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*Bill of Complaint.*

**BILL OF COMPLAINT AND AFFIDAVITS.**

Filed March 28, 1933.

**In Chancery of New Jersey**

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To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey.

The complainants, Charles D. Partrick and Grace Partrick his wife, of the City of Elizabeth, County of Union, and State of New Jersey, respectfully show that:

1. Complainants reside at No. 44 Vista avenue, in the City of Elizabeth, and have resided there for the past thirteen years.

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2. On January 1, 1920, complainants made and executed a first mortgage on their premises to one, Fannie O. Bouton for the sum of Thirty-five hundred dollars and a second mortgage in the sum of Eleven hundred dollars. The said William F. Groves represented the said Fannie O. Bouton and himself in the transaction. The said mortgage of Fannie O. Bouton was on February 10, 1921 assigned to Webster S. Schultz.

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3. Complainants paid to said William F. Groves in installments the amount due on his second mortgage and said mortgage was in July 1922, cancelled of record. At or about said time complainant, Charles D. Partrick inquired of William F. Groves if he, Partrick could make monthly payments on the first mortgage and was informed by said Groves that it would be all right to make payments to him on account of the

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*Bill of Complaint.*

principal of the first mortgage monthly and he, Groves would pay same to the mortgagee.

10 4. Complainants from July 1922, until June 30, 1926 paid to said William F. Groves the sum of fifteen hundred and eighty dollars on account of principal of said first mortgage, together with interest on the semi-annual balances. From June 30, 1926 to January 1, 1930, complainants paid interest on the unpaid balance of Nineteen hundred and twenty dollars due on the said mortgage according to the accounts of complainant and William F. Groves.

20 5. The said William F. Groves did not pay to the mortgagee the installments collected on first mortgage but appropriated said payments to his own use and purposes and has up to and including the present time fraudulently withheld the payments from the mortgagee and fraudulently refuses to return said money to the complainants.

30 6. Complainants had no knowledge whatever that the installment payments made to William F. Groves were not paid to Webster S. Schultz until May 1930, after said Webster S. Schultz communicated with said complainants and complainants ascertained from said William F. Groves and his books of account that said moneys were fraudulently withheld.

40 7. Said William F. Groves admitted that he received said money from complainants and admitted he did not pay them to Webster S. Schultz which admissions were made in the Chancery Court in a proceeding to foreclose the above mortgage and were also made to complainant, Charles D. Partrick and his solicitor, Louis C. Lehmann, Jr.

*Bill of Complaint.*

8. Said William F. Groves fraudulently concealed through this entire period from July 1922, until May 1930, that he did not pay the money received from complainants to said Webster S. Schultz and it was not until May 1930, that said fraud and the concealment thereof was discovered by complainants. 10

9. Suit was thereupon started on August 1, 1932 by complainants in the New Jersey Supreme Court against William F. Groves for the return of said money paid to him and damages resulting from the fraudulent conduct on the part of Groves in procuring said moneys, appropriating them to his own use and concealing said appropriations. Said suit being started as soon after the foreclosure in Chancery as was practicable. 20

10. Defendant, William F. Groves did on or about March 19, 1933, file an amended answer to said suit and set up as a first and second separate defense the statute of limitations in the following language.

#### THE FIRST SEPARATE DEFENSE.

That the defendant does not owe the plaintiffs the amount set out in their complaint because he says, that he did not at any time within six years before the commencement of this suit undertake or promise in manner and form as the said plaintiffs have above thereof complained of him. 30

#### THE SECOND SEPARATE DEFENSE.

That the defendant does not owe the plaintiffs the amount set out in their complaint, because he says, that the supposed causes of action 40

*Bill of Complaint.*

in the said complaint mentioned, did not nor did any of them accrue to the said plaintiffs at any time within six years before the commencement of this suit.

10 11. Defendant, William F. Groves during the entire period from May 1930 until the final hearing in the Court of Chancery lead complainants to believe by his conduct, conversation and by his books of account that he was the agent for Webster S. Schultz but at said final hearing he definitely stated he had no specific authority to collect said installment payments on said first mortgage.

Complainants are without adequate remedy in the courts of law and therefore pray:

20 1. That William F. Groves who is the defendant to this suit may answer the bill of complaint and each statement therein made.

2. That the said William F. Groves may be enjoined from setting up and relying upon the statute of limitations as a defense in the action at law referred to in this bill of complaint brought by the complainants against the defendant in the New Jersey Supreme Court.

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

LOUIS C. LEHMANN, JR.,  
Solicitor for and of Counsel with Complainants.

