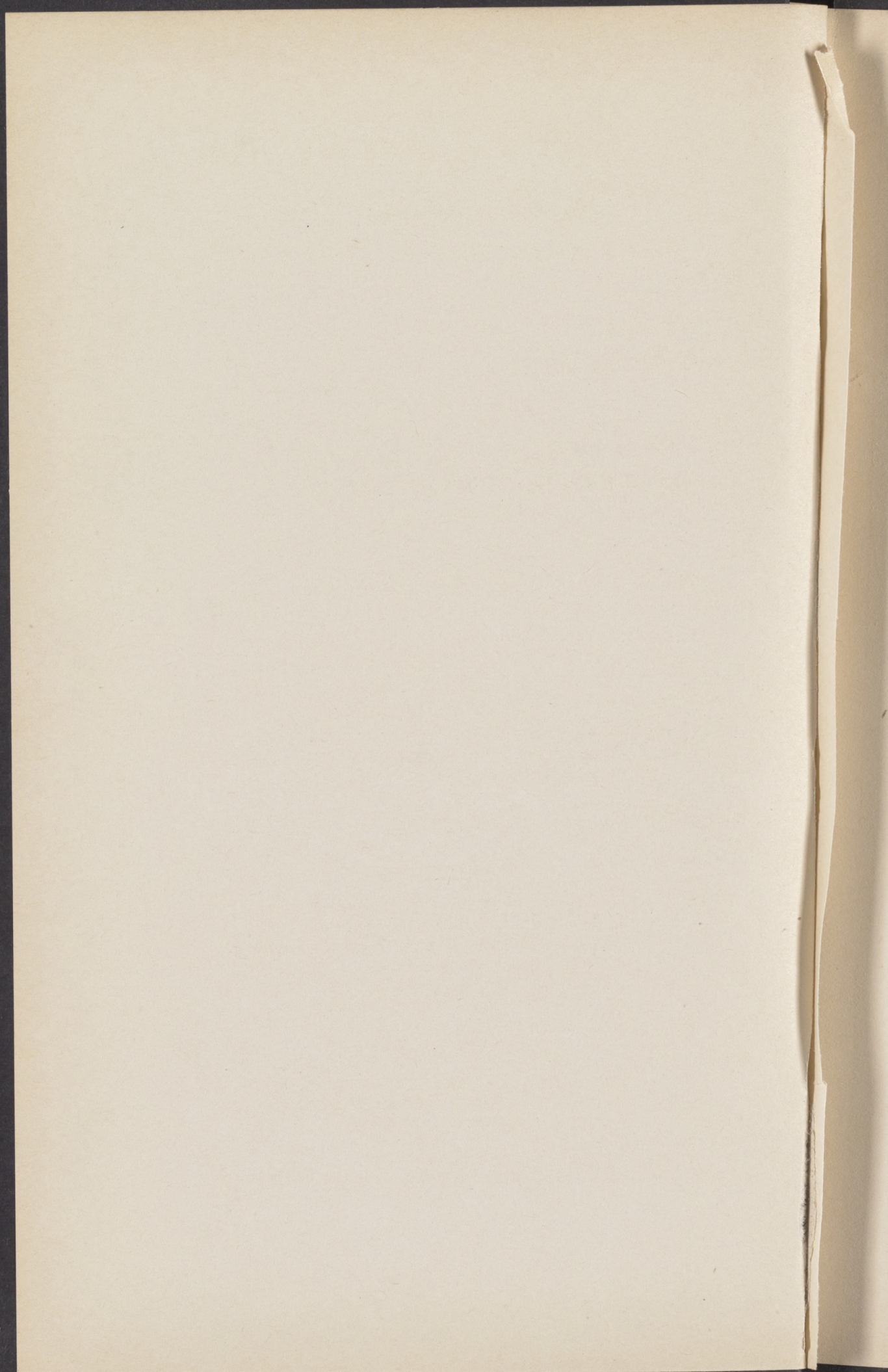
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## INDEX

|                                    |     |
|------------------------------------|-----|
| Notice of Appeal .....             | 1   |
| Petition of Appeal .....           | 3   |
| Answer to Petition of Appeal ..... | 8   |
| Rule to Show Cause .....           | 9   |
| Affidavit .....                    | 19  |
| (Edwin G. Fraser)                  |     |
| Affidavit .....                    | 21  |
| (Andrew W. Morton)                 |     |
| Replying Affidavit .....           | 22A |
| (Joseph Massopust)                 |     |
| Replying Affidavit .....           | 22C |
| (Hans Nielsen)                     |     |
| Stipulation .....                  | 23  |
| Order .....                        | 24  |
| Notice .....                       | 28  |
| Affidavit .....                    | 30  |
| (William A. Spencer)               |     |
| Objections to Order .....          | 37  |





Notice of Appeal

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above entitled cause.

JOHN E. TOOLAN,

Solicitor for and of Counsel with complainant, Robert Henderson, and the defendant Anna Henderson, individually and as Executrix of the last will and testament of Thomas Henderson, deceased.

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WILLIAM A. SPENCER,

Of counsel with Charles K. Seaman, receiver for Henderson Brothers.

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## Petition of Appeal

### NEW JERSEY COURT OF ERRORS AND APPEALS

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| <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON, et als,<br/>Complainant-Appellants,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">THOMAS HENDERSON and<br/>FRANK VAN SYCKLE,<br/>Defendant-Appellees.</p> | } | <p>On Appeal            10<br/>from the<br/>Court of<br/>Chancery.<br/>PETITION<br/>OF APPEAL.</p> |
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| <p>TO THE HONORABLE COURT OF ERRORS<br/>AND APPEALS IN THE LAST RESORT IN<br/>ALL CAUSES:</p> | 20 |
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The petition of Robert Henderson, Annie A. Henderson, individually and as executrix of the Last Will and Testament of Thomas Henderson, deceased, and Charles K. Seaman, receiver for Henderson Brothers, the appellants in the above entitled cause, respectfully shows that:

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1. Petitioners find themselves aggrieved by final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 15th day of October, 1924, in a certain cause in said Court of Chancery wherein said Robert Henderson was complainant and the said Thomas Henderson, et als were defendants, in this respect, to wit:

That the decree recites that on the 21st day of June, 1917, Robert Henderson and Evelyn Hen-

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## Petition of Appeal

10 derson, his wife, Thomas Henderson and Annie A. Henderson, his wife, and Charles K. Seaman, receiver for said Robert Henderson and Thomas Henderson entered into a contract with one Emil Stremlau of the City of Perth Amboy, County of Middlesex and State of New Jersey, for the sale of all those lots, tracts or parcels of land and premises hereinafter particularly described, situate and lying and being in the City of Perth Amboy in the County of Middlesex and State of New Jersey, described as follows:

20 Situated on the north side of Jefferson Street in the said City of Perth Amboy, containing twenty-five feet each or fifty feet in front on the north side of said Jefferson Street and extending northwardly of that width ninety-seven  $\frac{53}{100}$  feet in depth to lot No. 208. Bounded on the north by Lot No. 208, east by Lot No. 115, south by said Jefferson Street and west by Lot No. 118. Being lots Nos. 116 and 117 on the Plan of Lands of Estate of E. M. Patterson at Perth Amboy, N. J., known as Smith Street property, as laid out by C. C. Hommann, C. E.

