

New Jersey Court of Errors and Appeals.

Between

RANDOLPH PERKINS,

Complainant-Appellant,

vs.

JAMES T. MCBRIDE,

Defendant-Respondent,

On Appeal 10
from
Chancery.

BRIEF OF APPELLANT.

The bill was filed in this cause by an attorney and counsellor at law against a former client to restrain the client from setting up certain defenses in a suit pending in the Hudson County Circuit Court. 20

The facts leading up to the filing of the bill are as follows:

In March, 1906, the defendant was indebted to the complainant in about \$500 for legal services rendered between August, 1903 and March, 1906. In the latter month, the defendant disappeared from New Jersey, and from the time of his disappearance until nearly a year later, the complainant had no knowledge or information as to the whereabouts of the defendant or of his place of abode. 30

Under the circumstances related hereinafter, the complainant issued an attachment in September, 1906, against the defendant, and levied upon certain moneys which the defendant now denies having any interest in (p. 54 top.) 40

Previous to the disappearance of the defendant, a judgment was entered against him in favor of Dr. Chambers, execution issued, the defendant examined in supplementary proceedings, and a receiver of his assets appointed. In the latter part of July, 1906, the receiver served upon the complainant a certified copy of his order of appointment, and demanded possession of papers and property of the defendant. The complainant thereupon communicated with the sister and mother, the only relatives of the defendant, known to complainant for the purpose of notifying him of the appointment of the receiver, and for the further purpose of serving upon him a copy of complainant's bill for services.

Upon being informed that the defendant was in Chester, Massachusetts, complainant mailed to the defendant the copy of the order appointing the receiver. The defendant refused to accept the envelope which bore the complainant's name, and address, and the same was returned unopened and marked "Refused." Immediately thereafter the complainant notified the sister of the defendant of the demand made by the receiver upon him, whereupon the sister of the defendant claimed to be the true owner of the papers and property in the possession of complainant, and demanded delivery.

So that, on September 20th, the date of issuing the attachment, the situation was that for six months past the complainant had been unable to get any trace of the defendant, did not know of his place of abode or his whereabouts, had no means of communicating with him whatever except as above stated. He was informed by the Chief of Police of Chester that the defendant was no longer there, and an active effort was being made by the sister of the defendant to obtain possession of the only property defendant had within or without the jurisdiction of New Jersey.

Complainant then caused to be issued a writ of attachment against the property of the defendant, and entered the usual defaults. The notice of the attachment was published in the Jersey Journal five weeks successively, commencing November 20th, 1906.

On January 18th, 1907, complainant was notified that the defendant's appearance to the suit had been entered by Clarence Kelsey, his attorney (p. 24).

Later, John J. Mulvaney was substituted as defendant's attorney. Declaration, with bill of particulars was then filed, and served. Pursuant to demand, a further bill of particulars was served and later a third bill of particulars was served upon defendant.

So that before the defendant's time to plead had expired, he had before him a detailed statement of every item of plaintiff's demand (p. 25, middle).

The defendant then defaulted in filing a plea, and judgment was about to be entered by the plaintiff, when an agreement was made between the plaintiff and the defendant's attorney that the defendant might have further time to plead, providing that the plea filed would be confined to a plea of general issue.

The cause was finally tried at the September Term, 1908, before Judge Speer and a jury, and resulted in a verdict for the plaintiff for \$514. The defendant was represented at this trial by another attorney, Mr. Herman Berg. In the following month the defendant obtained a rule to show cause why a new trial should not be granted. After argument this rule was discharged (p. 28, top).

Again in January, 1909, a fourth firm of attorneys, Messrs. Heine & Herr, made application to open the judgment, which was finally denied (p. 28, bottom).

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Some time later, another attorney representing McBride, instituted a summary proceeding in the Court of Chancery against the complainant, claiming that the moneys attached were the property of McBride's sister (p. 27, bottom). In this proceeding McBride appeared as a witness, and swore that the money attached was not his property (p. 25, top). At the top of page 54 in the present case, he also swore that the money attached was not his property.

- 10 Two years later, in September, 1910, the defendant's present attorneys, being the sixth in the case, applied to the circuit court to open the judgment, on the ground that no plea had ever been filed by the defendant, and that no issue was tried by the jury which rendered the verdict. This application to open the judgment was successful, and defendant was granted time to plead. He then filed a plea of general issue and several pleas setting up that the claim of the plaintiff was for attorney's fees, charges and disbursements, and
- 20 that no bill thereof had been served upon him before the suit was begun. Then the complainant in this cause filed the present bill, seeking to restrain the defendant from setting up the last defense mentioned, on the ground that it is inequitable and unjust and contrary to the agreement made between the plaintiff and defendant's attorney after default, permitting the defendant to plead general issue.

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I.

The filing of the plea objected to is a breach of the agreement made between the complainant and the defendant's attorney, after plaintiff was entitled to judgment whereby the defendant was permitted to file a plea of general issue.

- The plaintiff and the defendant's attorney both testify as to this agreement (p. 27, bottom),
- 40 and p. 34, top). It is not denied by the defendant.

At the time of making the agreement, the plaintiff was entitled to judgment. By the agreement he waived his right to enter the judgment, and the defendant acquired the right to file a plea of general issue. By that agreement, the defendant was confined to a plea directed to the merits of the case. He had already lost his right to file the plea setting up the technical defense now sought to be interposed, and the agreement between the parties was specific that the plea that the defendant should file was general issue.

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Four years later, the defendant is attempting to take advantage of his long default, and file a plea setting up defenses contrary to the letter and spirit of his agreement.

Is it fair, just or equitable that at this time the defendant should be permitted to file the pleas that he agreed not to file four years ago? It must be kept in mind that for four years the defendant has had in his possession full and complete bill of particulars, showing every detail of the plaintiff's claim. Notwithstanding this complete knowledge on his part, and the agreement to confine himself to the plea of general issue, and notwithstanding the fact that the entire claim of the plaintiff is now outlawed, defendant is insisting upon the interposition of this technical defense.

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At the time the defendant first sought to interpose the defense of non-service of the bill, many items of the plaintiff's claim were outlawed. The items ran from August, 1903, to March, 1906. The first effort to assert the technical defense was in September, 1911, more than eight years after part of the demand accrued.

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There can be no question but that the attorney had a right to bind his client in respect to this matter.

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See

Gifford v. Thorn (Stock. 702-722);
Howe v. Laurence, 2 Zab., 99;
Price v. Ward, 1 Dutch. 225;
Davis v. First Nat'l Bank, 139 Ga., 702;
 46 L. R. A. N. S. 750, and cases cited.

It is grossly inequitable for the defendant to enjoy the rights acquired by the agreement, and insist upon interposing the defenses barred by
 10 his agreement. This particularly so, considering the long period of time that elapsed before he first sought to set up this defense, and the change in the legal status of plaintiff's demand.

II.

By the defendant's own acts, he put himself in a position where it was impossible for the complainant to serve a bill of fees, etc., upon him.

20 In order to fully comprehend this controversy, it is necessary that the testimony of the defendant be read. It casts a light upon the character of the defendant which it is quite necessary to understand.

It will be remembered that before the defendant left New Jersey for parts unknown, judgment had been taken against him; he had been examined in supplementary proceedings, and a receiver appointed. The complainant had rendered services to him from August, 1903, to March, 1906,
 30 without receiving compensation therefor. After the defendant left, there was no means by which the complainant could locate him, and defendant's sister was endeavoring to possess herself of the property which was eventually levied upon in the attachment.

That the defendant would have no communication with the complainant or receive any papers from him is evidenced by the fact that the defendant
 40 returned complainant's letter, marked "Re-

fused." Thereafter it was impossible to serve the defendant at Chester, because he had left there for parts unknown. Of course the defendant says that he came back to New Jersey, but he did not produce a single witness who saw him in New Jersey during any portion of the period up to the attachment suit. He did not produce his convenient sister, who usually appeared to help him out of his difficulties. If he had been in New Jersey, he certainly would have produced a number of witnesses to testify to his presence here. Be that as it may, there was absolutely no way by which the complainant could locate him or serve him. The complainant was therefore left to his choice of absolutely foregoing his claim and seeing the property taken away by the sister, or of levying his attachment. 10

The mental attitude of the defendant toward the world at large, is somewhat a factor in this case. Admittedly he went south on a kidnapping expedition some time in March, 1906. He says he passed through New Jersey on the eleventh of May, but only stopped long enough in Newark to take the advice of counsel to leave at once. He was a fugitive. He passed on to Massachusetts, where he finally was arrested, as he puts it, by "this wife with the fraudulent decree" (p. 41, middle). His sister came to his rescue in Massachusetts, and put up a thousand dollars cash bail. That was in 1906. It is up yet. He does not know why, "but the lawyers put some sort of a claim on it" (p. 45, top). When asked whether he had not had a lot of trouble with lawyers, he characteristically replied, "They are a lot of scoundrels—those that I have had to deal with" (p. 45, top). At the bottom of the same page, he admits swearing to an affidavit stating that he went to see over twenty-five lawyers in Hudson County, "They took my money and then lay down." 20 30 40

We have here, in brief review, some of the mental characteristics of the defendant, who is insisting, notwithstanding the agreement of his attorney made way back in 1907, upon filing a plea that before the beginning of suit no bill had been served upon him.

To have found the defendant between the months of March and September, 1906, would have taxed the imagination and skill of Sherlock Holmes.

- 10 This is not a case like *Truitt v. Darnell*, where the defendant's whereabouts were well known to the plaintiff and service could readily have been made. Here the defendant voluntarily put himself beyond the jurisdiction of our courts, and far outside the knowledge of anyone residing in the state, refused to accept communications from the plaintiff, immediately moved away from the place where that communication was sent, and departed into the unknown. Then his sister comes forward
- 20 and attempts to take out of the jurisdiction the only property out of which the plaintiff might make his claim,—all this while there is a receiver appointed for defendant's assets in another cause pending against the defendant.

- It may be that under these circumstances it was the plaintiff's duty under the statute to serve a bill of particulars. If it was his duty, then it was impossible for the complainant to protect himself
- 30 in any way whatever. A lawyer in such case would be absolutely at the mercy of an unscrupulous client, notwithstanding there was an honest debt due and plenty of property out of which it might be made. The testimony of the defendant at the top of page 54 casts a further ray of light upon his peculiar mentality. He absolutely denies having any interest in the subject matter of the attachment. He states that the money which was attached was not his but his mother's. Not-
- 40 withstanding that this apparently insolvent judg-

ment debtor, for whom a receiver had been appointed, had no interest in the moneys attached, he causes his appearance to be entered in the suit, has engaged, and I hope—but doubt—paid six different lawyers to conduct it, and eight years after the institution of the suit, is still vigorously fighting in the hope and expectation of preventing complainant from asserting his just claim against him. What the defendant has sworn to in this regard may be true. But it is very far from the conduct of the ordinary man,—so far that I doubt whether it appeals to the reason of any member of the Court. 10

I contend that under the circumstances of this case, the Court of Equity has power to afford appropriate and adequate relief (*Board of Freeholders v. Veght*, 15 Vr., 511 and cases).

“The power of the Court of Equity to prevent a defendant by injunction from setting up the statute of limitations as a defense to an action at law which he has wrongfully procured to be restrained until sufficient time has elapsed to render such a defense available, must, I think, on the plainest principles of justice be regarded as entirely free from doubt” *Lamb v. Martin*, 43 N. J. Eq. 36. 20

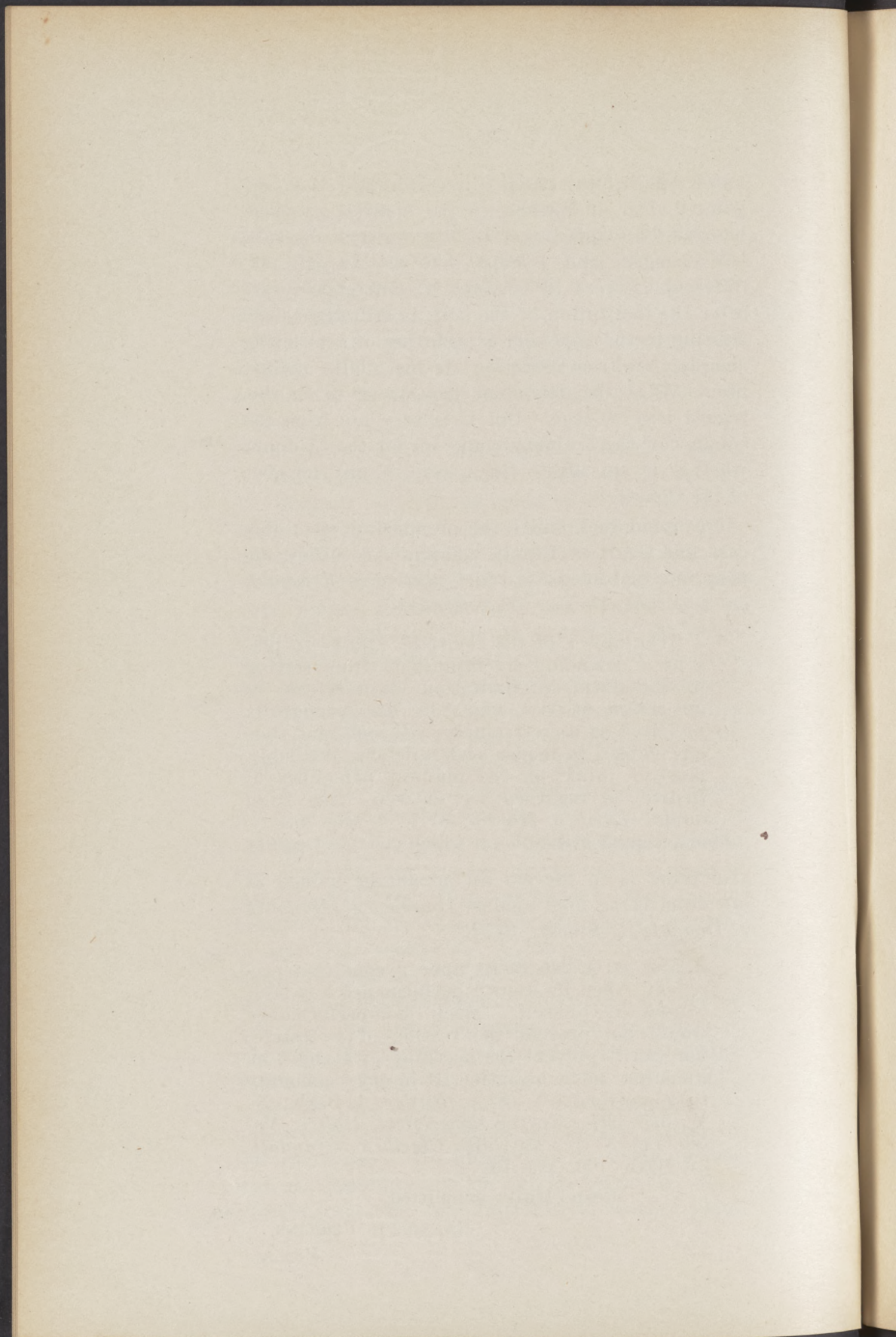
One accepted principle on which courts of equity give relief is to prevent an advantage gained at law from being used against conscience (*Doughty v. Doughty*, 2 Stockt., 347).