*Bill of Complaint—Affidavit of C. D. Partrick.*

STATE OF NEW JERSEY, }  
 COUNTY OF UNION. } ss.:

CHARLES D. PARTRICK, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the complainants in the foregoing bill of complaint mentioned. I have read the same and am familiar with the contents thereof and the matters and things therein set forth are true. 10

2. I reside at #44 Vista avenue, in the City of Elizabeth, and have resided there upwards of thirteen years.

3. On January 1, 1920, I and my wife made and executed a first mortgage on our premises to one, Fannie O. Bouton, for the sum of thirty-five hundred dollars and a second mortgage to William F. Groves in the sum of eleven hundred dollars. The said William F. Groves was an attorney and represented Fanny O. Bouton and himself in the transaction. I paid on behalf of myself and wife to said William F. Groves in installments the amount due on his second mortgage and said mortgage was in July, 1922 cancelled of record. After the second mortgage was paid off I asked Mr. Groves if I could pay to him in installments the amount due on the first mortgage and if he would accept the money on behalf of the mortgagee. Mr. Groves informed me that it would be all right for me to pay the money to him and that he would in turn pay the money received from me to the mortgagee. I thereupon from July, 1922, until June 30, 1927 paid to said William F. Groves the sum of fifteen hundred and eighty dollars on account of principal of said 20 30 40

*Bill of Complaint—Affidavit of C. D. Partrick.*

first mortgage and also interest on the semi-annual balances. From June 30, 1926 to January 1, 1930, I paid to William F. Groves only the interest on the unpaid balance of Nineteen hundred and twenty dollars due on the mortgage.

10     4. I had no knowledge whatever that the installment payments made by me to William F. Groves were not paid to the mortgagee, Webster S. Schultz until May, 1930, when said Webster S. Schultz communicated with me and I ascertained that William F. Groves withheld the money I paid him from Schultz.

20     5. The said William F. Groves after this date admitted to me as he also did in the Chancery proceedings to foreclose this mortgage that he received fifteen hundred and eighty dollars from me on account of this mortgage. He continued however to advise me from said date in May, 1930 until the Chancery proceedings that he had a right to collect this money on behalf of said Schultz.

30     6. After the Chancery proceedings were terminated and it was established that said William F. Groves had no authority to collect this money from me for Schultz, I commenced together with my wife an action in the New Jersey Supreme Court against said William F. Groves for the return of the money paid to him together with damages resulting from his fraudulent conduct in procuring said money and appropriating it to his own use.

40     7. I am informed by my attorney that William F. Groves through his attorney filed an answer to this complaint and set up as a defense the statute of limitations.

*Bill of Complaint—Affidavit of Grace Partrick.*

8. The said William F. Groves purposely and fraudulently concealed through this entire period from July, 1922 until some time in May, 1930 that he had not paid over to Webster S. Schultz the money I gave him for said Schultz.

CHARLES D. PARTRICK.

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Subscribed and sworn to before me  
this 27th day of March, 1933.

MATHILDE H. KOHLMETZ-WEINING,  
A Notary Public of New Jersey.

STATE OF NEW JERSEY, }  
COUNTY OF UNION. } ss.:

GRACE PARTRICK, of full age, being duly sworn according to law, upon her oath deposes and says:

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1. I am one of the complainants in the foregoing bill of complaint mentioned.

2. I reside at No. 44 Vista avenue, in the City of Elizabeth, County of Union, and State of New Jersey, and have lived there upwards of thirteen years.

3. I am not familiar with the arrangements made by my husband, Charles D. Partrick, relative to payments on account of principal of first mortgage held by Webster S. Schultz, but I do know that he did make payments to William F. Groves, some of which I personally brought to Mr. Groves.

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4. I have had no knowledge or information that the money paid to Mr. Groves on account of this mortgage were appropriated by himself and not paid to the mortgagee, Webster S. Schultz until informed in May, 1930, by Mr. Schultz and

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*Order to Show Cause.*

my husband that Mr. Groves did not pay the money over to Mr. Schultz.

GRACE S. PARTRICK.

Subscribed and sworn to before me  
this 27th day of March, 1933.

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MATHILDE H. KOHLMETZ-WEINING,  
A Notary Public of New Jersey.

**ORDER TO SHOW CAUSE.**

Filed March 28, 1933.

This matter being opened to the Court by Louis C. Lehmann, Jr., solicitor of the complainants and the Court having read the bill of complaint in the above entitled cause and the affidavits thereunto annexed; it is on this 28th day of March, 1933, ORDERED that the defendant, William F. Groves show cause before the Chancellor, at the Chancery Chambers in the Industrial Building, #1060 Broad street, in the City of Newark, on the 11th day of April, 1933, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard why the said defendant, William F. Groves should not be restrained and enjoined according to the prayer of said bill.