30 Being the same lands and premises that were conveyed to the said Thomas P. Henderson and Robert Henderson by John D. Patterson, Executor, &c., by deed dated November 22, 1900, and recorded in the Clerk's Office of the said County of Middlesex in Book 365 of Deeds on pages 99 &c.

40 for the sum of Sixty-five Hundred Dollars (\$6,500.00) upon which a deposit of One Hundred Dollars (\$100.00) was paid at the time and the balance of the purchase price was to be paid upon the delivery of a warranty deed and upon confirmation of said sale by this court and with the understanding that the receiver was to file a report and apply for confirmation of said sale within thirty days from the date of the contract as more fully appears from the copy of the contract made a part of the petition heretofore filed in this cause.

## Petition of Appeal

That the decree further recites that on the 21st day of June, 1917, the said Emil Stremlau assigned said contract to Frank Van Syckle.

That the decree further recites that on October 28, 1923, Thomas Henderson died leaving a last will and testament which was duly probated on November 20, 1923, in Book 40 of Wills, page 112, of Middlesex County, in which he devised the residue of his estate including the above described premises to his wife, Annie A. Henderson and in which he appointed her his executrix. 10

And the decree further recites that at no time after the execution of said contract did the receiver make any effort looking to the consummation of said contract nor has he ever filed any report or applied to this court for a confirmation of said sale. 20

And the decree further recites that the said Frank Van Syckle since the signing of the agreement of sale and the assignment thereof as above, has at frequent intervals asked for a delivery of the deed and tendered the balance of the purchase price to wit, the sum of Sixty-four Hundred Dollars (\$6,400.00).

And the decree further recites that the said Frank Van Syckle after the execution of said contract went into possession of the premises above described which premises consists of two vacant lots and has from that time on had possession of said premises. 30

And the decree further recites that the said Charles K. Seaman, the receiver, has filed no inventory or taken any steps to the winding up of the affairs of said partnership, and the court having considered the verified petition and affidavit of said Frank Van Syckle and the affidavit submitted by William A. Spencer, Solicitor for Charles K. Seaman, receiver aforesaid, and having heard the argument of Joseph E. Stricker, solicitor for 40

## Petition of Appeal

said petitioner, and William A. Spencer, solicitor for said receiver and having duly considered the same.

10 That the decree orders and adjudges that a certain contract entered into on June 21, 1917, by and between Robert Henderson and Evelyn Henderson, his wife, and Thomas Henderson and Annie A. Henderson, his wife, and Charles K. Seaman, receiver for said Robert Henderson and Thomas Henderson with one Emil Strelau be confirmed by the Court of Chancery and that the said Charles K. Seaman, receiver, Robert Henderson, Evelyn Henderson and Annie A. Henderson, individually and as executrix of Thomas Henderson, deceased, execute and deliver a warranty deed to certain premises situate on the northerly side of Jefferson Street, Perth Amboy, New Jersey, and in said order particularly described, free from all encumbrance, to Frank Van Syckle, on or before the 28th day of October, 1924, upon payment of the balance of the purchase price, to wit, the sum of Sixty-four Hundred Dollars (\$6,-400.00) by said Frank Van Syckle to said receiver.

2. And the petitioners appeal from the decree or order or that part of the decree or order of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that there was not any fact, testimony, or sufficient proof before the Chancellor to support or found the recitals in said decree upon which said decree was based that said decree materially and substantially affects the rights of numerous creditors of Henderson Brothers for whom the appellant, Charles K. Seaman was receiver, and that no notice had been given to the creditors and no opportunity had been given the creditors to be heard in this proceeding; that the court, at the time the said decree was made, had no jurisdic-

Petition of Appeal

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tion over Annie A. Henderson for the reason that said Annie A. Henderson was not a party to the original suit and no proper proceeding was taken to make her a party by suggesting on the record the death of her husband, Thomas Henderson, deceased; that the said decree is contrary to law in that it directs appellants to carry out and perform a contract that had been abandoned by appellee and when appellee had been guilty of gross laches, and to enforce the decree would work great harm and injustice upon appellants and would be inequitable to appellants and the creditors of Henderson Brothers. 10

Petitioners, therefore, pray that the said decree of the said Chancellor may be wholly reversed and set aside and for nothing holdeth and that petitioners may have such other relief in the premises as this court may deem proper. 20

JOHN A. TOOLAN,  
WILLIAM A. SPENCER,  
Solicitors for and of Counsel  
with Appellants.

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## Answer to Petition of Appeal

### NEW JERSEY COURT OF ERRORS AND APPEALS

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| 10 | <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON, et als.<br/>Complainants-Appellants,<br/><br/>and<br/>THOMAS HENDERSON and<br/>FRANK VAN SYCKLE,<br/>Respondents-Appellees.</p> | <p>On Appeal<br/>from the<br/>Court of<br/>Chancery<br/>ANSWER TO<br/>PETITION<br/>OF APPEAL</p> |
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20      The answer of Frank Van Syckle, one of the respondent appellees to the petition of appeal of the above named appellants:

30      This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the 15th of October, 1924, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

JOSEPH E. STRICKER,  
Solicitor for and of Counsel  
for Frank Van Syckle.



Rule to Show Cause

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Said Charles K. Seaman, Robert Henderson, Evelyn Henderson, and Annie A. Henderson within two days from the date hereof.

E. R. WALKER,  
C.

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Respectfully Advised,  
ALONZO CHURCH,  
V. C.

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## Rule to Show Cause

## IN CHANCERY OF NEW JERSEY

To the Honorable EDWIN ROBERT WALKER,  
Chancellor of the State of New Jersey:

The petition of Frank Van Syckle of the Township of Woodbridge, County of Middlesex and State of New Jersey, respectfully shows: 10

1. The petitioner is engaged in the automobile business in the City of Perth Amboy, County of Middlesex and State of New Jersey.

2. On August 26, 1911, Robert Henderson and Thomas Henderson were seized as tenants in common of all that certain lot, tract or parcel of land and premises situate, lying and being in the City of Perth Amboy, County of Middlesex and State of New Jersey, described as follows: 20

Situated on the North side of Jefferson street in the City of Perth Amboy, containing twenty-five (25') feet each or fifty (50') feet in front on the north side of said Jefferson Street and extending northwardly of that width ninety-seven and fifty-three hundredths (97.53') feet in depth to lot number 208. Bounded on the north by lot number 208; East by lot number 115; south by said Jefferson Street; and west by lot number 118. Being Lots Numbers 116 and 117 on the Plan of Lands of Estate of E. M. Patterson at Perth Amboy, N. J., known as Smith Street property, as laid out by C. C. Hommann, C. E. 30

Being the same lands and premises that were conveyed to said Thomas P. Henderson and Robert Henderson by John D. Patterson, Executor &c., by deed dated November 22, 1900, and recorded in the Clerk's Office of the said County of Middlesex in Book 365 of Deeds on pages 99 &c.

