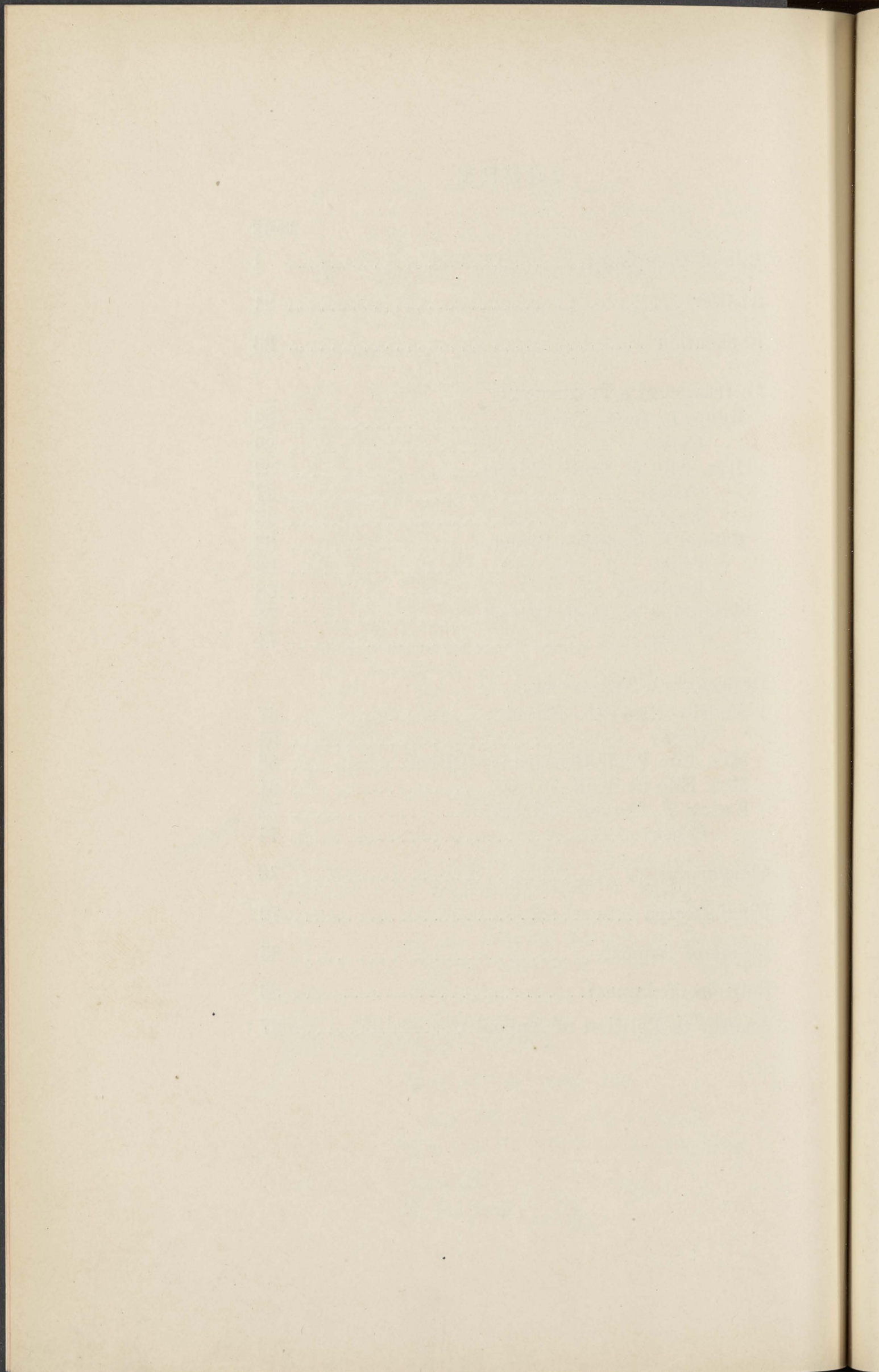


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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

Complaining, shows unto your Honor, your oratrix, Ella S. Scull, of the City of Ocean City, County of Cape May and State of New Jersey, was the wife of Joseph I. Scull, deceased, late of said City of Ocean City, who died on or about the sixth day of April, A. D. 1918, leaving a last will and testament, which was duly proved and probated in said county, and letters testamentary granted thereon, a copy of which said will and letters is hereto attached and made a part hereof. 10

And your oratrix further shows unto your Honor that the said Harriet R. Scull, mother of said Joseph I. Scull, deceased, to whom, along with your oratrix, was devised and bequeathed, the residuary estate mentioned in paragraph eleven of said will, did also die on or about the second day of May, A. D. 1921, leaving a will whereby she devised her interest in said property to her daughter, Rae Scull Rosecrans, of the City of Atlantic City, County of Atlantic and State of New Jersey, in manner following, to wit: 20

“I give, devise and bequeath unto my said daughter, Rae Scull Rosecrans, all the real estate or interest in the same, of which I may die seized, which is located and situated in the City of Ocean City, County of Cape May and State of New Jersey; also all the shares of stock of the Ocean City Title & Trust Company that I may own at the time of my death.” 30

And your oratrix further shows unto your Honor that said Rae Scull Rosecrans, is a married woman, and that her husband's name is Paul C. Rosecrans, and that he may claim a curtesy or other interest in said property.

10 And your oratrix further shows unto your Honor that the following real estate so devised by said eleventh section of the said will of Joseph I. Scull remains the joint property of your oratrix and the said Rae Scull Rosecrans, and consists of the following, to wit:

1. Lot 432, Section F on the plan of lots of the Ocean City Association.

20 Beginning at a point in the Southeasterly side of West Avenue 220 feet Northeast of its intersection with the Northeast side of 26th Street and running Northeastly in said side line of West Avenue 30 feet and of that width or frontage extending Southeasterly between parallel lines at right angles to said West Avenue 90 feet in length or depth to a 15 feet wide alley.

2. Lots 130, 131 and 132, Section D plan of Ocean City Association.

30 Beginning at a point in the southeasterly side of Simpson Avenue 370 feet Southwest of its intersection with the Southwest side line of 14th Street and extending Southwesterly in said side line of Simpson Avenue 130 feet and of that width or frontage extending Southeastwardly between parallel lines at right angles to said Simpson Avenue 115 feet to a 15 feet wide alley, one of said side lines being in the Northeastly side of 15th Street.

3. Lot No. 7, block No. 1201 on the official tax map of the City of Ocean City.

Beginning at a point in the Northwest side of Ocean Avenue 300 feet Southwest of its intersection with the Southwesterly line of 12th Street and extending Southwesterly along said side line of Ocean Avenue 50 feet and of that width or frontage extending Southeastwardly between parallel lines at right angles to said Ocean Avenue to the Riparian Commissioners Exterior line.

4. Lot 177, Section A on the plan of the Ocean City Association. 10

Beginning at a point in the Northwesterly side of West Avenue 250 feet Southwest of its intersection with the Southwest side line of 7th Street and extending Southwesterly in said side line of West Avenue 30 feet and of that width or frontage extending Northwesterly between parallel lines at right angles to said West Avenue 100 feet in length or depth to a 15 feet wide alley.

20

5. Lot No. 66, and part of lot No. 65, Section C on plan of the Ocean City Association.

Beginning at a point in the Northwest side of Simpson Avenue 187.4 feet Southwest of its intersection with the Southwest of 9th Street and extending Southwest along the said side of Simpson Avenue 57.4 feet and of that width or frontage between two lines Northwestwardly 115 feet in length or depth to a 15 feet wide alley, the Northeasterly side line of said lot being parallel to 9th Street and the rear frontage on said alley being 56.2 feet. 30

6. Lot No. 1, block 910, on the official tax map of Ocean City.

Beginning at a point being the intersection of the Southwest side of 9th Street with the Northwest side

of Pleasure Avenue and extending Northwestwardly along said side line of 9th Street 51.25 feet and of that width or frontage extending Southwestwardly along said side of Pleasure Avenue 100 feet in length or depth.

7. Lot No. 2 $\frac{1}{2}$, block 910, on the official tax map of Ocean City.

10 Beginning at a point in the Northwesterly side of Pleasure Avenue 100 feet Southwest of its intersection of the Southwest side of 9th Street and extending Southwestwardly on Pleasure Avenue 65.71 feet and of that width or frontage extending Northwestwardly between lines parallel with said 9th Street 102 $\frac{1}{2}$ feet in length or depth.

8. Lot No. 7, block 910, on the official tax map of Ocean City.

20 Beginning at a point in the Southeast of Palen Avenue 75 feet Southwest from its intersection with the Southwest side of 9th Street and extending Southwest along said side line of Palen Avenue 30.73 feet and of that width or frontage Southeastwardly between lines parallel with said side line of 9th Street 102.5 feet in length or depth.

9. An equal one-half part of lots 2 and 3, block 911, on the official tax map of Ocean City.

30 Beginning at a point in the Northwest line of Palen Avenue 25 feet Southwest of its intersection with the Southwest side of 9th Street and extending Southwest along said side of Palen Avenue 103.21 feet and of that width or frontage between lines parallel with said line of 9th Street Northwestwardly to the exterior line of Beach Thoroughfare.

10. A part of lots 25 and 26 in Section C on the plan of the Ocean City Association.

Beginning at a point in the Southwesterly side of 11th Street 35.52 feet Southeast from the Southeasterly line of Bay Avenue and containing Southeasterly of said point in said side line of 11th Street 15.38 feet and of that width or frontage between lines parallel to the said Southeasterly line of Bay Avenue 90 feet in length or depth; also a strip of ground or alley along the Southwesterly side of lot 10 26, not heretofore conveyed.

11. Lot No. 152A in block 1107 on the official tax map of Ocean City.

Beginning at a point in the Southeasterly side of Simpson Avenue 290 feet Southwest of the Southwest side of 11th Street and extending Southwesterly along said side of Simpson Avenue 30 feet and of that width or frontage between lines parallel with the said 11th Street Southeasterly 115 feet in length 20 or depth to a 15 feet wide alley.

12. Lots 153B and 154A in block 1107 on the official tax map of Ocean City.

Beginning at a point in the Southeasterly side of Simpson Avenue 350 feet Southwest of the Southwest side of 11th Street and extending Southwardly along said side of Simpson Avenue 30 feet and of that width or frontage between lines parallel with said 11th Street Southeasterly 115 feet in 30 length or depth to a 15 feet wide alley.

13. Parts of lots 155 and 156 in Section C on plan of the Ocean City Association.

Beginning at a point in the Northeast side of 12th Street 65 feet Southeast from its intersection with

the Southeast side of Simpson Avenue and extending Southeasterly along said side of 12th Street 25 feet and of that width or frontage between lines parallel to said Simpson Avenue 90 feet in length or depth; Also a strip of ground or alley along the Northeasterly side of lot 155, five feet in width not heretofore conveyed.

10 And your oratrix further shows unto your Honor that her said deceased husband was, at the time of his death, seized in fee simple of a one-half interest in lots 436 and 438, Section A on the plan of lots of the Ocean City Association together with buildings thereon, known as the Scull-Cresse Building; that after the death of one Lewis M. Cresse, said Joseph I. Scull and your oratrix did purchase from the devisee of the said Cresse, the remaining one-half interest in said lots and buildings, as tenants by the entirety.

20 And your oratrix further shows unto your Honor that upon said two lots, is erected a large three-story brick building, containing three stores on said Asbury Avenue with apartments on the upper floors, which building is known as the Scull-Cresse building and is also known as numbers 835, 837 and 839 Asbury Avenue, but that at or about the time of the making of said will by said testator the one-third part of said building now known as number 839 Asbury Avenue was in the course of construction and that no street number had been placed thereon.

30 And your oratrix further shows unto your Honor that the said Rae Scull Rosecrans claims an interest in the one-half part of number 839 Asbury Avenue, a part of said building, and the Southwest 19 feet of lot 438 Section A on the aforesaid plan, upon which said part of the building is located, but that your oratrix well knew the intention of her said hus-

band to give and devise the whole of said building, and the whole of said lots 436 and 438 in Section A to your oratrix by the fifth paragraph of his said will.

And your oratrix further shows unto your Honor that she is desirous that a partition or division of the said lands and premises should be made among your oratrix and the defendants who are seized thereof and entitled thereto, according to their several and respective rights, estates and interest therein, or, in case there be any part thereof that cannot be so divided among them without great prejudice to their respective interests, then that the same may be sold, and the proceeds thereof divided among your oratrix and said defendants as they are entitled thereto according to their respective rights and interests. 10

But your oratrix is advised that no valid partition, division or sale of the said premises can be effected without the aid and interposition of some competent court; and that this Honorable Court has full and complete jurisdiction in the premises. 20

In consideration whereof, and to the end that the said Rae Scull Rosecrans and Paul C. Rosecrans may, upon their several and respective oaths and affirmations, full, true, direct and perfect answer make to all and singular the charges and matters aforesaid, as fully and particularly as if the same were here again repeated, and they thereunto particularly interrogated; and that a fair partition and division of the above-described premises may be made, according to the course and practice of this court, if the same be practicable and consistent with the rights of all the parties interested therein, among your oratrix and other persons entitled to shares of the said premises, according to their re- 30

- spective rights and interests therein; and that the liens, if any, on the undivided estate or interest of any of the parties hereto be decreed to be a charge only on the share assigned to such party, such share to be first charged with its just proportion of the costs of these proceedings in preference to any such lien; and in case such partition and division in fact of any part of the said premises shall be found to be impracticable, or if it should appear that the same
- 10 cannot be made without great prejudice to the owners of the said premises, then that said tract of land and premises may be decreed by this honorable Court to be sold including the right of curtesy of the defendant, Paul C. Rosecrans, and the proceeds thereof, after paying the costs and charges of this suit, divided among your oratrix and the several parties interested therein, according to their respective rights, shares and interests; and that the portion of the moneys arising from said sale of the es-
- 20 tate, share or interest of any party against whom there are existing any liens or encumbrances held by any creditor of such party, who is a party defendant to this suit, be brought into this court by the master or commissioner, as the case may be, who shall make sale of said premises, after deducting the costs, charges and expenses to which it shall be liable, to the end that the Chancellor may make such order thereof as the circumstances of the case may require.
- 30 And that this Honorable Court may construe the said fifth section of the said will of Joseph I. Scull as to the building known as number 839 Asbury Avenue and being a part of the Scull-Cresse Building and located on a part of the same lot with number 837 Asbury Avenue mentioned therein, in the light of the intent of said testator and determine whether

or not the fee simple of the said building and the part of said lot whereon the same is situate is the absolute property of your oratrix, or if the said defendants have any interest therein by virtue of the said eleventh or residuary clause of the testator's said will; and that if the said defendants have such interest therein, that then the same be included in the properties mentioned above and in like manner as hereinabove requested, to be partitioned or sold; and that if it be decreed to be the sole and absolute property of your oratrix that the same be excluded therefrom. 10

And that your oratrix may have such other and further relief as the nature of the circumstances of the case may require, and as shall be agreeable to equity.

May it please your Honor to grant unto your oratrix the State's writ of subpoena to be directed to the said Rae Scull Rosecrans and Paul C. Rosecrans commanding them, and each of them at a certain day, and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to and abide and perform such decree therein as to your Honor shall seem meet. 20

And your oratrix will ever pray, &c.

ELLA S. SCULL,

Complainant. 30

By GEORGE R. GREIS,

*Solicitor for and of Counsel
with Complainant.*

STATE OF NEW JERSEY, }
 COUNTY OF CAPE MAY, } ss.

ELLA S. SCULL, of full age, being first duly sworn on her oath according to law, says that she is a resident of Ocean City in the County of Cape May and State of New Jersey, and is the complainant in the attached bill in chancery; that Joseph I. Scull, deceased, was lately her husband, and that she is the person named in his said will as a legatee and devisee.

Deponent further says that Harriet R. Scull was the mother of said Joseph I. Scull, that said Harriet R. Scull is now deceased, and that the copy of will of said Joseph I. Scull hereto attached is accurate and quotation from will of said Harriet R. Scull is accurate to the best of deponent's knowledge and belief; that Rae Scull Rosecrans is the daughter and devisee of said Harriet and a sister of the late Joseph I. Scull, and as such devisee is joint owner with this deponent in properties in Ocean City remaining in said residuary estate and fully described in said bill of complaint.

Deponent further says that she is the owner absolutely and in fee simple, of a one-half interest in lot 438, Section A or the southwest 19 feet thereof, together with a part of the Scull-Cresse Building, a brick store and apartments, located on a portion of said lot, as survivor of her said husband, Joseph I. Scull, the said having been heretofore conveyed to them as tenants by the entirety; that this deponent claims the remaining half interest therein, by virtue of the will of her deceased husband, and that the said Rae Scull Rosecrans and Paul C. Rosecrans, her husband dispute said claim to the extent of an

undivided one-quarter interest therein based upon the allegation that said half interest is a part of the residuary devise in said decedent's will.

Deponent further says that she is not properly able to manage or handle her interests while the same remain undivided and jointly owned with the said Rae Scull Rosecrans and Paul C. Rosecrans, her husband, and that this deponent desires a partition and division of said properties. That the matters and things alleged in said bill of complaint are true. 10

ELLA S. SCULL.

Subscribed and sworn to before me this 27th day of April, A. D. 1925.

(Seal)

EWING T. CORSON,
Notary Public of N. J.

20

EXHIBIT A.

TO Harry S. Douglass,
SURROGATE OF THE COUNTY OF
CAPE MAY, N. J.

Ella S. Scull, of Ocean City, New Jersey, and The Ocean City Title and Trust Company, a corporation of the State of New Jersey, respectfully represent that they are the executors named in the last will and testament of Joseph I. Scull, late of Ocean City, N. J., deceased, dated the 26th day of January, A. D. 1917, that said Joseph I. Scull departed this life at Ocean City, New Jersey, on the sixth day of April, A. D. 1918, leaving him surviving as his heirs at law and next of kin the following named persons: 30

Name	Kin	Residence
Ella S. Scull,	widow,	Ocean City, New Jersey.
Harriet R. Scull,	mother,	May's Landing, N. J.
Rae Scull,	sister,	May's Landing, N. J.
Andrew R. Scull,	brother,	Ocean City, New Jersey.
Harry G. Scull,	brother,	Atlantic City, New Jersey.

That said testator died seized of real and personal property.

Therefore the said Ella S. Scull and Ocean City
 10 Title and Trust Company respectfully apply for the
 probate of said last will and testament, and for let-
 ters testamentary thereon.

Dated April 18th 1918.

Ella S. Scull.

Ocean City Title & Trust Co.,

By Leslie S. Ludlam, Trust Officer.

CAPE MAY COUNTY, SS.

Leslie S. Ludlam, Trust Officer of the Ocean City
 Title and Trust Company, one of the executors
 20 named in the above application, and Ella S. Scull,
 the other executor therein named, being duly sworn
 on their oath say that the matters and things set
 forth in the above application are true, to the best
 of their knowledge and belief; that he, the said Les-
 lie S. Ludlam, is the Trust Officer of said Company,
 and is its duly authorized agent in this behalf.

Ella S. Scull.

Leslie S. Ludlam.