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It is further ORDERED that copies of said bill and affidavits thereunto annexed certified to be true copies by the solicitor of complainants and of this ORDER, be served on said defendant within eight days from the date hereof.

LUTHER A. CAMPBELL,

Respectfully advised,

C.

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JOHN H. BACKES,  
V.-C.

*Answer of Defendant.*

**ANSWER OF DEFENDANT.**

Filed March 28, 1933.

The answer of the defendant, William F. Groves, to the bill of complaint above.

This defendant answering the bill of complaint, 10  
says that:

1. Paragraphs 1 and 2 are admitted.

2. Paragraph 3 of said complaint including the three first lines concluding with words "cancelled of record" is admitted, but the balance of said paragraph is denied.

3. Paragraph 4 of said bill is denied so far as it states that payments were made on account of principal until June 20, 1927, but it is admitted 20  
the last payment on account of principal was made June 30, 1926, and if any subsequent payments for interest were paid to anyone in the office by complainants, on account of Schultz mortgage the same was sent to Schultz.

4. Defendant while admitting that he received the amounts set forth in paragraphs 5 and 6 on account of principal up to June 30, 1926, yet said complainants failed to have the defendant in this suit made a party defendant to the foreclosure suit brought by one Schultz against the complainant to recover the alleged payments and failed to bring suit against the said Groves in the law courts within the time limited by law. 30

5. Defendant says as to paragraph 7, he admits that he received the amount on account of the Schultz mortgage up to June 30, 1926, but the interest money generally paid into the office

*Answer of Defendant.*

where the defendant had an office and same was remitted to the Mr. Schultz mentioned in said bill.

10 6. Defendant denies that there was any concealment after June, 1926, and that the last payment of principal was then made. The complainants elected to try their differences in the suit brought by one Schultz against them and failed to have defendant Groves made a party to that suit and are bound by the decree made in the same, and are precluded from further prosecuting their claim in this Court.

20 7. Defendant admits as set forth in paragraphs 9 and 10 the bringing the suit in the Supreme Court of this State, laying the venue in Union County to which the defendant has answered, and has pleaded the Statute of Limitations and demands a trial by jury.

8. Defendant admits pleading the Statute of Limitations and is entitled to a trial by jury at the Union Circuit.

9. Paragraph 11 of the bill is deined.

30 10. The defendant Groves feels that as a suit at law is still pending, that the complainant should be remitted to their action at law, and that their case in this Court should be dismissed.

11. That an adequate remedy at law can be had, and that complainants be required to enforce their claim in the courts of law.

WILLIAM R. WILSON,  
Sol'r and of Counsel with  
Defendant Groves.

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WILLIAM F. GROVES.

*Affidavit of William F. Groves.*

**AFFIDAVIT USED ON THE RULE TO  
SHOW CAUSE.**

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

WILLIAM F. GROVES, of full age, being duly  
sworn, deposes and says that he is the defendant  
above mentioned. 10

1. That a bill has been filed in the above cause  
by the complainants to enjoin the said defendant  
from setting up the Statute of Limitations as a  
defense in the action at law brought against him  
by the complainants, as plaintiffs in the New  
Jersey Supreme Court the venue laid in Union  
County, and referred to in complainant's bill of  
complaint, and in which suit now pending in 20  
this court, a rule to show cause was granted on  
March 28, 1933 and returnable to this Court at  
the City of Newark on April 11, 1933 and the  
same was adjourned to May 2, 1933, restraining  
and enjoining the said Groves according to the  
prayer of complainant's bill.

2. That the suit sought to be restrained was  
commenced in the New Jersey Supreme Court  
and the venue laid in Union County, and an an-  
swer was filed and later on complaint was 30  
amended, and an amended answer was filed and  
reply filed and the case is now at issue in the  
Union Circuit Court.

3. That a suit was heretofore brought in this  
court by one Schultz against the complainants,  
to foreclose a mortgage held by Schultz against  
their property, as set out in complainant's bill  
and in which suit the defendant Groves was not  
made a party, and in the opinion filed by the  
Vice-Chancellor before whom the case was 40

*Affidavit of William F. Groves.*

heard, it was decreed that Partrick would have to pay the money alleged to have been paid to the defendant Groves. No appeal was taken from this decree to the Court of Errors and Appeals for a final determination. Then suit was commenced by the complainants against defendant Groves in the Union Circuit as before stated to which he pleaded as a defence among others the Statute of Limitations, claiming that as the matter happened in June 1926 and no action was commenced against him until August 1932 more than six years past, the Statute of Limitations would run.

