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COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Daniel B. Naphas, of Philadelphia, Pennsylvania, respectfully shows: 10

1. On January 13th, 1918, Elizabeth C. Naphas, wife of complainant, died at Glendora, Camden County, New Jersey, intestate, leaving to survive her, her husband, the complainant and their five children, namely, William Naphas, Elizabeth Gue-tens, Samuel W. Naphas, Joseph Naphas and Harry Naphas, their next of kin and heirs at law.

2. The said Elizabeth C. Naphas was at the time 20
of her death seized in fee simple of the following
real estate, situate at Glendora, Camden County,
New Jersey:

First Tract: BEGINNING at a point, Eighty
feet North of Northwest corner of Thirteenth
and Glendora Avenues, thence North along
West Line of Glendora Avenue, one hundred
and sixty feet to a point thence (2) West at
right angles with Glendora Avenue one hun-
dred feet to a point thence (3) Southerly paral- 30
lel with Glendora Avenue one hundred and sixty
feet, thence (4) East at right angles to Glen-
dora Avenue one hundred feet to the point and
place of beginning.

Known as Lots Nos. 279-300-451 and 452 on
Plan of Lots No. 2 of Glendora.

BEING the same tract of land and premises

thereon which was granted and conveyed by William Weber and Emma, his wife, to the said Elizabeth C. Naphas in fee simple by deed dated October 13th, 1909, and recorded October 20th, 1909, in the office of the Register of Deeds of Camden County at Camden in Deed Book No. 342, Page 142, &c.

10 Second Tract: BEGINNING at the Southeast corner of Central Avenue and Magnolia Avenue, thence South one hundred and sixty feet, thence West one hundred and twenty feet, thence North one hundred and sixty feet, thence West one hundred and twenty feet. Being lots 467-468 and part of lot 466 in Section "N" of Plan of lots of Glendora.

20 BEING the same tract of land and premises which was granted and conveyed in fee to the said Elizabeth C. Naphas by Charles Gilbert Beans, et ux., by deed dated December 22nd, 1917 and recorded in the Register of Deeds Office aforesaid January 10th, 1918 in Deed Book No. 422, Page 536, &c.

30 Third Tract: BEGINNING at a point eighty feet, ten inches West from the Southwest corner of Glendora and Magnolia Avenue, thence along Magnolia Avenue Westwardly one hundred twenty-one feet to a point, thence South one hundred seventy-four feet more or less to a point, thence East one hundred feet, thence North one hundred forty-seven feet to the point and place of beginning.

Being portions of lots 463-464 and 465 in Section "N", Glendora plan of Lots.

BEING the same land and premises which was granted and conveyed in fee to the said Elizabeth C. Naphas by John R. Sinkinson and Lena H., his wife by deed dated August 3, 1910,

and recorded in the office of the Register of Deeds aforesaid in Deed Book 347, Page 516, &c.

Elizabeth C. Naphas at the time of her death was seized in fee simple of the following real estate situate in the County of Philadelphia, State of Pennsylvania, is described as follows:

ALL THAT CERTAIN lot or piece of ground with the three-story brick messuage or tenement thereon erected, situate on the northwest corner of Front and Siegel Streets in the First Ward of the City of Philadelphia, containing in front or breadth on the said Siegel Street seventeen feet and extending of that width in length or depth northward along the west side of the said Front Street forty-two feet, six inches.

BEING the same land and premises which was granted and conveyed in fee to the said Elizabeth C. Naphas by Wharton Building Association, No. 3, a corporation, by deed dated June 25th, 1901, and recorded in the office of the Recorder of Deeds for the County of Philadelphia and State of Pennsylvania in Deed Book, J. V. 299, Page 67, etc.

All of the above described tracts were at the time of the decedent's death and now are improved stores and dwellings being erected thereon.