3. At the time above specified and for some time prior thereto, the said Robert Henderson and 40

## Rule to Show Cause

Thomas Henderson were engaged in the general contracting business in the City of Perth Amboy under the firm name of Henderson Brothers.

10 4. On August 26, 1911, and action was commenced in the Court of Chancery of New Jersey wherein the said Robert Henderson was complainant, and Thomas Henderson, et als, were the defendants, wherein among other things it was prayed that the partnership theretofore existing between the said Robert Henderson and Thomas Henderson be dissolved, and that a receiver be appointed to receive and collect all outstanding debts and moneys due to or on account of the said partnership, and also to take possession of all the effects or property due or belonging to the said partnership, and that the said effects and  
20 property of or belonging or due to the said partnership, be sold and converted into money by and under direction of this Court.

5. On September 6, 1911, Charles K. Seaman was duly appointed receiver according to the prayer of said petition, and took into his possession and under his control all of the assets and property of the said Henderson Brothers, including the land above described.

30 6. On June 21, 1917, the said Robert Henderson and Evelyn Henderson, his wife, Thomas Henderson and Annie A. Henderson, his wife, and Charles K. Seaman, receiver for said Robert Henderson and Thomas Henderson, entered into a contract with one Emil Stremlau of the City of Perth Amboy, County of Middlesex and State of New Jersey, for the sale of the premises above described for the sum of \$6,500.00, a copy of which contract is hereto annexed and made a part hereof. There was paid as a deposit the sum of \$100.00, and the balance of the purchase price  
40 was to be paid upon delivery of deed, and con-

## Rule to Show Cause

firmation by this Honorable Court. Said deposit was duly paid to the receiver, Charles K. Seaman, or to his attorney, William A. Spencer.

7. On June 21, 1917, the said Emil Stremlau assigned said contract to the petitioner, Frank Van Syckle.

8. On October 28, 1923, the said Thomas Henderson died leaving a last will and testament which was duly probated on November 10, 1923, in Book L40 of Wills, page 112, in which he devised the residue of his estate including the premises in question, to his wife, Annie A. Henderson, and in which he also appointed her as executrix.

9. Soon after the execution of said contract the said receiver, Charles K. Seaman, petitioner went into possession of the premises in question and from that time on has had possession of said premises, which consists of two vacant lots above described.

10. Petitioner since the signing of the agreement of sale on June 21, 1917, has at frequent intervals asked for a delivery of the deed and has tendered to him the balance of the purchase price to wit, the sum of \$6,400.00, the said receiver although promising repeatedly to do so, has failed to carry out his promise and has further failed to apply to this court for a confirmation of said sale as provided for in said agreement and so far as petitioner is informed and believes, said receiver has filed no inventory, nor has he done anything toward the administrating of said estate and winding up its affairs since his appointment.

11. Petitioner further shows that said premises are encumbered by mortgage in the sum of \$3,000.00, held by one, Ida Benner, which mortgage said receiver has recently acquired by assignment not in his capacity as received but as an individual and petitioner charges that said Charles

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Rule to Show Cause

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K. Seaman has done this in order to foreclose said mortgage and thus hinder petitioner in the acquiring of said property in accordance with his contract.

10      Petitioner further shows that he is ready, willing and able to take the title of the premises aforesaid and therefore prays that said receiver, Charles K. Seaman, be directed and ordered by this Honorable Court to execute and deliver a deed for the aforesaid premises and that the said execution and delivery of said deed be confirmed by this Honorable Court and your petitioner will every pray, &c.

FRANK VAN SYCKLE,  
Petitioner.

20      County of Middlesex: }  
State of New Jersey, } ss.

FRANK VAN SYCKLE, of full age, being duly sworn according to law, on his oath deposes and says:

30      I am the petitioner in the foregoing petition mentioned. I have read the said petition and know the contents thereof, and the same are true of my own knowledge except as to matters that are therein stated to be on information and belief, and as to these matters I believe them to be true.

FRANK VAN SYCKLE.

Sworn and subscribed to before me  
this 17th day of September, 1924.

EMIL STREMLAU,  
M. C. C. of N. J.

40      ARTICLES OF AGREEMENT, made the twenty-first day of June in the year of Our Lord One

## Rule to Show Cause

Thousand Nine Hundred and Seventeen,

Between Robert Henderson and Evelyn, his wife; Thomas Henderson and Annie A., his wife, and Charles K. Seaman, receiver for Robert Henderson and Thomas Henderson, trading under the firm name and style of Henderson Brothers, of the City of Perth Amboy in the County of Middlesex and State of New Jersey, parties of the First Part: 10

And Emil Stremlau of the City of Perth Amboy in the County of Middlesex and State of New Jersey of the Second Part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Sixty Five Hundred Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns by Deed of Warranty free from all encumbrance on or before the twentieth day of July next ensuing the date hereof; all those lots, tracts, or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Perth Amboy, in the County of Middlesex and State of New Jersey described as follows: Situated on the north side of Jefferson street in the said City of Perth Amboy, containing twenty-five feet each or fifty feet in front on the north side of said Jefferson Street and extending northwardly of that width ninety seven  $53/100$  feet in depth to lot No. 208. Bounded on the north by Lot No. 208, East by Lot 115,, south by said Jefferson Street and west by Lot No. 118. Being Lots Nos. 116 and 117 on the Plan of Lands of Estate of E. M. Patterson at Perth Amboy, N. J., known as Smith Street property, as laid out by C. 20 30 40

## Rule to Show Cause

C. Hommann, C. E.

10 Being the same lands and premises that were conveyed to the said Thomas P. Henderson and Robert Henderson by John D. Patterson, Executor &c., by deed dated November 22, 1900, and recorded in the Clerk's Office of the said County of Middlesex in Book 365 of Deeds on pages 99 &c.

20 AND the said EMIL STREMLAU, for himself, his heirs, executors, and administrators and assigns doth covenant, promise and agree, to and with the said party of the first part, their heirs, executors, administrators and assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part the said sum of Sixty Five Hundred Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: The sum of one hundred dollars (\$100.) upon the signing, sealing and delivery of these presents.

The balance of the purchase price to be paid upon delivery of deed upon condition that the sale hereby made upon the part of the receiver aforesaid being confirmed by the Court of Chancery.

30 It being further understood that application to the Court of Chancery for that purpose be made upon filing the report of the receiver; which said report of the receiver and confirmation of sale of the property are to be made within thirty (30) days from the date hereof.

40 It is further understood and agreed that the one hundred dollars (\$100) paid as aforesaid shall be deposited with Beekman & Spencer and held by them until the delivery of the deed as aforesaid, and in case of the failure to deliver the said deed then the said one hundred dollars (\$100) to be returned to the said party of the second part.

Rule to Show Cause

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AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the twentieth day of July next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use. 10

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Beekman and Spencer between the hours of nine in the forenoon and eight o'clock in the afternoon on the said twentieth day of July next ensuing the date hereof.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of One Hundred Dollars which they hereby fix and settle as liquidated damages therefor. 20

In WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Signed, Sealed and Delivered 30  
in the presence of

ROBERT HENDERSON,  
EVELYN HENDERSON,  
THOMAS HENDERSON,  
ANNIE A. HENDERSON.