Sworn and subscribed the 18th
 30 day of April, A. D. 1918, before me
 Harry S. Douglass,
 Surrogate.

WILL OF JOSEPH I. SCULL.

I, Joseph I. Scull, being of sound and disposing mind and memory, do hereby make, publish and declare the following as and for my last will and testament, hereby revoking all former wills, testaments and codicils heretofore made by me.

FIRST. I direct that all my just debts and funeral expenses be paid as soon as possible after my decease. 10

SECOND. I do hereby declare that the house and premises located at number 732 Wesley Avenue, in the City of Ocean City, together with all the contents therein, is the property of my wife, Ella S. Scull, and forms no part of my estate, either real or personal.

THIRD. I give, devise and bequeath to my beloved wife, Ella S. Scull, the proceeds of the insurance policy of which she is the beneficiary. 20

FOURTH. I give, devise and bequeath to my mother, Harriet R. Scull, the proceeds of the policy of insurance of which she is the beneficiary, to enjoy the income thereof for and during the term of her natural life, and at her death the principal thereof I give, devise and bequeath to my sister Rae Scull, and it is my will, and I do hereby direct, that in the event that my said mother should predecease me, then and in such event the proceeds of said insurance policy of which she is the beneficiary, to go to my said sister, Rae Scull, absolutely. 30

FIFTH. I give, devise and bequeath unto my wife, Ella S. Scull, the properties located and known as number 755, 757, 824 and 826 Asbury Avenue; and also all my interest in the Scull-Cresse Building known as number 835 and 837 Asbury Avenue,

and the lands upon which said buildings are erected, all situate in the City of Ocean City, N. J., absolutely and in fee simple.

SIXTH. I give and bequeath unto my wife, Ella S. Scull, twenty-six shares of the capital stock of the First National Bank of Ocean City, N. J. also fifteen shares of the capital stock of the Ocean City Title and Trust Company.

SEVENTH. I give, and bequeath unto my
10 brother, Andrew R. Scull, ten shares of the Capital stock of the First National Bank of Ocean City, N. J.

EIGHTH. I give and bequeath unto my wife, Ella S. Scull, sixty per cent (60%) interest in, and unto my brother, Andrew R. Scull, forty per cent (40%) interest in my real estate business, together with all office fixtures, book accounts and capital therein employed.

NINTH. I give, devise and bequeath unto my
20 brother, Andrew R. Scull, lots 161 and 163, Section A, Ocean City, N. J., together with whatever interest I may have in the building thereon erected; also all my interest in the Elberon Hotel situate at the West corner of Central Avenue and Eighth Street, Ocean City, N. J., and in those parts of lots 593 and 595, Section A, on which it is located.

TENTH. I give and bequeath the sum of Two hundred Dollars to the Ocean City Title and Trust Company, of Ocean City, N. J., to be invested and
30 the income therefrom paid to the Trustees of the Union Cemetery of May's Landing, N. J., for the maintenance and care of the lots owned by my mother or myself in said Cemetery. If for any reason the Trust Company should desire to relinquish this trust, it is hereby directed to pay over said Two Hundred dollars and accrued earnings to said Trustees and they are directed to invest said fund in

good securities and to apply the income as hereinbefore directed.

ELEVENTH. All the balance and remainder of my estate, both real and personal, or mixed, where-soever situate, I give, devise and bequeath unto my wife, Ella S. Scull, and my mother, Harriet R. Scull, share and share alike; but if my mother should be deceased at the time of my death her share is to go to my brothers and sisters living at the time of my death, share and share alike.

10

TWELFTH. I hereby authorized my executors to sell and convey any and all of my real estate and give good and sufficient deed for the same (without any liability on the part of the purchaser or purchasers to see to the application or non-application of the purchase money) as it may seem best to them.

THIRTEENTH. I exonerate my executors from giving any bond, filing any inventory, and from all other legal formalities except proving and recording this will.

20

FOURTEENTH. I nominate and appoint my wife, Ella S. Scull, and the Ocean City Title and Trust Company as executors of this my last will and testament.

In Witness Whereof, I, the said Joseph I. Scull, have hereunto set my hand this twenty-sixth day of January A. D. nineteen hundred and seventeen.

Joseph I. Scull.

Signed, acknowledged and declared by the said Joseph I. Scull as and for his last will and testament in the presence of us (both being present at the same time) who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

30

Hiram S. Mowrer
Elizabeth B. Pioch
Ocean City, N. J.

Cape May County, SS.

Hiram S. Mowrer and Elizabeth B. Pioch, the witnesses to the within and annexed Will, being duly sworn, did depose and say that they saw Joseph I. Scull, the testator therein named, sign and seal the same, and heard him pronounce, publish and declare the annexed and within writing to be his last Will and Testament, and that at the doing thereof, the said testator was of sound and disposing mind and
10 memory, as far as these deponents, the subscribing witnesses, know, and as they verily believe, and that they, the said subscribing witnesses, were both present at the same time, and signed their names as witnesses to the said Will, at the request of and in the presence of the testator and in the presence of each other.

Hiram S. Mowrer
Elizabeth B. Pioch.

Sworn and subscribed the 18th
20 day of April, A. D. 1918, before
me, Harry S. Douglass
Surrogate.

Cape May County, SS.

Leslie S. Ludlam, being duly sworn, according to law, upon his oath, deposes and says, that he is the Trust Officer of the Ocean City Title and Trust Com-
30 pany, one of the executors in the annexed Will named; that the said Ocean City Title and Trust Company is a corporation of the State of New Jersey, and is duly authorized by the laws of said State to act as such executor; that as such Trust Officer he is duly authorized as agent of the said Company to act in this behalf; that the annexed writing con-

tains the true last Will and Testament of Joseph I. Scull, the testator therein named, so far as he knows, and as he verily believes; that the said Ocean City Title and Trust Company will, as such executor, well and truly perform the same by paying first the debts of said testator, and then the legacies therein specified, so far as the goods, chattels and credits of the said testator will thereunto extend; and that it will make and exhibit into the Prerogative office at Trenton, or into the Surrogate's Office of the County of Cape May, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased that have or shall come to its knowledge or possession or to the possession of any other person or persons for its use, and that it will render a just and true account when thereunto lawfully required. 10

Leslie S. Ludlam.

Sworn and subscribed the 18th day of April, A. D. 1918, before me, Harry S. Douglass
Surrogate.

20

Cape May County, SS.

Ella S. Scull, one of the executors in the within testament named, being duly sworn, did depose and say that the within instrument contains the true last Will and Testament of Joseph I. Scull, the testator therein named, so far as she knows, and as she verily believes, and that she will well and truly perform the same by paying first the debts of the said deceased, and then the legacies in the said testament specified, as far as the goods, chattels and credits of the said deceased can thereunto extend, 30

and that she will make and exhibit into the Prerogative Office at Trenton, or into the Surrogate's Office of the County of Cape May, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased and have or shall come to her knowledge or possession or to the possession of any other person or persons for her use, and render a just and true account when thereunto lawfully required.

10

Ella S. Scull

Sworn and subscribed the 18th
day of April, A. D. 1918, before me,
Harry S. Douglass.
Surrogate.

CAPE MAY COUNTY SURROGATE'S OFFICE.
In the matter of the alleged Will of

20 Joseph I. Scull
deceased.

Order for Probate.

Application having been made by Ella S. Scull and the Ocean City Title and Trust Company, executors, for the probate of the last Will and Testament of Joseph I. Scull, deceased, and Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and being satisfied to the genuineness of the Will Pro-

30 duced, the validity of its execution and the competency of the testator and the probate of the said Will not having been contested and it appearing that the testator died more than ten days ago, it is, on this 18th day of April A. D. 1918, adjudged that the instrument offered for probate in this matter is the last Will and Testament of Joseph I. Scull deceased

and the same is hereby admitted to probate, and it is ordered that Letters Testamentary be issued thereon to Ella S. Scull and the Ocean City Title and Trust Company the Executors named in said Will, who may qualify thereunder.

Harry S. Douglass.
Surrogate.

10

STATE OF NEW JERSEY, }
CAPE MAY COUNTY, } SS.

I, HARRY S. DOUGLASS, Surrogate of the County of Cape May, do hereby certify the annexed to be a true copy of the last Will and Testament of JOSEPH I. SCULL, late of the County of Cape May, and that Ella S. Scull and the Ocean City Title and Trust Company, the Executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the 20 estate of the testator agreeably to said Will.

WITNESS my hand and seal of office this eighteenth day of April in the year of (SEAL.) our Lord one thousand nine hundred and eighteen.

Harry S. Douglass,
Surrogate.

30

CAPE MAY COUNTY SURROGATE'S OFFICE.
STATE OF NEW JERSEY, }
COUNTY OF CAPE MAY, } SS.

I, HARRY S. DOUGLASS, Surrogate, for the Probate of Wills and Granting Letters of Administration in and for the

10 said County of Cape May, in the State of New Jersey, Do Hereby certify that the foregoing writings are true copies of the last Will and Testament of Joseph I. Scull, late of the County of Cape May, in the State of New Jersey, deceased, together with the affidavits and other proceedings had in this office for the probate thereof, now of record in Book L. of Wills, page 384, &c., in my office; also a copy of the letters Testamentary issued to the Executor; and further, that the said Will appears to be duly proved according to the laws of the State of New Jersey, and is of force; and that the attestation is in due form according to law.

20 WITNESS my hand and seal of office this eighteenth day of April, in the year of our Lord one thousand nine hundred and eighteen.

Harry S. Douglass.
Surrogate.

ANSWER.

(Filed June 6, 1925.)

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SCULL,
Complainant,
 and
 RAE SCULL ROSECRANS,
et al.,
Defendants.

10

On Bill, &c.
Answer.

The defendant, Rae Scull Rosecrans, answering the bill of complaint of the complainant, Ella S. Scull, says: 20

1. She admits the first paragraph of the bill of complaint except that she denies that the copy of the will of Joseph I. Scull, attached to the bill of complaint, is a true and correct copy.

2. She admits the second paragraph of the bill of complaint.

3. She admits the third paragraph of the bill of complaint. 30

4. She admits that she and the complainant are tenants in common of certain real estate in the County of Cape May, attempted to be described in the bill of complaint but denies the accuracy of the descriptions of the said property in the bill of complaint contained.

5. She avers that under and by the proper construction of the will of Joseph I. Scull, deceased, and by the will of her mother, Harriet R. Scull, she is entitled to an undivided one-fourth interest in the premises and property described in the bill of complaint as lots 436-438 on Section A on the plan of lots of the Ocean City Association together with the buildings thereon. She denies that it ever was the intention of Joseph I. Scull to devise to the complainant the whole of the premises described in the bill of complaint as lots 436-438, Section A on the plant of lots of the Ocean City Association together with the buildings thereon, or that the will of Joseph I. Scull does so devise the said lots and the buildings thereon, to the complainant.

6. Except as to the property and premises referred to in the next preceding paragraph hereof, she avers that she and the complainant are tenants in common, each owning an equal and undivided one-half.

7. She avers that certain of the said property can be physically partitioned and certain of it cannot be so physically partitioned without great prejudice.

8. For several years last past, she has paid the taxes on all of the said property, and claims a lien on all of the said property including the undivided share of the complainant therein, for so much of the said taxes so paid as exceeds her just and equitable portion thereof.

MCCARTER & ENGLISH,
*Solicitors of Defendant,
Rae Scull Rosecrans.*

REPLICATION.

(Filed June 17, 1925.)

IN CHANCERY OF NEW JERSEY. 10

Between
 ELLA S. SCULL,
 Complainant,
 and
 RAE SCULL ROSECRANS,
 et al.,
 Defendants.)

On Bill, &c.
 Replication.

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The complainant joins issue on the answer of the defendant, Rae Scull Rosecrans.

GEORGE R. GREIS,
Solicitor of Complainant.

(Mr. Cole opens for the complainant.)

(Mr. McCarter opens for the defendants.)

Mr. McCarter: Now, there is one other feature that has just been called to my attention this morning, and as the result of which I would like to make an amendment to the answer. The will in question contains in the fifth clause: "I give, devise and bequeath unto my wife Ella S. Scull"—"also all my interest in the Scull Cresse Building known as No. 835 and 837 Asbury Avenue and the land upon which said buildings are erected or situate, in the City of Ocean City, New Jersey, absolutely and in fee simple."— Then there are various other specific bequests and devices, and comes then the eleventh clause: "All the balance and remainder of my estate, both real, personal and mixed, wheresoever situate, I give, devise and bequeath unto my wife, Ella S. Scull, and my mother"—and so forth.

Now, the defendant, Mrs. Rosecrans, claims as the devisee of the mother, Harriet R. Scull. Now, at the time of the testator's decease, there was a substantial block of shares in a building and loan association standing registered in his name, which were not specifically bequeathed by the will and which Mrs. Scull, the mother, who was then alive, who survived the testator, claimed went to her under the residuary clause, and the widow, Ella S. Scull, claimed it went to her. How she based the claim I do not know, except as same attempted to give, not completed by transfer. At any rate, rather than bring the matter into court, the family adjusted, as we say now, all disputes under the will

by giving to Mrs. Ella S. Scull, the complainant, those building and loan shares, and Mrs. Ella S. Scull, the complainant, has acquiesced from that day until the filing of this bill in the undivided interest of first Harriet R. Scull, and then her devisee, of the portion of the Scull-Cresse Building, so called, as is now in dispute, and I would like to amend my answer to set up, in effect, accord and satisfaction, and laches in the acquiescence by Harriet R. Scull of the interests in the building and loan going to Mrs. Ella S. Scull, laches in now seeking to adopt or enforce a construction of the will of the testator contrary to that which has been practically carried into effect since his death. That was only called to my attention this morning. That explains my personal delay in not making application before.

So far as Mrs. Rosecrans, herself, is concerned, while she was aware of the facts, she did not, perhaps, realize its significance or bearing on this matter, although she casually mentioned it, and I then said, "Why didn't you tell me this before? I think it is a matter which should be before the court."

I ask leave to amend the bill to bring that in. I am not at the moment prepared to state the number of shares of the building and loan or get the actual name of the company. Mrs. Rosecrans, probably, I think, can help me out on that.

30 Mr. Cole: Please, your Honor, I had not intended to convey to Mr. McCarter any idea that this case should be simply a question of construction of the will. What I intended to convey to him was I didn't suppose he was disputing the question of the ownership of the land or that he could not be partitioned equitably, and I was trying by that to limit this case to the simple question of a construc-

tion of the will. He seems to have taken the view, which, of course, he is all wrong, in the interpretation he put on my letter, if it bears that interpretation it was not intended. As I say, I thought the whole question is what does this will mean? Now, while we think it is not possible to have this land actually partitioned, I do not want to be debarred of the right to show it can be.

On the question of this amendment, certainly that ought not to be allowed at this date. Of course, there is no such thing as laches. The best he could set up is there had been a bargain whereby we have in some way released our rights in that land, or estopped from asserting it, but now it is a little late, after three or four years, of filing this bill, and the bill sets forth the claim, now to claim in a way we haven't any interest because of some estoppel, and I, therefore, object to the amendment being allowed.

The Court: I will permit the amendment with this condition, upon each side, and that is after the hearing today if either side requires a continuation because of the surprise on the part of Judge Cole or because of the desire to put in other testimony on the part of Mr. McCarter, I will give you a very short day for that purpose.

Mr. Cole: I think then, your Honor please, he ought to, of course, put the amendment down in writing so that I will know exactly what to do, but in the meanwhile we will put in what proof we have on the main question.

RALPH L. GOFF, SWORN.

Direct examination.

By Mr. Cole:

- Q. Mr. Goff, where do you live?
A. Ocean City, New Jersey.
- 10 Q. How long have you lived there?
A. Thirty years.
- Q. What is your business or profession?
A. Civil engineer.
- Q. Did you know Mr. Scull, Joseph I. Scull, in his lifetime?
A. Very well.
- Q. Do you know the building in Asbury Avenue, Ocean City, known as the Scull-Cresse Building?
A. Yes, sir, I staked it out.
- 20 Q. Were you there during the course of construction?
A. I lived within about 150 feet of it during its construction.
- Q. I show you a photograph and ask you if you can tell me what that represents?
A. That is what is known as the Scull-Cresse Building on the easterly side of Asbury Avenue.
- Q. If you know, tell us, as to your best recollection, as to when the work was begun on what I will call the original or first building?
30 A. I can't give you the exact date, but it was, I should say, at least two years prior to the completion of the entire building.
- Q. Now, then, coming to what you refer to as the entire building, when was the entire building completed?

A. I can't give the exact date, but it was some-time, the best of my recollection, in 1916, I think in time for the summer of 1916.

Q. Can you say, if so, tell us, how much time intervened between the completion of what I call the original structure and the building as it now is.

A. I cannot give that to you closer than about two years, I would imagine, without being definite.

Q. Does this building as it now stands carry a number of numbers?

10

A. There are two numbers on it at the present time, number 835 and 835-A.

Q. Is there any number 837 on this building any where?

A. There is not.

Q. Has there ever been, so far as you know?

A. Not to my recollection. There are six doors, but there is only two numbers.

(Photograph offered, received in evidence and marked Exhibit C1.)

20

Cross-examination.

By Mr. McCarter:

Q. Which way do the numbers run on Asbury Avenue, from left to right?

A. To the right.

Q. (To the right of the picture?)

A. Yes.

30

Q. So that there is no number upon the part or parts in any way of the building further to the right than 835-A?

A. No.

Q. And that is in the left-hand part of the structure originally build, is it not?

A. It is in the —

Q. Using the left as we look at it, of course?

A. Yes.

Q. Now, can you indicate on this photograph, Exhibit C1, what was originally the line to the right, as we look at it, of the structure as originally built?

A. The division line which is to the right of the word "Cream" on the sign.

10 Q. That is very clear, I think, without making any mark. And the part to the right of the sign "Cream," you say, was built some time in the summer of 1916, completed?

A. Completed, yes.

Q. And when was the part first built completed?

A. Well, my information is uncertain about that. If I could get back to my books, I could find the charge for staking it out, which was my job.

20 Q. The line between the old structure and the addition, if we may call it that, is also indicated by a certain different coloring in the limestone cornice over the first story, isn't it?

A. Very slight difference in color.

By the Court:

Q. Was the first building completed in its entirety?

30 A. No. This wall, the south wall of the first part of the building, was in an incompleated state for quite a long time, a year or more. It was not finished. It was not a finished building at all. It was built of tile, hollow tile, and the raw edge of the tile was left entirely open to be joined to on the completion, and was joined to when the right-hand end of the building was completed.

By Mr. Cole:

Q. The same wall was used when the 19 feet addition was added?

A. Yes, that was the division wall between the two, and the hollow tile were all there and piled up on the lot for the completion of the building.

By the Court:

Q. I notice apparently there now exists three separate sections? 10

A. That is true.

Q. Are they separate and distinct or are there communications, doors, on the upper part of the building, on the second and third story?

A. I cannot answer as to whether there is a communicating door through there now. I do know that this store has been sold off and the middle store has been sold off since the making of the will, by Mrs. Scull and Mrs. Cresse, who were the owners of the building after the death of Mr. Cresse and Mr. Scull. These two stores have been sold. 20

Q. Then the original part of the building, for this purpose call it so, is not now owned by either of the parties in this suit or by the estate?