3. Complainant is entitled to a life interest in all of said real estate, but his five children above named, who are made defendants herein, have excluded him from any enjoyment, possession or control over said real estate or any part thereof and have since the death of their mother, the aforesaid, despite the repeated demands of the complainant occupied portions of said real estate to the exclusion of the com-

plainant and have rented remainder of said real estate to tenants, collecting all the rentals therefrom and have refused and still refuse to account to the complainant therefor.

Complainant is without adequate remedy in the courts of law and therefore prays that:

1. William Naphas, Elizabeth Guetens, Samuel
10 W. Naphas, Joseph Naphas and Harry Naphas, the five children who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the rents, issues and profits of and the value of the use and possession of said premises due complainant.

3. That the defendants or some of them may be
20 decreed to pay complainant the amount so found due with interest and costs, by a short day to be appointed by this court.

4. That the defendants be enjoined and restrained from further interfering with the complainant's rights and possession of the said premises.

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

JOHN D. McMULLIN,
*Solicitor for and Counsel
with Complainant.*

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between DANIEL B. NAPHAS, <i>Complainant,</i> and WILLIAM NAPHAS, et al., <i>Defendants.</i>	}	On Bill, etc. Answer.	10
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The defendants, William Naphas, Elizabeth Gue-
 tens, Samuel W. Naphas, Joseph Naphas and Harry
 Naphas, of Glendora, Camden County, N. J., say
 that: 20

1. They admit paragraph 1 of the bill.

2. They deny paragraph 2 of the bill, and say
 that the property held in the name of Elizabeth C.
 Naphas was held by her as trustee for these defen-
 dants, and that the said Elizabeth C. Naphas had
 no interest whatsoever in said premises.

3. They deny paragraph 3 of the bill. 30

4. These defendants by way of further answer
 say that, if the said Elizabeth C. Naphas did in her
 lifetime own any real estate, that the complainant
 would not be entitled to any right of courtesy or
 other interest in said premises, for the reason that
 the said complainant had not provided for his said

wife, but had deserted her for a period of more than twenty years, by reason whereof said premises were the separate and entire property of the said Elizabeth C. Naphas.

5. These defendants by way of further answer say that this court has no jurisdiction to consider or make any order concerning rents, issues and profits of, and the value of the use and possession of
 10 any real estate, not located within the State of New Jersey.

These defendants beg to be dismissed with their costs most wrongfully sustained.

OSCAR B. REDROW,
Attorney for Defendants.

REPLICATION.

20

IN CHANCERY OF NEW JERSEY.

Between

DANIEL B. NAPHAS,

Complainant,

and

WILLIAM NAPHAS, et al.,

Defendants.

} Replication.

30

The complainant joins issue on the answer of the defendants.

JOHN D. McMULLIN,
Solicitor for Complainant.

AMENDMENT TO BILL.
IN CHANCERY OF NEW JERSEY.

Between
DANIEL B. NAPHAS,
 Complainant,
 and
WILLIAM NAPHAS and
others,
 Defendants.

} Amendment to Bill. 10

This cause coming on for final hearing before Robert H. Ingersoll, and application being made by defendants to dismiss the bill upon the ground that it appears from the face of the bill that complainant has an adequate remedy at law and it appearing that defendants have answered the bill and have not heretofore raised the objection upon which they now insist; and counsel for complainant praying leave to amend bill: 20

It is, on this twelfth day of November, 1925, ordered, that complainant have leave to amend his bill by adding thereto at the end of page 3 thereof the following: 30

“4. The accounts between complainant and the said defendants cover four properties consisting of a great many items of charge and discharge requiring a discovery of numerous documents, receipts, leases and other writings in the possession of the defendants or some of

them, wherefore the complainant's remedy at law would be inadequate.

5. Should the plaintiff attempt to find relief in the premises by suits at law, it would be necessary for him to maintain four or more suits, partly in New Jersey and partly in Pennsylvania and after the termination of said suits the court of equity would still be required for discovery and an accounting."

10 and by adding on the fourth page of said bill an additional prayer as follows:

"1½. That said defendants make discovery and produce to the court all books, receipts, leases and papers of every character relating to the disbursements and receipts on account of said properties from the date of the death of Elizabeth C. Naphas."

and the bill is hereby amended accordingly.