CHAS. K. SEAMAN,  
Receiver.

Perth Amboy, N. J., June 21, 1917. 40

Rule to Show Cause

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10 In consideration of the sum of One Hundred Dollars to me in hand paid by Frank Van Syckle, I do hereby assign, transfer and set over unto the said Frank Van Syckle, his heirs and assigns, all my right, title, and interest in and to the within agreement of sale; subject, however, to all terms and conditions therein contained.

Signed, sealed and delivered  
in the presence of:

EMIL STREMLAU.

PETER VAN SYCKLE.

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

20 BE IT REMEMBERED, That on this 21st day of June in the year of Our Lord One Thousand Nine Hundred and Seventeen, before me, the subscriber, a Master in Chancery of the State of New Jersey, personally appeared Robert Henderson, and Evelyn, his wife; Thomas Henderson and Annie A., his wife, and Charles K. Seaman, Receiver for Robert Henderson and Thomas Henderson, who, I am satisfied are the Grantors in the within agreement named; and I having first made known to them the contents thereof, they did then ac-  
30 knowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed:

WM. A. SPENCER,  
M. in C. of N. J.

## Affidavit

IN CHANCERY OF NEW JERSEY

|   |   |  |    |
|---|---|--|----|
| <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON,<br/>Complainant,<br/>and<br/>THOMAS P. HENDERSON,<br/>et als.,<br/>Defendants.</p> | } | <p style="text-align: center;">On Bill &amp;c.<br/>AFFIDAVIT</p> | 10 |
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| <p>State of New Jersey,<br/>County of Middlesex:</p> | } | <p style="text-align: center;">ss.</p> | 20 |
|--|---|--|----|

I, Edwin G. Fraser, of full age, being duly sworn, according to law on my oath depose and say that I am engaged in the real estate business and have been so engaged for twenty-five years last past, in the City of Perth Amboy, in the County of Middlesex and State of New Jersey; that I have seen and inspected the property of Henderson Brothers located on the Northerly side of Jefferson Street, adjoining property of Frank Van Syckle; that I am acquainted with property value in that section of Perth Amboy; that said property is fifty feet in front of on Jefferson Street and 97.53 feet in depth; that a fair market value of said property, at the present time, is the sum of fifteen thousand dollars; that my opinion concerning said value is based upon the value of like property located on the same street, particularly property located on the same street, opposite the property in question. 30

There have been recent sales of property on Jefferson Street directly in the vicinity of the 40

Affidavit

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10 property in question; the same is located within one block of the principal cross streets in the City of Perth Amboy, namely Smith and State Streets. It is also located within two blocks of the post office in the City of Perth Amboy, and about one hundred feet westerly from New Brunswick Avenue, which is the main avenue of entrance in the City of Perth Amboy.

EDWIN G. FRASER,

Sworn and subscribed to before me  
this 29th day of September, 1924.

DOGIL SKOV,  
Notary Public of N. J.

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## Affidavit

## IN CHANCERY OF NEW JERSEY

|   |   |                                      |    |
|---|---|--------------------------------------|----|
| <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON,<br/>Complainant,<br/>and<br/>THOMAS P. HENDERSON,<br/>et als.,<br/>Defendants.</p> | } | <p>On Bill &amp;c.<br/>AFFIDAVIT</p> | 10 |
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|--|---|-----|----|
| <p>State of New Jersey,<br/>County of Middlesex:</p> | } | ss. | 20 |
|--|---|-----|----|

I, Andrew W. Morton, of full age, being duly sworn, according to law on my oath depose and say that I am engaged in the real estate business and have been so engaged for twenty-five years last past, in the City of Perth Amboy, in the County of Middlesex and State of New Jersey; that I have seen and inspected the property of Henderson Brothers located on the Northerly side of Jefferson Street, adjoining property of Frank Van Syckle; that I am acquainted with property value in that section of Perth Amboy; that said property is fifty feet in front of on Jefferson Street and 97.53 feet in depth; that a fair market value of said property, at the present time, is the sum of fifteen thousand dollars; that my opinion concerning said value is based upon the value of like property located on the same street, particularly property located on the same street, opposite the property in question.

There have been recent sales of property on Jefferson Street directly in the vicinity of the

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Affidavit

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10 property in question; the same is located within one block of the principal cross streets in the City of Perth Amboy, namely Smith and State Streets. It is also located within two blocks of the post office in the City of Perth Amboy, and about one hundred feet westerly from New Brunswick Avenue, which is the main avenue of entrance in the City of Perth Amboy.

ANDREW W. MORTON.

Sworn and subscribed to before me  
this 29th day of September, 1924.

CHARLES L. STEUERWALD,  
Notary Public of N. J.

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## Replying Affidavit

IN CHANCERY OF NEW JERSEY

|  |   |  |    |
|--|---|--|----|
| <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON,</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">THOMAS HENDERSON, et als.,</p> <p style="text-align: center;">Defendants.</p> | } | <p style="text-align: center;">REPLYING<br/>AFFIDAVIT.</p> | 10 |
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|--|-------|----|
| <p>STATE OF NEW JERSEY,<br/>COUNTY OF MIDDLESEX. }</p> | } ss. | 20 |
|--|-------|----|

JOSEPH MASSOPUST, of full age, being duly sworn according to law on his oath deposes and says:

“I am a member of the firm of Massopust Brothers and Company, real estate and insurance agents, in the City of Perth Amboy, and have been so engaged for the past fifteen years. During that period I have made a large number of appraisals on real estate in the City of Perth Amboy and am well qualified to make the same. I am familiar with the property owned by Henderson Brothers on the North side of Jefferson Street in the City of Perth Amboy, which said property is described as follows:

All those lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Perth Amboy, County of Middlesex and State of New Jersey, situated on the North side of Jefferson Street, containing twenty-five feet each or fifty feet in front on the North side of said Jefferson Street and ex-

## Replying Affidavit

tending Northwardly of that width ninety-seven and fifty-three hundredths (97.53) feet in depth to Lot No. 208.

10 Bounded on the North by Lot No. 208; East by Lot 115; South by said Jefferson Street and West by Lot 118. Being Lots Nos. 116 and 117 on the Plan of Lands of Estate of E. M. Patterson at Perth Amboy, N. J., known as Smith Street property, as laid out by C. C. Hommann, C. E.

20 Said property consists of two vacant lots in a section of the City of Perth Amboy which has not shown very much progress during the past twenty years. Adjoining the property above described on the East is an old frame building used as an automobile laundry; on the West of the property is a vacant lot and then two dwellings and a church; on the south side of Jefferson Street opposite the premises above described, there is another automobile laundry and a large vacant lot used for storage of teams; adjoining that is the Public Service Power House.

30 On June 21, 1917, the value of the premises above described in my opinion, was worth the sum of Six Thousand (\$6,000) Dollars. I base this value on the fact that the lot immediately adjoining the premises on the West was sold in 1919 for Three Thousand (\$3,000) Dollars. The Henderson property has increased in value since the 21st day of June, 1917, and is now worth the sum of Ten Thousand (\$10,000) Dollars.

Sworn and subscribed to before me  
this Fourth day of October, 1924.