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20  
4. That the complainants have sought their forum a court of law, and that by reason of delay in bringing suit after the expiration of six years, they have lost any right they might have had, and this deponent has the right to have his cause passed upon by a jury of the County where the action is laid.

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40  
5. That a notice has been served on the defendants' attorney in the law court by the plaintiff's attorney in the law court who is also the solicitor in the Chancery suit, that on May 6, 1933, at 9:30 o'clock in the forenoon of that day he would move before Mr. Justice Case for an order striking out the answer filed by defendant Groves on the ground that the material allegations contained in the same are untrue in fact and sham, and will support the application by affidavits of plaintiffs attached to said notice and which affidavits attached are to be used before Mr. Justice Case, were sworn to on March 28, 1933. And the affidavits to be used in this court were sworn to by complainants on March 27, 1933.

*Order Restraining Defendant.*

6. That the Statute of Limitations is one that can be properly pleaded in a Court of Law, and where there is an adequate remedy at law as there is in this case then the Court of Chancery will not interfere.

WILLIAM F. GROVES. 10

Sworn and subscribed before me  
May 1, 1933.

J. W. ORR,  
Notary Public of N. J.  
My license expires March 17, 1935.

**ORDER RESTRAINING DEFENDANT.** 20

Filed May 2, 1933.

This matter being opened to the Court by Louis C. Lehmann, Jr., solicitor of complainants, Charles D. Partrick and Grace Partrick, his wife, in the presence of William R. Wilson, solicitor for the defendant, William F. Groves; and the Court having considered the bill of complaint and affidavits filed herein, and the answer and affidavits on the part of the said defendant, and having heard and considered the arguments of counsel, and being satisfied that the complainant is entitled to an order restraining the said defendant, William F. Groves, and his agents and servants, from setting up and relying upon the Statute of Limitations as a defense in the action at law in the New Jersey Supreme Court wherein the complainants are the plaintiffs and the defendant herein is the defendant. 30

*Order Restraining Defendant.*

And it appearing that the order to show cause made in this matter on the twenty-eighth day of March, nineteen hundred and thirty-three, has been duly served in the manner therein directed;

10 It is on this 2nd day of May, one thousand nine hundred and thirty-three, ORDERED, that the said defendant, William F. Groves, and his agents and servants, be, and they are each and every one of them hereby enjoined and commanded to desist and refrain from setting up and relying upon the Statute of Limitations as a defense in the action at law in the New Jersey Supreme Court wherein Charles D. Partrick and Grace Partrick, his wife, are the plaintiffs, and William F. Groves, is the defendant, until the further order of this Court.

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LUTHER A. CAMPBELL,

C.

Respectfully advised,

ALFRED A. STEIN,  
V.-C.

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*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed May 10, 1933.

The defendant hereby appeals from an order made May second 1933, in the above cause, by the Chancellor on the advise of Vice-Chancellor Stein, and from the whole and every part thereof, enjoining the defendant his servants and agents to desist and refrain from setting up and relying upon the Statute of Limitations as a defense, in the action at law in the New Jersey Supreme Court, wherein Charles D. Partrick and Grace Partrick, his wife are the plaintiffs, and William F. Groves is the defendant, until the further order of this Court, to the Court of Errors and Appeals in the last resort in all causes. 10  
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Dated: May 10, 1933.

WILLIAM R. WILSON,  
Sol'r of Defendant and of Counsel.

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

WILLIAM R. WILSON,  
Of Counsel with Defendant. 30

*Petition of Appeal.*

**PETITION OF APPEAL.**

Filed May 29, 1933.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes.

10     The petition of William F. Groves the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of New Jersey, on the advice of Honorable Alfred A. Stein, Vice-Chancellor, bearing date May second 1933, wherein the said Charles D. Partrick and Grace Partrick, his wife were complainants and William F. Groves was defendant,  
20     in this respect to wit: that the said order enjoins the said appellant William F. Groves from setting up and relying upon the Statute of Limitations as a defense in the action at law in the New Jersey Supreme Court, wherein the complainants and appellees in this cause are the plaintiffs and the appellant in this cause is the defendant in the said Supreme Court suit.

30     And your petitioner humbly appeals from that part of the order which decrees as above, upon the ground that an action is now pending in the Supreme Circuit Court of Union County involving the same question as was before the Vice-Chancellor; and that as the action is one of law, and is now pending in the above court, the Vice-Chancellor erred in granting the restraint as aforesaid.

40     And further because the whole matter being a legal one, can be determined in the Law Court; and because it is beyond the province of the Court of Chancery to enforce a legal right as

*Petition of Appeal.*

in this case, where it appears that it is not clear either through substantial dispute touching the facts or uncertainty touching the legal rules under which the right is claimed.