Respectfully advised.

20

30

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between DANIEL B. NAPHAS, <i>Complainant,</i> and WILLIAM NAPHAS, et al., <i>Defendants.</i>	} On Bill, &c. Final Hearing.	10
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Camden, N. J., November 12, 1925.

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TESTIMONY

Before HON. R. H. INGERSOLL, Vice-Chancellor.

APPEARANCES:

For complainant, JOHN D. McMULLIN, Esq.
For defendants, OSCAR B. REDROW, Esq.

30

Mr. McMullin: If the Court pleases, an intimation made yesterday there might be an attack on the standing of the bill in equity. I have prepared an amendment in which I state no new facts, but

amplify the wording in some instances. I submitted it to counsel.

The Court: Any objection to the filing?

Mr. Redrow: The situation is I don't want to be placed in an embarrassing position, if it necessitates the filing of an answer or if it is necessary to obtain additional proofs to meet that, I would like to have
10 that opportunity.

The Court: You may have that opportunity, of course. It will be permitted to be filed then and we will proceed, assuming that it has been answered.

Mr. Redrow: On that line, I contemplate that this is filed by reason of the fact that I got in touch with Mr. Curley—I mailed a letter to Mr. McMullin and it was mailed to the wrong address and came
20 back to me and I went down to see Mr. Curley, who was also associated in the case with McMullin—that there was two things in this case that the Court perhaps should consider before taking up the testimony. The first question would arise from the pleadings as they were and as they are now, as I understand it, the complainant in this case has set forth in the complaint as being the husband of a woman who has died and who owned property not only in New Jersey but also in Pennsylvania and he
30 undertakes to ask for an accounting against the defendants, one of whom resides in California, not only for the New Jersey property but also for the Pennsylvania property. My understanding of the test in this sort of case is this, that the accounting can only be demanded or requested in the same jurisdiction in which an ejectment will lie and, if

that is the test, then there can be no accounting as far as the Pennsylvania property is concerned. The other question is that the bill sets forth that the complainant is the husband of the woman who owned this property and by reason of his legal rights, courtesy right, of course, would have been entitled to possession of the property. Now, then, our contention, as far as that is this, and I have been unable to find any bill where any accounting has ever been demanded, where a complainant or a person has a legal remedy and certainly he has had a legal remedy from the time from January, 1918, until the present time, that he must exercise that legal remedy and simply because he defaults in doing that or waits for a period perhaps of seven or eight years, the Court of Equity will not grant him the relief that he requests simply because, being entitled to the property, he has not maintained his ejectment suit and taken possession. Those things, it seems to me, are matters that should be considered before the taking of testimony, or, as your Honor may see fit.

The Court: What have you to say, Mr. McMullin, as to the accounting for the Pennsylvania property?

Mr. McMullin: That question is properly raised by Mr. Redrow at this time because it is in his answer. I understand that an accounting is not an action in rem. It is in no sense an action regarding the property. If this Court has jurisdiction of the parties, it necessarily follows that it is the proper forum to enforce any rights which the parties may have. The mere fact that the rights arise out of a piece of real estate has nothing to do with it, same way as an agreement of the sale of land, the land could be in Philadelphia, the parties may be in Cal-

fornia, but if this Court, by any means, obtained jurisdiction by service on the parties or by acceptance of service, this Court would decide that question although the land at issue was in Pennsylvania and there are ample cases which hold to that effect. That, as I say, is raised. All I can say for the defendant in California, who was not served with process but for whom process was acknowledged, had that defendant raised the question of lack of jurisdiction, it would avail him, I suppose. I take it he has waived it by not raising it earlier. So far as the other defendants, who are served here, who were actually physically in the jurisdiction of the court, I don't take it they can raise the question, of course, the moneys received by them were received by them out of real estate in Philadelphia, therefore this court has no jurisdiction. In fact it would be remediless in Philadelphia on an accounting suit because we could not get personal action and could not get personal service.