“No party can insist upon a condition precedent, when its known performance has been caused by himself. Such non-performance would not prevent the vesting of an estate, nor can it prevent the accruing of a right, or its enforcement by action. It in effect amounts to a waiver.” *N. Y. v. Butler*, 1 Barb., N. Y., 325, 337. To the same effect, *Doll v. Noble*, 115 N. Y., 230; also *Clarke v. Crandall*, 27 Barb. (N. Y.) 73. 30

Respectfully submitted,

RANDOLPH PERKINS,

Pro se. 40



New Jersey Court of Errors and Appeals

RANDOLPH PERKINS,
Appellant,

vs.

JAMES T. McBRIDE,
Respondent.

On Appeal from
Chancery.
Brief for Re-
spondent.

The printed state of the case in this cause was not served upon counsel for respondent until June 10th, 1914, at which time counsel for respondent objected to the state of the case on the ground that the evidence of the witness, George Britten, and also certain exhibits had not been printed. Subsequently these were printed and together with brief of appellant were served upon counsel for the respondent on July 6th, 1914.

FACTS.

The appellant in his brief states that the respondent was indebted to him in the sum of about \$500.00 for legal services rendered between August, 1903 and March, 1906, and that in March, 1906, the respondent disappeared from New Jersey, and from that time

until nearly a year later appellant had no knowledge as to respondent's whereabouts.

From the proofs in the case it appears that appellant *claimed* that the respondent was indebted to him for some \$500.00 (18), but that when he undertook to prove his claim, after the respondent had been given an opportunity in the law suit to interpose his pleas to the declaration of the appellant, the appellant was unable to reply to such pleas and his replication thereto was struck out on the ground that it presented no legal answer (30), and as a matter of fact judgment was entered in favor of the respondent on July 10, 1912.

It may be true that the appellant had no knowledge as to the whereabouts of the respondent during the time stated, but it appears from the evidence of the respondent that he has lived in the state of New Jersey for fifty years (47); that in March 1906 he went to Georgia to get his children, returning to New Jersey in May, 1906 (42); that on the twenty-fifth day of July, nineteen hundred and six, respondent was arrested in Massachusetts, detained for five days and then came to Jersey City (44), since which time he has continued to live in Jersey City.

The appellant produces a letter addressed to the respondent at Chester, Massachusetts, which is returned marked "refused." It does not appear, however, that this letter ever was seen by the respondent or that he ever authorized it to be returned to the appellant, and the respondent distinctly testifies that at no time during the months of July, August, Sep-

tember or October, 1906, nor at any other time did he refuse to receive any mail matter coming from the appellant, nor did he give any instructions to any one to refuse any mail matter coming to the respondent from the appellant (38). As a matter of fact the Court state that this letter was received in evidence for the sole purpose of showing what the appellant did in endeavoring to locate the respondent (21.)

This appears to be the only proof of what the appellant did. He claims that he wrote a letter to the respondent's sister in Brooklyn and also to the respondent's mother, but there is no proof whatever that any letter ever written by the appellant to either the respondent's sister or mother was ever received by either of them, and if the appellant was endeavoring in good faith to ascertain the address of the respondent, it would seem that caution would dictate to a prudent lawyer that if he really desired to obtain proof of any effort on his part to locate the respondent, he should have sent his letter by registered mail so that there might be no doubt as to its reaching their destination. There is no competent evidence that the appellant ever received any information that the respondent was in Chester, Massachusetts. Although the appellant knew that this evidence was incompetent, yet he endeavored to inject it into the case, but his effort was frustrated by the Court and the evidence attempted to be offered was stricken out (22 and 23.)

On September 21, 1906, the appellant made

an affidavit which was filed in the Hudson County Circuit Court, and upon this affidavit a writ of attachment was issued against the respondent on September 23, 1906 (24). Although it is a fact, yet it does not appear, except by inference from the bill of complaint, testimony and memorandum of the Vice-Chancellor, this writ of attachment was issued upon the affidavit of the appellant verifying the fact that the respondent was not in the State of New Jersey at the time of the issuing of the writ of attachment.

The respondent swears that he was in the State of New Jersey on that day and that he has lived continuously at No. 273 Sherman Avenue in Jersey City from 1903 until 1907 (48), and the fact that the respondent was living in Jersey City at that time is borne out by the testimony of Mr. Britten, an attorney-at-law of this state, and by correspondence which took place at that time (57-59), so that as a matter of law the appellant was not justified in any manner in issuing his writ of attachment in September 1906.

Notice of appearance was served by the respondent, whereupon the appellant served his declaration in the law suit. Although demand was twice made for further bill of particulars, the respondent did not file a plea in the law action. Notwithstanding the absence of a plea, the appellant noticed the action at law for trial and tried the case before Judge Speer in the Hudson County Circuit Court at the September term 1908, and recovered a judgment.

The appellant states in his brief that the

respondent was represented at the trial by Mr. Herman Berg. As a matter of fact the respondent was neither present in person nor represented by counsel at the trial, nor was any evidence offered on behalf of the defense, and nowhere in the State of the Case, now before this Court, does it appear that the respondent was represented by counsel at the trial of the action at law.

Upon the respondent learning that judgment had been entered against him in the law action, he took proceedings within a month to have the judgment set aside (28). In this effort he was unsuccessful. He subsequently took proceedings in January, 1909, and endeavored to have this judgment set aside, and again was unsuccessful (28.)

He again in September 1910 made application to have the judgment vacated and in this effort the respondent was successful, and as soon as the judgment was vacated he promptly filed his pleas, and upon the appellant filing a replication, which was no answer to the defense set up by the pleas, the replication was stricken out and judgment entered in favor of the respondent on July 10, 1912 (30).

I.

The appellant contends that the filing of the pleas objected to by him is a breach of the agreement made between him and the attorney who appeared for the respondent in the law action. This alleged agreement appears on pages 27 and 34.

An examination of the evidence of the appellant himself discloses that no agreement was entered into except, that if the case was called for trial before the attorney, who appeared for the respondent in the law action had filed a plea of general issue, then that the case could be proceeded with as if a plea had actually been filed. But we do not perceive how by any possible imagination this alleged agreement can be so construed as to limit the respondent to filing a plea of general issue in his law action.

The evidence of Mr. Mulvaney, who was the attorney for the respondent in his law action, on page 34, is that he told the appellant that he might consider a plea of general issue as having been filed and serve a notice of trial for the April term, 1908, as if the cause were at issue, but nowhere does it appear that Mr. Mulvaney ever agreed to confine his defense to a plea of general issue.

Even, however, if he had so agreed, there is nothing before this court to show that the action had not been so instituted as to permit the respondent to raise in the action at law under the plea of general issue, the very defense set up in the plea to which the appellant now objects. Again if there was any agreement between the attorneys in the law action which could have been enforced, confining the respondent in his action at law to a plea of general issue, such agreement should have been called to the attention of the court at law and have been disposed of by such court. If the agreement was of such a nature that it

could not be recognized or enforced by the law court, we cannot conceive of any principle by which equity will now enforce it.

The appellant contends that there can be no question but that the attorney had a right to bind his client in respect to this matter, and he cites several cases.

Such a contention on the part of the appellant is most remarkable in view of Section 11 of the Practice Act requiring agreements made out of court between counsel relative to the conducting of cases to be made in writing in order to be binding.

It would seem to us that even if such an agreement had been made by Mr. Mulvaney, yet if it were not in writing he was not bound by it, and if he was not bound by it, certainly no attorney substituted in his place thereafter was bound by it. If it be true that a court of equity will enforce agreements between counsel, which are not in writing, respecting the conducting of an action at law, then Section 11 of the Practice Act is a mere delusion.

The case of *Griffin vs. Thorne*, 1 Stockton page 722, was a case in which a solicitor had consented in writing to the entry of a decree and the client made no effort to show that the solicitor was not authorized by him to consent to the making of such a decree. It is not at all in point because until the client shows an absence of authority on the part of the solicitor to consent in writing to the making of a decree, it is presumed that the solicitor had such authority.

The case of *Howe vs. Lawrence*, 2 Zab.

page 99, is a case directly opposed to the contention of the appellant. It holds that agreements between counsel as to the manner of conducting a cause will be respected and enforced by the court. This surely means the court in which the cause is pending and not in any other court, and if the appellant had desired to have this alleged agreement enforced, his remedy was solely by appeal to the authority of the court at law to control such agreement and not by appeal to a court of equity. And the case goes still further and holds, that unless an attorney has the consent of his client his agreement to waive a substantial legal right of his client, will not be enforced in a court of law.

The case of *Price vs. Ward*, 1 Dutch. 225, is likewise not in point, because in that case the agreement was reduced to writing.

We submit therefore that this contention on the part of the appellant should be overruled.

II.

The appellant secondly contends that the respondent by his own acts put himself in a position where it was impossible for the appellant to serve a bill of fees, etc., upon him.

He states in his brief that before the respondent had left the State of New Jersey judgment had been taken against him but there is no proof whatever that any judgment had been taken against the respondent prior to the respondent going to Georgia in March, 1906.

There was proof that a suit was pending in the Supreme Court instituted against the respondent by Talbot R. Chambers, but that is as far as the proofs go (18.)

There is also proof, as appears by the letter of August 9, 1906, that some paper had been served upon the appellant as attorney for the respondent, but the letter to respondent does not mention a judgment, and moreover was addressed to the respondent at Chester, Massachusetts, at a time when the respondent was living in Jersey City. The letter is dated August 9, 1906 (20) and the respondent returned to Jersey City on the last day of July 1906 (44), and he has remained in Jersey City ever since that time (48.)

The appellant urges that the respondent returned the appellant's letter marked "refused." There is no proof that this letter ever came to the hands of the respondent, or that he ever saw it, while there is proof that he was in Jersey City at the time when the letter was sent to Massachusetts, and there is proof that he received letters at his home No. 273 Sherman Avenue, Jersey City, which were sent to him by Mr. Britten his attorney (57-59), and the respondent himself testifies that he saw the appellant but that he did not speak to him because of a quarrel (52.) But be that as it may, there is no proof that the appellant made any attempt whatever to locate the respondent in Jersey City during the period commencing August 1st, 1906, and prior to the issuing of the writ of attachment.

The appellant states on page 7 of his brief that the respondent was on a kidnapping expedition, and that he was a fugitive. So far as the proofs go, he may have been entitled to the custody of his own children. There is nothing to show anything to the contrary, while on the other hand the only proof that we have upon the subject is that the respondent's wife had obtained a fraudulent decree in Ohio, but the purport of the decree is not disclosed. There is no proof whatever that even though the respondent was arrested in Massachusetts in 1906, he has ever been convicted of any crime or been called upon to answer any suit.

The appellant attacks the mentality of the respondent because he interposes a defense to the suit which the appellant had instituted against him at law, although the respondent admitted that he had no interest in the res which had been attached. We respectfully insist that the respondent was perfectly justified in interposing any defense that he saw fit, and even though he had no interest in the res yet it was of the utmost importance to him that he should not have a judgment rendered against him which was wholly and entirely unjust. And the attacks of the appellant upon the honesty and integrity of the respondent are wholly uncalled for, are foreign to the issue and even if material or relevant the truth of the statements contained in these attacks is not borne out by proofs.

The appellant admits that from February, 1904, the respondent had paid him nothing for

his services, and to permit a creditor to issue a writ of attachment against a debtor when he maintains a residence in this state, simply because the debtor happens to be temporarily absent from the state, is to countenance a procedure which has never yet received the sanction of the legislature.