Your petitioner, therefore, prays that the said order so as aforesaid made by the Chancellor, on the advice of Vice-Chancellor Stein aforesaid, may be reversed, set aside and for nothing holden. 10

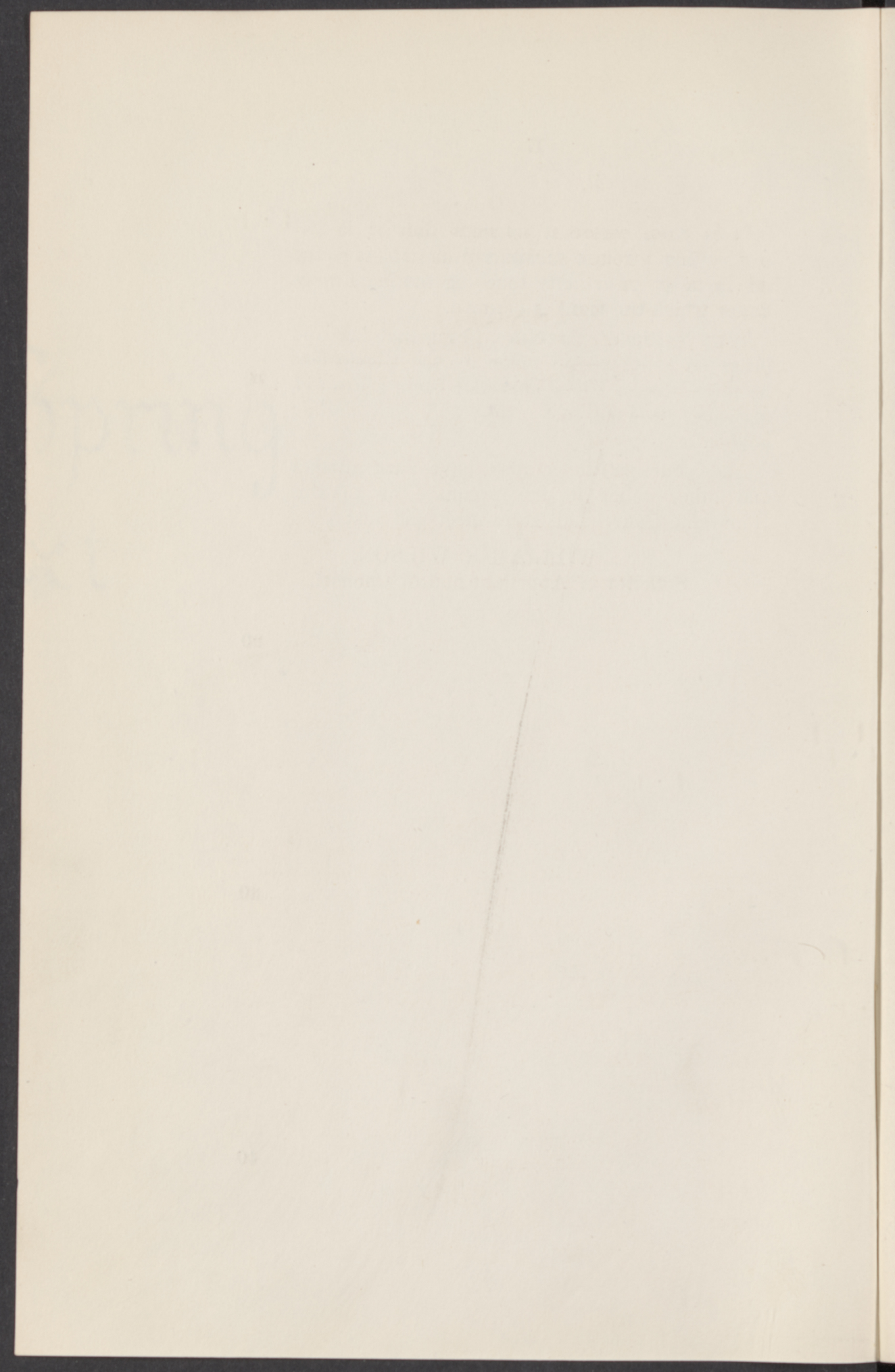
And your petitioner may have such further and other relief in the premises as to this Honorable Court shall seem meet and just.

WILLIAM R. WILSON,  
Solicitor of Appellant and of Counsel.