Now, on a question as to the right to account in this court, in the first place, as I understand it, the Court of Chancery has concurrent jurisdiction with the law courts on all matters of accounting. The Court of Chancery will not exercise that jurisdiction excepting at its discretion and, as it is not particularly anxious to do more than its share of the work, it don't exercise that where there is a plain and adequate remedy at law. In this case, however, there appears on the pleadings there are four properties, three in New Jersey, one in Pennsylvania. Should this court not take jurisdiction, it would be necessary for the complainant to bring four ejectment suits, because, under the law practice it is impossible to combine these three New Jersey properties into one. There are four ejectment suits. His remedy, of course, in ejectment would be for

accounting for mesne profits. Some of them may show a profit and some may show a loss. The accounts would be intermingled and naturally running over, as they do, a period of seven years, they would be intricate, so, because of the difficulty of the accounting, because the accounting can be done better by this court than it could in four separate suits in a court of law, because of the multiplicity of actions, because, after all, it is a subject of account, and because all of the evidence is in the hands of the defendants, so as to require discovery, I maintain the Court should take jurisdiction of this cause. 10

Besides which an answer was made on the merits. Some couple of months has expired since the answer was filed and this is the first time when this question has been raised and I think after the witnesses are in court it is rather late to do that.

The Court: The only question in my mind is whether I want to take the accounting or whether I want to refer it to a master. 20

Mr. McMullin: It will be referred to a master. I don't understand the accounting will be yours. If you should decide to take jurisdiction of the case and if you should decide, after hearing the case, an accounting should be taken, the Court will simply order an accounting be taken and the reference be made.

Mr. Redrow: The difficulty of this proposition is this, that I think Mr. McMullin, the Court and myself all agree that the action for ejectment in the Pennsylvania property would necessarily have to be brought in Philadelphia where the property is located. Now, then, there is no allegation that the complainant is in possession of that property in 30

Philadelphia and until he is in possession of it there isn't anything before this Court to say whether or not he is entitled to possession of it. As a matter of fact, the Act of 1852 of the State of Pennsylvania provides that he is not entitled to any rights at all in that property. It would seem to me that would be a controlling proposition. How can this court in New Jersey undertake to account or force people to account for rents, profits, &c., of the property in Pennsylvania, where the courts of Pennsylvania might determine that the person who may be seeking the account has no property interest in it whatsoever? I have a case on that if the Court wishes.

The Court: Yes, I want to see that, but I will hear such testimony as you have here today upon the question, reserving both of the motions.

20

Mr. Redrow: There is one thing I would like to do—I haven't spoken to Mr. McMullin about it—last week I started to go over this case; I don't recall what day it was and I prepared a notice and sent the notice and copy to Mr. McMullin and the letter was addressed, instead of Philadelphia it was addressed to Camden and came back on Tuesday of this week. That was, I understand, my mistake, and I went down to see Mr. Curley, who is also on the papers and left it there and I thought maybe he would be good enough to acknowledge service for me and yesterday I saw him and he says, "Well, you can serve it on me but I would rather not acknowledge service; you better get in touch with Mr. McMullin." Are you willing to acknowledge that this notice was served or require proof?

Mr. McMullin: I am willing to take your statement as being correct, don't require proof of what you said, no.

Mr. Redrow: If no objection I would like to have this notice filed as a matter of record.

The Court: You may file it. Hasn't that question been raised before?

10

Mr. McMullin: That was an earlier case brought between the parties where Mr. Curley represented the complainant, a bill for partition, and when I got into the case I filed this bill for an accounting.

The Court: The other motion was denied five months after you filed this bill.

Mr. McMullin: That is correct. What happened there was this earlier suit for partition between the same parties was brought and Mr. Curley represented the complainant and I, without knowledge of the pendency of that suit, brought this suit, whereupon Mr. Redrow moved to dismiss the present suit on the ground that there was a prior suit pending.

20

The Court: That explains it.

Mr. McMullin: That was discontinued and this remains.