The case of *Lamb vs. Martin*, 43 Eq., page 36, instead of sustaining the appellant is an authority against his contention. In that case, as appears by the second syllabus, it was held that it is an indispensable requisite to such power when invoked by a complainant that he must prove that he was prevented by the act of the defendant from suing *until his action at law was barred*.

In this case, the action at law of the appellant would not have been barred until March, 1912, if any, he had, and he could at any time have served the defendant with a taxed bill of costs and if not paid, he could have instituted his action, and so long as the defendant remained without the State of New Jersey, just so long would the statute of limitations have failed to be of benefit to him in his defense, had he raised it.

In the case cited by the appellant, the complainant was denied the relief sought on the ground that she had allowed the statute to extinguish her right of action at law, by herself wrongfully procuring an injunction restraining proceedings at law.

The case of *Doughty vs. Doughty*, 2 Stockton, page 347, is similar to the case of *Board of Freeholders vs. Veghte*, 44 Law, 511, and

the principles laid down in each of these cases is sound. This principle is to the effect, that equity will prevent a defendant from pleading the statute of limitations when by his fraudulent conduct he has made it inequitable that he should be permitted to exercise this right.

In the present case there is no evidence whatever that the respondent has been guilty of any fraudulent conduct whatever. If it be true that this respondent has been guilty of fraudulent conduct by leaving the State of New Jersey temporarily, as appears from the proofs, then any debtor must remain within the jurisdiction of the Court or else, if he go away for a temporary period, even though he maintains a residence in the State, a creditor can institute suit by attachment and then deprive the debtor of a defense which he would otherwise have, had he remained within the jurisdiction of the court.

We respectfully submit that if any conduct in this litigation is unconscionable, it is that of the appellant in issuing a writ of attachment against a respondent, whom he has known to be a resident of this jurisdiction for a number of years and take advantage of his temporary absence, for the purpose of embarrassing him and obtaining undue advantage. It is true that no party can insist upon a condition precedent when its non performance has been caused by himself.

We will concede that if the defendant in this case had left the State of New Jersey for the purpose of preventing the appellant from serving a taxed bill of costs, or if he had re-

mained away from the State for a period incompatible with the idea of temporary absence, then the appellant might have some foundation upon which to raise the equity of his position.

In this case however the respondent is not responsible for the non service of the taxed bill of costs, neither has he at any time done anything to deceive the appellant or to deprive the appellant of the right to serve his taxed bill of costs upon the respondent at all reasonable times, had the appellant seen fit so to do.

It seems to us that the question of whether this suit was started by attachment or not is not material to the issue, and as a matter of fact all the proceedings in the case, after the entry of the appearance of the defendant, are by statute directed to be carried on in the same manner as if commenced by summons. Therefore we think that for the purposes of this argument, the manner in which the suit was instituted can be entirely disregarded.

The appellant himself testified that he had an account with the respondent which covered the period beginning in February, 1904, and ending in March, 1906. Therefore under our statute even if each transaction is to be regarded as a separate transaction, the statute of limitations would not have run against his claim for services rendered in February, 1904, until February, 1910, so that the appellant had over a year and a half after the institution of the action at law, which was brought by him, before he could possibly have been barred by the statute of limitations in any way.

Supposing the respondent had been actually served with a summons in the law action. Can there be any doubt but that he would have had the legal right to plead the same defense as he has now pleaded? If this question is answered in the negative and it is conceded that the respondent could have pleaded the same defense in his law action, if the suit had been instituted by summons, then it must also be conceded that the appellant cannot at this time succeed in his contention that because he took advantage of the respondents temporary absence from the State of New Jersey and issued a writ of attachment, he should be permitted to prevent the respondent from now raising a defense in the action at law to which the respondent is legally entitled.

We therefore submit that under any aspect of the case the decree of the Court of Chancery dismissing the bill of complaint herein, was correct and should be affirmed.

MELOSH & MORTEN,
of Counsel with Respondent.

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FOR COMPLAINANT.

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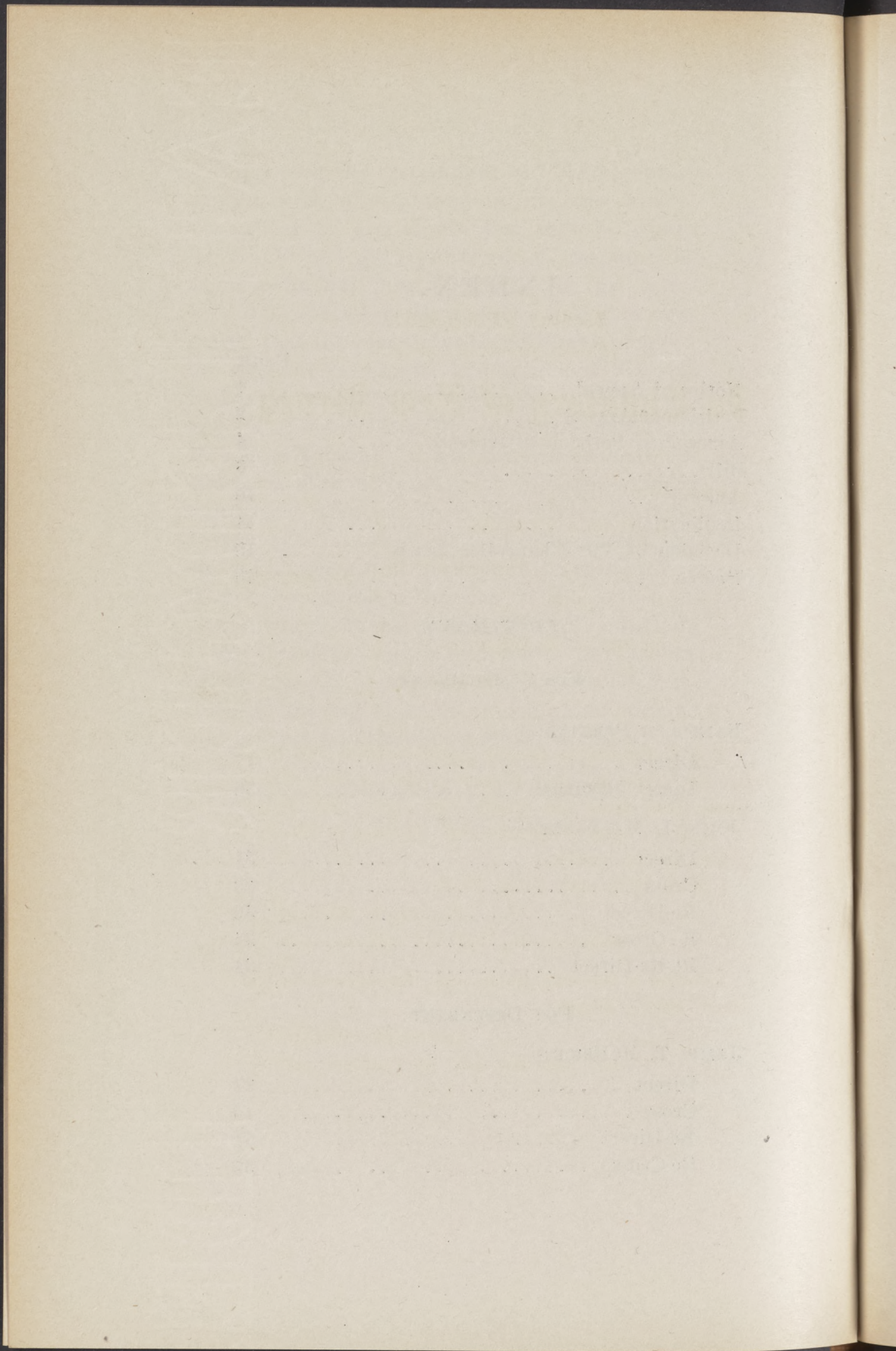
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JAMES T. MCBRIDE:—

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Notice of Appeal.
(Filed, March 16, 1914.)

In Chancery of New Jersey.

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Between

RANDOLPH PERKINS,

Complainant,

and

JAMES T. MCBRIDE,

Defendant.

On Bill &c.

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The complainant hereby appeals from the final decree made in this Court in the above stated cause, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, February 24th, 1914.

RANDOLPH PERKINS,
Solicitor for and of Counsel pro se. 30

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

RANDOLPH PERKINS,
Solicitor for and of Counsel pro se.

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Petition of Appeal.

(Filed, March 16,)

New Jersey Court of Errors and Appeals.

Between

RANDOLPH PERKINS,

Complainant-Appellant,

and

JAMES T. MCBRIDE,

*Defendant-Respondent.*On Appeal
from
Chancery.

To the Honorable, The New Jersey Court of Errors and Appeals:

The Petition of Randolph Perkins, the complainant-appellant in the above stated cause, respectfully shows:

That your petitioner finds himself aggrieved by the final decree made in the Court of Chancery by his honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 26th day of January, 1914, wherein the said Randolph Perkins was complainant and the said James T. McBride was defendant, in this respect, to wit: that the said decree adjudges that the bill of complaint filed by the complainant therein should be dismissed with costs to the defendant to be taxed, in which should be included a counsel fee of Fifty Dollars to counsel for the defendant.

AND YOUR PETITIONER HUMBLY APPEALS from the final decree and from the whole and every part thereof, upon the ground that the same is erroneous: for that the said decree should have adjudged that the said defendant should be restrained by the order and injunction of the hon-

Petition of Appeal.

orable Court of Chancery of New Jersey from attempting to maintain a defense pleaded in a certain action pending in the Hudson County Circuit Court between Randolph Perkins and James T. McBride, which defense was that said James T. McBride was not served with a taxed bill of fees, costs and disbursements, prior to the commencement of said action in the Hudson County Circuit Court.

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YOUR PETITIONER THEREFORE PRAYS that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

RANDOLPH PERKINS,
Solicitor for and of Counsel with Appellant.

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Answer to Petition of Appeal.

(Filed, March, 1914.)

Court of Errors and Appeals.

Between

RANDOLPH PERKINS,

*Complainant,**and*

JAMES T. MCBRIDE,

Defendant.

On Bill &c.

The answer of James T. McBride, respondent to the petition of appeal of Randolph Perkins, appellant.

20 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 twenty sixth day of January nineteen hundred and fourteen, made and entered in the Court of Chancery of New Jersey, in a 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

30 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.

MELOSH & MORTEN,
Of Counsel with James T. McBride,
Respondent.

Bill.

(Filed, Aug. 26, 1912.)

In Chancery of New Jersey.

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

HUMBLY COMPLAINING, shows unto your Honor your orator Randolph Perkins, of the Borough of Woodcliff Lake, in the County of Bergen and State of New Jersey. That he is an attorney and counselor at law and solicitor in Chancery of said State, and hath been such ever since the year eighteen hundred and ninety-six. That in the year nineteen hundred and six and previous thereto your orator rendered certain services to one James T. McBride, and that on or about the twenty-first day of September, nineteen hundred and six, the said James T. McBride was indebted unto your orator in the sum of five hundred dollars for professional services and disbursements. That sometime previous to the said twenty-first day of September, nineteen hundred and six, the said James T. McBride left the State of New Jersey for parts unknown to your orator, and continued to absent himself from said State of New Jersey for a long period of time. That on the twenty-first day of September, nineteen hundred and six, your orator issued a writ of attachment against said James T. McBride out of the Hudson County Circuit Court and attached rights and credits which were believed by your orator to belong to the said defendant. That on the twenty-ninth day of December, nineteen hundred and six Clarence Kelsey, an attorney at law of this State, entered an appearance in said attachment suit for said defendant and notice thereof was on the eighteenth day of January, nineteen hundred and seven, served upon your orator. That your orator

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Bill.

afterwards filed a declaration in said cause within the time required by law, and notice of substitution of John J. Mulvaney as attorney for defendant; was served upon your orator. That your orator at various times extended the time of the said James T. McBride to file his plea, and finally entered into an agreement with John J. Mulvaney, attorney for defendant, that the cause should be
10 set down for trial for the September term nineteen hundred and eight, and tried as though a plea of general issue had been filed. The cause was regularly noticed for trial for the April term, nineteen hundred and eight, and noticed for the September term, nineteen hundred and eight. That said cause proceeded afterwards to trial by jury in the said Hudson County Circuit Court and resulted in a judgment for your orator, which
20 was entered on the second day of October, nineteen hundred and eight, for the sum of five hundred and ninety-seven dollars and costs.

And your orator further shows that afterwards and on or about the thirtieth day of September, nineteen hundred and ten, application was made to the Hudson County Circuit Court for an order vacating the judgment entered in said cause, and that said judgment was vacated because no plea of the defendant was found on file in the Clerk's
30 Office of said Hudson County Circuit Court. That afterwards the said defendant obtained an order from said Hudson County Circuit Court permitting him to plead, and that among other defenses the said James T. McBride has set up a plea that he, the said defendant, was never served with a taxed bill of your orator's fees, charges and disbursements prior to the commencement of said action.