A. No.

By Mr. McCarter:

Q. The side to the right is the southerly side? 30

A. Southwesterly side.

Q. And the southerly wall of the original structure which you said was incomplete, was a party wall, was it not?

A. No, it was just a part of the entire building, the whole building was planned here and the ma-

terial brought here and piled up on the ground but was finished as far as that wall with the exception of the outside, the outside was left to be joined to, the material was right there, that is all the brick and tile.

The Court: When you staked the original structure, did you stake out the three sections?

10 A. Staked out the three sections and fixed this line here.

Q. By that you mean the extremely southerly line?

A. Yes, I completed two 30-foot lots, 60 feet.

By Mr. Cole:

Q. That has been on two 30-foot lots?

A. Yes.

20 Q. Is the frontage covered by the building?

A. It is here to the line of the south end, but a very small distance away from the line, a small alley left on the north side, both buildings have left a little open space.

MRS. ELLA S. SCULL, sworn.

30 Direct examination.

By Mr. Cole:

Q. Mrs. Scull, you are the widow of Joseph Scull?

A. Yes, sir.

Q. Are you familiar with this building known as the Cresse-Scull Building?

A. Yes, sir.

Q. Were you living in Ocean City during its construction?

A. Yes, sir.

Q. When, about, was it that you sold that part of the building that lies to the north, I suppose it is, or left of this picture, and which does not include the 19 feet in question?

A. Why, I have no recollection of the exact date but I think it was soon after Mr. Scull's death. 10

Q. Since he died?

A. Since he died, yes.

Q. At one time Mr. Cresse had a half interest in this, did he not?

A. I believe he did.

Q. The whole of it?

A. Yes.

Q. That is the whole lot?

A. Yes.

Q. By the way, how many lots were there? 20

A. Two lots.

Q. What was their width?

A. Thirty feet each.

Q. Were you there when this 19 feet addition was put on, were you in Ocean City?

A. Yes, sir.

Q. Tell us by your best recollection when the original work was begun?

A. I have no date. I left that entirely with Mr. Scull.

Q. Now, can you tell us when the 19 feet was completed? 30

A. As nearly as I can tell you, I think it was in 1916.

Q. Now tell us whether that was before or after the date of the will?

A. Before the date of the will.

Q How long before?

A Why, fully a year.

Q. Do you recall, and if so tell us, how much time was there intervening between the building of the original structure and the adding of the 19 feet?

10 A. Well, it was to be one operation, but Mr. Cresse died in the meantime, and Mrs. Cresse did not care to finish the building, so Mr. Scull bought the materials and the portion of the lot from her, and completed the building. There wasn't much time in between, I don't think.

Q. Now, I understand that since the filing of this bill there have been certain properties sold off; is that correct?

A. Yes.

20 Q. I understand also that the properties that have been sold off and that are out of this case now are these—tell me if I am correct about it—this under description No. 3 in the bill, as lot number 7, block number 1201, on the official tax map of Ocean City, beginning at a point in the northwest side of Ocean Avenue, 300 feet southwest of its intersection with the southwesterly line of 12th Street, and extending southwesterly along the side line of Ocean Avenue fifty feet, and of that width or frontage extending southeasterly between parallel lines at right angles to said Ocean Avenue to the Riparian Commissioner's line?

A. I sold my one-half undivided interest to it.

30 Q Under number 4 is lot 177, section A on the plan of the Ocean City Association which begins at a point in the northwesterly side of West Avenue 250 feet southwest of its intersection with the southwest line of 7th Street, and so on.

A. That is sold.

Q. Then under number 5 is lot number 66, and part of lot 65, Section C, on the plan of Ocean City,

beginning at a point in the northwest side of Simpson Avenue 187.4 feet southwest of its intersection with the southwest of 9th Street and extending, and so forth.

A. That is sold.

Q Now, I call your attention to description under number 1 of the bill, which is lot 432, Section F, on the plan of Ocean City, and begins at a point in the southeasterly side of West Avenue 220 feet northeast of its intersection with the northeast side of 26th Street, and running northeasterly in said line of West Avenue 30 feet and of that width or frontage extending southeasterly between parallel lines at right angles to said West Avenue 30 feet in length or depth, and I ask you whether in your opinion that lot should be divided between you and Mrs. Rosecrans according to your interest as one-half without affecting its value, or if you would each get an equal interest?

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Mr. McCarter: Now, I object, on the ground the witness is not qualified to testify.

The Court: I will permit it.

A. I should not think a single lot could be divided.

Q. Now, we have under number 2, lots 130 and 131, and 132, Section D, beginning at a point in the southeasterly side of Simpson Avenue 370 feet southwest of its intersection with the southwest side of 14th Street, and extending southwesterly from said line of Simpson Avenue 130 feet and of that width or frontage and extending southeasterly between parallel lines at right angles to Simpson Avenue 115 feet. What have you to say as to whether that piece of land could be divided?

30

A I should think that could be.

Q. You should think that could be?

A. I should think that could be.

Q. Number 6 is lot number 1, block 910, that begins at a point in the intersection of the southwest side of 9th Street with the northwest side of Pleasure Avenue extending northeasterly along said side of 9th Street 51.39 feet, of that width or frontage 100 feet, what have you to say as to whether that could be divided between you and the party, each
10 have a half interest?

A. I should think that could be.

Q. You should think that could be?

A. What is the width?

Q. 51.25 feet by 100 feet.

A. I think that is the bay front. I should think that could be divided.

Q. Beginning at a point being the intersection of the southwest side of 9th Street with the northwest side of Pleasure Avenue, extending northwestwardly
20 along said line of 9th Street 51.25 feet, and of that width or frontage extending southwestwardly along said side of Pleasure Avenue 100 feet in length or depth. Is that a bay front lot?

A. I don't know.

Q. Having read that description to you now in full, do you think it could be partitioned practically?

A. If it is a bay front lot I know a number of lots that have been sold 25 feet front lots.

Q. Now, then, we have another one under description number 7, lot 2½ in block 910, beginning at a point in the northwesterly side of Pleasure Avenue 100 feet southwest of its intersection with the southwest side of 9th Street, and extending southwestwardly on Pleasure Avenue 65.70 feet and of that width or frontage extending northwestwardly between lines parallel with said 9th Street 102½ feet in length or depth. What as to that?
30

A. Well, if that is the adjoining lot that you asked me about preceding, I wouldn't say it could be divided.

Q. I think it is from the description. Now, we have number 8, lot 7 in block 910, beginning at a point in the southeast side of Paylan Avenue 75 feet southwest of its intersection with the southwest side of 9th Street, and extending southwest along said side line of Paylan Avenue 30.73 feet, and of that width or frontage southeasterly between parallel lines 102.5 feet in length or depth. 10

A. That is a single lot again. I shouldn't think that could be divided.

Q. Number 9 is an equal one-half part of lots 2 and 3, block 911, beginning at a point in the northwest line of Paylan Avenue 25 feet southwest of its intersection with the southwest side of 9th Street and extending southwest along side of Paylan Avenue 103.20 feet and of that width or frontage between parallel lines parallel with said line of 9th Street northwesterly to the exterior line of Beach Thorofare. That is a bay front lot. 20

A. What did you say?

Q. That is 103.20 feet and runs to the —

A. Judge, Mr. Andrew Scull and my husband owned that together and since then we have given Mr. Andrew Scull a deed for his part of it so that we own the 51 and a fraction feet of it.

Q. When you say "we" you mean you and Mrs. Rosecrans? 30

A. Yes.

Q. In other words, you are dividing that lot up into 51-foot lots?

A. That is as I remember.

Q. It would be which 51 feet you own?

A. I think Mr. Andrew Scull took the one nearest 9th Street that he had been paying the taxes on.

Q. The one nearest 9th Street?

A. Yes.

Q. And can that lot be divided as to what remains of the 103 feet?

A. Well, I would think it could.

Q. You think it can?

A. Yes.

Q. You say you think it could or could not?

A. I would think it could.

10 Q. Now number 10 is a part of lots 25 and 26 in Section B, beginning at a point in the southwesterly side of 11th Street 35.32 feet southeast from the southerly line of Bay Avenue and containing southeasterly of said point in said of 11th Street 15.38, of that width or frontage between lines parallel with said southeasterly line of Bay Avenue 90 feet in length or depth. What have you to say as to whether that could be partitioned?

20 A. That is just a little brick house in a row of houses.

Q. A house on that?

A. That has a house on that.

Q. Could that be partitioned?

A. I wouldn't think so.

30 Q. Number 11 is lot 152½ in block 1107, beginning at a point in the southeasterly side of Simpson Avenue 290 feet southwest of the southwest side of 11th Street, extending southwesterly along said side of Simpson Avenue 30 feet 115 feet in length or depth, could you partition that?

A. There are two in there, in that same block, that could be divided, you have read the description of one. There are two lots in that same block, I think, of 30 feet frontage and they could be divided.

Q. That is, you mean the two single lots 30 feet each?

A. Yes, they are not adjoining, I think there is a house or something in between.

Q. Number 12—perhaps this is the other—lot beginning at a point in the southwesterly side of Simpson Avenue 350 feet southwest of the southwest side of 11th Street and extending southwesterly along said side of Simpson Avenue 30 feet and of that width or frontage between parallel lines parallel with 11th Street 115 feet. Those lots the same value, you think?

10

A. Yes.

Q. Now, the last, rather, the 13th, part of lots 155 and 156, beginning at a point in the northeast side of 12th Street 65 feet southwest from its intersection with the southeast side of Simpson Avenue, and extending southeasterly along said side of 12th Street, 25 feet and of that width or frontage of 90 feet, you think that could be partitioned, or actually divided?

A. I should think so.

20

Q. 25-foot lot?

A. No, I guess it couldn't be.

Q. Is there any building on that?

A. No, I don't think so.

Q. Now, I think I overlooked this property, Mrs. Scull, that is on the corner at ———

A. 9th and Pleasure Avenue.

Q. That is the one I have in mind.

A. That is 50 feet on 9th Street and then runs back 100 feet, and then we have something like 60 feet adjoining that on Pleasure Avenue, that makes one large tract of land which, if I said could be divided, I do not think it could be.

30

Q. And why do you think that couldn't be?

A. Well, I think the frontage on 9th Street is so much more valuable than it would be on Pleasure Avenue.

Q. Let me go back and see where this description goes. I think you did say that it could be.

The Court: Isn't this the combination of number 6 and number 7?

Mr. Cole: Yes, here it is. I think that is correct.

10 Q. Mrs. Scull, it came under 6 and 7, and the description is beginning at a point being the intersection of the southwesterly side of 9th Street with the northwest side of Pleasure Avenue, and extending northwesterwardly along said side line of 9th Street 55.29 and of that width or frontage extending southwesterly along said side of Pleasure Avenue 100 feet.

A. Judge, that is the corner of 9th and Pleasure Avenue and I guess I got that confused with the bay front lot, and that could not be divided.

20 Q. Then is this an adjoining lot, beginning at the side of Pleasure Avenue 100 feet southwest of its intersection with the southwest side of 9th Street and extending 65.75 feet, of that width or frontage 102½ feet?

A. Yes, sir. That adjoins the corner lot.

Q. That is a part of the corner lot or adjoins it?

A. It adjoins it.

30 Q. Could you partition that lot among you two by having an equitable interest in each, taking the corner lot for a moment?

A. Oh, the 67 feet, you mean?

Q. 65.70 feet by 102½?

A. Well, I suppose it could be.

Q. You think that it could be done without damaging in any way the corner lot?

A. I have always felt it would be to our advantage to sell it as one piece.

Cross-examination.

By Mr. McCarter:

Q. Which of these two tracks, Mrs. Scull, that you have described is the one that is about to be rented for \$900 or some negotiations for renting for \$900?

A. That is the corner of 9th and Pleasure Avenue. 10

Q Just what are those negotiations? How far have they gone?

A. I haven't taken any part in them. I have had offers before and it has always been blocked, so I have taken no part in this negotiation.

Q. Well, what do you know about the negotiations?

A. Mrs. Rosecrans told me to call Mr. Ewing. I didn't call him. He called me and I told him to refer it to her. 20

Q. But you do know, as a matter of fact, that the sum of \$900 per year has been offered by a prospective tenant of that tract?

A I know that we have had offers before and they never could be carried through.

Q. I don't care about that. Do you not know, as a matter of fact, that an offer of \$900 per year for this tract has now been made by a prospective tenant?

A I know it has been suggested to us, but I don't know that it is going to be carried through because we have had many other offers. 30

Q And why have they not been carried through?

A. What is that?

Q. Why have those many other offers not been carried through?

A. Because the joint owner would not have worked with me.

Q. Because Mrs. Rosecrans did not deem them sufficient, is that what you mean?

A. I don't know what her reason was, because we couldn't carry it far enough.

Q. She didn't agree to do it; is that the fact?

A. Well, she would agree and then not do it.

Q. Is your hesitancy about this \$900 per year offer based on the thought that perhaps you may not agree to that when it comes to the point to, or is it due to what you consider inadequacy of the price?

A. I told Mr. Ewing when Mrs. Rosecrans was ready to sign the papers to come to me, that I would agree to anything that she agreed to.

Q. Don't you think \$900 per year is a good rent for this particular property?

A. I would if I got it, but we have never gotten it.

Q. Now, do these different lots vary much in value?

A. What is that?

Q. There are thirteen different lots or tracts that you have been asked about, which you have told us some you thought could be divided and some you thought could not, I am asking you do they vary much in value as between themselves?

A. Well, I don't consider that I am much of a judge of real estate. I would say that there are a few of the lots that are in right desirable locations.

Q. Now, I note that, using the description perhaps given in the bill of complaint, that the first parcel contains one lot; the second, three lots; sixth, one lot; seventh, one lot; eight, one lot; ninth, one lot

The Court: Now, develops it is an equal one-half part of two lots.

Mr. McCarter: Testified, however, that one of these lots had been partitioned as between them and Andrew Scull.

The Court: Yes, that is correct.

Q. Ten, 11, 12 and 13, each one lot, making a total of 11 lots. Do you see any reason why an equitable and fair distribution as between you and Mrs. Rosecrans could not be made of those eleven lots, giving some wholly to you and some wholly to her without attempting to divide up each individual lot? 10

A. Well, I don't see why a division could not be made.

Q. In other words, you don't see why there couldn't be a partition of the whole holdings as distinguished from a partition of each lot? 20

A. Well, I don't know how that would be done, but I say a division could be made.

Q. Now, getting back to the building, Mrs. Scull, you say you were familiar with its construction? You were, were you not? You knew when it was built? Wasn't it built, you knew the one part was built before the other, didn't you?

A. Yes.

Q. You were, of course, familiar with your late husband's will? 30

A. Surely.

Q. It is a fact, is it not, that ever since his death you have acknowledged that Mrs. Harriet Scull, your mother-in-law, in her lifetime had an interest in the 19 feet and that after her death until the filing of this bill of complaint you at all times

acknowledged that Mrs. Rosecrans had an interest in this 19 feet?

Mr. Cole: I object, makes no difference. I think it is a question of the construction of this will.

The Court: I will permit it.

(Question repeated.)

10 A. In my own mind, I never acknowledged it. I always thought it was a mistake.

Q. Did you not permit them to receive the portion of the rents?

A. I took no charge of the rents. I had nothing to do with them. I had to adhere to what the Trust Company told me. They made other mistakes. They gave me a mortgage at one time, gave part of it in to the residue, but they turned it back to me.

20 Q. Who is Mr. Ewing T. Corson?

A. He has charge, he bought Mr. Scull's business, he has charge of the affairs now.

Q. He has had charge of the renting of the disputed 19 feet of the building shown in Exhibit C1, has he not?

A. He has.

Q. And you know, as a matter of fact, don't you, Mrs. Scull, that ever since your late husband's death, he has been sending statements to not only you but to your late mother-in-law in her lifetime and to

30 Mrs. Rosecrans in hers?

A. I do.

Q. You know that part of the rents such as they have been, have been paid to two persons in her lifetime, and Mrs. Rosecrans in hers?

A. I do.

Q. You also know that their proportionate share

of the expenses of the building were charged to them, to them, I mean Mrs. Harriet R. Scull and Mrs. Rosecrans?

A. Certainly.

Q. I show you statement dated January 27th, on what appears to be the letterhead of Ewing T. Corson, and ask you if that is not a typical statement such as you received?

A. Certainly.

Q. Ever since your husband's death, that is a 10 typical statement of the rents of this building which Mr. Corson submitted to you?

A. The same.

(Statement marked D1 for identification.)

Q. I show you statement, Exhibit D1, for identification, refers to number 839 Asbury Avenue, does it not?

A. Yes, but there is no number 839 on it. 20

Q. No, but it refers to it, does it not?

A. Yes.

Q. And you understood this statement to refer to the 19 feet in dispute, did you not?

A. I did.

By Mr. Cole:

Q. Mrs. Scull, when did Mr. Scull die?

A. April 6th, 1918.

Q. Did you seek an opinion or advice concerning 30 that part of this will which refers to the Cresse-Scull Building, or were you given an opinion by any one as to your rights under that will?

A. I was given the opinion by the Trust Officers, and they told me if I wasn't satisfied, to seek other opinion, but really, Judge, I didn't know what they

meant for me to do, but they told me if I were not satisfied, to get some one else's opinion.

Q. How did it happen that you got the opinion or advice of the Trust Company?

A. Why, they were executors.

Q. They were the executors under this will?

A. With me, yes.

Q. And they gave what opinion to you?

A. Why, they told me that Mr. Scull already
10 owned a half interest in it, and he bought this half lot from Mrs. Cresse to finish the building, and because he didn't get me a separate deed for the half of lot that he purchased from Mrs. Cresse, that threw the interest of this building into the residue.

Q. And at the time they gave you that advice, did you suppose that was correct?

A. No, I was never satisfied with it, after I read Mr. Scull's will and knew that he had one deed
20 made out tenants by the entirety, and I knew the meaning of that, I never was satisfied with it in my own mind.

Mr. Cole: May it please your Honor, as I said a moment ago, I did not suppose there would be any question here as to the practical side of this in dividing this property, but, of course, Mrs. Scull is not a woman of experience, as she has already said, she is not acquainted with real estate. In view of
30 the position counsel now takes that they are contesting the right to sell the land about which there is no dispute as to title, and there should be an amendment of it setting up some estoppel, I would like a privilege to remedy the proof by experienced men to show that a partition here is not practical from any aspect, so whatever day your Honor gives us to hear the question of estoppel, I would like to put that proof in.

The Court: I will give you that opportunity.

Mr. Cole: We close with that right to put in proof on that question.

DEFENDANT'S TESTIMONY.

ANDREW R. SCULL, sworn.

10

Direct examination.