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## New Jersey Court of Errors and Appeals

*Between*

CHARLES W. PARTRICK and  
GRACE PARTRICK, his wife,  
*Complainants-Appellees,*

*and*

WILLIAM F. GROVES,  
*Defendant-Appellant.*

*On Appeal  
from an  
Order of the  
Court of  
Chancery on  
Advice of  
V.-C. Stein*

### BRIEF FOR THE APPELLEES.

#### Statement of the Case.

A suit at law was instituted by the complainants against the defendant in the New Jersey Supreme Court, Union County Circuit, on August 1st, 1932. Defendant filed answer to the same on August 23rd, 1932, to which plaintiff made reply; thereafter on notice to defendant leave was granted to the plaintiff by the court to file an amended complaint; no amended answer was filed and a judgment by default was entered in favor of the plaintiffs. Defendant then succeeded in vacating the default judgment and obtained leave to file an amended answer to the amended complaint, which amended answer was filed on March 19th, 1933, and wherein the defendant sets forth as his first and second Separate Defenses the Statute of Limitations.

Complainants on March 28th, 1933, filed in the Court of Chancery, a bill of complaint seeking to enjoin and restrain defendant from setting up and relying upon the statute of limitations as a defense in the action at law instituted by complainants against defendant in the New Jersey

Supreme Court. Said bill and the affidavits attached thereto, set forth, among other things, that defendant misrepresented his authority to collect principal on a mortgage held by one of the defendant's clients; fraudulently applied said moneys to his own use; fraudulently concealed the misappropriations until May, 1930, and thereafter fraudulently induced complainants to believe, by his conversation, letter, conduct and books of account that he was the agent of the mortgagee to collect principal on the mortgage. Said bill and affidavits further set forth that defendant continued to lull complaints into a sense of security and assured them that the payments made to him and appropriated by him would be the loss of the mortgagee and not until the final hearing on the foreclosure of the mortgage did the defendant state that he had no authority or right to collect principal on the mortgage. Complainants were thereupon required to pay to the mortgagee the amount due on the mortgage and therefore brought the suit at law.

Defendant's answering affidavit and answer to the bill of complaint did not deny or explain any of the acts set forth in complainants' bill or affidavits, but did admit the receipt of the moneys and the failure to pay the same to the mortgagee. On May 2nd, 1933, after argument on the rule to show cause why a restraint should not be granted, a restraining order was made in our Court of Chancery enjoining and commanding defendant to desist and refrain from setting up and relying upon the statute of limitations as a defense in the action at law.

The appellees set forth the following points of law to be discussed on the argument;

1. Law Courts have no authority or jurisdiction to except from the running of the statute of limitations cases where a party against whom the statute normally runs has been induced by fraudulent conduct to postpone bringing a suit.

*Freeholders of Somerset v. Veghte*, 44 New Jersey Law, 509;

*Freeman v. Conover*, 95 New Jersey Law, 89.

2. The Court of Chancery has inherent power and jurisdiction to prevent fraud and injustice by restraining and enjoining defendants from relying upon the statute of limitations in a Court of Law.

*Lincoln v. Judd*, 49 N. J. Eq. 387;

*Clark v. Augustine*, 62 N. J. Eq. 695;

*Holloway v. Appelget*, 55 N. J. Eq. 583;

*Howard v. West Jersey and Seashore R. R. Co.*, 102 N. J. Eq. 517; affirmed 104 New Jersey Equity 401.

The material facts in this case are not controverted. The law is unmistakable and definite. The order of the Chancellor should be affirmed and the appeal should be dismissed.

Respectfully submitted,

LOUIS C. LEHMANN, JR.

Solicitor for and of Counsel with  
Complainants-Appellees.

The speaker set forth the following points of law to be discussed on the arguments:

1. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

2. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

3. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

4. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

5. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

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11. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

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15. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

16. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

17. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

18. The Court has no authority to interfere with the ruling of the State of Missouri when the State has been treated by Congress as a foreign territory.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

*Between*

CHARLES W. PARTRICK and  
GRACE PARTRICK, his wife,  
*Complainants-Appellees,*

*and*

WILLIAM F. GROVES,  
*Defendant-Appellant.*

*On Appeal  
from an  
Order of the  
Court of  
Chancery on  
Advice of  
V.-C. STEIN.*

### BRIEF FOR THE APPELLANT.

#### Statement of the Case.

The bill in this cause was filed March 28, 1933 by the complainants setting forth substantially the same facts as were set forth in the complaint filed by them in the Supreme Court Circuit of Union County (see State of Case).

The suit in the Union Circuit was commenced on August 1, 1932 to which an answer was filed and the same was at issue several months before the bill in this case was filed, and the same facts appear in both cases and the Statute of Limitations is set forth in both cases. On March 28, 1933, the bill was filed and an application for a rule to show cause was made to restrain the defendant from pleading the Statute of Limitations in the law court, and later on and on May 2, 1933 a restraint was granted by Vice-Chancellor Stein forbidding the defendant from pleading the Statute of Limitations in the law court.