And your orator further shows, that prior to
40 commencing the said action in said Hudson Coun-

Bill.

ty Circuit Court against the defendant, James T. McBride, he made inquiries for the address of the said defendant from the sister of the said defendant, James T. McBride, Sara L. Reid, and also from his mother, Catherine L. McBride, and that neither of said persons would give to your orator the said address of said defendant. That by the public press your orator read that said McBride was imprisoned in Massachusetts and sent a letter to said James T. McBride, which was returned marked "refused", and your orator expressly charges that the said defendant concealed himself out of the State of New Jersey and that his address and whereabouts were unascertainable by your orator. 10

And your orator therefore charges the fact to be that the said defendant knowingly and purposely placed himself beyond the jurisdiction of the Courts of New Jersey and concealed himself and his whereabouts from your orator, and by said means prevented your orator from serving upon him a copy of his taxed bill of fees, costs and disbursements, and in effect waived the service of the same, and that it would be grossly inequitable, and in fact a fraud upon your orator, to permit the defendant to interpose the defense of the aforesaid plea. That the interposition of said plea is in violation of an agreement between your orator and the attorney for said McBride to the effect that a plea of general issue would be filed. 20 30

And your orator further shows that he exercised all due diligence in his endeavor to locate the said James T. McBride previous to the institution of the said suit in the Hudson County Circuit Court, and that afterwards when said McBride appeared complainant served upon his attorney in the month of March, nineteen hun- 40

Bill.

dred and seven, a bill of particulars of complainant's claim against said McBride, and afterwards on the twentieth day of March, nineteen hundred and eight, complainant caused to be served upon John J. Mulvaney, attorney for said defendant, James T. McBride, a complete and adequate bill of particulars showing all the items of the claim and demand which your orator had against the
10 said McBride.

And your orator further shows, that it will be grossly inequitable and unjust and a hardship upon your orator to permit the said McBride to file a plea setting up the fact that your orator did not serve upon said McBride a copy of his bill for fees, costs and disbursements previous to the commencement of said suit.

20 In tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises by the strict rules of the common law, and without the aid and intervention of this Honorable Court, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said defendant, James T. McBride, may without oath, (the oath being hereby waived), full, true and perfect answer make, to all and every the matters aforesaid, as fully and particularly as if the same were here again re-
30 peated, and he thereto particularly interrogated, and that said defendant, James T. McBride may be restrained by the order and injunction of this Honorable Court, from attempting to maintain the defense pleaded in the second plea in the said action between your orator and defendant, now pending in the Hudson County Circuit Court, namely, that defendant was not served with a taxed bill of fees, costs and disbursements prior to the commencement of the said action, and
40 that your orator may have such further or other

Bill.

relief in the premises as the nature and circumstances of the case may require, and to your Honor shall seem meet and agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator, not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said James T. McBride, restraining him from pleading or attempting to plead the aforesaid second plea in the aforesaid action, but also the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said James T. McBride, commanding him on a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such decree therein as to your Honor shall seem meet, &c.

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

RANDOLPH PERKINS,
Solicitor pro se.

Answer.

(Filed, Sept. 18, 1912.)

In Chancery of New Jersey.

Between

RANDOLPH PERKINS,

Complainant,

and

JAMES T. MCBRIDE,

*Defendant.*Answer.
On Bill &c.

The answer of James T. McBride, the defendant to the bill of complaint of Randolph Perkins, the complainant. This defendant answering so much of the bill of complaint herein, as he is advised it is material or necessary for him to make answer unto, answering says:

He believes the allegations in paragraph one of said bill of complaint to be true, excepting as herein denied or otherwise replied to. He denies that in the year nineteen hundred and six, or at any other time the complainant rendered any services to this defendant for which this defendant was indebted to the complainant in the sum of Five hundred dollars, or any sum whatsoever, either for professional services or for disbursements.

This defendant admits that in the year nineteen hundred and six, he left the State of New Jersey for a temporary absence and went to the State of Massachusetts. He avers that he left the State of New Jersey on May 11th, 1906 and returned to Jersey City on or about July 30th, 1906. This defendant has no knowledge as to any agreement alleged to have been entered into between the

Answer.

complainant and one, John J. Mulvaney, as attorney for this defendant as stated in paragraph one aforesaid, but this defendant denies that the said John J. Mulvaney had any power to enter into any such agreement as therein mentioned. This defendant believes that the plaintiff did attempt to bring on the trial of said action mentioned in paragraph one of said bill of complaint.

This defendant admits the allegations of paragraph two of said bill of complaint. 10

This defendant has no knowledge as to any inquiry alleged to have been made by the complainant to ascertain this defendant's address as stated in paragraph three of said bill of complaint. This defendant admits that while in the State of Massachusetts he endeavored to recover the possession of his children from his wife, and in so doing was arrested upon the charge of kidnapping, and afterwards compelled to give bail to answer said charge; which said proceeding was taken for the purpose of permitting this defendant's wife to obtain the custody of their children and place them beyond the reach of this defendant. But this defendant denies that at any time while he was in the State of Massachusetts he was ever tendered a letter from the complainant, and that he ever refused to receive any letter from the complainant, and he denies that he concealed himself outside of the State of New Jersey. 20 30

This defendant denies that he placed himself beyond the jurisdiction of the Court of the State of New Jersey, and concealed himself and his whereabouts from the complainant, and on the other hand avers that there was no reason why he should have done so in the year nineteen hundred and six, as he was not indebted to the complainant for any moneys whatsoever and now holds in his possession, receipts for moneys which 40

Answer.

the complainant has charged against him, and which the complainant knows are fraudulent charges and charges for which this defendant is not and was not in nineteen hundred and six or at any other time since then liable to the complainant. This defendant further answering says, that he has been a resident of the State of New Jersey for about fifty years; that since the
10 year nineteen hundred and four and until the year nineteen hundred and eight, this defendant resided at No. 273 Sherman Avenue, in Jersey City, with his mother, Catherine L. McBride, and that his address was known to the complainant, and that this defendant has continuously since the death of his mother resided at the address aforesaid and still resides there; and that if the complainant believed that he had any reasonable cause for action against this defendant to recover
20 any moneys, he could have served whatever papers were necessary upon this defendant any time during the year nineteen hundred and four or nineteen hundred and five or nineteen hundred and six, excepting during the time that elapsed between May eleventh, nineteen hundred and six and about July thirtieth, nineteen hundred and six, when this defendant was in the State of Massachusetts for the purpose hereinbefore mentioned.

30 This defendant has no knowledge as to what diligence was exercised by the complainant in his endeavor to locate this defendant previous to the institution of said suit in said Circuit Court, but he avers that if ordinary diligence had been used the complainant would have had no trouble in serving papers upon this defendant of any nature whatever. This defendant believes that a bill of particulars of the complainant's claim against him was served upon this defendant's attorney,
40 but he avers that the same was so indefinite, un-

Answer.

certain and unreliable that this defendant's attorney was obliged to apply to the court to compel the complainant to serve a more specific bill of particulars of his claim, so that this defendant might be able to determine how to prepare his defense to said action.

This defendant denies that it is inequitable or unjust to permit this defendant to file the plea referred to in paragraph six of said bill of complaint, and on the other hand insists that both in law and in equity he is justified in so doing, and that this court should not in any way deprive this defendant of his legal rights in said action at law.

WHEREFORE this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MELOSH & MORTON,

Solicitors and of Counsel with Defendant.

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Replication.

(Filed, Sept. 27, 1912).

In Chancery of New Jersey.

Between

RANDOLPH PERKINS,

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*Complainant,**and*

JAMES T. MCBRIDE,

*Defendant.*On Bill &c.
Replication.

The complainant joins issue on the answer of
the defendant.

RANDOLPH PERKINS,
Solicitor pro se.

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Decision of Vice Chancellor Lewis.

In Chancery of New Jersey.

Between

RANDOLPH PERKINS,

Complainant,

and

JAMES T. MCBRIDE,

Defendant.

On Bill &c.
Memoranda.

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Decided, January 16, 1914.

Randolph Perkins, Esq., Solicitor Pro Se.
Melosh & Morten, Esqs., Solicitors of Defendant.

V. C. LEWIS:

There was no evidence of deception or fraud on the part of the defendant, and he was under no duty to remain continuously in this State. It was disclosed by the testimony, however, that the defendant actually was in the State when the attachment suit was issued. He appears to have been a resident for upwards of fifty years, and his absence temporarily and arrest in Massachusetts, was due to unfortunate matrimonial difficulties. Under all the circumstances of the case, and the evidence produced at the hearing, I can see no reason why the strong arm of this Court should be raised to prevent the defendant from interposing his defense at law. Laches were not satisfactorily established and it differs materially from an action where the power of this Court is called into play to prevent a defendant by injunction from setting up the Statutes of Limitation as a defence to an action at law which he has wrongfully procured, to be restrained until sufficient time has elapsed to render such a defence available.

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I am of opinion that the bill must be dismissed
and I shall advise a decree accordingly.

A true copy.

SAMUEL K. ROBBINS,
Clerk.

Decree.

(Filed, Jan. 20, 1914.)

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In Chancery of New Jersey.

Between

Complainant,
RANDOLPH PERKINS,

and

JAMES T. MCBRIDE,

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Defendant.

On Bill &c.
Decree
Dismissing
Bill of
Complaint.

This cause coming on to be heard in the presence of Randolph Perkins, counsel pro se and Melosh & Morten, of counsel with the defendant, and the court having read the pleadings and heard the proofs offered by the respective parties, and having duly considered the same, and being of the opinion that the complainant is not entitled to the relief prayed for in his bill of complaint.

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It is on this twenty sixth day of January, in the year of our Lord, one thousand nine hundred and fourteen, on motion of Melosh & Morten, of counsel with defendant,

ORDERED, that the bill of complaint filed by the complainant herein be dismissed with costs to the defendant to be taxed, in which shall be included a counsel fee of Fifty Dollars, to counsel for the defendant.

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Respectfully advised,

VIVIAN M. LEWIS,
V. C.

Testimony.
In Chancery of New Jersey.

Between :

RANDOLPH PERKINS,

Complainant,

and

JAMES T. MCBRIDE,

Defendant.

On Bill, etc.

Testimony. 10

Transcript of testimony taken in the above entitled cause, before Hon. Vivian M. Lewis, at the Jersey City Chancery Chambers, on June the fourth, nineteen hundred and thirteen.

APPEARANCES:

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Randolph Perkins, Esq., solicitor pro se.

Louis G. Morten, of the firm of Melosh & Morten, for the defendant.

RANDOLPH PERKINS, sworn in his own behalf, testified as follows: I am an attorney and counsellor of the Supreme Court of the State of New Jersey, and a solicitor in Chancery, and have been such since the June Term, in 1896. For a number of years previous to 1906, I represented the defendant as his attorney and counsel, and solicitor, and rendered services in a number of matters for him, some of which matters were in the Court and some of which did not require attendance in Court. He paid me from time to time, over a period of years, but finally ceased paying anything, although my services continued. After Feb-

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Randolph Perkins—Direct.

ruary 1st, 1904, and until I ceased to represent him, in the middle of 1906, he paid nothing for services.

BY MR. MORTEN:

Q. Prior to that, how did he pay you? A. He retained me by the case, based on the quantity of time spent in each matter. At the end of March, 1906, he owed me \$576.10, according to my books, and my understanding of the matter. The last time that he appeared in my office previous to the institution of a suit against him for those services,—were the 13th of March, 1906, as near as I can fix it,—I fix that date by refreshing my memory from an entry in a book called a “call book,” which is kept in my office, and such a book has been kept there for fifteen years past, in which book is entered the name of any person who comes in or ‘phones. I have searched through the call book for 1906, and the last entry I find of Dr. McBride being actually in the office was March 13th, 1906. Some time in March, 1906, I was informed that there was a suit pending against Dr. McBride, in which a receiver had been appointed in supplementary proceedings; that was a case pending in the New Jersey Supreme Court,—Talbot R. Chambers v. James T. McBride. Having previously acted as Dr. McBride’s attorney, I was served with a restraining order in that suit. At that time, I had in my possession various bonds and mortgages, or conveyances of them, and had collected as the proceeds of a foreclosure suit about six hundred dollars. Dr. McBride disappeared from Jersey City some time early in the summer of 1906.

MR. MORTEN: I object to that,—that is a conclusion; I ask that that be stricken out.

Randolph Perkins—Direct.

THE WITNESS: He disappeared from my view and I read in the newspapers,—

MR. MORTEN: I object to what appeared in the newspapers.

THE WITNESS: I made an effort to locate him; I was well acquainted with Mrs. Sarah Reed of Brooklyn,—Dr. McBride's sister, and I wrote to her, asking for Dr. McBride's whereabouts. I will refresh my memory by referring to office copy of a letter written August the third, nineteen hundred and six, to Mrs. Sarah L. Reed, No. 76 St. James Place, Brooklyn. 10

MR. MORTEN: I object to anything that was contained in the letter unless it can be shown that Mrs. Reed received it.

THE WITNESS: I wrote the letter and directed it, and stamped it and mailed it to Mrs. Reed. 20

MR. MORTEN: I object to anything that was contained in the letter.

THE WITNESS: I also wrote a letter to Dr. McBride's mother, Mrs. Catherine L. McBride, of Brooklyn, asking the whereabouts of the Doctor, and I received information from Mrs. Reed that Dr. McBride,—

MR. MORTEN: I object to that. 30

THE WITNESS: It is necessary for me to show in this case that I made a diligent effort to locate Dr. McBride. It is a question of whether I should have served him with a bill of particulars, and I think it is proper for me to show that I inquired of his mother, and of his sister, and that I received information from his sister by letter. 40

Randolph Perkins—Direct.