By Mr. McCarter:

Q. Mr. Scull, are you a brother of the deceased, testator in this case?

A. Yes.

Q. Also a brother of Mrs. Rosecrans, my client?

A. Yes.

20

Q. Did you have anything to do with the building of the building shown in Exhibit C1?

A. I built it.

Q. Now, I understand that it was not, as shown in that picture, all built at the same time, is that correct?

A. No.

Q. How was it built, tell us that, please?

A. Well, the 835 and 7 was built first. That was what was known as the Scull-Cresse Building.

30

Q. When was that built?

A. That was around '12, finished in '13 and '14. It was about the middle of the year.

Q. Now, when was the other part, the 19 feet in dispute, built?

A. That was about—that was finished at or about April or May in '16.

Q. Now, I show you what looks like a plan and ask you if you can tell me what this is a plan of?

A. That is a plan of the second floor of 839, which was always termed as the new building.

Q. New building?

A. Yes.

Q. Is that the plan by which it was constructed by you?

A. Yes, absolutely.

10 Q. Now, which end of the plan shows the frontage on Asbury Avenue?

A. This.

Q. Will you put an "X" there, please?

A. (Witness complies.)

Q. Where, with relation to this plan, is the other part or old building?

A. [The old building is in here. (Indicating.)

Q. Where my pencil is now?

A. Yes.

20 Q. Suppose I mark a circle there, does that indicate where the old building was?

A. Yes.

Q. Now, were you able to find a first-floor plan of this?

A. We have the first-floor plan there, but it wasn't

Mr Cole: Pardon me, sir, not the "but."

30 The Court: You have the first-floor plan there, he says?

A. Yes, I have a first-floor plan there.

Q. Is the first-floor plan you have a plan exactly in the form in which the building is built?

A. As far as the outside dimensions, but the inside is different.

(2nd and 3rd story plan offered, received in evidence and marked Exhibit D2.)

Q. I show you another plan similar to the one just offered and ask you what that represents?

A. That represents the third floor.

Q. Will you please mark an "X" where the Asbury Avenue front is?

(Witness complies.) 10

Q. Circle where the old building is.

(Witness complies.)

(Third-story plan received in evidence and marked Exhibit D3.)

Q. Then, turning to the next exhibits, Mr. Scull, I ask you, Mr. Scull, what the dates on the plans just put in evidence refer to? 20

A. I think April 5th.

Q. I didn't ask you to tell me what they are, but what do they mean, the date the plan was made, or what?

A. Yes, they were made and the plans were executed right away.

Q. Was the construction of the building commenced promptly after the completion of those plans?

A. Yes. 30

Q. About when in 1916, then, will you say that that building was completed, if the plans were drawn in April?

A. Well, I think it was all finished, I couldn't give just the exact date, but I would say around in the last of June or first of July.

Q. Now, I show you, Mr. Scull, another plan—you have the ground floor of this, haven't you?

A. I think so.

Q. Will you just leave the stand a moment and find it?

(Witness produces plan.)

A. This is the dimensions of it here.

10 Q. Referring to the two plans, exhibits which are in evidence, Mr. Scull, can you tell me whether or not the first-floor plan of the building was like in that, there was no opening or communication between?

A. Absolutely not, separate building entirely.

Q. That was the way they were constructed?

A. Yes.

20 Q. So far as the wall between the 19 feet in dispute and the other part indicated by the circle here, is there any difference between the third- and second-floor plans, on the one hand, and the first-floor plan on the other?

A. No.

Q. I call your attention to the wall between the 19 feet in dispute and the old building for the first, say, fifteen feet 4 inches back from Asbury Avenue, and ask you to tell me whether or not that is what is known as a party wall?

A. Party wall. This is the distance, about nineteen feet from the old building, party wall here.

30 Q. Back of the place where the walls diverge in this plan, were there separate and distinct walls entirely over the two buildings?

A. Absolutely, yes.

Q. Now you have referred to this as number 839. Where did you get that number? How did the building in your mind get that number?

A. Well, it is numbered so many feet in the block and that is—I really don't know.

Q. Let me ask you this. During the construction of the building was this referred to as 839?

A. Referred to that as the new building.

Q. Was the old building referred to as 835 and 837, or how was it referred to?

A. The other building was always referred to as the Scull-Cresse Building.

Q. This was referred to as the new building? 10

A. New building.

Cross-examination.

By Mr. Cole:

Q. Who referred to it as the new building?

A. Well, my brother and myself, most anybody that had any, came in contact with it, that is in regard to anything to do with it.

Q. Any such number as 839 on that building? 20

A. Beg pardon?

Q. Is there any such number as 839 on that building?

A. I don't know whether that number is on there, but —

Q. I didn't ask you that, sir. Is there any number 839 on the building?

A. I really couldn't say, but I think there is.

Q. Where do you think it is?

A. I think it is over the door. 30

Q. 839? What makes you think that?

A. It kind of strikes me I noticed it going in the gas office.

Q. When did you see it there?

A. Well, I think I have seen it on the gas bill, this last —

Q. I didn't ask you about the gas bill, I asked——

A. That is the only way I have of getting it.

Q. You are interested in having your sister win this suit, aren't you?

A. Well, I am sure I don't want to do anything detrimental to the other one, either.

Q. Now, do you now say there is a number 839 on that building anywhere?

A. Well, I wouldn't say positive that there is, to
10 be positive.

Q. Is there a number 837 anywhere?

A. Well, I am not familiar with the numbers there. I never bothered with them.

Q. Don't you know that the only number that appears on the building is 835 and 835-A?

A. Well, that 835-A is something new to me. I never knew that until this morning.

Q. This original building was built on two 30-foot lots, wasn't it?

20 A. I think it was, yes.

Q. So there is nineteen feet left of the original 60 feet that was not covered by what you call the old building?

A. No.

Q. When you built what is now referred to by you as 839 or the new building, you used the wall of the old building, didn't you?

A. A portion.

30 Q. Well, did you build any new wall for what you call the new building running parallel?

A. It is all new wall except 19 feet.

Q. That is what I say. But is there any new wall for the north side of the new building except the one that was there in the old building?

A. I didn't quite catch that.

Q. The old building, of course, had a wall on what I will call the southerly side?

A. Yes.

Q. That is still there, isn't it?

A. Yes.

Q. When you put the new building by the side of the old, was that old wall used?

A. Why, only a very small part of it.

Q. Was some of it used?

A. There was a little wall there and there was 19 feet used as a party wall.

Q. Now, is there any means of communication on either the second or third floor between the apartments of 835 and 837 which you speak of, or are they separate? 10

A. They open together at the head of the stairs,

Q. But only there?

A. Yes.

Q. In other words, you part up at the head of the stairs at 835 and 837, is that right?

A. Yes.

Q. Which door do you go in on that photograph that takes you to that? Will you mark in lead pencil the door which you used, the old building? 20

A. It is there. (Indicating.)

The Court: That marked 835-A?

Q. The one marked 835-A?

A. Yes.

Q. Did you have a contract in writing for the old building? 30

A. No.

Q. For whom did you build the old building?

A. I built the old building for my brother and Mr. Cresse.

Q. For whom did you build the new building?

A. Joseph I. Scull.

Q. In the meanwhile Mr. Cresse had died?

A. Yes.

Q. And your brother took up the addition of the 19 feet after Mr. Cresse died?

A. Yes.

Q. Did you know or had you heard Mr. Cresse or his widow had in the meanwhile parted with his interest in this nineteen feet?

A. Yes.

10 Q. How long did your brother live after the 19 feet addition was completed?

A. I would say he lived around two years.

Q. In the case you added, did you have the contract in writing with your brother?

A. No. We never had a contract.

Q. Have you the floor plan of the old building?

A. Of the old building? I don't know as I have got that old plan here.

20 Q. You have produced a number of plans here. Where did you get them?

A. I had an architect who drew them.

Q. I mean when you brought them here where did you get them from?

A. From my files.

Q. Did you hunt for a floor plan of the old building?

A. No, I didn't look for that.

Q. You didn't hunt for it, did you?

30 A. No, I didn't hunt for that, for the Scull-Cresse Building.

Q. Will you hunt for the floor plan of the old building and produce it here at the next hearing if you can find it?

A. Yes.

Q. Did you have plans and specifications for the old building?

A. Yes, there was —

Q. You did have them? Are they here?

A. No.

Q. Have you hunted for those?

A. No.

Q. Will you hunt for those and produce them at the next hearing?

A. Well, if I have got them.

Q. Of course, if you haven't you can't produce them, but will you hunt for them and if you find them, will you produce them?

10

A. Why certainly, only be too glad to, sir. I haven't got them here.

Q. If you haven't got them, we can't help that, you weren't asked to produce them today, were you?

A. No.

Q. You were not asked to hunt for them, were you?

A. I wasn't ask to hunt for them.

Q. You just produced these voluntarily?

20

A. Yes.

Q. How did you come to do that?

A. My brother called me up and told me about this and he asked me if I had them.

Mr. Cole: Mr. McCarter, I notice in your answer that you deny the copy of Mr. Scull, the copy of which is not a correct copy of the will.

Mr. McCarter: Just a pure formal denial, and I understand it is correct. Have you got the certified copy?

30

Mr. Cole: No, I thought I had. That is out of the way?

Mr. McCarter: That is out of the way. That will be conceded to be a correct copy.

MRS. REA SCULL ROSECRANS, SWORN.

Direct examination.

By Mr. McCarter:

10 Q. Mrs. Rosecrans, you are one of the defendants in this case?

A. I am.

Q. And the sister of Joseph I. Scull whose will is now under construction before the Court?

A. I am.

Q. I show you Exhibit D1 for identification and ask you from whom you received that.

A. From Ewing T. Corson, of Ocean City.

Q. Did you receive other similar statements?

A. Yes, sir.

20 Q. When did you first receive such statement?

A. After my mother's will was settled.

Q. Do you know whether your mother in her lifetime received similar statements —

A. She did.

Q. —from Mr. Corson?

A. She did.

Q. And have you continued to receive such statements from Mr. Corson down to the present?

30 A. Each month. Last one I received was April 20th, 1928.

Q. Is that Exhibit D1 for identification all respects typical to the others?

A. Yes, this happens to be 1927, but they are just about the same.

Q. Showing rents received from the various tenants and the disbursements paid out by Mr. Corson?

A. Yes.

Q. Was Mr. Corson what we might call the renting agent of that building?

A. He was.

Q. Did you select him or did you find him in charge when your mother died?

A. Found him in charge.

Q. Did you acquiesce in that situation?

A. Yes, continued the same as it did while she lived.

Q. I notice that on Exhibit D1 for identification he referred to the property as 938 Asbury Avenue. Was it so referred to on other rent statements for that building? 10

Mr. Cole: Objected to.

A. Always.

Mr. Cole: My objection goes to the whole, what a real estate man may have put on the bill can't aid us in construing this will. 20

The Court: I admitted it before, that is, admitted the testimony concerning this paper before because it might be material as to the question of laches in this matter, but I can't see the relevancy otherwise than that. If these parties had agreed that this will should be construed in a certain way so far as this suit is concerned, it could not be done, they can't make an agreement, but the Court would certainly reserve the right to construe the will regardless of what the parties thought or even if counsel thought. 30

Mr. McCarter: There is no question of that, as to the legal meaning of words, but here we are confronted with the practical fitting in there of some

deeds of land into the language in the will. He says the Scull-Cresse Building, then he says number 835 and 837.

The Court: That is his construction of it, of course, and it may be that if he was here the testimony would be admissible, but what some real estate man has done in communications with parties to the suit at present, I can't see the admissibility.

10 Mr. McCarter: Well, it certainly goes to show that the 19 feet in dispute was described by a separate number other than 835 and 837.

The Court: If he is produced I would admit his testimony concerning it, but how the complainant can produce letters from an ordinary real estate agent, no matter if it was the real estate agent of the other party as well —

20 Mr. Cole: Of course, the present proof practically undisputed is there is no number 839.

The Court: If objection is made at the present time to this testimony, I will sustain the objection.

Mr. McCarter: I offer in evidence Exhibit D1 for identification.

(Exhibit D1 for identification admitted in evidence and marked Exhibit D1.)
30

Q. I show you a group of similar statements on the letterhead of Ewing T. Corson and ask you to pick out from those, Mrs. Rosecrans, statements that refer to the property in question. I notice there are some in there that refer to other properties.

(Witness complies.)

Mr. McCarter: I offer in evidence as one exhibit 26 separate sheets just identified by the witness as referring to the property in question.

Mr. Cole: Of course, your Honor, I object to them. I don't see how anything these agents did can —

The Court: What is the purpose of the offer, Mr. McCarter? 10

Mr. McCarter: The purpose of the offer, your Honor please, is to show that a portion of the property in dispute was by the renting agent, whose testimony is, has been in charge ever since the testator's death and was in charge to the knowledge of the complainant as well as of the defendant, described as 839 Asbury Avenue and disclosed the fact that the defendant, Mrs. Rosecrans, was interested and entitled to a share in the rents thereof. 20

The Court: Is there anything to show that she was? The only paper offered in evidence does not intimate at all that she has any interest in it except as it says Scull estate.

Mr. Cole: Of course, may it please your Honor, you are right in that phase, but after all my objection goes to this: If it be true that this 19 feet 30 is not covered by the devise to Mrs. Scull, then Mrs. Rosecrans has an interest. We are agreed about that, but my objection is this, that suppose, even Mrs. Scull herself in reading the will, should have said, "Yes, I think Mrs. Rosecrans is entitled to it," suppose she had gone on and collected the rent

fifty years, and turned out she was not entitled to it, she has not been hurt, has simply been getting money didn't belong to her, so I can't see what interpretation somebody else puts on a will, it is not like parties construing their own contract, there, of course, the courts will say we will do what you said it meant, but this isn't Mrs. Scull's will, it is her husband's will. On the question of estoppel whether they made some kind of an agreement whereby she, Mrs. Rosecrans, is giving up hers, and we are seeking to undo that, that will be another question. I can't meet that until I see what the proof may be.

Mr. McCarter: In order to dispose of the question before your Honor, I will put a further question as to some of them before offering them in evidence.

Q. I note that one of these receipts has at the head, "Ella S. Scull and Rae Scull Rosecrans." They are you and the complainant, are they not?

A. Yes.

Q. I notice that some of them show a balance paid R. S. R. and balance paid E. S. S. Did you receive the sum as stated balance paid to R. S. R.?

A. I did.

The Court: I will sustain the objection.

(Papers marked Exhibits D4 to 11 for identification.)

The Court: Exhibit D1 was admitted in evidence because of the fact that Mrs. Scull had testified that that was one of the series of like statements which had been made and which she had received and was therefore admitted by me in evidence tending to

show that she knew that this particular portion of the building was designated as 839 Asbury Avenue, and that the agent had considered certain rents as belonging to the Scull estate. Exhibit D1 showed no indication of any division of the proceeds between anyone, and therefore other exhibits showing other material facts that have not been connected with the complainant in any way, I have overruled.

(No cross-examination.)

10

MRS. ELLA S. SCULL, recalled.

Further cross-examination.

By Mr. McCarter:

20

Q. Mrs. Scull, I show you Exhibit D4 for identification and ask you if you received a similar statement from Mr. Corson?

A. I have no doubt, but what I received one just like it.

Q. And you received others in which your name and Mrs. Rosecrans' name appeared?

A. I have.

Q. And others in which the balance paid to her and paid you were indicated, is that correct?

30

A. It is.

The Court: Admitted for the purpose of showing Mrs. Scull had knowledge of the contents.

Mr. Cole: I object for the same reason.

The Court: Admitted for the purpose of showing that Mrs. Scull had knowledge of those facts to which I have previously referred.

(Exhibits for identification D4 to 11 received in evidence and marked Exhibits D4 to D11 inclusive.)

Mr. Cole: I want to offer in evidence what I overlooked, and that is a certified copy of deed dated
10 October 31, 1914, from Cecelia Cresse, widow, and Cecelia Cresse, executrix, of the estate of Lewis M. Cresse, deceased, to Joseph I. Scull and Ella S. Scull, his wife, as tenants by the entirety, for the 19 feet of land in question.

(Certified copy received in evidence and marked Exhibit C2.)

Mr. Cole: I want to offer in evidence from the
20 Ordinance Book of Ocean City, at page 50, an ordinance entitled: "An ordinance regulating the numbering of houses and other buildings in Ocean City," adopted June 30, 1902, and the pertinent part is:
"The official or starting point of number on all streets or highways running parallel to the Atlantic Ocean shall be First Street and running from thence southerly, allowing two numbers for each lot as laid out on the map or plan of Ocean City, and one hundred numbers for each square or block, and begin-
30 ning with an even hundred at the beginning of each square or block."

(Further testimony adjourned until May 10, 1928, at 2 o'clock P. M.)

Atlantic City, N. J., May 10, 1928.

(Trial of cause resumed at 2 o'clock, P. M.)

EWING T. CORSON, sworn.

Direct examination.

10

By Mr. Cole:

Q. How old are you?

A. Thirty-three.

Q. Where do you live?

A. Ocean City.

Q. What is your business?

A. Real estate and insurance.

Q. In Ocean City?

20

A. Yes, sir.

Q. How long have you been in that business?

A. Eight years.

Mr. McCarter: We will admit Mr. Corson's qualifications.

Q. Did you receive from me a description of certain lots in Ocean City?

A. I did.

30

Q. Are you acquainted with the properties?

A. I am.

Q. I wish you would take up in the order they are on the paper in your hand which I believe is a paper I sent you?

A. It is.

Q. First, give me your opinion of the value of each item and call it off.

- A. Item number 1 is lot 432, section F. This is a lot between 26th and 27th on the southeasterly side of West Avenue. It is unfilled ground and worth, in my estimation, very little. I would say somewhere in the neighborhood of \$150 to \$200. Item number 2 includes three lots on the corner of 15th and Simpson Avenue, and I would estimate that the
 10 corner lot is worth about \$750 and the two inside lots about \$500 each. The next item which I was asked to appraise was lot number 1, block 910. This is the lot on the entrance to Ocean City, automobile entrance, and the corner of Pleasure Avenue, about 51 feet, and I would estimate that property to be worth about \$15,000. In my estimate of that, I would say that our office had an offer on this lot for \$20,000 during the boom. However, I do not think it is worth over fifteen at the present time.
 20 The next item is a lot on Simpson Avenue directly in the rear of the before-mentioned lot, a lot of 65 and some odd tenths frontage. If this lot —

Q. Is that a part of 7?

A. That is part of 7.

Q. Lot number 2½, lot number 910?

A. Yes.

Q. You are now testifying about?

- A. Yes. This lot, if it were sold with the corner, would bring more than if it were sold by itself. I
 30 would say the lot might be worth \$5,000 if sold with the corner, and probably \$4,000 if by itself.

Q. When you speak of the corner —

A. I am speaking of the corner, the lot number 1, block 910, in other words, the lot would have more value, the 9th Street frontage is of value for automobile use entirely, and if the lot adjoining it on

the avenue off of 9th Street could be used with it, it would have more value than if sold by itself.

Q. Now, the next.

A. The next one is number 8, on your sheet, it is lot number 7, block 910, is a small 30-foot lot on Paylan Avenue. That lot I would presume is worth about \$70 a foot or \$2,100. The next item is a half of lots 2 and 3. I would say that the frontage—that is bay front property, and I think it is worth about \$125 a front foot. Now, a half of that, of course, would be \$62.50. 10

Q. The next?

A. The next item is a part of lots 25 and 26, Section C. This has a frontage of about 15 feet. It is a brick house, in a brick row. I would say the property is worth about \$3,500. The next item is lot 152-A, in block 1107. It is a 30-foot lot on Simpson Avenue, worth about twenty-five hundred. The next item is the lot adjoining it, which I also appraised at \$2,500. The next item is number 13 on the sheet and part of 155 and part of 156, Section C. This is a 25-foot lot on 12th Street, about 80 or 90 feet deep, and I appraised that lot at \$1,250. 20

Q. Now, have you considered whether, from the standpoint of dollars, you could divide these tracts, about which you have testified, so that each of two people, having equal interest, could get the same amount in dollars, is that feasible?