30

Mr. Redrow: I had forgotten that myself.

Mr. McMullin: Your Honor please, the answer admits that Elizabeth C. Naphas died on January thirteenth, 1918, intestate, leaving to survive her the complainant, her husband, and their five chil-

dren, William Naphas, Elizabeth Hobbins, Samuel W. Naphas, Joseph Naphas and Walter Naphas. I will ask for the production of deed record book 342, page 142, Camden County, deed of William Webber, covering the first property described in the bill.

(Deed admitted and marked Exhibit C1.)

(Call for a deed from Charles Gilbert Maines and
10 wife recorded in this county in book 422, page 536.)

Mr. Redrow: I haven't got it, 347-516 seems to be the only one I have.

Mr. McMullin: This is for lots 467, 468 and part of 466. I will have the record book brought up. I call for the production of the third deed mentioned in the bill from John B. Sinkinson and wife to Elizabeth C. Naphas recorded deed book 347, page 516.

20

(Deed admitted and marked Exhibit C2.)

(Call for deed from Wharton Building Association to Elizabeth C. Naphas recorded in deed book JD 99, page 67.)

(Deed produced, offered and marked Exhibit C3.)

I asked the surrogate to bring up the applications
30 for letters of administration on this estate from downstairs.

WILLIAM NAPHAS, SWORN.

Direct examination.

By Mr. McMullin:

Q. Mr. Naphas, you are one of the defendants in this cause?

A. I believe so.

10

Q. Where do you reside?

A. Glendora, New Jersey.

Q. Are you familiar with these lots 279, 300, 451 and 452, plan 2 of Glendora?

A. Beans property, Beans ground?

Q. Yes.

A. I am.

Q. What is the character of the ground?

A. Vacant, these lots.

Q. Those lots are vacant?

20

A. Lots.

Q. No dwellings or houses on them?

A. No.

Q. Are you familiar with the properties at the southeast corner of Central Avenue and Magnolia Avenue, being lots 467 and 468 and part of 466 in section M, of Glendora plan?

A. Magnolia—wait a minute, now; them first mentioned are they Beans or were they Sinkinson's?

Q. The first I mentioned were Webber.

30

A. Webber, that is right; they are vacant too, and the lots you are speaking of last they are Beans, purchased off of Beans, see what I mean? They are vacant.

Q. They are vacant?

A. Yes, nothing on them at all only shrubbery.

Q. Are you familiar with lots 463, 464 and 465?

They are the lots purchased from Sinkinson at the corner of Glendora and Magnolia Avenue?

A. There is none there owned by mother, not right on the corner.

Q. No, eighty feet, ten inches west from the southwest corner Glendora and Magnolia.

A. Yes, you are right there.

Q. What is the character of those lots?

A. Vacant.

10 Q. They are vacant also?

A. Yes, sir; three different purchases they are, see, along there; you got three purchases there?

Q. Yes.

A. One house there; I don't want to get wrong on this, there is four lots, if I remember, attached to that, on that same property there, and then there is three lots bought that have no property and then there is another purchase made through Beans that has no property attached.

20 Q. Which of these properties described in the bill has a house on it?

A. The number of the lots I just can't place in memory.

Q. Who was the property bought from that has the house on?

A. Webber; they are 165 feet off of Magnolia Avenue on Glendora Avenue.

Q. Where is the house?

A. On Glendora Avenue.

30 Q. With reference to what other street?

A. No other street.

Q. What is the nearest side street to it?

A. Thirteenth Avenue.

Q. And that house is built on four lots?

A. On four lots.

Q. And that is the property which was conveyed by William Webber and Emma?

A. Yes.

Q. To Elizabeth C. Naphas in 1909?

A. Right about then.

Q. And it is the first property mentioned in the bill?

A. First property bought.

Q. And it is the first one mentioned in these papers? You have seen the bill?

A. I don't know about that; I haven't seen the papers.

10

Q. I show you Exhibit C1 and ask you to look at the description and say whether that is the property which has the house on?