Q. (By the Court.) Have you the letter? A. I did receive a letter from her, but I cannot find it.

MR. MORTEN: I object to the contents of the letter.

10 THE WITNESS: Pursuant to the receipt of a letter from Dr. McBride's sister, I sent Dr. McBride a letter, the original of which I produce. It bears date August ninth, nineteen hundred and six. (Reads letter.)

"Dr. James T. McBride,
Chester, Mass.

Dear Sir:

20 I beg to enclose herewith copy of a paper which has just been served upon me by Mr. John S. McMaster. At the time of the service of this paper, Mr. McMaster made demand upon me for all papers, moneys, and everything in my possession belonging to you. Please advise me what to do.

Very truly yours,
Randolph Perkins."

MR. MORTEN: I object unless it can be proved that Dr. McBride received it.

THE WITNESS: I am endeavoring to show that I made a diligent effort to find Dr. McBride.

30 THE COURT: I will admit it for that purpose.

THE WITNESS: In that letter, I enclosed a copy of an order, appointing a receiver in the case of *Chambers v. James T. McBride*, which was signed by James E. Hendrickson, Justice of the Supreme Court, which I produce and offer in evidence.

MR. MORTEN: I object, if the Court please, on the ground that it is irrelevant.

Randolph Perkins—Direct.

THE WITNESS: The only object of introducing that is to show what I did in pursuance of an effort to find Dr. McBride. It was enclosed in this letter.

THE COURT: I will accept it for that purpose alone.

THE WITNESS: I enclosed that letter with the order appointing a receiver, in the envelope, and mailed it in Jersey City on August the ninth, addressed to "James T. McBride, Chester, Mass.," having been informed—

MR. MORTEN: I object.

THE WITNESS: A number of days later, this envelope was returned unopened to me, personally, marked "refused". I offer the envelope in evidence.

MR. MORTEN: I object to it.

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THE COURT: It is just to show the effort of Mr. Perkins to locate him. I will admit it for that purpose.

THE WITNESS: On August the ninth, nineteen hundred and six, I notified Mrs. Reed,—Dr. McBride's sister,—by letter, of the service of the order, appointing a receiver, upon me, and the demand that had been made for me to turn over all papers and documents and moneys belonging to Dr. McBride.

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MR. MORTEN: I object.

THE WITNESS: I wrote her a letter, bearing date—

MR. MORTEN: I object to the contents of the letter.

THE WITNESS: I received an answer from Mrs. Reed to that letter.

Q. (By the Court.) Have you the answer 40

Randolph Perkins—Direct.

there? A. The answer bears date the twenty-fifth of August, nineteen hundred and six, and is a demand upon me for the delivery to her of all papers in my possession.

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MR. MORTEN: I have not seen that letter (Mr. Morten looks at it). I object to that, on the ground that it is not an acknowledgment of the receipt of a previous communication, and has nothing to do with it.

THE WITNESS: The letter is not offered, for the purpose of binding Dr. McBride by anything said in the letter. Not being able to ascertain the whereabouts of Dr. McBride, and having information that he was at Chester, Mass.,—

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MR. MORTEN: I object to the information.

THE WITNESS: I received information from the Chief of Police of Chester—

MR. MORTEN: I object; I ask to have that stricken out.

THE COURT: Strike it out.

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THE WITNESS: I am offering this evidence on the theory that what was in my mind is important to show why he was not served with the copy of the taxed bill of costs before I began suit against him. I wrote a letter to the Chief of Police of Chester, Mass., stating that on August the ninth I had mailed a letter to Dr. McBride containing some important papers that had been served on me, relative to his affairs, and stating further, that the letter was marked "refused;" stating that I understood that Dr. McBride was arrested and taken to Chester, and to kindly inform me "if you will, where we can address him at the present time. Thanking you in advance

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Randolph Perkins—Direct.

for your courtesy in this matter, I remain, very truly yours, Randolph Perkins." I received a reply from the Chief of Police.

MR. MORTEN: I object to what the reply stated.

THE WITNESS: And based on the failure to receive any information as to the whereabouts of Dr. McBride, pursuant to the letters I had written to his mother and his sister, and the Chief of Police of Chester, and the information from articles that appeared in the public print as to his whereabouts, I issued an attachment—and also with knowledge that Dr. Talbot R. Chambers had obtained a judgment against Dr. McBride, and had examined him in supplementary proceedings, and had a receiver appointed, I issued an attachment against the rights and credits, goods and chattels of James T. McBride, in a suit brought by myself to recover compensation for services rendered to him. Previous to the institution of that suit I did not serve upon him any taxed bill of costs, because from the latter part of the month of March, nineteen hundred and six, until the institution of this suit, I had knowledge whatever as to his whereabouts, except the information derived from his sister, and from the Chief of Police of Chester.

MR. MORTEN: I object, if the Court please, to the statement of that—I think counsel should be confined to his statement that he had no knowledge of his whereabouts.

THE COURT: Strike it out.

THE WITNESS: I had no knowledge of the whereabouts of Dr. McBride except the information derived from hearsay, and the

Randolph Perkins—Direct.

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fact that the letter which I had addressed to him was returned "refused." After issuing the attachment, Dr. McBride appeared—the affidavit was dated September twenty-first, nineteen hundred and six; the writ of attachment was issued two days after. Up to the time of issuing that attachment and until some months afterwards, I was never able to locate Dr. McBride and had no knowledge of his whereabouts, except such information as I had derived, as heretofore related. I took a rule for default and published the notice of the advertisement in the Jersey Journal; it was published five times in the Jersey Journal, five weeks successively, at least once a week, commencing on the twenty-fourth of November, nineteen hundred and six. On the eighteenth of January, nineteen hundred and seven, I was served with a notice of appearance on behalf of James T. McBride by Clarence Kelsey, which was signed "Attorney for the defendant," subsequently thereto. That notice says that on December twenty-nine, nineteen hundred and six, he entered an appearance for the defendant James T. McBride in the attachment proceedings. I afterwards received notice of substitution. I afterwards received notice of substitution of Mr. John J. Mulvaney as attorney for the defendant, and later filed a declaration in the cause, to which was annexed a bill of particulars. The bill of particulars contained items running from the eighteenth of August, nineteen hundred and three, to the thirtieth of March, nineteen hundred and six; in each instance giving

Randolph Perkins—Direct.

the date of the rendition of the service and the time spent; the name of the matter which was attended to, the number of folios of typewriting. Later, Mr. Mulvaney, as attorney for the defendant in that case, made a demand for a further bill of particulars. I believe he served me with an order of the Hudson County Circuit Court, requiring me to furnish a further bill of particulars. Pursuant to that demand, and order, I served upon Mr. Mulvaney a complete bill of particulars, a copy of which I produce, and ask that it be marked in evidence. 10

MR. MORTEN: Objected to on the ground that it is irrelevant.

(Mr. Perkins then addresses the Court and the stenographer is instructed not to take the remarks down.) 20

MR. MORTEN: I admit that in the suit a bill of particulars was served upon the attorney which set forth all the information that could possibly have been served in a demand, had it been made previous to suit; but I say, that that fact that there was a bill of particulars served after the suit was commenced, is irrelevant to this case, because the defense which we seek to interpose in the lawsuit is that there was no bill of particulars served before the suit. 30

THE COURT: I will admit it in evidence.

THE WITNESS: No plea was filed on behalf of the defendant, James T. McBride, within the time required by law in that suit, and at the request of his attorney, I granted several extensions of time. Desiring to bring the matter on for trial at the September term, nineteen hundred and 40

Randolph Perkins—Direct.

ten, I spoke with Mr. Mulvaney about filing his plea.

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MR. MORTEN: I wish to object to any further—I wish to object to any further evidence as to what took place previous to the filing of the plea of the defendants; not that I do not care to have it come out in court, but I do not think it necessary to burden the record in this case with a statement of what took place, in view of the fact that this proceeding is virtually for the purpose of setting up a certain plea.

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MR. PERKINS: This is an equitable action brought to restrain the Doctor from, at this time, setting up that defense. Now, one theory of the equity of the action is this, that for five years, or four years, he never filed any plea, and that the case was tried under an agreement. It was tried under an agreement, that it would be tried as though a plea of the general issue had been filed by the defendant. It was tried before a jury, and I recovered a judgment in that suit, and then several years afterwards Mr. Morten examined the files of the Hudson County Court and found no plea on file at all, and then made a motion and had my judgment opened up. So I say it would be grossly inequitable now to have him come in and file a plea four or five years after the institution of this suit, and his appearance in the suit.

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THE COURT: Well, we will take the testimony. I shall take the testimony and I will consider it afterwards, as to whether it is admissible. There is no doubt in your mind that Mulvaney did represent him at that time.

Randolph Perkins—Direct.

MR. MORTEN: There were four or five attorneys in this case, and I don't know who did represent him at that time.

THE WITNESS: The case was noticed for trial for the April term, nineteen hundred and nine, I think it was; no, April term, nineteen hundred and eight, and at the request of Mr. McBride's attorney, the case went over for the term. It was again noticed for trial at the September term, nineteen hundred and eight, and no plea having been filed, I then entered into a parol agreement with Mr. Mulvaney—

MR. MORTEN: I object to any testimony as to a parol agreement on the part of an attorney, to waive the filing of a plea.

THE WITNESS: I called to Mr. Mulvaney's attention to the fact that he had not filed a plea, and that a judgment could have been entered against him; and he said, "I want to file a plea, and if you will permit it, I will agree to file a plea of the general issue," and I said, "if you will—"

MR. MORTEN: I object to this.

THE WITNESS: It all enters into the equity of this suit; I said, "Suppose the case is called for trial before you actually file that plea." He said, "Well, if the case be actually called for trial before I have filed a plea of the general issue—"

MR. MORTEN: I object to this.

THE WITNESS: "We will go ahead and try the case just the same as though a plea of the general issue had been filed." The case was then tried at the September Term. I never received any notice of the substitution of attorneys from Mr. Mulvaney to

Randolph Perkins—Direct.

Mr. Berg, but at the trial Mr. Berg appeared and stated that he represented Mr. McBride. The case was tried before Judge Speer and a jury, in Hudson County Circuit Court on the second day of October, nineteen hundred and eight, and a verdict was rendered in my favor for the amount of my bill, \$514.00 and interest and costs.

10 A few days later, I was served with an order in the Hudson County Circuit Court, on motion of Mr. Herman Berg, attorney for James T. McBride, directing me to show cause why the verdict should not be set aside and a new trial granted. This order was returnable on the twentieth of October, nineteen hundred and eight, and on that day the matter was argued, and the

20 rule to show cause was discharged; and the court directed the defendant to pay the costs of the application. On the fourteenth of January, nineteen hundred and nine, Messrs. Heine & Herr, acting as attorneys for Dr. McBride, served upon me another notice of an application to open the judgment. At the request of Mr. McBride's attorneys this matter was adjourned for several weeks, and my recollection is that the

30 order was finally dismissed or discharged. Shortly before that, Mr. Herman Berg, who represented Mr. McBride, instituted a summary proceeding in this Court against me as solicitor—in the effort to obtain an order of the Court requiring me to pay over the six hundred dollars which had been attached in the judgment suit, to Dr. McBride's sister—just a summary proceeding

40 on a petition; the matter was heard before

Randolph Perkins—Direct.

Vice Chancellor Garrison on a short notice to me; the matter was heard, and in the meantime Mr. McBride was represented by a firm of lawyers named Childs of Newark—a man named Childs of Newark, New Jersey. McBride appeared and swore the money that was attached was not his property—he was the actively interested person in the suit. The result of that proceeding is a record of this court, and Vice Chancellor Garrison made an order requiring me to hold the money, pending a suit to be brought by Sarah R. Reed, as administratrix of the estate of Catherine L. McBride. Catherine, the mother of Dr. McBride, had died pending these proceedings. That suit was instituted and the plaintiff fell into default about three years ago, and is still in default.

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MR. MORTEN: There is an agreement, I think, that the suit is not to be moved until this other one is disposed of. We agreed that the suit shall remain in status quo.

THE WITNESS: There was a default before that agreement was made, in the application by me for a judgment for the defendant, and then, after that, it may be that some agreement was made with Mr. Morten. Some time after the application to open the judgment, made by Heine & Herr, Mr. Morten, of the firm of Melosh & Morten, filed a petition with the Circuit Court, setting forth that the defendant, McBride has never filed any plea in the suit, and prayed an order opening the judgment. The matter was heard before Judge Speer, who opened the judgment, on the theory

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Randolph Perkins—Direct.

10 that there was no issue which was tried before the jury on October the second, nineteen hundred and eight. The judge granted the defendant, James T. McBride, time to file pleas, and among other things, a plea was filed, setting forth that the plaintiff in the suit had not—previous to the institution of the suit—served upon the defendant a copy of his taxed bill of costs and charges. Replication was filed, which set up the fact—

Q. (By the Court.) Was any other plea filed?

A. Yes, sir, a plea of the general issue. Replication was filed to that plea, and on demurrer the replication was struck out, or rather, the demurrer was sustained on the ground that it represented no legal—that the replication presented no
20 legal answer to the plea; and then I filed a bill in this case, asking that Dr. McBride be retained from filing such a plea, on the ground that it was inequitable, unjust, and a fraud, and in contravention of the agreement made between his attorney and myself.