A. Well, you certainly could not divide each individual lot because a number of these lots, in fact, the majority of them are single lots ranging in frontage from 30 to 65 feet, I think is the largest, and any of those lots if cut in half would be worth less than half of the original lot. I would say that the only way that the lot could be divided, in other words, there is one lot here valued at \$15,000, which is practically worth the balance, the only way that 30

would be to give one person enough lots to counteract the value of the one valuable lot, and, personally, I cannot see how you could very successfully divide these lots.

&. Now, will you tell us whether there are any of these lots which are unimproved that can be divided in half and their value retained, I mean the value as an entire lot?

A. There are four—you mean without the build-
10 ings?

Q. Yes.

A. Well, to start with, the first item was a small lot of 30 feet which is even unfilled, as well as unimproved, and certainly a 15-foot lot down there would have no value, you couldn't put a house on it, and the same is true with a number of the other lots, they are 30 feet in front or 40 feet in front, and you couldn't build on a 15 or 20-foot, so if a lot were cut in half it certainly would have no value.
20 As I say, the only way they could be divided would be by giving different parcels to one side or the other, the lots themselves, and they would be impossible to divide them without seriously destroying their value.

Cross-examination.

By Mr. McCarter:

30 Q. Mr. Corson, do you think it would be possible to make a fair distribution so far as value is concerned between the two parties by assigning some one or more of the lots to one and the rest to the other?

A. I would say that could be done from that very thing, in other words, the second item, with three

lots, two of those lots that are exactly the same worth, \$500 apiece, I would think that could be divided, and I would certainly think further on I stated two lots on Simpson Avenue at \$2,500 apiece, alongside of each other, which certainly could be divided, but I don't know how you would go about finding enough lots to make up for the one on 9th Street, you couldn't cut 9th Street in half without seriously hurting it.

Q. Would it be possible to allow one party the property on 9th Street which you have appraised at approximately \$15,000 and then give enough of the rest to the other party to make up the equivalent in value? Could that fairly be done? 10

A. I see no reason why it couldn't be done if each party were satisfied. In other words, what I mean, some people might feel, the one party might feel if they got 9th Street they would have the best or the worst of the deal.

Q. In your opinion as a real estate man, do you think a fair division could be made, regardless of what the parties receiving one share or the other might themselves think, could an essentially fair and equitable division of those lots be made among the two parties by giving one of them the \$15,000 lot and assigning to the other sufficient of the rest of the property or all of it to make up an equivalent in value? 20

A. If it were me, I would say yes, I could be satisfied. I don't know whether a person not familiar with real estate could be or not, but I could be satisfied. In other words, I could be given enough to satisfy myself that I had received as much as the one lot on 9th Street. 30

Re-direct examination.

By Mr. Cole:

Q. The lot on 9th Street the most eligible of all for the purpose of sale?

A. Absolutely.

Q. The one that is most likely to be sold first, is it not?

10 A. There are more calls for the 9th Street lot than any other. We have had through our office more queries about that lot than all the rest of them put together.

Q. When you answered Mr. McCarter as to your thought of the possibility of having one person take the 9th Street lot and the other take all the other lots, did you entertain any doubt as to whether the one who might take the other lots would in the end get as much as the one who got the 9th Street lot?

20 A. I said, Mr. Cole, that I could be satisfied, in other words, I would feel frankly that if I received the \$15,000 lot that the other party should receive more than \$15,000, even on this appraisal of the other lots, because the 9th Street property could be sold at any time, and they would require a lot more effort to sell the other properties, even at the figures given, than would that particular property. If I were going to have to take a half a dozen lots or a dozen lots to make up for the one, I should feel I
30 would have to have more than \$15,000 worth of value in those lots.

Q. And for what reason?

A. For the simple reason the 9th Street property is a good deal easier to handle, a good deal easier to be sold, than, for instance, the lots which are unimproved, and in a rather remote part of the city. In other words, there is one lot 26 feet which is on mea-

dow land really, and the three lots at 15th Street are as yet on meadow land, I believe they are filling in that vicinity at the present time.

Q. Now, when it comes to the question of a practical division, by that I mean the physical division of the land itself, are there any of these lots which in your opinion could be so divided other than the lots which adjoin and are of the same size?

A. There are no individual pieces mentioned on here in this sheet that could be divided except probably number 2 and numbers 11 and 12. 11 and 12, one could be given to one and one to the other without any serious difference and in number 2, 131 could be given to one person and 132 without any serious difference to the other, and the other pieces I see no way they could be divided without seriously impairing the value of the property. 10

By the Court:

20

Q. Then, as I understand it, Mr. Corson, if you were personally interested in this matter, you would not be willing to take the appraisal that you have now given and divide it half and half according to your appraisement and say that each party would get an equal value?

A. I would answer that particular question by saying that I would rather have the \$15,000 lot than I would \$15,000 worth of other lots of the same appraisal. 30

Q. Now, for my information, how much less is the percentage that you consider that they are worth?

A. They are not worth any less except for trouble of selling them and trouble of handling them.

Q. How much worth less that way?

A. I would say probably ten per cent.

Q. Then your valuation as given here, your valuation for this purpose is ten per cent higher on the lot number 6, as we call it here, than your others?

A. Well, I hardly put it that way. In other words, I think the lot on 9th street could be sold for \$15,000, and I think the other pieces could be sold for the amount I specified, but if I had six properties to sell to make the same amount of money, six agents to deal with, six people to find to buy them, it is a
10 harder job than it is to sell one.

Q. We are speaking of the present-day value.

A. I think the prices which I gave you are the present-day value as near as I can judge them on each individual piece.

Q. But you wouldn't be willing to take your chance of taking approximately \$20,000 worth of the smaller lots in exchange for \$20,000 which includes the \$15,000?

A. I think I would rather have the \$15,000 lot.

20 Mr. Cole: Of course, that is a matter of argument.

A. In other words, somebody else might feel different about that, somebody might feel they would have the small pieces to sell, but I would feel I would rather have the \$15,000 lot than the other lots on an equal basis.

30 Q. What I am trying to determine is, assuming that to be the fact, as you feel it to be the fact, what increase in value, if it should be divided, should the other lots take?

A. In other words, I would want \$16,500 worth of the other lots for it if I were going to divide it that way, I would feel I was entitled to that much for the trouble I would be put to to sell them and take care of them.

Q. Then, if it was to be sold, say there is a sale of the two lots, you would say then according to your appraisal, take \$16,500 of the other lots to offset the \$15,000 of this?

A. I would think so.

JOSEPHINE N. GOFF, SWORN.

Direct examination.

10

By Mr. Cole:

Q. What is your name?

A. Josephine N. Goff.

Q. Where do you live?

A. Ocean City.

Q. Do you know the building that is referred to as the Cresse-Scull Building?

20

A. Yes.

Q. Did you know it while it was in course of construction?

A. Yes, I did.

Q. Do you know how the wall and the side of the building toward Cape May was left before the new 19 feet addition was added?

A. The hollow tiles were left exposed.

Cross-examination.

30

By Mr. McCarter:

Q. How long were they left exposed, do you recall?

A. Several months, many months I should say.

Q. Over a year, wasn't it, Mrs. Goff?

A. I don't know. I know a number of months.

Q. Are you familiar with the rear of the building, do you know that the new building is deeper than the old building?

A. I don't know that.

Mr. Cole: I want to offer in evidence a receipt given by Cecelia H. Cresse to Mr. Scull. It is dated 10 Ocean City, N. J., October 31, 1914, and reads: "Received of Joseph I. Scull the sum of \$1,080.96 for the one-half interest in 19 feet of lot number 438, Section A, and the one-half interest in the building materials purchased by Joseph I. Scull and Lewis W. Cresse."

(Received in evidence and marked Exhibit C2.)

COMPLAINANT RESTS.

20

EWING T. CORSON, recalled.

Direct examination.

By Mr. McCarter:

30 Q. Mr. Corson, do you recognize these documents I show you, Exhibit D5, for example?

A. Yes, sir.

Q. And were they prepared by you?

A. By my office.

Q. In your office?

A. Yes.

Q. And you are familiar with the buildings to which that refers?

A. I know the building, sir.

Q. By what number do you know it?

A. 839 Asbury.

Q. How long have you known it by that number?

A. Since I took over Mr. Joseph I. Scull's business in 1920.

Q. Do you know whether or not it is commonly known as that number?

A. I presume it is. It always was as far as I had anything to do with it. 10

Q. Who are the tenants, present occupants of the store on the ground floor of that building, do you know?

A. Gas company.

Q. Do you know whether or not in the Ocean City telephone directory that gas company address is listed 839?

Mr. Cole: I object to all this as incompetent. 20

The Court: I will permit it.

A. I presume it is.

Q. Will you look—is this book which I show you a telephone book of Ocean City?

A. Yes.

Q. Will you look at that and see whether the gas company, the name of which I don't know, is listed at the address of 839, Jersey Central Power & Light, is that the name? 30

A. Yes. We have known the number so long we never look it up any more. It is listed 839 Asbury.

Cross-examination.

By Mr. Cole:

Q. Do you know whether there is a number on that building?

A. I don't know, Mr. Cole, whether there is a number on that building or not.

10 By Mr. McCarter:

Q. I show you a coal bill made out to Mrs. E. Scull on the billhead of Messrs. Headley & Adams, and ask you if you had anything to do with the paying of that bill?

A. Yes, sir; our office paid this bill.

Q. Is the same thing true of the other bills there?

A. Beg pardon?

Q. Is the same thing true of the other bills?

20 A. I imagine we paid all these bills, we paid all the bills on the building. I imagine they were all taken out of the rent account.

Q. And do you know how this building came to be designated in these bills as 839 Asbury Avenue?

Mr. Cole: How in the world can he tell that?

The Court: The question is, he is asked if he does know.

30 A. No, I don't. I always called the building 839 Asbury. That is all I know.

(Bills offered in evidence.)

Mr. Cole: Objected to.

The Court: Sustain the objection.

(Six bills marked D12 for identification.)

Mr. McCarter: Now, I wish to offer in evidence certified copy under the seal of the Cape May County Clerk, of deed dated May 15, 1911, between Joseph I. Scull and Ella, his wife, to Lewis M. Cresse, affecting the property in question.

(Certified copy received in evidence and marked Exhibit D13.)

10

Mr. McCarter: And I offer in evidence a similarly certified copy of a deed between Ella Scull, widow, and Cecelia H. Cresse, widow, to Adam J. Herbott, dated October 1, 1920.

Mr. Cole: What does that convey?

Mr. McCarter: That conveys what we know as the Scull-Cresse Building, the other part, the 41 feet.

20

Mr. Cole: Not the 19 feet?

Mr. McCarter: Not the 19 feet; the 41 feet.

(Certified copy received in evidence and marked Exhibit D14.)

Mr. McCarter: By consent of counsel we offer in evidence a blue-print entitled: plan of land situate in Ocean City and other places in Cape May County owned by Joseph I. Scull estate, made by William H. Collisson, Jr., civil engineer, June 25, 1925.

30

(Blue-print admitted in evidence and marked Exhibit D15.)

TESTIMONY CLOSED.

CONCLUSIONS.

INGERSOLL, V. C.:

I see no advantage, gentlemen, for me to retain this matter under advisement. My views, as I now see the case, are, first, as to the construction of the portion of the fifth clause of Mr. Scull's will, in which he says that he gives, devises, and bequeaths
10 unto his wife, Ella S. Scull, "all my interest in the Scull-Cresse Building, known as number 835 and 837 Asbury Avenue, and the lands upon which said buildings are erected, all situate in the City of Ocean City, New Jersey, absolutely and in fee simple." The facts, as they appear, as regard the building or buildings in dispute are that a portion of the entire structure, consisting of two stores upon the first floor with apartments upon the second and third
20 floors, reached through a common entrance, which common entrance, I think, in the photograph was marked 835A, was erected by Mr. Scull and Mr. Cresse during Mr. Cresse's lifetime; that the entire tract of land was owned by Mr. Scull and by Mr. Cresse together and that, at the time of Mr. Cresse's death certain building material was upon the ground, which material was afterwards purchased of Mr. Cresse's widow by Mr. Scull and used in the construction of a portion, as it now exists, of said building, which consists of a store with the
30 apartments on the second and third floors over said store, approached by an entrance directly from that portion of the building. There is no communication between the first building, consisting of two stores and apartments, which was erected before Mr. Cresse's death, and the one store and apartments built by Mr. Scull after Mr. Cresse's death.

The second structure was made of like appearance and apparently might or could be considered a part of one entire structure, to such an extent at least that a few feet—I think in one case it was said nineteen and others perhaps more feet—of the front part of the end wall first constructed was used as a wall for that part of the building later constructed.

I would have very little difficulty in determining what Mr. Scull meant had he not placed the limitation on those numbers with the fact that this part of the building was not erected during Mr. Cresse's lifetime, that Mr. Cresse or his estate had nothing whatever to do with the construction of that building, it seems possible that Mr. Scull did not consider that a part of the Scull-Cresse Building and were it not for the fact that he apparently limited his statement as to what he meant, I do not think that that fact would be sufficient, perhaps, for me to view the matter as I now do, but it seems quite clear to me that Mr. Scull evidently meant that the addition was not a part of the Scull-Cresse Building and to make that clear he added information as to two numbers which he mentioned, which it is quite clear means the two stores, 835 and the adjoining store, which would naturally be 837, and exclude the one adjoining 837 which would naturally be 839. 10 20

This view is to some extent confirmed by the fact that the common entrance to the apartments over the first stores erected bears number 835A, showing, I think, clearly that it was the intent and meaning that each store would bear the designation 835 and 837 and the additional one 839. 30

In taking this view of it I have considered that it is, I think, clearly the settled rule of construction of this matter that the larger designation is more to be considered than the lesser. That, of course, does not go to the extent of where there is a specific des-

ignation that it isn't binding, but, I think, for this purpose, the citation as quoted by Judge Cole, can be accepted as the law governing it. And I will say further that I am not in any way swayed in my view of this matter by the fact that Mrs. Scull has apparently acquiesced in this for a number of years. I do not think that that acquiescence in any way would be binding upon the Court even if she was absolutely wrong in any way except as an acceptance of the
10 terms of the will, by some contract with the co-beneficiary, otherwise it would not be binding upon this Court as to the construction of the will.

On the second phase of the question I would be extremely loathe to advise a partition by sale at the present time. It is only incidentally mentioned but the Court cannot help but and probably be entirely justified in taking judicial notice of the fact that land, such as this, if not all land in this neighborhood at the present time, is of less value for an immediate
20 sale than it has been heretofore, and, as is hoped by a great many and believed by a great many, will be in the near future. And, therefore, if I was in any doubt as to the question of the possibility of a partition in this matter, I would be very loathe at the present time to order a sale and would endeavor to find some method by which I could justly say that an immediate sale could not be required, but I do not see the necessity of that position at the present time. It is not necessary that a particular piece
30 of land should be divided by metes and bounds when there are a number of tracts and I haven't the slightest doubt but that this land can be honestly, fairly and absolutely, in an equitable manner, divided between these parties and I will advise a decree in accordance with the views expressed, of course, reserving the right to go over these notes and correct the grammar.

FINAL DECREE.

(Filed May 25, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between ELLA S. SCULL, <i>Complainant,</i> and RAE SCULL ROSECRANS, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, etc. Final Decree.
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20

This cause coming on to be heard on the fourth and tenth days of May, 1928, in the presence of Clarence L. Cole, Esquire, of counsel with the complainant, and George W. C. McCarter, Esquire, of counsel with the defendant, Rae Scull Rosecrans; and the complainant's bill having been heretofore taken as confessed against the defendant, Paul C. Rosecrans, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered:

30

It is, thereupon, on this 25 day of May, 1928, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this court, does hereby order, adjudge and decree as follows:

1. Joseph I. Scull, deceased, late husband of the complainant, did not in and by clause "Fifth" of his last will and testament refer to or devise any right, title or interest in the building known as #839 Asbury Avenue, in the City of Ocean City, in the County of Cape May and State of New Jersey, or the land upon which the said building stands, being the southwest nineteen feet of lot 438, Section A on the plans of lots of the Ocean City Association; but
10 the whole interest of the said Joseph I. Scull in the said lot and building thereon of which he died seized and of which he was capable of devising, passed under clause "Eleventh" of the said last will and testament as part of the balance and remainder of the said testator's estate.

2. The complainant and the defendant Rae Scull Rosecrans are seized of and entitled to the lands and premises in the bill of complaint described, which
20 are hereinafter described, and their respective rights and interests therein are hereby adjudged and decreed to be as follows:

(a) In the southwest nineteen feet of lot 438, Section A, on the plan of the Ocean City Association in the City of Ocean City, in the County of Cape May, being the premises also referred to in paragraph 1 hereof, the complainant is seized in fee of and entitled to the one undivided three-quarters part, and the defendant, Rae Scull Rosecrans, is seized of and
30 entitled to the one undivided one-quarter part.

(b) In all of the tracts of land, together with the buildings thereon, if any, and the appurtenances hereinafter more particularly described, the complainant is seized in fee of and entitled to the one undivided half part, and the defendant, Rae Scull Rosecrans, is seized of and entitled to the one undivided half part.

The said properties all lie in the City of Ocean City, in the County of Cape May, and are more particularly described as follows:

First tract: Lot 431, Section F, on the plan of lots of the Ocean City Association.

Beginning at a point in the southeasterly side of West Avenue 220 feet northeast of its intersection with the northeast side of 26th Street and running northeasterly in said side line of West Avenue 30 feet and of that width or frontage extending southeasterly between parallel lines at right angles to said West Avenue 90 feet in length or depth to a 15 feet wide alley. 10

Second tract: Lots 130, 131 and 132, Section D, plan of Ocean City Association.

Beginning at a point in the southeasterly side of Simpson Avenue 370 feet southwest of its intersection with the southwest side line of 14th Street and extending southwesterly in said side line of Simpson Avenue 130 feet and of that width or frontage extending southeastwardly between parallel lines at right angles to said Simpson Avenue 115 feet to a 15 feet wide alley, one of said side lines being in the northeasterly side of 15th Street. 20

Third tract: Lot No. 1, block 910, on the official tax map of Ocean City.

Beginning at a point being the intersection of the southwest side of 9th Street with the northwest side of Pleasure Avenue and extending northwestwardly along said side line of 9th Street 51.25 feet and of that width or frontage extending southwestwardly along said side of Pleasure Avenue 100 feet in length or depth. 30

Fourth tract: Lot No. 2½, block 910, on the official tax map of Ocean City.