JOS. MASSOPUST.

HELEN V. CHRISTIANSEN,  
Notary Public of New Jersey.



## Replying Affidavit

10 past twenty years. Adjoining the Henderson property on the East is an old frame building used as an automobile laundry or storage place; on the West of the property is a vacant lot followed by two residences and a church; on the south side of Jefferson Street opposite the premises above described there is an automobile laundry and a large vacant lot used for the storage of teams; west of said lots is the Public Service power house.

20 On June 21, 1917, the Henderson property was valued at \$5,800. . I base this value on the fact that the lot immediately adjoining the said premises on the West was sold in 1919 for \$3,000.00. In recent years the Henderson property has increased somewhat in value, and is now worth about \$10,000.00. This is due to the general increase of values in the City of Perth Amboy, and not because of any particular activity on Jefferson Street. To my knowledge there have been no new buildings erected on Jefferson Street in the block in which the Henderson property is located during the past seven or eight years.

Sworn and subscribed to before me  
this Fourth day of October, 1924.

HANS NIELSEN,

30

EMIL STREMLAU,  
M. C. C. of N. J.

## Stipulation

### NEW JERSEY COURT OF ERRORS AND APPEALS

|   |  |    |
|---|--|----|
| <p style="text-align: center;">Between:</p> <p>ROBERT HENDERSON, et als.,<br/>Complainant-Appellants,</p> <p style="text-align: center;">vs.</p> <p>THOMAS HENDERSON and<br/>FRANK VAN SYCKLE,<br/>Defendant-Appellees,</p> | <p>On Appeal<br/>from Court of<br/>Chancery.<br/>STIPU-<br/>LATION</p> | 10 |
|---|--|----|

It is hereby stipulated between counsel for the respective parties that Charles K. Seaman was duly appointed and qualified as receiver of Henderson Brothers, a co-partnership, and since that time has done nothing as Receiver by way of administering the receivership, excepting the making of the contract which is sought to be enforced by Frank Van Syckle. 20

January 7th, 1925.

JOHN E. TOOLAN,

Solicitor for and of counsel with complainant Robert Henderson and the defendant Anna Henderson, individually and as executrix of the last will and testament of Thomas Henderson, deceased. 30

WILLIAM A. SPENCER,

Solicitor for and counsel with Charles K. Seaman, Receiver of Henderson Bros.

JOSEPH E. STRICKER,

Solicitor for and of counsel with defendant Frank Van Syckle. 40

**Order**

IN CHANCERY OF NEW JERSEY.

|    |                            |                        |
|----|----------------------------|------------------------|
|    | Between:                   |                        |
| 10 | ROBERT HENDERSON,          | }                      |
|    | Complainant,               |                        |
|    | and                        |                        |
|    | THOMAS HENDERSON, et als., |                        |
|    | Defendants.                | On Bill, &c.<br>ORDER. |

20 This matter being opened to the court by Joseph E. Stricker, solicitor for and of counsel with the petitioner, Frank Van Syckle, upon the return of a rule to show cause made returnable on the 23rd day of September, 1924, and subsequently adjourned to the 30th day of September, 1924, and later to the 7th day of October, 1924.

AND IT APPEARING by affidavit that certified copies of said rule to show cause together with petition upon which same was based were served upon Charles K. Seaman, Evelyn Henderson, Robert Henderson and Annie Henderson.

30 AND IT FURTHER APPEARING that on the 21st day of June, 1917, Robert Henderson and Evelyn Henderson, his wife, Thomas Henderson and Annie A. Henderson, his wife, and Charles K. Seaman, receiver for said Robert Henderson and Thomas Henderson entered into a contract with one Emil Stremmlau of the City of Perth Amboy, County of Middlesex and State of New Jersey for the sale of all those lots, tracts or parcels of land and premises hereinafter particularly described, situate and lying and being in the City  
40 of Perth Amboy in the County of Middlesex and State of New Jersey, described as follows:

## Order

Situated on the north side of Jefferson Street in the said City of Perth Amboy, containing twenty-five feet each or fifty feet in front on the north side of said Jefferson Street and extending northwardly of that width ninety seven  $53/100$  feet in depth to lot No. 208. Bounded on the north by Lot No. 208, East by Lot No. 115, south by said Jefferson Street and west by Lot No. 118. Being Lots Nos. 116 and 117 on the Plan of Lands of Estate of E. M. Patterson at Perth Amboy, N. J., known as Smith Street property, as laid out by C. C. Hommann, C. E.

10

Being the same lands and premises that were conveyed to the said Thomas P. Henderson and Robert Henderson by John D. Patterson, Executor &c., by deed dated November 22, 1900, and recorded in the Clerk's Office of the said County of Middlesex in Book 365 of Deeds on pages 99 &c.

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for the sum of Sixty-Five Hundred Dollars (\$6,500.00) upon which a deposit of One Hundred Dollars (\$100.00) was paid at the time and the balance of the purchase price was to be paid upon the delivery of a warranty deed and upon confirmation of said sale by this court and with the understanding that the receiver was to file a report and apply for confirmation of said sale within thirty days from the date of the contract as more fully appears from the copy of the contract made a part of the petition heretofore filed in this cause.

30

AND IT FURTHER APPEARING that on the 21st day of June, 1917, the said Emil Stremlau assigned said contract to Frank Van Syckle.

AND IT FURTHER APPEARING that on October 28, 1923, Thomas Henderson died leaving a last will and testament which was duly probated on November 20, 1923, in Book 40 of Wills, page 112, of Middlesex County, in which he devised the residue of his estate including the above

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## Order

described premises to his wife, Annie A. Henderson and in which he appointed her his executrix.

10 AND IT FURTHER APPEARING that at no time after the execution of said contract did the receiver make any effort looking to the consummation of said contract nor has he ever filed any report or applied to this court for a confirmation of said sale.

AND IT FURTHER APPEARING that the said Frank Van Syckle since the signing of the agreement of sale and the assignment thereof as above, has at frequent intervals asked for a delivery of the deed and tendered the balance of the purchase price to wit, the sum of Sixty-Four Hundred Dollars (\$6,400.00).

20 AND IT FURTHER APPEARING that the said Frank Van Syckle after the execution of said contract went into possession of the premises above described which premises consists of two vacant lots and has from that time on had possession of said premises.

30 AND IT FURTHER APPEARING that the said Charles K. Seaman, the receiver, has filed no inventory or taken any steps to the winding up of the affairs of said partnership, and the court having considered the verified petition and affidavit of said Frank Van Syckle and the affidavit submitted by William A. Spencer, Solicitor for Charles K. Seaman, receiver aforesaid, and having heard the argument of Joseph E. Stricker, Solicitor for said petitioner, and William A. Spencer, Solicitor for said receiver and having duly considered the same,

40 It is on this 15th day of October, 1924, on motion of Joseph E. Stricker, solicitor for and of counsel with the petitioner, Frank Van Syckle, ORDERED, ADJUDGED and DECREED that the

## Order

contract dated the 21st day of June, 1917, for the sale of the property above described be CONFIRMED by this court and that Charles K. Seaman, Receiver, Robert Henderson, Evelyn Henderson and Annie A. Henderson as individual and as executrix of Thomas Henderson, execute and deliver a warranty deed to the premises above described, free from all encumbrances to Frank Van Syckle on or before the 28th day of October, 1924, upon payment of the balance of the purchase price to with, the sum of Sixty-Four Hundred Dollars (\$6,400.00) by said Frank Van Syckle to said receiver. 10

AND IT IS FURTHER ORDERED that the said receiver, Charles K. Seaman file his inventory and account forthwith and that he proceed with dispatch in winding up said receivership. 20

IT IS FURTHER ORDERED that a copy of this order certified by the solicitor of the petitioner be served on said Charles K. Seaman, Receiver, Robert Henderson, Evelyn Henderson, and Annie A. Henderson, within 3 days from the date hereof.