CROSS EXAMINATION RESERVED TO A LATER DATE:

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Mr. John J. Mulvaney—Direct.

MR. JOHN J. MULVANEY, sworn in behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. PERKINS:

Q. You are an attorney at law and solicitor in Chancery of this State? A. Yes, sir.

Q. Do you know James T. McBride? A. Yes, sir.

10

Q. You were his attorney at one time, in the suit of Randolph Perkins against James T. McBride, in the Hudson County Circuit Court? A. I was for a time.

Q. You succeeded Mr. Kelsey as his attorney? A. Yes, sir.

Q. Do you remember whether or not you filed a plea in that case in the Hudson County Circuit Court? A. I don't recall that I did.

Q. Do you remember whether there was any conversation between you and Mr. Perkins, relative to your filing a plea for Mr. McBride? A. I think there was some delay about the filing of the plea.

20

MR. MORTEN: I think the question should be answered yes or no.

A. Yes, sir.

Q. What was it?

30

MR. MORTEN: I object to any conversation between Mr. Perkins, the complainant, and Mr. Mulvaney, regarding the filing of a plea, if the purport of that conversation is that the case could be tried without the plea being filed.

THE COURT: Let me hear the conversation.

A. I was dissatisfied with the bill of particu-

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Mr. John J. Mulvaney—Direct.

lars annexed to the declaration. My recollection is that the declaration was not served with the summons, but was subsequently filed, and I did not feel that the bill of particulars was specific enough. I called Mr. Perkins' attention to it, and he then promised to furnish me with a further bill. He did so, and I was not satisfied with that, and then applied to the court for an order that a
 10 further bill of particulars be furnished. During the talks, many of them, that I had with Mr. Perkins, he expressed a wish not to have the trial of the case delayed, and that if I would—I think he said at one time, "I assume your plea will be a plea of the general issue," and I said, "I cannot see any reason for any other plea," and while the case was not at issue, at one term, I agreed to accept notice of trial, or put the case
 20 on the list—the date was in nineteen hundred and eight, I get now from an affidavit which I signed in nineteen hundred and ten. I do not recall that date, except as I see it here, and it went off for some reason, and I agreed with Perkins, during the summer, that we would try the case at the September Term. During the summer McBride dismissed me and retained Mr. Herman Berg, and I turned over to him all the papers that I had relating to the case, with a statement of its then
 30 present situation; after Mr. Berg succeeded me there was no substitution of attorney on the record, and Mr. Perkins sent to me, as the attorney of record, a notice of trial for the September Term, service of which I acknowledged, and I forwarded the notice itself to Mr. Berg. That was all my connection with it.

Q. Had you gone over the final bill of particulars with Mr. McBride? A. Oh, yes, Dr. McBride came to my office.
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John J. Mulvaney—Cross, Re-Direct.

MR. MORTEN: I object to the answer.

A. Yes, sir.

Q. More than once? A. I cannot say as to that last one.

CROSS EXAMINATION BY MR. MORTEN:

Q. Mr. Mulvaney, the time when you ceased to represent Dr. McBride was the summer of nineteen hundred and eight. A. I say yes, because those are the dates in this affidavit which I made in nineteen hundred and ten. 10

Q. But it was prior to the opening of the September Term, nineteen hundred and eight when the case was alleged to be tried—tried to be tried.

A. It was sought to be tried by both Mr. Perkins and myself at the April Term. Something intervened—I think there was delay in Mr. Perkins' office in furnishing the last bill of particulars. That is a hazy recollection I have now. 20

Q. And it was previous to the September Term following, that you had ceased to represent Dr. McBride? A. Yes, sir, it was prior to the notice of trial for the September Term; it was served upon me in August.

RE-DIRECT EXAMINATION BY MR. PERKINS:

Q. You were still the attorney of record in the case? A. So far as I knew. 30

Q. You never had given substitution to any one? A. I think I did; I think I gave Dr. McBride a blank substitution—sent an order for substitution with the name of the attorney left out.

Q. What was your agreement with Mr. Perkins, with reference to the trial of the case at the April Term? 40

John J. Mulvaney—Re-Cross, Re-Direct.

MR. MORTEN: Objected to as irrelevant and immaterial to this issue.

THE COURT: The objection is overruled.

10 A. Essentially that Mr. Perkins might consider a plea of the general issue as having been filed, and serve a notice of trial for the April Term as if the cause were at issue, and we would dispose of it during that April Term.

RE-CROSS EXAMINATION BY MR. MORTEN:

Q. That was all based upon the condition that he would give you a more definite bill of particulars? A. Yes, sir.

20 Q. When you delivered the papers to Mr. Berg, was it at that time that you gave the substitution in blank? A. No, sir. Prior to that. It was after my dealings with Dr. McBride, personally, had ceased, that Mr. Berg called upon me for the papers.

Q. What time was that? A. I cannot say.

RE-DIRECT EXAMINATION BY MR. PERKINS:

30 Q. I show you a copy of the bill of particulars which has been offered in evidence, and I call your attention to the fact that it was dated March, nineteen hundred and eight; does that refresh your memory as to whether the bill of particulars had been served upon you before the April Term, nineteen hundred and eight? A. This seems to be a carbon copy of a bill of particulars. My recollection, refreshed by this affidavit which I made in nineteen hundred and ten, was that there were three separate bills of particulars. Now, this copy here appears to be dated March, twenty-fifth, nineteen hundred and
40 eight, if that date is correct, I am quite certain

Mr. John J. Mulvaney—Re-Direct.

in my mind that this was not the last one which was served—one subsequent to that.

Q. I call your attention to a copy of an order which you obtained from Judge Speer, requiring the plaintiff to furnish a further and more specific bill of particulars. A. No, sir, that copy does not say so; the order is that the plaintiff show cause on the twenty-fourth of January, why such a further bill of particulars should not be granted, and I do not know from memory now, whether we argued that rule to show cause on January twenty-fourth or not.

Q. You are not clear, then, as to whether this bill of particulars, that I have shown you, was the last bill of particulars served or not? A. No, sir, except the more or less hazy recollection that I have that the last bill of particulars was served after the opening of the April Term which would, of course, indicate that this was not the last bill of particulars.

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Randolph Perkins—Direct.

MR. RANDOLPH PERKINS RESUMES THE WITNESS
STAND:

10 The bill of particulars which was dated March
twenty-fifth, nineteen hundred and eight, was the
final bill of particulars which was served, and
the conversation which I had with Mr. Mulvaney
about proceeding to the trial of the case, as though
a plea of the general issue were filed, was pre-
vious to the opening of the April Term, and then
it was also after the case had gone off, the April
Term.

MR. MORTEN: My client is not here. I
don't know why he is not here. The evi-
dence is very short.

20 THE COURT: Why cannot we take it on
a Motion Day. I will take it next Monday
if Mr. Perkins desires it.

MR. PERKINS: Next Monday will not suit
me.

ADJOURNED TO MONDAY, JUNE 30TH, 1913.

Continuation of the taking of testimony in the
above cause on June the thirtieth, nineteen hun-
dred and thirteen, at the same place, before Hon.
30 Vivian M. Lewis, Vice Chancellor.

APPEARANCES: As before noted.

Dr. James T. McBride—Direct.

DR. JAMES T. MCBRIDE, sworn in his own behalf.

DIRECT EXAMINATION BY MR. MORTEN:

Q. Doctor, you are the defendant in this suit?

A. Yes, sir.

Q. Where were you during the month of September, and part of August, in the year nineteen hundred and six? A. In Jersey City.

10

Q. Did you have occasion to have any business transaction with George B. Britton, an attorney of this State, in the month of September? A. Yes, sir, I did.

Q. I show you a letter, which has been marked Exhibit D-1 for identification, on the letter head of Mr. Britton, dated Jersey City, September the ninth, nineteen hundred and six; did you receive that letter from Mr. Britton? A. Yes, sir.

20

MR. PERKINS: Objected to as immaterial. This might be used to refresh his recollection, but I do not see how it can be offered in evidence. It could be used possibly to refresh his memory, but it is not a matter of evidence.

THE COURT: The objection will be overruled. (Objection withdrawn.)

Q. I show you a letter that has been marked Exhibit D-2 for identification, on the letter head of The Hotel Arizona of Washington, D. C., dated September the twentieth and signed George G. Britton. Did you receive that letter on or about that date? A. I received it about that date, yes, sir.

30

Q. Where were you living in Jersey City when you received those letters? A. Two hundred and thirty-three Sherman Avenue; that was my mother's home.

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Dr. James T. McBride—Direct.

Q. And what was your mother's name? A. Catherine L. McBride.

Q. When did you receive this letter? A. At the time of its arrival.

Q. Now, during the month of September, do you recall whether or not you had business transactions with Mr. Britton? A. Yes, sir, I had several conferences with him.

10 Q. And where were they held? In Jersey City, in his office in Jersey City? A. Yes, sir.

Q. Did you ever refuse to accept any mail from anyone during the months of August, September or October, nineteen hundred and six? A. I think not.

MR. PERKINS: I object; unless it is brought down to this specific case it would make me go far afield.

20 Q. Did you ever, during the months of July, August, September or October, nineteen hundred and six, refuse to receive any mail matter, bearing the name of Crouse & Perkins, or Randolph Perkins, or any counsel in Mr. Perkins' office? A. No, sir.

Q. Did you ever give any instructions to any one to refuse any mail coming to you from Mr. Perkins in either the envelope of Crouse & Perkins or Blair & Crouse? A. I did not know that they were going to send me any.

30 Q. (By the Court.) Did you give any? A. No, sir, I did not.

MR. MORTEN: Mr. Perkins, you have, I believe, the bill of particulars that you offered in evidence for the purpose of showing what the suit was. I have the copy here that you served and I will refer to that.

40

Dr James T. McBride—Direct.

Q. I call your attention to the bill of particulars which Mr. Perkins has testified to in this matter, which covers charges for a period commencing August the eighteenth, nineteen hundred and three, and ending on March the thirtieth, nineteen hundred and six; and I also show you a receipt dated July the eleventh, nineteen hundred and three; did you ever see that receipt before?
A. Yes, sir, I remember that.

10

Q. From whom did you get it? A. From Mr. Perkins.

MR. MORTEN: I offer this receipt in evidence.

Marked Exhibit D-1.

MR. MORTEN: The receipt reads as follows: "Received from Doctor James T. McBride, fifty dollars, in full for professional services, and all other claims to date, including suit
v. Schwab,
Randolph Perkins."

20

Q. I now show you a receipt dated June twenty-ninth, nineteen hundred and five; did you ever see that receipt before? A. Yes, sir.

Q. From whom did you get it? A. From Mr. Perkins.

MR. PERKINS: I object to this.

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Marked Exhibit D-2.

MR. MORTEN: I offer the typewritten part, signed James T. McBride, Randolph Perkins; and I also offer the written part below that, signed Randolph Perkins.

MR. PERKINS: I object to this; evidently, his idea is to try the case that is now pending in the Circuit Court, in this Court here, as to the merits of my cause of action.

MR. MORTEN: I offer that in evidence.

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Dr. James T. McBride—Cross.

The letter of July the eleventh, nineteen hundred and three, is marked Exhibit D-3.

The receipt dated June the twenty-ninth, nineteen hundred and five, is marked Exhibit D-4. C. E. R.

10 Q. I now show you a letter on the letter head of Crouse and Perkins; did you ever see that before? A. Yes, sir.

Q. From whom did you get that? A. From Mr. Perkins.

Marked Exhibit D-5 C. E. R.

MR. MORTEN: That is dated February the twenty-sixth, nineteen hundred and six.

MR. PERKINS: I make the same objection to that; it necessitates my opening my case again.

20 MR. MORTEN: I will read Exhibit D-5 (does so).

THE COURT: I agree with the solicitor of the complainant that there is grave doubt as to the materiality of it.

CROSS EXAMINATION BY MR. PERKINS:

30 Q. How do you fix the fact now, Doctor, that seven years ago this coming month of July, August, September and October, you were in Jersey City? A. Because I had meetings with Mr. Britton.

Q. Is that the only fact that is in your mind that fixes that date? A. I had to pay money, and I sent him on a mission.

40 Q. Do you mean to say that that single fact refreshes your memory so that you can say you were in Jersey City on all those months? A. Yes, sir, and then I had letters; and papers about that time.

Dr. James T. McBride—Cross.

Q. Were you not in Lowell, Mass., in the months of August, September, and July? A. No, sir.

Q. Were you not there in the months of July, August and September, nineteen hundred and six? A. I was there in July; I was in Springfield.

Q. Whereabouts in Springfield? A. In Springfield.

Q. Whereabouts were you in Springfield? A. 10
Is it important that I should state that?

THE COURT: Yes.

A. I was arrested for kidnapping my children.

Q. Whereabouts? A. In Springfield.

Q. When were you arested? A. In July.

Q. Nineteen hundred and six? A. Yes, sir.

Q. Were you not in Lowell at all? A. No, sir.

Q. Where in Massachusetts, besides Springfield, were you? A. I was in Westfield, and adjoining 20
town.

Q. Who caused you to be arrested? A. This wife, with the fraudulent Ohio decree.

Q. Whereabouts were you charged with kidnapping the children? A. You mean where the act took place?

Q. Yes. A. In Georgia.

Q. In what month? A. May.

Q. Nineteen hundred and six? A. Yes, sir. 30

Q. So that you were in Georgia in May, nineteen hundred and six? A. Yes, sir.

Q. The fact is that you were having a sort of hide and seek time with your wife about these children? A. No, sir, but I heard they were down there, and I went down and got them.