Beginning at a point in the northwesterly side of Pleasure Avenue 100 feet southwest of its intersec-

tion of the southwest side of 9th Street and extending southwestwardly on Pleasure Avenue 65.71 feet and of that width or frontage extending northwestwardly between lines parallel with said 9th Street 102½ feet in length or depth.

Fifth tract: Lot No. 7, block 910, on the official tax map of Ocean City.

10 Beginning at a point in the southeast of Palen Avenue 75 feet southwest from its intersection with the southwest side of 9th Street and extending southwest along said side line of Palen Avenue 30.73 feet and of that width or frontage southeastwardly between lines parallel with said side line of 9th Street 102.5 feet in length or depth.

Sixth tract: Lot 3, block 911 on the official tax map of Ocean City.

Seventh tract: A part of lots 25 and 26 in Section C, on the plan of the Ocean City Association.

20 Beginning at a point in the southwesterly side of 11th Street 35.52 feet southeast from the southeasterly line of Bay Avenue and containing southeasterly of said point in said side line of 11th Street 15.38 feet and of that width or frontage between lines parallel to the said southeasterly line of Bay Avenue 90 feet in length or depth; also a strip of ground or alley along the southwesterly side of lot 26.

Eighth tract: Lot No. 152A in block 1107 on the official tax map of Ocean City.

30 Beginning at a point in the southeasterly side of Simpson Avenue 290 feet southwest of the southwest side of 11th Street and extending southwestwardly along said side of Simpson Avenue 30 feet and of that width or frontage between lines parallel with the said 11th Street southeasterly 115 feet in length or depth to a 15 feet wide alley.

Ninth tract: Lots 153B and 154A in block 1107 on the official tax map of Ocean City.

Beginning at a point in the southeasterly side of Simpson Avenue 350 feet southwest of the southwest side of 11th Street and extending southwestwardly along said side of Simpson Avenue 30 feet and of that width or frontage between lines parallel with said 11th Street southeasterly 115 feet in length or depth to a 15 feet wide alley.

Tenth tract: Parts of lots 155 and 156 in Section C, on plan of the Ocean City Association.

Beginning at a point in the northeast side of 12th Street 65 feet southeast from its intersection with the southeast side of Simpson Avenue and extending southeasterly along said side of 12th Street 25 feet and of that width or frontage between lines parallel to said Simpson Avenue 90 feet in length or depth; also a strip of ground or alley along the northeasterly side of lot 155, five feet in width not heretofore conveyed. 10

3. All of the aforesaid premises are so situated that a partition or division thereof can be made among the parties interested therein without great prejudice to the owners thereof. 20

4. Partition be made of the said lands and premises among the said parties, the complainant and the defendant, Rae Scull Rosecrans, according to their respective rights and interests therein, as the same have been hereby adjudged and declared by this Court, and F. Stanley Kreps, Joseph G. Champion and French Loveland, of the County of Cape May, be and they are hereby appointed commissioners for the purpose of making such partition, and that a commission do issue out of and under the seal of this court for that purpose, to be directed to the said commissioners, commanding them to divide the said lands and premises in equal parts or shares, 30

each equal in value to the other, quality and quantity being relatively considered, and that they allot one of the parts or shares unto the complainant, Ella S. Scull, and that they allot one of the said parts or shares to the defendant, Rae Scull Rosecrans, to be held and enjoyed by the said parties in severalty according to their respective rights and interests therein as adjudged and decreed by this decree; and that the said commissioners designate the part or
10 share so allotted to each of the said parties, and the boundaries thereof, by sufficient descriptions, or monuments.

5. In case partition of the said premises cannot be made with perfect equality among the said parties according to their respective rights and interests, unless compensation be made by one or more of the said parties to the other or others of them for and to secure equality of partition, then and in that
20 case the said commissioners may ascertain and report to this Court the proper compensation which ought to be made for equality of partition and by whom of the parties the same should be paid, and to whom of the parties it ought to be allowed; and the said commissioners be authorized to employ a surveyor and cause all necessary maps and surveys to be made; and that all the parties in the cause do produce and leave with the said commissioners for
30 such time as the commissioners shall deem reasonable all deeds, writings, surveys and maps in their possession or control relating to the said premises, and that the said commissioners examine witnesses concerning the matters entrusted to them if they shall think fit.

6. Each share or part of the said premises when allotted as aforesaid shall be charged with a ratable

proportion of the court's charges and expenses of this suit, except as hereinafter provided; a counsel fee of one hundred fifty dollars be allowed to the solicitors of the defendant, Rae Scull Rosecrans, and that the complainant do pay the same ten days after service upon her or her solicitors of a copy of this decree.

E. R. WALKER,
C.

Respectively advised.
R. H. INGERSOLL,
V. C.

10

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

20

Between
ELLA S. SCULL,
Complainant,
and
RAE SCULL ROSECRANS,
et al.,
Defendants.

On Bill, etc.
Notice of Appeal.

30

The complainant, Ella S. Scull, hereby appeals from the final decree made in the above-entitled cause on the 25th day of May, nineteen hundred and twenty-eight, by the Chancellor as advised by V. C. Ingersoll, and from the whole and ever part thereof,

to the Court of Errors and Appeals in the last resort in all causes.

Dated June 14, 1928.

COLE & COLE,
*Solicitors for and of Counsel
with Complainant.*

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

10

C. L. COLE,
Of Counsel with Complainant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20

<p>Between ELLA S. SCULL, <i>Complainant-Appellant,</i> and RAE SCULL ROSECRANS, <i>et al.,</i> <i>Defendants-Respondents.</i></p>	}	<p>On Appeal from the Court of Chancery. Petition of Appeal.</p>
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*To the Honorable, the Court of Errors and Appeals
in the Last Resort in All Causes:*

The petition of Ella S. Scull, the appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 25th of May, nineteen hundred and twenty-eight, in a certain cause in said Court of Chancery wherein the said Ella S. Scull was complainant, and the said Rae Scull Rosecrans, and Paul C. Rosecrans, her husband, were defendants, in this respect, to wit, that the said decree adjudges that the premises described in the bill of complaint are so situated that partition or division thereof can be made among the parties interested therein without great prejudice to the owners thereof, and appoints commissioners to make a partition thereof, and further adjudges that the defendant has an interest in the building referred to as the Scull-Cresse Building; 10

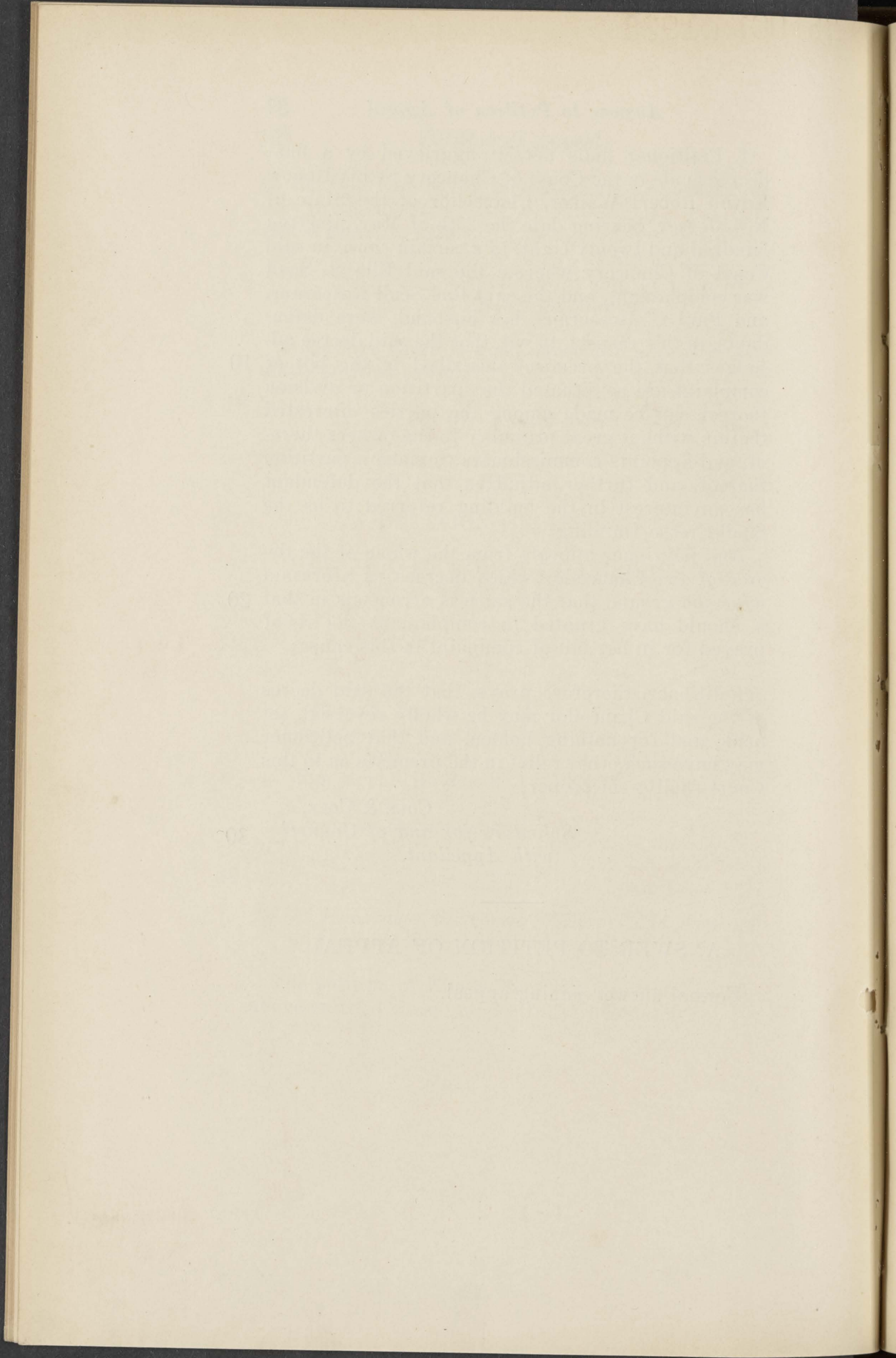
And petitioner appeals from the whole of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that it should have granted to complainant the relief prayed for in her bill of complaint in this cause; 20

Petitioner, therefore prays, that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

COLE & COLE,
Solicitors for and of Counsel 30
with Appellant.

ANSWER TO PETITION OF APPEAL.

Formal answer joining appeal.



75 OCT. 1. 1928

New Jersey Court of Errors and Appeals

Between
ELLA S. SCULL,
Complainant-Appellant,
and
RAE SCULL ROSECRANS,
Defendant-Respondent.

ON APPEAL FROM CHANCERY.

APPELLANT'S BRIEF.

STATEMENT.

The bill is the ordinary bill for partition and sale, with the exception that there is a dispute as to the interest of the parties in one tract, which dispute involves the construction of a will. The bill averred that the land is not partible and should be sold. The answer admits that some of the land is not partible, but that some is. At the end of the final hearing the Vice-Chancellor construed the will against complainant, and denied complainant the right to an order for sale, and appointed commissioners to partition. From the decree thereon this appeal is taken.

ARGUMENT.

I.

THE VICE-CHANCELLOR ERRED IN FINDING THAT RESPONDENT IS VESTED WITH AN INTEREST IN THE PREMISES DESCRIBED IN THE FIFTH CLAUSE OF THE WILL OF JOSEPH I. SCULL AS THE SCULL-CRESSE BUILDING, KNOWN AS 835-837 ASBURY AVENUE, OCEAN CITY, NEW JERSEY.

The controversy under this head is over nineteen feet of land with the building thereon which appellant contends is a part of the Scull-Cresse Building. It will be observed that the fifth clause of said will reads:

“I give, devise and bequeath unto my wife, Ella S. Scull, the properties located and known as number 755, 757, 824 and 826 Asbury Avenue; and also all my interest in the *Scull-Cresse Building known as number 835 and 837 Asbury Avenue and the lands upon which said buildings are erected, all situate in the City of Ocean City, N. J.*, absolutely and in fee simple.”

It is the claim of the respondent that the nineteen feet in question is known as 839 Asbury Avenue and not intended to be included by the testator in his will. The Vice-Chancellor was of the same opinion. He thought that it was his function to ascertain the intent of the testator and in this we concur. Our insistence is that it is plain from all the facts, most of which are not in the realm of dispute, that testator intended to stress the *Scull-Cresse Building*, and not the numbers. At the time of the execution of the will the building known as the Scull-Cresse

Building existed completed as it now exists. There was no number 839 on the building at that time nor has there since been any number on it, although there is some proof that the portion in question is known as 839. Photographs show one continuous building. The building, as it stands, covers practically all of two city lots, each being 30 feet in width. What we refer to as the original building covered all of one lot and 11 feet of the immediately adjacent lot, leaving nineteen feet uncovered. At this time, Joseph I. Scull, the testator and husband of appellant, and one Cresse, were joint owners of the two lots and built the original building. But it was in an unfinished state on the side of the lot not wholly covered; that is to say, the wall was left in a condition that made it apparent that there was to be a further addition. Material was on the ground for this purpose and it was finally, after Cresse's death, used by Scull to complete, as it was at the time of his (Scull's) death.

The history of the title is as follows: One June 9, 1910, Harriet E. Moore conveyed the two lots, 30 feet each, to Joseph I. Scull. On May 15, 1911, Joseph I. Scull and wife conveyed to Lewis M. Cresse an equal undivided one-half interest in said lots. On October 31, 1914, the widow of Cresse and executrix under his will conveyed to Joseph I. Scull and Ella S. Scull, his wife, an undivided one-half interest in the nineteen feet in question. This vested the entire interest in the nineteen feet in Scull and his wife and there was an equal undivided one-half interest in Scull in the remaining forty-one feet. On October 1, 1920, the widow of Cresse and the widow of Scull conveyed the forty-one feet to Adam J. Herbott. These are the undisputed facts. The question is, was the Vice-Chancellor right in saying that it was Scull's intention, by his will, to exclude

his wife from the nineteen feet? Any one of the foregoing facts indicate a purpose to vest the title in his wife to the whole of the land and the building thereon. It seems unreasonable to suppose that he ever intended that his sister, the respondent, should have an interest in the nineteen feet. Nowhere does the will specifically refer to it. If she takes an interest in the nineteen feet, she takes it under the eleventh or residuary clause, which residue is given to appellant and testator's mother, Harriet R. Scull, through whom respondent claims. The building is an entity. When he purchased Cresse's interest in the nineteen feet, he took title jointly so that his wife would be the owner in the event of her survivorship. His will calls the property the Scull-Cresse Building, and that certainly means the whole, not a part. The building, in its uncompleted state, covered both lots less nineteen feet. It was wholly completed at the date of the will. It never had any number on it except 835 and 837. Aside from the foregoing, which seems to clearly manifest a purpose to devise the entire building, the law seems to militate against the view expressed by the Vice-Chancellor. In *Thompson on Wills*, paragraph 202, there is this expression:

“Gifts by words of general description will not be limited by subsequent attempts at particular description unless such appears to be the intent of the testator.”

Again:

“Where the property intended to be given is described in such distinct and explicit terms it cannot without inconsistency admit of the qualification resulting from the subsequent partial description and that partial description seems

upon its face rather designed as an additional description of the same property than was intended as a qualification, such particular description will be rejected for its inconsistency with other parts of the description."

Cases cited in support of this are:

Chace v. Lamphew, 148 N. Y. 206;

In re Willis' Will, 25 R. I. 332;

Drew v. Drew, 28 N. H. 489.

A case in our own Courts is *Kanouse v. Central Railroad*, 97 Law 185. The case cites *Griscom v. Evans*, 40 N. J. Law 402, where Chief Justice Beasley said:

"The description of all the farm by name incontestably designated the whole by such farm so that the first description called for the entire thing and the second description for only a part of such entire thing. The two descriptions were therefore irreconcilable and the latter was properly rejected."

The quoted language is highly pertinent. The will says:

"And also all my interest in the Scull-Cresse building."

If we stopped there, there could be no question that all the building existing at the time of the will was intended and we have shown that all the building existed at the time of the making of the will. Then follows:

"Known as 835 and 837 Asbury Avenue, and the lands upon which said *buildings* are erected."

If it can be said that the latter language is irreconcilable with what precedes it, then it must be rejected.

But we do not believe that it is irreconcilable. It will be observed that in the latter part he says: "And the *lands* upon which said *buildings* are erected"—plural both as to lands and buildings. There were two lots and there were two buildings in the sense that one portion was erected at one time and one at another. Since the added portion was never recognized by him as No. 839 and no number was ever placed thereon, how can it be said that he did not intend to devise the building on the nineteen feet?

II.

THE VICE-CHANCELLOR SHOULD HAVE ORDERED A SALE.

The answer (paragraph 7) reads:

"She avers that certain of the said property can be physically partitioned and certain of it cannot be so physically partitioned without great prejudice."

The answer does not state which properties cannot be partitioned without great prejudice. The bill alleges that there can be no physical partition without great prejudice. The question is, therefore, one of fact. Thirteen separate tracts are involved. Some are improved and some are unimproved. They lie in different sections of Ocean City and have varied values. The proof is within a narrow compass being furnished by appellant and one Ewing

T. Corson, a real estate agent. We shall not attempt to quote the testimony. A reading of the opinion of the Vice-Chancellor will indicate that he was opposed to making an order for the sale of the property because of the depressed condition of the real estate market and with the possibility of a sacrifice. We submit the Vice-Chancellor had no discretion in the matter if we brought our case within the statute.

Our insistence is that it is manifest by the testimony of the two witnesses named that a physical partition is impossible without prejudice and that the only method whereby it can be insured that the parties shall have an equal interest is by a sale and the division of the money.

The decree should be reversed, with directions for sale.

COLE & COLE,
*Solicitors for and of Counsel
with Appellant.*

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New Jersey Court of Errors and Appeals

Between

ELLA S. SCULL,
Complainant-Appellant,

and

RAE SCULL ROSECRANS,
Defendant-Respondent.

*On Appeal
from
Chancery.*

BRIEF FOR RESPONDENT.

Statement.

The bill in this case was filed for the partition of several separated and distinct tracts of land in the City of Ocean City, and for the construction of the will of the complainant's late husband, the defendant's brother, with respect to another tract of land. On the question of construction the Court below decided in favor of the defendant that she had an undivided interest in that piece of property.

On the question of partition the Court was of opinion that it did not appear that the properties could not be actually partitioned physically without great prejudice and therefore refused to order partition by sale.

The complainant appealed from the whole of the decree.

ARGUMENT.