The same application was made to the Judge at the Circuit for a restraining order forbidding the defense of the Statute of Limitations in that

Court, which application was refused. The granting of the restraint by Vice-Chancellor Stein is now before this Court for review.

The appellant feels aggrieved at the issuance of the order of restraint for many reasons.

1. Because the issue is a common law action and is properly triable at the Circuit in Union where the defendant may have the benefit of a jury trial, and where the whole case may be presented properly.

2. Because this Court cannot by a rule of practice, alter the law so as to deprive a party of his right to a trial by jury.

3. Because where there is a complete remedy at law as in the case before this Court, equity should not interfere.

4. Because the bill filed in this cause shows, that it is a common law action, and a suit for the same cause of action is now pending in the Union Circuit, and in which suit the Statute of Limitations has been pleaded and which suit should be tried before a jury.

This cause has no place in the Court of Chancery as we have a Court of Law. This case belongs in the Court of Law. If this case can be triable in this Court, what is there to prevent a suitor who, having commenced his action in one of the District Courts of our State, is dissatisfied and then commences a suit in Chancery alleging fraud.

This should not be permitted. There should be a line drawn between Law and Equity.

The rule in this State is, that where the law court is competent to grant the relief sought

for, it has paramount jurisdiction of the whole matter.

Daniel's Chancery Practice, Vol. 1, page 549, states the law concisely when demurrers to pleadings were in evidence, and states it thus: Demurrers to the jurisdiction are either on the ground

1. That the case made by the bill does not come within the class of cases in which a Court of Equity assumes the power of decision.

2. That the subject-matter is within the province of the jury of the Court of Law.

The bill in this case is not drawn with such particularity, as equity requires, so as to present a cause of action to be passed upon by this Court. It is a mere recital of facts, as found in the complaint in the law action, and the complainants fearful that they may be defeated in the law court, have come into equity.

*\* They sought their forum in the first instance and should be compelled to have their case tried at law.*

The complainants in Chancery do not pray for any relief. They merely state, that they are without adequate remedy at law, and, therefore, pray—"That the said complainants are without adequate remedy at law and, therefore pray that defendant William F. Groves be enjoined from setting up and relying upon the Statute of Limitations as a defense in his action at law." This request is not sufficient.

In their bill as framed and their alleged prayer in the same, no cause of action is properly presented to this Court, and the bill should be dismissed, and the restraining order set aside.

*The Law That Should Be Applied.*

The case before this Court presents many features that should be considered carefully. It is an attempt to try a legal action in the Court of Equity and the bill is not so framed as to warrant it.

The bill states specifically that there is a cause of action now pending in the law court between the same parties, for the same remedy, and the case should be retained there. They can get ample justice there, if that is what they desire—but they are out of place in this Court.

*The defendant is entitled to a trial by jury.*

I.

**The Constitution of this State recites that the right of trial by jury shall remain inviolate.**

Such is the law of this State as found in the Constitution.

*See also Laws of New Jersey, 1915, Pt. Chap. 116, p. 184, Sec 8*  
Article I, paragraph 7 of the Constitution of New Jersey.

Our courts have passed upon this right.

In the case of *Scudder v. Trenton Delaware Falls Co.*, 1 New Jersey Equity, page 694, the Court held among other things the following:

“The Constitution provides that the Common Law of England as well as so much of the Statute law as have heretofore been practiced in this State, shall remain in force until altered by the legislature, etc., and that the inestimable right of trial by jury shall remain confirmed as a part of the law of this State without repeal forever.” These words of the Constitution are fully satisfied, by preserving the trial by jury in

all criminal cases, and all trials in suits at common law.

The appellant by his answer filed to the bill of complaint in Chancery at section 7 of the same demands a trial by jury.

Where there is a complete remedy at law equity will not interfere. A leading case on this point is the following which held as follows:

*Agens v. Agens*, 50 N. J. Equity 566, held, that no suit can be maintained in equity for a cause for where there is an adequate remedy at law. This is a jurisdictional regulation which *may not be transcended without usurpation*. Where there is both a legal and equitable remedy for the same cause of action, if the legal has become barred by the lapse of time, the equitable will also, except under very special circumstances, be held to be barred.

See also:

*Freeholders of Essex v. Newark Bank*,  
3 Dickinson Chancery 627 (48 N. J. Eq. 627);  
*Smith v. Wood*, 42 N. J. Equity 563,  
44 N. J. Equity 603.

In the case of *Joseph M. Smith v. Board of Freeholders of Essex*, 48 N. J. Equity, p. 638, the Court held as follows: "That the respondent on its own statement has an adequate and complete remedy at law and may not, therefore, maintain its bill against the appellant." The Court of Chancery was reversed in the above case.