Q. (By the Court.) How long did you stay there? A. About five days.

Dr James T. McBride—Cross.

FURTHER CROSS EXAMINATION BY MR. PERKINS:

Q. Then were you released? A. Oh, in Massachusetts.

Q. Yes. A. Yes, sir, I was released on bail.

Q. In the month of July? A. Yes, sir.

Q. You were released on bail then? A. Yes, sir.

Q. Where did you go to then? A. Jersey City.

10 Q. You saw articles in the newspapers, didn't you, about this arrest? A. Yes, sir.

Q. About this arrest of yourself? A. Yes, sir.

Q. What time did you leave Jersey City to go to Georgia? A. At the end of March.

Q. And you were there until the end of May? A. No, sir; I went further down until I found where they were.

30 Q. You were scouting through the South, in search of the children? A. Yes, sir, after I learned they were in Georgia, I was about three days in Georgia, and then came North.

Q. So that, from the end of March until the month of July, you were either in the South or on your way up to Massachusetts? A. No, sir, May 11th I was back in New Jersey; I went to Judge Raymond in Newark, New Jersey.

Q. You were tracing the children from March, were you not? A. Yes, sir.

30 Q. Your movements were designed to be so that your wife would not have knowledge of your whereabouts? A. I don't think she had any intimation at all.

Q. Your movements were conducted in such a way that she was not to get any intimation? A. I was not doing the searching; I had a man doing it.

Q. You had conceived, a long time before, the getting possession of your children? A. Yes, sir.

40 Q. And you had been taking advice with respect to that? A. I don't know that I asked advice, but I got a man to go down there.

Dr. James T. McBride—Cross.

Q. And you were conducting yourself in such a way so that your wife would not know of your whereabouts? A. No, sir; I was not, at all, because she had not an intimation that I was looking for the children.

Q. Well, you did not go down South with a brass band to attract attention to yourself? A. I am not a politician, and I do not have a brass band.

10

Q. Your trip from Jersey City was without the knowledge of your wife, wasn't it? A. It was taken in the regular way; I don't know whether she knew it or not; I don't suppose she did, because she never paid any attention to me.

THE COURT: Strike that out.

A. I cannot say.

Q. You went down there secretly, for the purpose of obtaining possession of your children?

20

A. There was no secrecy in my method of doing so.

Q. How long had you had a man in the South?

A. He went down with me.

Q. And you two went together? A. Yes, sir.

Q. When you left Jersey City, it was your intention to find your children, who were somewhere in the South and take them away? A. Yes, sir.

Q. And the man who was with you was doing the detective work? A. Yes, sir.

30

Q. And keeping you advised of what was going on? A. Yes, sir.

Q. And it was necessary that his movements should be secret? A. I suppose so; he did not tell her that he was going.

Q. Answer the question. A. I suppose so.

Q. Didn't you have more than a man with you?

A. The man's wife was with him; she was with him part of the time.

40

Dr. James T. McBride—Cross.

Q. When were you arrested in Massachusetts?

A. In July.

Q. What date? A. I think it was the 25th—in towards the end of the month, anyway.

Q. Where were you arrested? A. I was arrested in a small town near Westfield, a village near Westfield.

10 Q. How long were you detained there? A. Five days.

Q. When did you leave there? A. As soon as I got out.

Q. How soon did you get out? A. In five days.

Q. The last of July, 1906? A. Yes, sir.

Q. Where did you go then? A. I came to Jersey City.

Q. Alone? A. Yes, sir.

20 Q. Where were your children then? A. She had skipped with them; I had hired a lawyer to make her show her divorce.

Q. Did you go back to answer that charge? A. They never preferred the charge; I went back to get the bail money.

Q. You put up cash bail? A. My sister, Mrs. Reid, did.

Q. So that your sister knew where you were during the latter part of July, didn't she? A. When I wrote her.

30 Q. Your sister, Mrs. Sarah R. Lee, put up cash bail for you in Massachusetts? A. Yes, sir.

Q. How much? A. \$1,000.

Q. Did she go up there personally? A. Yes, sir.

Q. And she knew where you were in Massachusetts, didn't she? A. After I wrote her; I wrote her from Springfield.

Q. You saw her in Massachusetts? A. Yes, sir.

40 Q. But you were in prison there? A. Yes, sir.

Dr. James T. McBride—Cross.

Q. Now, how long did that thousand dollars cash bail remain up? A. It is up yet.

Q. You did not get it then? A. No, sir; I don't know why it was, but the lawyers put some sort of a claim on it.

Q. You have had a lot of trouble with lawyers, haven't you? A. They are a lot of scoundrels,—those that I have had to deal with.

Q. You have had 40 lawyers, haven't you? 10

MR. MORTEN: Objected to.

Q. Doctor, you have had a great number of lawyers in Hudson County?

MR. MORTEN: Objected to.

THE COURT: What do you want to show—the temperamental peculiarities of this man?

MR. PERKINS: Yes.

THE COURT: I don't think that is material; however, let him answer. 20

Q. (Question read). A. Yes, sir.

Q. How many have you had, probably? A. One dozen.

Q. Didn't you make an affidavit in a case in summary proceedings in the Court of Chancery against me, respecting this fund that is held in the attachment suit, that you have had over 25 lawyers in Hudson County? A. I don't remember that. 30

Q. Didn't you make an affidavit that you went to over 25 lawyers in Hudson County to get them to bring this suit against me, and they refused to take the suit? A. They took my money, and then lay down.

Q. That is the way lawyers do with you, isn't it?

MR. MORTEN: Objected to.

THE COURT: Don't answer that question. 40

Dr. James T. McBride—Cross.

Q. Are you sure that this trip of yours to the South was not after the writing of this letter, dated September 9, 1909? A. No, sir.

Q. Does not this letter say: "I would be pleased to go to Savannah or Brunswick?" A. Yes, sir.

Q. You were still pursuing the children? A. No, sir.

10 Q. Didn't you go out to Ohio? A. Not in that year; it was two years afterwards.

BY THE COURT:

Q. Where do you live? A. 273 Sherman Avenue, Jersey City; I lived with my mother.

FURTHER CROSS:

Q. Your mother was Catherine L. McBride? A. Yes, sir.

Q. And you had two sisters? A. Yes, sir.

20 Q. One was Sarah R. Reed? A. Yes, sir.

Q. And Mrs. Reed lived in Brooklyn, didn't she? A. Yes, sir.

Q. 76 St. James Place, Brooklyn? A. At one time.

Q. When? A. She lived in Brooklyn for a long time.

Q. Your mother lived at 76 St. James Place, Brooklyn, didn't she? A. She visits over there, she did not live there.

30 Q. She did not live there? A. No, sir.

Q. You say Mrs. Catherine L. McBride did not live in Brooklyn? A. She made visits there.

Q. Did she live there? A. What do you mean?

Q. Did she have a residence there? A. No, sir, she did not.

Q. She never had a place of residence in Brooklyn? A. No, sir, not a residence.

40 Q. Still, she used to visit her daughter, Sarah L. Reed, for protracted periods in Brooklyn? A. Yes, sir.

Dr James T. McBride—Cross.

Q. And you did, too? A. No, sir.

Q. You used to visit your sister a great deal in Brooklyn, didn't you? A. I never stayed two days at a time, but I used to visit her.

Q. You said you lived in Hudson County for 50 years? A. In New Jersey, I said.

Q. When did you take up your residence in Hudson County? A. In 1861.

Q. In Hudson County? A. Yes, sir. 10

Q. When did you go to East Orange? A. About 1892.

Q. You lived in East Orange with your wife and children? A. Yes, sir.

Q. Up to what time? A. About 1897.

Q. And then, after that, you lived at a variety of places—after your wife left you? A. I lived in Jersey City after that and voted here.

Q. Where did you live right after 1897? A. With my sister, on the hill. 20

Q. Have you voted each year? A. Yes sir.

Q. Where did you vote? A. In the Twelfth Ward of Jersey City.

Q. How long is it since you have missed a vote? A. I don't remember missing a vote. I always vote.

Q. Whereabouts did you vote in Jersey City? A. At a barber shop around the corner.

Q. What street? A. On Sherman Avenue. 30

Q. What number on Sherman Avenue? A. I don't know.

Q. Near what Street? A. Near South Street.

Q. And you voted there continuously for how long? A. I don't know just how long.

Q. Since you have lived there? A. I went there somewheres, since 1898, except the times when I was in Asbury Park; I used to vote there.

Q. When was that? A. That was in 1901.

Q. When did your life leave you from Asbury Park? A. 1903. 40

Dr James T. McBride—Cross.

Q. So that, from 1903 to 1907, where did you live? A. In Jersey City.

Q. Where, in Jersey City? A. Most of the time at 273 Sherman Avenue, and I boarded awhile before that at 550 Summit Avenue.

Q. Where else did you live in Jersey City besides that? A. That is the only place I remember now.

10 Q. Where did you vote in Jersey City? A. I mostly voted on Sherman Avenue, in the barber shop, near South Street.

Q. Where were you living when you received this letter from George B. Britton? A. At 273 Sherman Avenue.

Q. Isn't it addressed to you at 260 Union St.? A. No, sir, that is his address, man.

Q. Where is the envelope that went with this letter? A. I could not say.

20 Q. When did you last see it? A. I don't remember; I only just found those by accident among a lot of papers.

Q. What is the name of the sister you lived with in Jersey City? A. Anna Tappen.

Q. Was your name ever in the Jersey City directory? A. I don't know; I never looked for it.

Q. Where did you stop when you were released from prison in Massachusetts? A. I stopped that night at the Cooley House.

30 Q. Where is that? A. In Springfield.

Q. That was the night of July 31st, 1906? A. Something about that.

Q. Your mother knew where you were located then, didn't she? A. I don't know.

Q. You don't know whether she knew where you were or not? A. I did not ask her.

Q. She was an elderly lady? A. Yes, sir.

Q. Your sister, Mrs. Reed, did not know where you were until you wrote to her? A. No, sir.

Dr James T. McBride—Cross.

Q. She did not know where you were stopping at the various places through the South? A. I did not write to her.

Q. So you did not communicate with your sister by letter from the month of March until you wrote to her from Massachusetts? A. I don't remember whether I did or not; I probably wrote her sometimes, but I can't remember.

Q. If you did not write, she would not know where you were? A. No, sir. 10

Q. Are you sure just what time you went South? A. It was in March, I believe.

Q. Wasn't it the early part of March? A. I think it was near the end of March.

Q. Mr. and Mrs. Beetman, the people who were with you, could tell that, couldn't they? A. Yes, sir.

Q. Did you send a money order to Mr. Britton when he was on this mission South for you, in September, 1906? A. No, sir. 20

Q. Did you send a check to him? A. No, sir.

Q. In this letter dated September 20th, he asked you for a good sized money order; do you remember whether you made any such remittance to him? A. No, sir, I do not.

Q. Did you have a bank account in Jersey City around that time—1906? A. No, sir.

Q. You had not had for several years? A. No, sir. 30

Q. And you were not the owner of any property in Jersey City at that time, were you? A. Well, I don't believe I was—you thought I was, though.

THE COURT: Strike that out as not responsive.

MR. PERKINS: I have no objection to letting it stay in. 40

Dr. James T. McBride—Cross.

Q. There was a judgment obtained against you by Dr. Chambers, of Jersey City, wasn't there?

MR. MORTEN: Objected to as immaterial.

THE COURT: What time was this judgment taken?

MR. MORTEN: It was a year before that.

THE COURT: Then how is this relevant?

10

MR. PERKINS: I want to show that a judgment was obtained against this defendant by Dr. Chambers—that he was examined in supplementary proceedings, and he swore he did not have any property. I was served with a restraining order, and upon my notifying his sister that some criminal proceedings had been threatened for perjury, the judgment was immediately paid.

20

Q. What is the name of that little town you said you were in in Massachusetts? A. Outside of Westfield, in Massachusetts.

Q. Didn't you mention any place? A. I said I was in the country, near Westfield; they call it Hunterdon County; it was no village or city, but it was near Westfield.

Q. Were you in a place called Chester in Massachusetts? A. We used to get our mail there.

Q. Did you get mail there? A. Yes, sir.

30

Q. You knew the Chief of Police up at Chester? A. Yes, sir.

Q. Do you remember what his name was? A. No, sir.

Q. I show you a letter which purports to bear date August 25, 1906, marked "Exhibit 5;" is that your sister's signature? A. Yes, sir, it is, I think.

40

Q. Is this interlineation in black ink your interlineation or hers? A. I don't know; it is not my writing, I think.

Dr. James T. McBride—Cross.

Q. It is not your sister's writing, is it? A. It looks like hers.

Q. Do you know when your sister went up to Chester to see you? A. Well, it was sometime at the end of July.

Q. With whom were you residing in Chester? A. I think the man's name was Knox.

Q. What is his first name? A. I could not tell you. 10

Q. What was his business? A. Farmer.

Q. Where did he live in Chester? A. I don't know the names of the streets there—I don't know that they have any; it is a little bit of a hamlet, you know.

Q. Did he live in Chester proper? A. I lived in the country portion, and when I first went there, I met him at his place in the town, and then went with him to his place in the country. 20

Q. Are you quite certain you left Chester in the month of July, 1906? A. Yes, sir.

Q. You are sure it was July? A. Yes, sir.

Q. Was there any reason why a letter addressed to you would not reach you during the time you were there? A. While I was there I ought to have gotten it.