Respectfully Advised,

ALONZO CHURCH,  
V. C.

E. R. WALKER,

C. 30

**Notice**

IN CHANCERY OF NEW JERSEY

|    |   |   |             |
|----|---|---|-------------|
|    | Between:                                  | } |             |
| 10 | ROBERT HENDERSON,<br>Complainant,         |   | On Bill &c. |
|    | and                                       |   | NOTICE      |
|    | THOMAS HENDERSON, et als.,<br>Defendants. |   |             |

TO: FRANK VAN SYCKLE, Petitioner.

20 Take NOTICE that on Wednesday, November 5, 1924, I shall apply to vacate the order of October 15th, 1924, insofar as it directs the defendant, Annie A. Henderson, as individual and as executrix of Thomas Henderson, **to execute and deliver a warranty deed** upon the ground that **this court has no jurisdiction** upon these proceedings to compel the said Annie A. Henderson, as individual and as executrix of Thomas Henderson, to execute the deed, she **not being a party to the cause and not having been brought in by proper process** and upon the ground that there was no evidence to sustain such an order against her, and upon such

30 application I shall apply for a hearing or re-hearing of the order to show cause made herein, and upon said hearing—or re-hearing I shall raise the question of jurisdiction, the appearance made by me for the said Annie A Henderson, as individual and as executrix of Thomas Henderson by this notice being limited to the question of the jurisdiction of the court.

JOHN E. TOOLAN,

Solicitor of Annie A. Henderson, individually and as executrix of the Estate of Thomas Henderson, deceased.

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Dated: October 25, 1924.

## Notice

## IN CHANCERY OF NEW JERSEY

|   |   |  |
|---|---|--|
| <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON,<br/>Complainant,<br/><br/>and<br/>THOMAS HENDERSON, et als.,<br/>Defendants.</p> | } | <p>On Bill &amp;c.      10</p> <p>NOTICE</p> |
|---|---|--|

TO: FRANK VAN SYCKLE, Petitioner.

Take NOTICE that on Wednesday, the 5th day of November, 1924, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Chancery Chambers in Newark, New Jersey, I shall apply to the Honorable Alonzo Church, the Vice-Chancellor, who made the order herein upon the 15th day of October, 1924, to settle the form or the order and to hear the objections filed herein, a copy of which is herewith served upon you, and at such time and place I shall also move for a hearing, or re-hearing upon the said petition and order to show cause and shall apply for leave to offer testimony and upon which occasion I shall use an affidavit, a copy of which is annexed hereto.

WILLIAM A. SPENCER,

Solicitor for and of counsel with  
Charles K. Seaman, Receiver for Hen-  
derson Bros.

Dated: October 25, 1924.

## Affidavit

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

WILLIAM A. SPENCER, of full age, being duly sworn according to law, upon his oath deposes and says:

10

I am an attorney at law and attended before the Honorable Alonzo Church, Vice-Chancellor on the hearing of the order to show cause made herein on the petition of Frank Van Syckle. There was no testimony taken before the Vice Chancellor. No notice of application to confirm the sale was given to creditors. There are many creditors of the estate. If the sale be confirmed and the property conveyed and the moneys received there will not be sufficient moneys to pay the creditors. The

20 creditors have never had notice of the sale or of application to confirm the sale. There are also judgment creditors, who have liens upon the property, who have not been notified. There are liens upon the property at the present time which must be paid by the estate amounting to the sum of \$ . These liens are up as follows:

DISTRICT COURT OF THE CITY OF  
PERTH AMBOY

30

THE GOELLER IRON WORKS,  
a Corporation,

Plaintiff,

vs.

THOMAS HENDERSON and  
ROBERT HENDERSON, part-  
ners, Trading as Henderson  
Brothers.

Defendants.

40

On Contract.  
Docketed  
Sept. 11,  
1911. Book 1  
Docketed  
Judgments,  
Page 16.

Affidavit

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Judgment rendered August 28, 1911.

\$152.47 damages.

\$11.63 costs.

Execution issued August 29, 1911, and returned  
Sept. 7, 1911, unsatisfied.

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## Affidavit

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 DISTRICT COURT OF THE CITY OF  
 NEW BRUNSWICK
 

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|    |  |   |  |
|----|--|---|--|
| 10 | THE DUNELLEN LUMBER and<br>STONE COMPANY, a Cor-<br>poration,<br><div style="text-align: right; padding-right: 20px;">Plaintiff,</div>                               | } | On Contract.<br>Docketed<br>Nov. 8, 1911.<br>Book I of<br>Docketed<br>Judgments,<br>Page 55. |
|    | vs.  |   |  |
|    | ROBERT HENDERSON and<br>THOMAS HENDERSON, part-<br>ners, trading as Henderson<br>Brothers,<br><div style="text-align: right; padding-right: 20px;">Defendants.</div> |   |  |

20 Judgment entered in favor of plaintiff against the defendants, November 2, 1911, for \$227.47 damages  
 \$ 16.35 costs.

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 MIDDLESEX COUNTY CIRCUIT COURT.

|    |   |   |  |
|----|---|---|--|
| 30 | RARITAN MERCANTILE COM-<br>PANY, a Corporation,<br><div style="text-align: right; padding-right: 20px;">Plaintiff,</div>  | } | On Contract.<br>Docketed<br>May 20, 1914.<br>Book M. of<br>Circuit Court<br>Judgments.<br>Page 87. |
|    | vs.   |   |  |
|    | ROBERT HENDERSON and<br>THOMAS HENDERSON, late<br>Partners, trading as Hender-<br>son Brothers,<br><div style="text-align: right; padding-right: 20px;">Defendants.</div> |   |  |

40 Judgment entered by default in favor of plaintiff for the sum of \$493.78 damages.  
 \$ 41.12 costs.

## Affidavit

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 DISTRICT COURT OF THE CITY OF  
 PERTH AMBOY
 

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RANSOME CONCRETE MA-  
 CHINE COMPANY,

Plaintiff,

vs.

THOMAS HENDERSON and  
 ROBERT HENDERSON, part-  
 ners trading as Henderson  
 Brothers,

Defendants.

On Contract.  
 Docketed 10  
 Dec. 14, 1914.  
 Book J of  
 Docketed  
 Judgments.  
 Page 55.

Judgment rendered March 5, 1912.

\$203.28 damages.

20

\$ 14.19 costs.