The opinion in the above cause in the Court of Errors and Appeals was delivered by Mr. Justice Magie, afterwards Chief Justice and Chancellor, speaking for that Court. At the end of his opin-

ion he closed with the following which is instructive and compelling, and should be followed by every Court. "But the line of decision between legal and equitable remedies is fixed in this State by a long course of precedents, and even legislative authority is forbidden to intermingle these remedies by the Constitutional prohibition against interference with the ancient jurisdiction of the Courts. When such an objection as we have been considering is advanced and established we are bound to give effect to it.

The result is, respondent on its own statements has an adequate and complete remedy at law, and may not, therefore, maintain this bill against appellant." The complainant in the case before this Court first appealed to the law court and he should be compelled to stay there and try his case.

A Court cannot by a rule of practice alter the law so as to deprive a party of his right to a trial by jury.

*Hinchly v. Machine*, 15 New Jersey Law 476.

A court of equity is as much bound by positive rules and general maxims concerning property as a court of law.

See *Mullaney v. Mullaney*, 4 N. J. Equity 6.

The right of trial by jury provided by the Constitution does not extend to suit in Chancery.

*Wood v. Tallman*, 1 N. J. Law 153-158.

In *Bailey v. Southwick*, 6 Lansing's Chancery Decisions (New York) at page 356, the law was announced as follows: "Although the Supreme Court possesses all the powers and exercises the functions both of the former Supreme Court and the former Court of Chancery, and may en-

tain an equitable defense to a legal action, it has not acquired the right of blending the two tribunals so as to administer a legal remedy in an action of purely equitable cognizance, nor equitable relief in an action of strictly legal cognizance."

"The administration of each tribunal is now, as it was before, as probably distinct, as it was when remedies were to be sought in different Courts. If the plaintiff's action is in equity, he must maintain it upon equitable grounds or fail even though he may prove a good action at law."

#### Statute of Limitations.

Under the statute of our State, under title, Limitation of Actions, we have the following:

1. Six years limitation. That all actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover and replevin for taking away of goods and chattels, all actions of debt founded upon any lending or contract, without specialty or for arrearages of rent due on a parol demise, and all actions of account and upon the case, except actions for slander and except also, such actions as concern the trade or merchandise between merchant and merchant, their factors, agents and servants shall be commenced and sued within six years next after the case of such actions shall have occurred and not after.

*Compiled Statutes of New Jersey*  
*Vol III. p. 3162. Section I*

*Construction and Operation in General.*

The Statute makes the lapse of time a positive and legal bar in all causes within its provisions.

*Thorpe v. Corwin*, 20 N. J. Law 311;

*Cook v. Smith*, 30 N. J. Law 394.

If an account is prima facie barred by the Statute, and it is pleaded as it was in the case in this Court, it should not be overruled by the justice.

*Sayres v. Scudder*, 2 New Jersey Law 53;

*Neafie v. Ackerman*, 3 New Jersey Law 562;

*Stout v. Seabrook's Extr's*, 30 N. J. Eq. 187;

*Todd v. Rafferty's Admr.*, 30 N. J. Eq. 254.

The bar of the Statute is as perfect an answer in equity as law to actions covered by the Statute.

*Partridge v. Wells*, 30 N. J. Equity 176; same case, p. 362.

Equity discourages laches and neglect and requires that those who seek its aid to act in good faith and with reasonable diligence.

*Rabe v. Dunlap*, 51 N. J. Eq. 40;

*Johnson v. Somerville*, 33 N. J. Eq. 152, aff. p. 621.

Equity can only help the diligent, it discourages laches and neglect.

*Norfolk Hosiery Co. v. Arnold*, 49 N. J. Equity 390.

I have tried to place this matter now on review before this Court as strongly as I could. I have shown, I think, that the bill is not so prepared that this Court can give any relief.

It is a legal matter and should be tried in the Court of Law where it is now pending.

A trial by jury has been demanded in the Chancery suit, and we should not be precluded from presenting it before the Law Court, no more than we should be prevented from pleading the Statute of Limitations.

The matter is respectfully submitted for the Court's consideration.

WILLIAM R. WILSON,  
Solicitor and of Counsel with  
Defendant-Appellant.

It is a legal matter and should be decided in the  
Court of law where it is now pending.  
A trial by jury has been demanded in the  
Chancery suit, and we should not be precluded  
from presenting a motion for the law Court, no  
more than we should be prevented from taking  
the benefit of the Statute.  
The matter is respectfully submitted for the  
Court's consideration.

WILLIAM R. WILSON  
Attorney at Law  
Ballston and of Counsel with  
Richard A. Pelland

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