Q. You know of no reason why a letter would not reach you? A. Well, they did not know me very well; unless I went to the post office, I would not have gotten it; they did not deliver them. 30

Q. Do you know who the postmaster was there? A. No, sir.

Q. Was there a rural free delivery there? A. No, sir, they did not deliver to our place, I know; they used to go down to the post office for their mail.

Q. There was no reason why anyone should refuse mail for you? A. No, sir. 40

Dr James T. McBride—Cross.

Q. You did not leave word with Mr. Knox to refuse any letters coming to you? A. No, sir.

Q. This judgment of Chambers was about 1905?

A. He started in 1903 with his judgment.

Q. When you came back from Georgia, where did you go? A. I went to Newark, New Jersey, first.

10 Q. Where did you go from Newark, New Jersey? A. I went to Massachusetts.

Q. How long were you in Newark, New Jersey? A. I was about a day there, talking to Judge Raymond; he advised me to go to Massachusetts on account of the Andrews' decision in divorce, that if she brought the case there I could beat her.

20 Q. You are quite certain that I did not know where you were? A. I saw you in the meantime; I was around your part of the town here.

Q. When? A. In August and September, 1906, and October.

Q. You don't mean that you saw me to speak to? A. No, sir, I saw you around; I did not speak to you, because we had had a quarrel, you tried to do me.

THE COURT: Strike that out.

30 Q. From the month of March until the latter part of the month of July, who were there in Jersey City that knew where you were? A. Oh, I don't know; my people, I guess, up at 273 Sherman Avenue, knew where I was.

Q. You don't know that they knew? A. Yes, sir, I am pretty certain that they knew on the hill.

40 Q. But outside of your people on the hill, there was nobody else in Jersey City knew where you were, was there? A. Well, I don't know; I have not got a large circle of friends.

Dr. James T. McBride—Cross.

Q. Just answer the question. A. No, sir.

Q. You could not name another person, could you? A. Yes, sir, there was one other; there was Mr. Pierson, an insurance man.

Q. You left your address with him before you went away? A. I met him many times after I came back.

Q. Keep your mind between the time in March when you went South, and the time you were imprisoned in July—keeping that in mind, no one in Jersey City knew where you were, did they? A. I don't know whether they did or not, except possibly, those people at home.

Q. And you are not sure of that? A. I am not certain, but I think they did.

Q. Your people at home knew? A. I think so.

Q. And if the people at home knew where you were, it must have been because you wrote to them to tell them where you were? A. They knew I was going after my children.

Q. They knew it required secrecy? A. I told Lawyer McCrea I was going, and he told you.

MR. PERKINS: I ask to have that struck out.

THE COURT: I will allow it to stand.

MR. PERKINS: Allow this man's conjecture to stand?

(After further argument.)

THE COURT: Strike it out.

THE WITNESS: McCrea told me he did, anyway.

THE COURT: Strike out that part.

Q. I refer you to "Exhibit 4," which was offered in evidence on your behalf, dated June 29, 1905; now, you never paid Mr. Perkins any money on behalf of that, did you? A. This will explain itself.

Dr. James T. McBride—Re-Direct.

Q. (Question read.) A. No, sir, I did not pay money on that.

Q. Doctor, do you claim to have any interest in the money which was attached in the Circuit Court in the suit of Randolph Perkins against James T. McBride, the money being the proceeds of a foreclosure on property at 26 Covert Street, Jersey City?

10

MR. MORTEN: Objected to as immaterial.

THE COURT: Objection overruled.

A. No, sir; that belonged to Mrs. McBride, my mother.

RE-DIRECT EXAMINATION BY MR. MORTEN:

Q. Mr. Perkins asked you whether you had paid any money under this receipt, "Exhibit D-4;"
20 the work which was to be performed by Mr. Perkins under this receipt, was never performed by him, was it?

MR. PERKINS: Objected to.

THE COURT: The question is leading.

Q. Why didn't you pay him? A. Because he did not do either one of those things, and he owed me \$25.00 besides, which he admitted in front of the office boy.

30

Q. This receipt says that Randolph Perkins is to secure a deficiency judgment in the Sully case, and conclude the Schwab litigation, and pay off the Staten Island mortgage; did Randolph Perkins secure a deficiency judgment in the Sully case? A. No, sir, he lost it.

Q. Did he conclude the Schwab litigation? A. Not that I know of.

Q. Did he ever tell you that it had been concluded? A. No, sir, I don't think he ever did.
40

Dr. James T. McBride—Re-Cross.

Q. Did he pay off the Staten Island mortgage?

A. I don't think he did.

Q. (Reading): "Dr. McBride is to extend the Dwight Street mortgage for one year from date, and pay Randolph Perkins \$100.00, which is in full to date. With respect to the Schwab litigation, Randolph Perkins is of the opinion—" (continuing reading). That was signed by you? A. Yes, sir.

10

Q. And the Dwight Street mortgage was extended for a year? A. Yes, sir.

MR. PERKINS: Objected to as leading.

RE-CROSS EXAMINATION BY MR. PERKINS:

Q. Your idea is, that there is a controversy between you and Mr. Perkins as to whether you owe money or not?

20

MR. MORTEN: Objected to.

THE COURT: Never mind answering that.

 DEFENDANT RESTS.

MR. PERKINS: I propose to bring somebody down from Massachusetts, if possible, on this matter.

30

Adjourned sine die.

40

10

George B. Britten—Direct.

In Chancery of New Jersey.

Between :

RANDOLPH PERKINS,

Complainant,

and

JAMES T. MCBRIDE,

Defendant.

On Bill, etc.
Testimony.

10

Continuation of the taking of testimony in the above-entitled cause, before Hon. Vivian M. Lewis, Vice-Chancellor, at the Chancery Chambers, Jersey City, New Jersey, on the twenty-third day of June, 1913.

Same appearances as before noted.

20

GEORGE B. BRITTEN, sworn in behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. MORTON:

(Taken subject to cross-examination on June 30, 1913.)

Q. You are an attorney of this Court? A. Yes, sir.

30

Q. You are at present employed in New York? A. Yes, sir.

Q. In 1906, you were admitted at that time? A. Yes, sir, in 1904 I was admitted.

Q. During 1906, particularly the month of September, did you have business relations with James T. McBride, the defendant? A. Yes, sir.

Q. During that month did you do any work for him which necessitated your consulting with him?

40

George B. Britten—Direct.

A. During September and October and November, yes, sir, I did considerable work.

Q. I call your attention to a letter dated September 9, 1906, on one of your letterheads; is that in your writing? A. Yes, sir; that is my writing.

Q. You wrote that to Dr. McBride at that time? A. Yes, sir.

10 Q. From that letter, are you able to say whether or not you had negotiations with him during that month before that, before the September 9th? A. Yes, sir, because I remember distinctly that I was employed by Clarence Kelsey up till Labor Day, and I saw Mr. McBride then almost every day at Mr. Kelsey's office.

Q. You say you would be pleased to go to Savannah; did you go to Savannah for Dr. McBride? A. Yes, sir.

20 Q. Do you recall on what date you went? A. No, sir.

Q. I show you letter of September 20, 1906; is that in your handwriting? A. Yes, sir.

Q. Did you send that to Dr. McBride? A. Yes, sir.

30 Q. You say there, "I arrived here last night;" and that is from Washington; does that tell you or refresh your memory as to when you left Jersey City? A. I must have left on September 19, I presume.

Q. Do you know when you returned to Jersey City? A. I don't know exactly, but I do recall that from Washington I went from there to Savannah, Georgia, and remained there two or three days, I believe.

Q. Did you return before October 1st? A. Yes, sir.

40 Q. During the time you were away, where did you write to Dr. McBride? A. 273 Sherman Avenue, Jersey City—his home.

George B. Britten—Direct.

Q. That is where his mother lived? A. Yes, sir, and his sister-in-law, Mrs. Tappen.

Q. Where did you meet him in Jersey City? A. Always at his home, No. 273 Sherman Avenue, except on one occasion, then I met him in the Hotel Terminus, at Montgomery Street, Jersey City.

Q. After you returned, did you have reason to consult with Dr. McBride in Jersey City? A. Yes, sir. 10

Q. And thereafter, during the month of October? A. Yes, sir, during October and the succeeding November.

Q. After you returned from Savannah, where did you write to him? A. Always at Sherman Avenue, Jersey City.

THE COURT: This testimony is taken with the distinct understanding that the witness will be produced for cross-examination by Mr. Perkins, the complainant in the case. 20

MR. MORTON: I offer these letters for identification at the present time.

Letter of September 9, 1906, marked "Exhibit D-1 for identification."

Letter of September 20, 1906, marked "Exhibit D-2 for identification." 30

ADJOURNED TO JUNE 30, 1913.

Randolph Perkins—Direct.

In Chancery of New Jersey.

Between :

RANDOLPH PERKINS,

Complainant,

and

JAMES T. MCBRIDE,

Defendant.

On Bill, etc.
Testimony.

10

Continuation of the taking of testimony in the above-entitled cause, before Hon. Vivian M. Lewis, Vice-Chancellor, at the Chancery Chambers, Jersey City, New Jersey, on the twenty-third day of November, 1913.

20 Same appearances as before noted.

REBUTTAL.

RANDOLPH PERKINS, recalled :

It is not true that in August, September or October, 1906, that I saw Dr. McBride in Jersey City, or that I saw him anywhere. From the month of March until the time of the institution of the attachment suit, I had no knowledge whatever as to his whereabouts, except that given by his sister to the effect that he was in Massachusetts.

30

MR. MORTON: I object to the latter part of this statement as being incompetent and not binding on the defendant, and it is hearsay.

(This was taken before the official stenographer, by consent, Vice-Chancellor Lewis not being present.)

40

Exhibit D-1.

Jersey City, N. J.,

September 9, 1906.

Dr. James T. McBride,

Dear Doctor:

I would be pleased to go to Savannah or Brunswick and do all that lies in my power for you. A good deal might be done—anyway, there is nothing like fighting and trying. First of all, you would need an attorney of Ga. who possesses ability, knowledge, courage and energy, also honest and besides who possessed more than having acquaintance with leading County officials (in whatever Co. they hold your trial). Such a man oughtn't to be difficult to secure, after one studies the political situation for a day or two. I thought that Mass. might refuse to extradite you. I have left Kelsey and was going on my vacation Tuesday morning but will wait till I hear from you and how you make out in Mass. When it comes time, I could go on ahead, make inquiries, see the newspaper men, have articles put in the papers, see Estell and others and from them get information as to what law firm exercises great influence, etc., and employ them.

But I sincerely hope it wont come to anything like that and that the Gov. of Mass. will refuse to honor the extradition request.

Payment of expenses and a small fee for work, etc., would suit me.

Very truly yours,

GEORGE B. BRITTEN.

Mr. Kelsey is now taking care of Cook in the Chambers matter, also of Gothelf and Perkins, 260 Union St.

Exhibit D-2.

Washington, D. C., Sept. 20, 1906.

Dear Doctor:

I arrived here last night quite late—couldn't possibly leave Jersey City earlier. To-day I will finish my work here (I am starting out now at 7.30 A. M.), see Connolly and *her* (if I deem it wise) and let you know results. If *they* are here will see
 10 lawyer for you, a good man whose name I got from Cong. Van Winkle.

The money you gave me wont go so very far, —if I take \$25 out for myself (that's all I want if I don't stay South longer than Oct. 1, although I think I ought to get \$50.00/100) I have \$25 left and it will cost me—carfare \$6.50, hotel \$2.50 a day; to Savannah about \$20, and nice dentals I must have—so you see I will be
 20 behind. I think you ought to send me a good sized money order to Savannah so that I will have mone to work on and wont be stinted. I want to do *fine for you* and can't see reporters and meet County officials, etc., unless I am able to treat them right (you know) and I don't feel like going into my own pocket. If I am to get results in Savannah and Brunswick I must have funds. Address me at Savannah, at Pulaski Hotel. I will go on to-night or to-morrow night
 30 and will be there about Sunday (takes a day to go). I write this letter not as a lawyer, but as a reporter who wants to get juicy results for you.

Your friend,

GEORGE B. BRITTEN.

Exhibit D-4.

It is understood and agreed between James T. McBride and Randolph Perkins as follows:

Randolph Perkins is to secure a deficiency judgment in the Sully case and to conclude the Schwab litigation, and to pay off the Staten Island mortgage.

Dr. McBride is to extend the Dwight Street mortgage for one year from date, and to pay Randolph Perkins One Hundred Dollars (\$100) which is in full to date. 10

With respect to the Swabe litigation Randolph Perkins is of the opinion that when the suit is finished Dr. McBride will be successful, and will either receive the money or the property.

June 29, 1905.

JAMES T. MCBRIDE,
RANDOLPH PERKINS. 20

The above \$100 to be paid after the above services is re Sully & Schwab are rendered.

Dwight Street mortgage to be extended on the conditions in the bond as to taxes, etc.

RANDOLPH PERKINS.

Exhibit D-3.

Received from Dr. Jas. T. McBride, fifty dollars in full for professional services and all other claims to date, including suit of *Birdsall v. Schwab*. 30

July 11, 1903.

RANDOLPH PERKINS.