1. The decree was right in ordering a physical partition rather than partition by sale.

The law is well settled that there cannot be a partition by sale unless it appears that a

physical partition cannot be made without prejudice. *Bentley v. Long Dock Co.*, 14 Eq. 480 (*Green, C.*, 1862). In this case a partition by sale had been ordered and an appeal from that decree was taken, and this court on appeal decreed as follows:

“The court *not being satisfied by the proofs* that the land and real estate whereof partition or sale is prayed by the bill cannot be partitioned among the owners and proprietors without great prejudice to their interest and without great loss in the value of the property, this court now order and direct that the decree of the Chancellor be reversed, and that the cause be remitted to the Court of Chancery, to the end that the said court may order a commission of partition to be issued to three commissioners, to be designated by the said court, for the partition of said lands and real estate among the owners and proprietors, according to their respective rights and interests therein; or, in case they shall be of opinion that such partition cannot be made without great prejudice to the said owners and proprietors, that they so report to the said Court of Chancery * * *”

When the case came down from the Court of Errors and Appeals it again came before the Chancellor, who, on page 487, said:

“It may be reasonably inferred that it appeared to the appellate tribunal that a property so considerable in value should not be sold against the consent of any one of the owners, unless upon evidence entirely satisfactory that a partition could not be made without prejudice to the owners; and that the most satisfactory evidence upon this point would be the report of competent commissioners, by whom the property should be viewed, and its nature, situation, and circumstances carefully examined and considered.”

and, again, on 489, said:

“Partition is a matter of right, and by the ancient practice, both at law and in equity, the partition was made, however prejudicial it might be to the interests of the parties. *Parker v. Gerard*, Ambler 136; *Warner v. Baynes*, Ambler 589; *Turner v. Morgan*, 8 Vesey 142.

“It was to remedy this evil that our statute of 1816 (Rev. Laws 597), where the commissioners reported that a partition could not be made without great prejudice, authorized the court to direct a sale of the land; and by the Act of 1846, the same power was conferred upon this court upon bills filed for partition.”

The Vice-Chancellor's opinion was affirmed by this court, *15 Equity*, 501; *Stapler v. Hollister*, 82 Eq. 7 (*Walker, C.*, 1913). This was an *ex parte* case, in which motion for a partition by sale was made on the coming in of a report by a Master to that effect. The Master found that the lands were all unimproved and unproductive city lots. In overruling the Master's conclusions and ordering actual partition, the Chancellor said:

“The act concerning partition (Comp. Stat. p. 3903, §16) provides, that if it shall appear by satisfactory proof that the land or real estate cannot be partitioned among the owners, without great prejudice to their interests, it may be ordered to be sold.

“It is obvious that these lands are susceptible of actual partition. Whether such division will greatly prejudice the interests of the owners, is the only question for adjudication. This is purely a question of fact, and must be determined upon the facts conceded and established by the evidence.

“It has been held that the circumstances which will render a partition injurious must usually relate to the land itself, and that the mere complication of the owners' interests

does not necessarily render partition injurious to the owners, or any of them."

Brown v. Garton, 86 Eq. 289 (*Walker, C.*, 1916); *Zudiak v. Szuryk*, 93 Eq. 559 (*Walker, C.*, 1922). In this case in denying an application for a decree for sale, the Chancellor said:

"The act concerning partition (Comp. Stat., p. 3903, §16), provides that when a partition of land cannot be made without great prejudice to the owners of the same the court may order a sale thereof. By the ancient practice, both at law and in equity, partition was made, however prejudicial to the interest of the parties. To remedy this our statute authorizes a sale in lieu of partition. *Bentley v. Long Dock Co.*, 14 N. J. Eq. 480.

"The power to direct partition of property by sale and division of the proceeds is statutory, and the circumstances under which it can be exercised depend upon the statutes in force in the different jurisdictions. 30 Cyc. 267. And it is incumbent on any person seeking partition by sale to show cause therefore justifying it under the statute *Ibid.* 268)."

From the foregoing authorities it is clear that unless the appellant had established that actual partition could not be made without great prejudice, then she is not entitled to a sale. The evidence, far from showing that, is clear that an actual partition can be made. The property in question is not one tract, but thirteen or fourteen different tracts, all in Ocean City. Of course some of the individual lots cannot themselves be divided between the parties. That, however, is immaterial. The testimony is that between the two tenants in common a fair division of the lots can be made. That is, some lots can be assigned to the appellant and another lot, or lots of equal value, can be given to the re-

spondent. So the appellant testified (C. 43) and so did her expert, Corson (C. 67). Of course actual partition does not call for the division between the two parties of each separate parcel or lot. On the contrary, a fair division of the whole by allocating two parcels or groups of lots of equal value to each party is all the law requires. Moreover, absolute mathematical equality is not required. Such approximate equality as can be compensated for by owelty is all that is necessary, and for that the decree appealed from provides (C. 84, l. 15).

It follows, therefore, that in decreeing actual partition the court below was right.

II.

The Vice-Chancellor was right in adjudging the respondent has an interest in the southwest nineteen feet of Lot 438, Section A, and the building thereon.

This adjudication is found in paragraph 1 of the decree (C. 80, l. 1). The question is whether the property passed under clause Fifth of the testator's will. If it did then the respondent has no interest in the property in question. On the other hand, if clause Fifth does not devise the property in question then it necessarily passes under the Eleventh clause, the residuary devise. Under this clause the testator's residuary estate was devised share and share alike to the appellant and Harriet R. Scull, the mother of the testator (C. 15, l. 3). The respondent has concededly succeeded as devisee to her mother's Harriet R. Scull's, interest in the residuary estate of Joseph I. Scull, the testator, whose will is

before the Court on this appeal. Clause Fifth reads:

FIFTH. I give, devise and bequeath unto my wife, Ella S. Scull, the properties located and known as number 755, 757, 824 and 826 Asbury Avenue; and also all my interest in the Scull-Cresse Building known as number 835 and 837 Asbury Avenue, and the lands upon which said buildings are erected, all situate in the City of Ocean City, N. J., absolutely and in fee simple."

The testator, Joseph I. Scull, and one Lewis M. Cresse became tenants in common of a tract of land on Asbury avenue. On this they proceeded to erect together a building which was known as the Scull-Cresse Building. It contained two stores on the ground floor, and an entrance to a stairway by which access was obtained to two apartments on the upper floors. This building was completed in 1913 or 1914 (C. 47) in the lifetime of Mr. Cresse.

Undoubtedly it was contemplated to add to that building, because the southwesterly end for about nineteen feet directly back from the street was left with the hollow tile exposed and the material for the completion lying on the ground. After Mr. Cresse's death Mr. Scull bought from the Cresse Estate Cresse's undivided one-half interest in the land and in the building and in the building materials lying on the land, which was the southwesterly nineteen feet of the original tract. Mr. Scull then proceeded to build on the nineteen feet. Both buildings, the original and the new building, were built by the testator's brother, Andrew Scull, who testified. The new part was finished in 1916 (C. 47). This witness, the builder, testified that there was no communication from one building to the other. There was, however, a party wall for the first nine-

teen feet, directly back from the street between the two buildings, and except for that there was no contact whatsoever. He testified that the part first completed was called the Scull-Cresse Building, and the part in dispute was referred to as the new building, (C. 51).

The testator lived two years after the completion of the new building, and he alone had anything to do with its construction (C. 54). The most northwesterly store on the ground floor had over the door the number 835 and over the door of the entrance to the upstairs were the figures 835a. No other numbers whatsoever appeared physically on the building so far as the testimony showed. Mr. Corson, however, the real estate agent who had charge of the property for renting, testified that the property in question was always known as No. 839 (C. 73). It was so described in a large number of statements of rents collected and disbursements made, sent by him to the complainant and defendant (C. Vol. 2, pp. 5 to 13 inclusive), and the number 839 was listed in the Ocean City telephone book as the address of the Jersey Central Power and Light Company, the tenant of the ground floor (C. 73).

For years, ever since Joseph Scull's death, and until the filing of the bill of complaint in this suit, the complainant acquiesced in the receipt by the defendant and her predecessor in title under the will in question of an undivided share in the rents of the property, and charged the defendant with her proportionate share of the expenses. The learned Vice-Chancellor held that this acquiescence was immaterial on the ground that the construction of a will is for the Court, no matter what the parties may agree or admit. We submit that this acquiescence is highly significant. We concede that on a pure question of law no

admission by the parties can affect the meaning of the testator's word—for instance—if a devise was to A and his heirs, it would not cut down A's interest if he admitted that he had only a life estate.

The case at bar, however, is different. It is a question of identification on the ground—in fact—of a description used in a will, which in and of itself has no particular meaning except as identified to and fitted in with the facts. Suppose, for example, there was a devise of “my homestead farm to my eldest son John” with a residuary devise to other devisees. Suppose the question arose whether or not the homestead farm included the wood lot across the state road. Surely the fact that his heirs, the residuary devisees, acquiesced in “my eldest son John” occupying the wood lot, would be evidence that the wood lot was included in the homestead.

Turning to the case at bar, the contention of the complainant is that the words “Scull-Cresse Building” include the nineteen feet, and that the limiting words “835 and 837 Asbury Avenue” should be rejected as a false demonstration. When we turn to the evidence, however, we have the testimony of Andrew R. Scull that the building in question was referred to as the new building and the part first constructed was always referred to as the Scull-Cresse Building (C. 51). On cross examination when asked:

“Q You referred to it as the new building? A Well, my brother and myself—most everybody that had any—came in contact with it—that is, in regard to anything to do with it.” (C. 51).

By “my brother” of course the witness meant the testator. This testimony is not at all contradicted. It is therefore evidence that the Scull-

Cresse Building means the old building. All of the testimony on the part of the complainant to meet this goes simply to the effect that under the circumstances the title Scull-Creese Building *ought to* cover the premises in dispute as well as the old building. When we turn to consider the street numbers the defendant's position is strengthened. There isn't a word of testimony that the premises in dispute were ever called either 835 or 837, and there is lots of testimony that they were called No. 839. If we consider all of the words in the devise, they intelligently and accurately describe and fit a specific piece of property, which piece of property excludes the tract in dispute. If we try to include in this specific devise the tract in dispute, that can be done only by eliminating from the testator's words the numbers 835 and 837. The authorities are clearly in favor of the defendant on this.

Griscom v. Evans, 40 Law, 402 (Supreme, 1878); affirmed 42 Law, 579;

Also *Kanouse v. Slockbower*, 48 Eq. 42 (Van Fleet, V.-C., 1891);

Kanouse v. Central R. R. Co., 97 Law, 185 (C. E. A., 1921).

Wherefore it is respectfully submitted that the decree be in all respects affirmed.

GEORGE W. C. McCARTER,
Of Counsel with Appellant.

October Term, 1928.

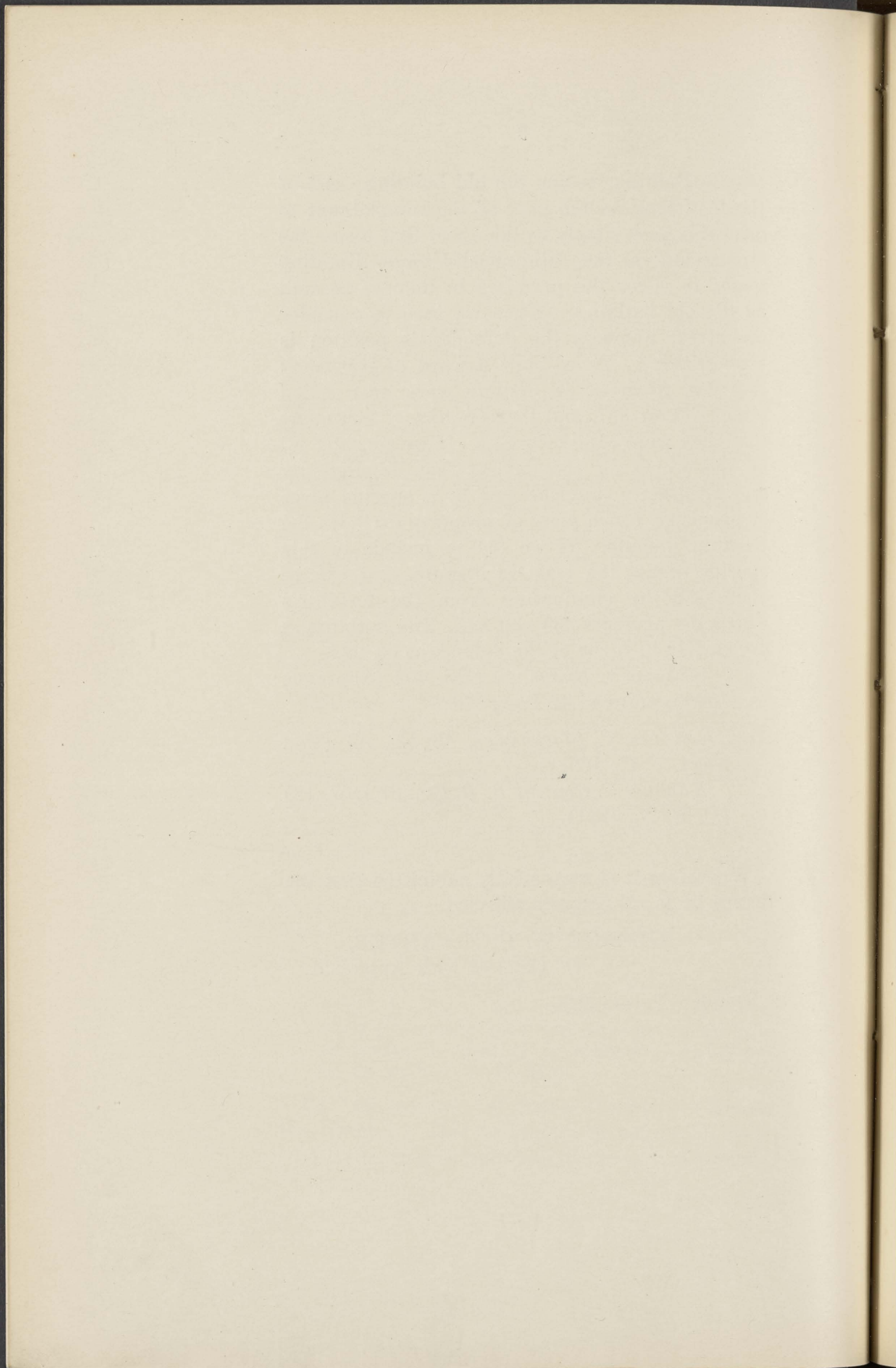


EXHIBIT C2.

5/4/28L.

THIS INDENTURE, Made the thirty-first day of October in the year of our Lord one thousand nine hundred and fourteen (1914). Between CECILIA H. CRESSE (widow) and CECILIA H. CRESSE, Executrix of the Estate of Lewis M. Cresse, Deceased, of the City of Ocean City, County of Cape May and State of New Jersey, party of the first part, and JOSEPH I. SCULL and ELLA S. SCULL, his wife, tenants by the entirety, of the City, County and State aforesaid, party of the second part: WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, their heirs and assigns, ALL her undivided one-half interest, in, of and to all that certain lot or piece of ground, situate, lying and being in the City of Ocean City, County of Cape May and State of New Jersey, being a part of lot numbered four hundred and thirty-eight (438) in Section "A" on the plant of lots of the Ocean City Association, bounded and described as follows, to wit: BEGINNING on the Southeast side of Asbury Avenue, at the distance of Three hundred and

twenty-one (321) feet Southwesterly from the Southwest side of Eighth Street; containing Southwesterly in front or breadth on said Asbury Avenue, nineteen (19) feet and of that width extending in length or depth Southeasterly one hundred (100) feet to a fifteen feet wide street. Being a part of the same premises which Joseph I. Scull, et ux, by Deed of Indenture dated the Fifteenth day of May, A. D. 1911 recorded in the Clerk's Office of Cape
10 May County, N. J. in Book No. 265 of Deeds, pages 64 &c., granted and conveyed unto Lewis M. Cresse, and the said Lewis M. Cresse died on the Tenth day of August A. D. 1914 leaving a Will dated July 1st, 1914 duly proved and probated before the Surrogate of Cape May County, N. J., August 21st, 1914 recorded in his office in Will Book "J" page 422 &c. in part, as follows: "2nd Item: I give, devise and bequeath unto my beloved wife, Cecilia H. Cresse,
20 of whatsoever kind and wheresoever situated absolutely." "3rd Item: Appoints said wife Executrix with power to sell all his real estate either at public or private sale and execute a deed or deeds therefor and to sell all his personal or mixed property and do all lawful things." TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof, and of every part and parcel thereof;
30 And Also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances; Under and Subject to the reservations and

restrictions of the Ocean City Association. TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever. And the said Cecilia H. Cresse, Widow, and Cecilia H. Cresse, Executrix, her heirs, executors and administrators does by these presents covenant, grant and agree to and with the said party 10 of the second part, their heirs and assigns, that she the said party of the first part, her heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, their heirs and assigns, against her the said party of the first part, her heirs and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, through or under her, them or any of them shall and will subject 20 as aforesaid, Warrant and forever Defend. IN WITNESS WHEREOF, the said part of the *of the* first part to these presents has hereunto set her hand and seal dated the day and year first above written.

Cecilia H. Cresse, Excx. (L. S.)

Cecilia H. Cresse (L. S.)

Signed, Sealed and Delivered

in the presence of

E. B. Pioch

30

State of New Jersey, Cape May County, ss. Be It Remembered, that on this Thirty-first day of October in the year of our Lord one thousand nine hundred and fourteen (1914), before me, a Commissioner of Deeds in and for said County and State personally appeared Cecilia H. Cresse (widow) and

Cecilia H. Cresse, Executrix of the Estate of Lewis M. Cresse, deceased) who, I am satisfied is the grantor mentioned in the above deed or conveyance and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

R. Curtis Robinson,
Commissioner of Deeds.

10 Received and Recorded this Deed, November 4,
A. D. 1914 at 9 A. M.

A. C. Hildreth,
Clerk.

STATE OF NEW JERSEY
(SEAL)

COUNTY OF CAPE MAY

20 I, A. C. HILDRETH, County Clerk, and Clerk of
the Courts of Oyer and Terminer, Quarter Sessions,
Common Pleas, and Circuit Court, in and for the
County of Cape May, DO HEREBY CERTIFY that
the foregoing is a true and correct copy of

Deed

CECILIA H. CRESSE, Ex. &c.

to

JOSEPH I. SCULL, et ux.

30 as filed and recorded, on the Fourth day of Novem-
ber A. D. 1914, in the Clerk's Office of the County of
Cape May, in Book 303 of Deeds at page 467.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of said Court, at Cape
May Court House this Third day of May A. D. nine-
teen hundred and twenty eight.

A. C. HILDRETH,
Clerk.

(Seal)

CERTIFIED COPY
 OF
 Deed
 Cecilia H. Cresse, Ex. & .
 to
 Joseph I. Scull, et ux.
 Cape May County Clerk's Office
 Cape May Court House, N. J.
 1-24-28—200

10

EXHIBIT D1.
 5/4/28L.

EWING T. CORSON
 Realtor
 757 Asbury Avenue
 Ocean City, N. J.

Member 20

Ocean City Real Estate Board
 Real Estate League of N. J.
 National Association of Real
 Estate Board

Scull Estate—#839 Asbury Ave
 January 1927

Insurance	\$42.90	
Prov. Wash. Policy #359—\$2500	19.50	
North America #216210—\$3000	23.40	30
Charles Quann Heater (Dec. & Jan.)	20.00	
Atlantic City Electric	5.16	
Wm. T. Taylor Papering 3rd fl. front apt	11.00	
Jersey Central Power & Light Co.	\$125.00	

Louisa Blatherwick		
\$45.00 3rd floor apt, front		
5.79 balance on 2nd floor apt, rear		50.79
Elsie Shearer		30.00
Advertising for apt. (3 weeks)	.75	
Commission	10.30	
Balance	115.68	
		<hr/>
		\$205.79 \$205.79

10

EXHIBIT D4.
Id.