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 DISTRICT COURT OF THE CITY OF  
 PERTH AMBOY
 

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MERRITT METAL CEILING  
 COMPANY, a Corporation,

Plaintiff.

vs.

THOMAS HENDERSON and  
 ROBERT HENDERSON,  
 Defendants.

On Contract.  
 Docketed 30  
 Dec. 29, 1916.  
 Book J of  
 Docketed  
 Judgments.  
 Page 483 &c.

Judgment rendered December 28, 1916.

\$268.14 damages.

40

\$ 17.41 costs.

Affidavit

MIDDLESEX COUNTY COURT OF  
COMMON PLEAS.

|    |  |   |  |
|----|--|---|--|
| 10 | KEYPORT BANKING COM-<br>PANY, a Corporation,<br><br>Plaintiff.<br><br>vs.<br><br>ROBERT HENDERSON,<br><br>Defendant. | } | Action at<br>Law.<br>Rule for<br>Judgment.<br>Book G of<br>Common<br>Pleas Judg-<br>ments, Page<br>472 &c. |
|----|--|---|--|

20 Judgment interlocutory entered by default in  
 favor of plaintiff, for the sum of  
 \$257.95 damages.  
 \$ 41.25 costs.  


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 \$299.20

NEW JERSEY SUPREME COURT.

|    |  |   |  |
|----|--|---|--|
| 30 | THE DUNELLEN LUMBER &<br>STONE COMPANY, a Cor-<br>poration.<br><br>vs.<br><br>ROBERT HENDERSON and<br>THOMAS HENDERSON, part-<br>ners, trading as Henderson<br>Brothers, | } | On Contract.<br>By Default.<br>Beekman &<br>Spencer,<br>Attys. |
|----|--|---|--|

40 Entered October 26, 1911.  
 Damages \$772.62  
 Costs 33.65 \$811.27

## Affidavit

## NEW JERSEY SUPREME COURT.

|   |   |  |    |
|---|---|--|----|
| ELLEN M. DONEHUE, Execu-<br>trix, etc., of JOHN C. DONE-<br>HUE, deceased,<br><br>vs.<br><br>ROBERT HENDERSON and<br>THOMAS P. HENDERSON, | } | Action at<br>Law.                          | 10 |
|   |   | On Postea.<br>Joseph E.<br>Stricker, Atty. |    |

Entered January 30, 1917.

|         |          |          |
|---------|----------|----------|
| Damages | \$621.77 |          |
| Costs   | 52.62    | \$674.39 |

## Bills as follows:

|                           |         |    |
|---------------------------|---------|----|
| W. J. Donnell             | 3.20    |    |
| F. X. Urbanski            | 22.50   |    |
| Richard V. Rue            | 56.90   |    |
| Arthur E. Smith           | 1091.90 |    |
| A. Beckhoff               | 16.95   |    |
| Hans Satter & Son         | 84.82   |    |
| Robert F. Hubble          | 45.30   |    |
| Munoz's Express           | 58.45   | 30 |
| Schantz & Eckert          | 54.70   |    |
| Martin Hanson             | 77.25   |    |
| Paul Batoric              | 32.47   |    |
| Frank Van Syckle          | .90     |    |
| Kelly & McAlinden         | 1.56    |    |
| I. R. Robbins             | 1.65    |    |
| S. A. Lumber & Supply Co. | 45.00   |    |
| Middlesex Sand Co.        | 53.42   |    |
| Wilson Stone Co.          | 327.79  |    |
| Patrick Convery           | 97.15   |    |
| Rock Plaster Mfg. Co.     | 151.00  | 40 |
| Walter Rechnitzer         | 28.70   |    |

## Affidavit

|    |                             |         |
|----|-----------------------------|---------|
|    | S. A. Terra Cotta Co.       | 75.00   |
|    | N. Y. Telephone Co.         | 26.39   |
|    | A. G. Bolton                | 3658.73 |
|    | Merritt Metal Ceil. Co.     | 262.62  |
|    | A. H. Koyen                 | 62.50   |
| 10 | Fibre Board Co.             | 10.80   |
|    | P. A. Hardware Co.          | 73.71   |
|    | M. Slobodien                | 12.95   |
|    | Public Service Elec. Co.    | 3.00    |
|    | Liddle & Pfeiffer           | 118.83  |
|    | Cliffwood Brick Co.         | 201.00  |
|    | P. A. Cement Stone & T. Co. | 58.52   |
|    | T. F. Dunigan               | 26.75   |
|    | Raritan C. E. & C. Co.      | 37.93   |
|    | Raritan Mercantile Co.      | 450.00  |
|    | F. W. Dodge                 | 158.33  |
| 20 | Andrew Clausen              | 18.10   |
|    | C. A. Liddle                | 9.39    |

The result will be that the moneys received by the receiver will not be sufficient to satisfy the liens against the property. No order has been made bringing in creditors.

30 I desire an opportunity, on the part of the receiver, to offer evidence showing laches on the part of the vendee, and an abandonment of the contract and such an inequitable set of circumstances as will induce this court to decline to grant specific performance.

WILLIAM A. SPENCER.

Sworn and subscribed to before me,  
this 25th day of October, 1924.

40 BODIL SKOV,  
Notary Public of N. J.

## Objections to Order

IN CHANCERY OF NEW JERSEY

|   |   |   |    |
|---|---|---|----|
| <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON,<br/>Complainant,<br/><br/>and<br/>THOMAS HENDERSON, et als.,<br/>Defendants.</p> | } | <p>On Bill &amp;c.<br/>OBJEC-<br/>TIONS TO<br/>ORDER.</p> | 10 |
|---|---|---|----|

TO: FRANK VAN SYCKLE, petitioner.

Charles K. Seaman, receiver, and Annie A. Henderson, object to the form of the order made in the above entitled matter in the following particulars: 20

1. The said order recites that "on the 21st day of June, 1917, Robert Henderson and Evelyn Henderson, his wife, Thomas Henderson and Annie A. Henderson, his wife, and Charles K. Seaman, receiver for said Robert Henderson and Thomas Henderson entered into a contract with one Emil Stremlau of the City of Perth Amboy, County of Middlesex and State of New Jersey for the sale of all those lots, tracts or parcels of land and premises hereinafter particularly described, situate and lying and being in the City of Perth Amboy in the County of Middlesex and State of New Jersey, described as follows: 30

Situated on the north side of Jefferson Street in the said City of Perth Amboy, containing twenty-five feet each or fifty feet in front on the north side of said Jefferson Street and extending northwardly of that width ninety-seven  $\frac{53}{100}$  feet in depth to lot No. 208. Bounded on the north by Lot No. 208, east by Lot No. 115, south by said Jefferson Street and west by Lot No. 118. Be- 40

## Objections to Order

ing lots Nos. 116 and 117 on the Plan of Lands of Estate of E. M. Patterson at Perth Amboy, N. J., known as Smith Street property, as laid out by C. C. Hommann, C. E.

10 Being the same lands and premises that were conveyed to the said Thomas P. Henderson and Robert Henderson by John D. Patterson, Executor, &c., by deed dated November 22, 1900, and recorded in the Clerk's Office of the said County of Middlesex in Book 365 of Deeds on pages 99 &c.