EWING T. CORSON
Realtor
757 Asbury Avenue
Ocean City, N. J.

Member

Ocean City Real Estate Board
Real Estate League of N. J.
National Association of Real
Estate Board

20

Ella S. Scull & Rae Scull Rosecrans
1/2 interest, July 1926

Sewer Company	\$11.20	
Water Company	18.00	
Thompson		\$45.00
Bryant		15.00
Whitaker		35.00
30 Crowley		18.00
Commission	4.75	
Repairs to #734 West Ave (Bryant)	3.50	
Balance	75.55	
		<hr/>
		\$113.00 \$113.00

RSR \$37.77

ESS 37.77

EXHIBIT D6.

Id.

EWING T. CORSON

Realtor

757 Asbury Avenue

Ocean City, N. J.

10

Member

Ocean City Real Estate Board

Real Estate League of N. J.

National Association of Real

Estate Board

Ella S. Scull & Rae Scull Rosecrans

#839 Asbury Ave. July 1926

Electric Company \$4.16

Charles Quann

(Repairs to screen door) 5.29

20 Gas Company \$125.00

Mary Miller 40.00

Anna Meehan 40.00

Lida Hamilton 30.00

Elsie Shearer 30.00

Commission 13.25

Balance 242.30

 \$265.00 \$265.00

RSR 60.56

30 ESS 181.74

EXHIBIT D7.

Id.

EWING T. CORSON

Realtor

757 Asbury Avenue

Ocean City, N. J.

Member

Ocean City Real Estate Board

Real Estate League of N. J. 10

National Association of Real

Estate Board

Scull Estate, #839 Asbury Ave

February 1926

Gas Company		\$85.00	
Mould		80.00	
Meehan		40.00	
Miller		60.00	
Shearer		30.00	
Electric for Jan. & Feb.	\$5.08		20
4.08 1.00			
4 tons coal @ \$15.00	63.00		
plus \$3.00 for carting			
Commission	14.75		
Balance	212.17		
		<hr/>	
		\$295.00	\$295.00

ESS \$159.13

RSR 53.04

“It is better to have Insurance and not need it, 30
than to need Insurance and not have it.”

EXHIBIT D8.

Id.

EWING T. CORSON

Realtor

757 Asbury Avenue

Ocean City, N. J.

Member

10

Ocean City Real Estate Board

Real Estate League of N. J.

National Association of Real

Estate Board

#839 Asbury Avenue

August 1927

George C. Harr (screen for Blather-
wick apt)

\$2.00

Ocean City Sewer Co.

35.00

" " Electric Co.

1.32

20 Jersey Central Power & Light Co.

\$125.00

Mary Miller

40.00

Louisa Blatherwick

45.00

Elsie Shearer

30.00

Commission

12.00

Balance RSR.

47.42

" ESS.

142.26

 \$240.00 \$240.00

30

EXHIBIT D9.

Id.

EWING T. CORSON

Realtor

757 Asbury Avenue

Ocean City, N. J.

Member

Ocean City Real Estate Board 10

Real Estate League of N. J.

National Association of Real Estate Board

RENT ACCOUNT—OCTOBER—829 Asbury Ave.

Heater	\$5.00	
Sentinel Ledger "Ad"	1.05	
Ocean City Electric	1.98	
Jersey Central		\$125.00
Mary Miller		40.00
Blatherwick		45.00
Elsie Shearer		30.00
Commission	12.00	
Balance R. S. R.	55.00	
" E. S. S.	164.97	

\$240.00 \$240.00

EXHIBIT D10.

Id.

EWING T. CORSON

Realtor

757 Asbury Avenue

Ocean City, N. J.

Member

10

Ocean City Real Estate Board

Real Estate League of N. J.

National Association of Real

Estate Board

#839 Asbury Avenue

November 1927

	Ocean City Water Co.	\$16.34	
	Ocean City Electric Co.	4.73	
	Heater	10.00	
	Jersey Central Power & Light Co.		\$125.00
20	Mary Miller		40.00
	Elsie Shearer		30.00
	Blatherwick		45.00
	Commission	12.00	
	Balance due RSR	49.23	
	“ “ ESS	147.70	

 \$240.00 \$240.00

“It is better to have Insurance and not need it,
than to need Insurance and not have it.”

30

EXHIBIT D11.

Id.

EWING T. CORSON

Realtor

757 Asbury Avenue

Ocean City, N. J.

Member

Ocean City Real Estate Board 10

Real Estate League of N. J.

National Association of Real

Estate Board

June 3, 1925

MAY, 1925

1/2 interest

Bryant		\$15.00	
Thompson		30.00	
Commission	\$2.25		
Balance due	42.75		20
		<hr/>	
	\$45.00	\$45.00	

ESS \$21.38

RSR \$21.38

“It is better to have Insurance and not need it,
than to need Insurance and not have it.”

Rec'd. 6/9/25.

EXHIBIT D13.

5/10/28. L.

THIS INDENTURE, Made the fifteenth day of May in the year of our Lord one thousand nine hundred and eleven (1911). Between JOSEPH I. SCULL and ELLA S., his wife, of the City of Ocean City, and County of Cape May and State of New Jersey, party of the first part, and LEWIS M. CRESSE, of the City of Ocean City, County of Cape May and State of New Jersey, party of the second part: WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollars (\$1.00) lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain undivided one-half interest of, in and to the lots or pieces of ground, situate, lying and being in the City of Ocean City, County of Cape May and State of New Jersey, numbered Four hundred and thirty-six (436) and Four hundred and thirty-eight (438) in Section "A," on the plan of lots of the Ocean City Association, bounded and described as follows, to wit:—BEGINNING on the Southeast side of Asbury Avenue, two hundred and eighty (280) feet Southwesterly from the Southwest side of Eighth Street, containing together in front or breadth Southwesterly on Asbury Avenue, sixty (60) feet

(each lot being thirty (30) feet wide) and of that width extending in length or depth Southeasterly one hundred feet (100) to a fifteen feet wide street. Being a part of the same premises which Harriette E. Moore, by deed of indenture dated the Ninth day of June, A. D. 1910, recorded in the Clerk's Office of Cape May County N. J., in Book No. 245 of Deeds, pages 412 &c., granted and conveyed unto the said Joseph I. Scull, his heirs and assigns forever, under and subject to the reservations and restrictions of the Ocean City Association. TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof, and of every part and parcel thereof; And Also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances; TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever. And the said Joseph I. Scull, for himself, his heirs, executors and administrators, does by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he the said Joseph I. Scull, his heirs all and singular, the hereditaments and premises, herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him the said Joseph I. Scull his heirs, and against all and every other per-

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son or persons whomsoever lawfully claiming or to claim the same, or any part thereof, by, from, through or under him, them or any of them, Shall and Will subject as aforesaid Warrant and forever Defend. IN WITNESS WHEREOF, the said party of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Joseph I. Scull (Seal)

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Ella S. Scull (Seal)

Signed, Sealed and Delivered
in the presence of
James M. Chester

State of New Jersey, Cape May County, ss. Be It Remembered, that on this Fifteenth day of May in the year of our Lord one thousand nine hundred and eleven (1911), before me, a Commissioner of Deeds in said County and State personally appeared Joseph I. Scull and Ella S. Scull, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the said Ella S. Scull, being of full age, on a private examination apart from her said husband, before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

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James M. Chester, Comm. of Deeds.

Received and Recorded this Deed May 17th, A. D.
1911 at 9 A. M.

A. C. Hildreth, Clerk.

STATE OF NEW JERSEY.

(SEAL)

COUNTY OF CAPE MAY.

I, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of

Deed

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JOSEPH I. SCULL, *et ux*,

to

LEWIS M. CRESSE,

as recorded, on the 17th day of May, A. D. 1911, in the Clerk's Office of the County of Cape May, in Book 265 of Deeds at page 64.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Cape May Court House, this Eighth day of May, A. D. nineteen hundred and twenty-eight.

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A. C. HILDRETH,

(Seal)

Clerk.

(COVER)

CERTIFIED COPY

OF

Deed

Joseph I. Scull et ux.

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to

Lewis M. Cresse

CAPE MAY COUNTY CLERK'S

OFFICE

Cape May Court House, N. J.

1-24-28—200.

EXHIBIT D14.

5/10/28. L.

10 THIS INDENTURE, Made the first day of October in the year of our Lord one thousand nine hundred and twenty. Between ELLA S. SCULL, widow, and CECELIA H. CRESSE, widow, both of City of Ocean City, County of Cape May, State of New Jersey, party of the first part, and ADAM J. HERBOTT, of the City and County of Philadelphia and State of Pennsylvania, party of the second part; WITNESSETH, that the said party of the first part, for and in consideration of the sum of Twenty-thousand Dollars (\$20,000.) lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensembling and delivery of these presents, the receipt whereof
20 is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain premises situate in the City of Ocean City, County of Cape May and State of New Jersey, being known as lot number four hundred and thirty-six (436) and the Northeasterly eleven (11) feet of lot number four hundred thirty-eight (438) in Section A on Plan of the Ocean City Association, bounded and described as follows:
30 BEGINNING in the Southeasterly line of Asbury Avenue two hundred eighty feet (280) Southwardly from the Southwesterly line of Eighth Street, extending thence Southwestwardly along said line of Asbury Avenue forty-one feet (41) in

front or breadth; and of that width extending South-eastwardly between lines parallel with Eight Street one hundred feet (100) to a fifteen feet (15) wide street. Being the same premises of which Lewis M. Cresse and Joseph I. Scull, were seized of an estate in fee in equal shares as tenants in common. The said Lewis M. Cresse departed this life August 10th, 1914, leaving a last will and testament dated July 1st, 1914 duly probated by the Surrogate of the County of Cape May, New Jersey, August 21st, 1914 and of record in said Surrogate's Office in Book "J" of Wills, page 422 etc., wherein he gave, devised and bequeathed all of his estate, which included his one-half interest in the premises aforesaid, unto his wife, Cecilia H. Cresse, one of the parties of the first part hereof, absolutely, the said Joseph I. Scull departed this life April 6th, 1918 leaving a last will and testament dated January 26th, 1917 duly probated by the Surrogate aforesaid April 18th, 1918 and of record in said office in Book . . . of Wills, page . . . wherein he did, by the fifth clause thereof, give, devise and bequeath unto his wife, Ella S. Scull, one of the parties of the first part hereto, all his interest (which was an undivided one-half interest as aforesaid) in the premises hereby conveyed and described in said will as "the Scull-Cresse building known as numbers 835 and 837 Asbury Avenue, and the lands upon which said buildings are erected," absolutely and in fee simple. Under and Subject to the reservations and restrictions of the Ocean City Association. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel

thereof; And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances. TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part, for themselves, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said party of the first part, their heirs all and singular the hereditaments and premises hereinbefore described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them the said party of the first part, their heirs and against all and every other person or persons, whosoever lawfully claiming or to claim the same or any part thereof, by, through, from or under him, them or any of them, shall and will subject as aforesaid warrant and forever defend. IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Ella S. Scull (L. S)

Cecilia H. Cresse (L. S.)

30 Signed, Sealed and Delivered
 In the presence of
 Words "of" on the 18th line
 and "July" on 24th line from
 bottom of page one, written
 over erasure, and erasure made
 following word "heirs" in the

4th and 7th lines of the covenants, all before execution.

“Executors and” in first line of covenant written over erasure before execution.

J. Fithian Tatem.

State of New Jersey, Cape May County, ss. Be It Remembered, that on this first day of October in the year of our Lord one thousand nine hundred and twenty, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Ella S. Scull, widow, and Cecilia H. Cresse, widow, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified. 10

J. Fithian Tatem, M. C. C. of N. J.

\$20.00 U. S. Int. Rev. Stamp.

Received and Recorded this Deed October 5th, A. D. 1920 at 2 P. M. 20

A. C. Hildreth, Clerk.

STATE OF NEW JERSEY.

(SEAL)

COUNTY OF CAPE MAY.

I, A. C. HILDRETH, County Clerk, and Clerk
of the Courts of Oyer and Terminer, Quarter Ses-
sions, Common Pleas, and Circuit Court, in and for
the County of Cape May, DO HEREBY CERTIFY
that the foregoing is a true and correct copy of

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Deed

ELLA S. SCULL, *et al.*,

to

ADAM J. HERBOTT,

as recorded on the Fifth day of October, A. D. 1920,
in the Clerk's Office of the County of Cape May, in
Book 348 of Deeds at page 335.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of said Court, at Cape
May Court House, this Eighth day of May, A. D.
20 nineteen hundred and twenty-eight.

A. C. HILDRETH,

(Seal)

Clerk.

(COVER)

CERTIFIED COPY

OF

Deed

Ella S. Scull et al

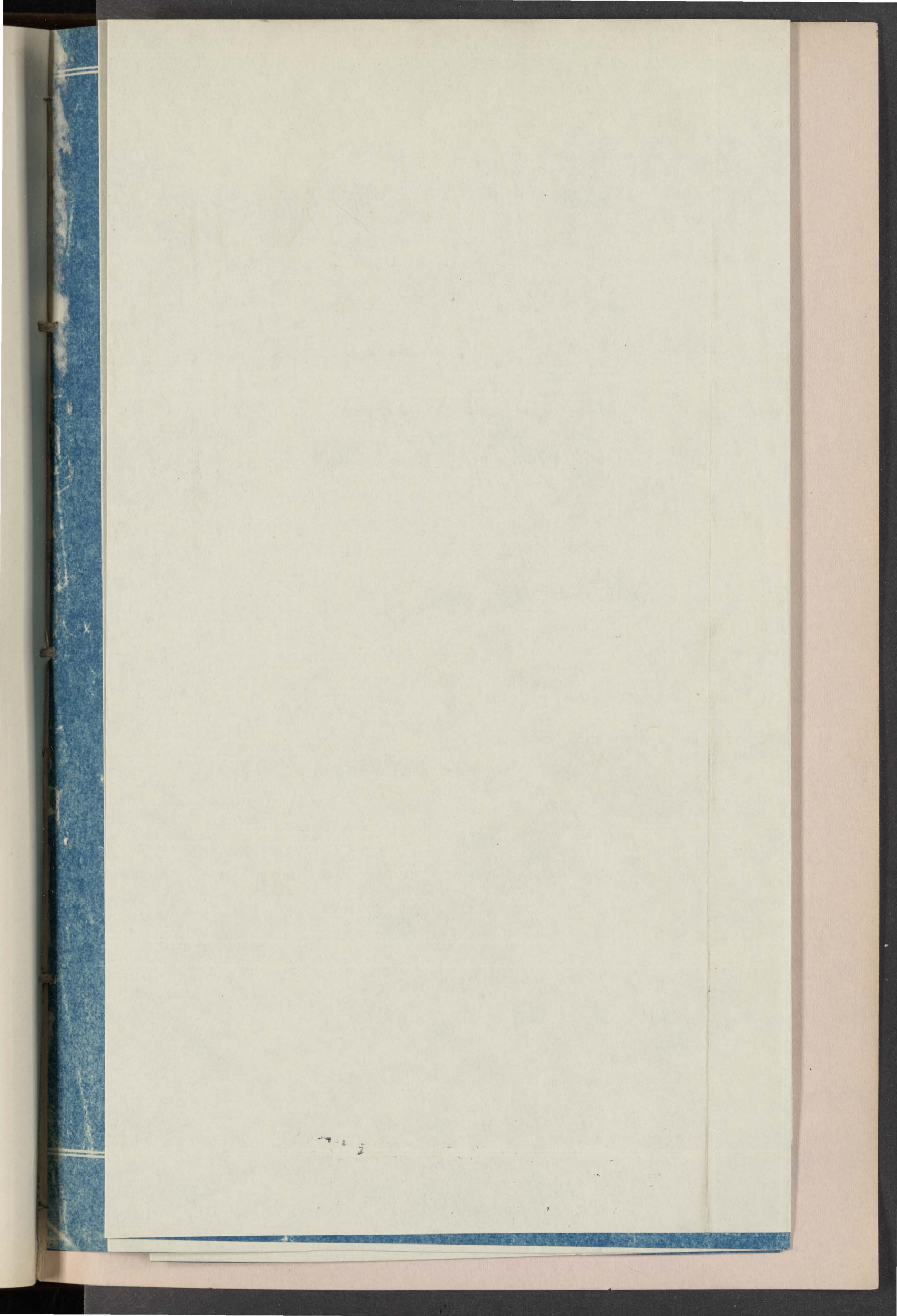
to

Adam J. Herbott

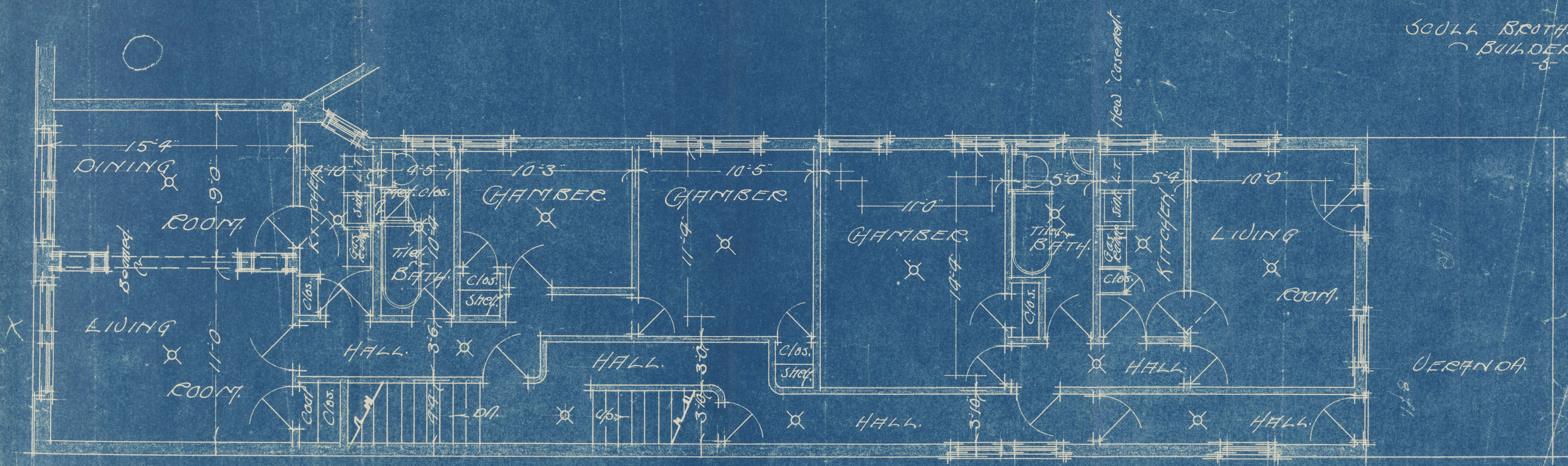
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CAPE MAY COUNTY CLERK'S
OFFICE

Cape May Court House, N. J.



SCOLL BROTHERS,
BUILDERS.
-3-



SECOND STY. PLAN.

"Verify all dimensions at the Bldg."

Scale 1/4 in. = 1 ft.
April 5, 1916.
Street No. Two