20 for the sum of Sixty-five Hundred Dollars (\$6,500.00) upon which a deposit of One Hundred Dollars (\$100.00) was paid at the time and the balance of the purchase price was to be paid upon the delivery of a warranty deed and upon confirmation of said sale by this court and with the understanding that the receiver was to file a report and apply for confirmation of said sale within thirty days from the date of the contract as more fully appears from the copy of the contract made a part of the petition heretofore filed in this cause; whereas said recital should not appear in said order in any manner whatsoever because there is no evidence before the court to sustain the recital.

30 2. The said order recites: "And it further appearing that on the 21st day of June, 1917, the said Emil Stremmlau assigned said contract to Frank Van Syckle; whereas said recital should not appear in said order in any manner whatsoever because there is no evidence before the court to sustain the recital.

40 3. The said order recites: "And it further appearing that on October 28, 1923, Thomas Henderson died leaving a last will and testament which was duly probated on November 10, 1923, in Book 40 of wills, page 112, of Middlesex County, in which he devised the residue of his estate including the above described premises to his wife, Annie A. Henderson and in which he ap-

## Objections to Order

pointed her his executrix; whereas such order should contain no such recital because there is no evidence before the court upon which to base such a recital.

4. The said order recites: "And it further appearing that at no time after the execution of said contract did the receiver make any effort looking to the consummation of said contract nor has he ever filed any report or applied to this court for a confirmation of said sale; whereas such order should contain no such recital because there is no evidence before the court upon which to base such a recital." 10

5. The said order recites: "And it further appearing that the said Frank Van Syckle since the signing of the agreement of sale and the assignment thereof as above, has at frequent intervals asked for a delivery of the deed and tendered the balance of the purchase price, to wit, the sum of Sixty-four hundred dollars (\$6,400.00); whereas such order should contain no such recital because there is no evidence before the court upon which to base such a recital." 20

6. The said order recites: "And it further appearing that the said Frank Van Syckle after the execution of said contract went into possession of the premises above described which premises consists of two vacant lots and has from that time on had possession of said premises; whereas such order should contain no such recital because there is no evidence before the court upon which to base such a recital." 30

7. The said order orders, adjudges, and decrees that the contract dated June 21st, 1917, for the sale of the property above described be confirmed by this court and that Charles K. Seaman, receiver, Robert Henderson, Evelyn Henderson and Annie A. Henderson as individual and as ex- 40



## Opinion

|  |   |  |    |
|--|---|--|----|
| <p style="text-align: center;">Between:</p> <p style="text-align: center;">ROBERT HENDERSON,<br/>Complainant,<br/>and<br/>THOMAS HENDERSON, et als.,<br/>Defendants.</p> | } | <p style="text-align: center;">OPINION</p> | 10 |
|--|---|--|----|

CHURCH, V. C.

Frank Van Syckle filed a verified petition with this court setting out that on August 26th, 1911, Charles K. Seaman was appointed receiver in the above-mentioned case for the partnership of Thomas Henderson and Robert Henderson. On September 6th, 1911, the receiver took possession of the assets of the property of the partnership, including a parcel of land on Jefferson street, Perth Amboy. On June 21st, 1917, title and possession having passed to him, the receiver entered into an agreement with Emil Stremlau for the sale of the property for \$6,500. Robert Henderson and Thomas Henderson, who comprised the defunct partnership, and their wives, joined in the agreement of sale.

A deposit of \$100 was paid on the signing of the agreement, the balance to be paid on delivery of the deed. The contract was on the same date assigned to Van Syckle. On October 28th, 1923, one of the partners, Thomas Henderson, died, leaving a will in which he named his wife as executrix and devised his estate to her. Frank Van

## Opinion

Syckle went into possession of the premises and has remained in possession. Since the agreement of sale he has frequently asked for a delivery of a deed, but the receiver has failed to so deliver.

10 It also appears that the receiver has filed no inventory, nor done anything towards the administration of the estate. It was further stated in the argument that the receiver has recently taken an assignment to himself, individually, of a mortgage of \$3,000, covering the premises.

20 Upon the filing of the petition, an order to show cause why the receiver and the Hendersons should not be ordered by this court to carry out the contract and deliver the deed to the petitioner, was entered. The order was served upon the receiver, Robert Henderson, Evelyn Henderson and Annie A. Henderson, individually, and as executrix of Thomas Henderson. Upon the return of the order to show cause, the receiver was represented by counsel, no one appearing for the other parties. No answer was filed to the petition, and the allegations as above set forth were admitted in open court by counsel for the receiver. The only reason the receiver advanced for his unwillingness to complete the sale was that the property has risen in value since 1917.

30 A contract entered into with a judicial officer for the sale of property is no different from any other contract. Courts will decree performance in the same manner as they would between private parties. *Cropper v. Brown*, 76 N. J. Eq. 406.

Where a sale has been acquiesced in it will constitute a performance of the contract even though no formal confirmation has ever been had. 35 Corp. Jur. 50.

40 The petitioner in this case has been in possession of the property with the receiver's permis-

Opinion

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sion for some years. Failure to give notice to creditors is not fatal. 35 Corp. Jur. 45.

Where a sale has been made for a fair price in good faith and there is no fraud, the subsequent offer of a higher price is not in itself sufficient to prevent confirmation of the lower bid. Adams v. Lambertville, &c., 84 N. J. Eq. 96; Krieger v. Scheuer, 86 Atl. Rep. 534. 10

On the return of the order to show cause the Hendersons, who were served, did not appear. In my opinion they were not necessary parties, as title to the premises passed to the receiver on his appointment. All the allegations as set forth in the petition having been admitted in open court, except as to value, I shall advise an order directing the conveyance as prayed for. 20

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tion for some reason. I believe it is necessary to  
investigate the matter.

It may be that they have been for a long time  
in good faith and there is no reason to  
doubt that they are honest. It is not in itself an  
10 objection to present arrangements for the future but  
I believe it is necessary to investigate the matter.

It is not necessary to order to show cause the  
15 person who has been named in the report. In  
my opinion they were not necessary. It is  
not necessary to order to show cause in the  
appointment of all the officers of the  
20 institution. It is not necessary to order to  
show cause in the appointment of all the officers  
of the institution. It is not necessary to order to  
show cause in the appointment of all the officers

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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

WESLEY LIBERTY WIEDMER,  
*Prosecutor-Appellant.*

and

WEST JERSEY AND SEASHORE RAILROAD COMPANY, *et al.*,  
*Defendants-Respondents.*

ON APPEAL.

BRIEF OF DEFENDANTS-RESPONDENTS.

On or about the eighth day of April, 1934, a petition was filed in the clerk's office of the County of Essex, New Jersey, by the West Jersey and Seashore Railroad Company, praying the appointment of Commissioners to ascertain the compensation to be paid to Wesley Liberty Wiedmer, Florence Liberta Wiedmer and Clyde B. Hammer for property condemned for public use under the Act of April 14th, 1905, entitled "An act concerning railroads (Revision of 1905)" and the supplements and amendments thereto, and the act concerning the ascertainment and compensation for land taken in condemnation proceedings (Revision of 1909), which land lay