A. Yes.

Q. What is the character of the house?

A. In what light do you wish to know?

Q. What is it built of?

A. Wood; frame.

Q. How many rooms?

A. Six rooms and a bath.

20

Q. Got city water?

A. City water? Absolutely no.

Q. Who occupies it at the present time?

A. People by the name of Tates.

Q. From whom do they rent?

A. From me.

Q. What rent do they pay?

A. Twenty-five dollars.

Q. A month?

A. A month.

30

Q. How long have they been in possession?

A. Well, that is something I couldn't answer just how long.

Q. At the time of your mother's death who occupied that property?

A. Several different people.

Q. I say at the time your mother died, who occupied it?

A. At the time she died people by the name of Cramps occupied it, I believe, at fifteen dollars a month.

Q. Has it been rented regularly since your mother's death?

A. Off and on.

Q. By you?

10 A. By me.

Q. Rents received by you?

A. Rents received by me.

Q. Did you give any of the rents to your father?

A. No, sir.

Q. Made any accounting to him at all?

A. No.

Q. You contend your father has no interest at all in it?

20 Mr. Redrow: I object.

The Court: Sustain the objection.

Q. Did you divide the rents with the other five children?

Mr. Redrow: I object.

The Court: I will permit that question.

30

A. No, sir.

Q. What did you do with them?

A. Held them in trust.

Q. Still have them?

A. Still have them in trust.

Q. Paid taxes out of them?

A. Paid taxes on them.

Q. The Philadelphia property is covered by Exhibit C4, what does that property consist of?

A. Three-story brick corner house.

Q. That been rented since your mother's death?

A. Been rented off and on.

Q. What rent do you get for it?

A. Various from fifteen dollars on up to thirty-five, minus the real estate, you know, charges for collecting rents.

Q. Who made the lease for that house? 10

A. Who made the lease for it? What do you mean, who rented it?

Q. Yes.

A. I did.

Q. Collected the money?

A. I collect the rents.

Q. What did you do with that money?

A. Held it in trust.

Q. Trust for whom?

A. That is for the heirs of the property when they would be settled and to pay the expenses of running the property. 20

Q. By the heirs of the property whom do you mean?

A. Well, the children, who the property belongs to.

Q. But not your father?

Mr. Redrow: I object.

30

The Court: Permit it.

A. I might say—

(Question repeated.)

A. No, sir.

Mr. McMullin: If your Honor please, subject to the right to put in evidence the application for letters in this estate when the surrogate brings them up and, unless counsel will agree as to the missing deed and the production of the deed book from downstairs, the complainant rests.

The Court: They are both formal matters.

10 Mr. Redrow: Only objection I have, there is no proof in this case at this time that the person who owned these properties is the widow or is the woman—

Mr. McMullin: It is admitted by the answer.

Mr. Redrow: I don't think so.

The Court: Yes, you admit paragraph one, which
20 alleges Elizabeth C. Naphas, wife of complainant, died leaving surviving her husband, the complainant and their five children, naming them, and then, the said Elizabeth C. Naphas was, at the time of her death, seized in fee simple of certain property. You deny paragraph two and say the property held by Elizabeth C. Naphas was held by her as trustee, I think that is an allegation, it is the same, involves an admission. But you deny that she, at the time of her death, held in fee simple. You allege held by
30 her as trustee.

Mr. Redrow: That was as I read the answer, if there was any property owned by her it was held by her as trustee.

DANIEL B. NAPHAS, sworn for defendants.

Direct examination.

By Mr. Redrow:

Q. Mr. Naphas, you are the complainant in this case, aren't you?

A. What is that?

10

Q. You are the complainant in this case?

A. I am the complainant?

Q. Yes.

A. I think I am.

Q. Where do you live?

A. Me live now?

Q. Yes.

A. 2143 South Second Street.

Q. Philadelphia?

A. Philadelphia.

20

Q. How long have you lived there?

A. Lived there about three years now, I guess.

Q. Where did you live before that?

A. Oh, I lived all over; I move with my jobs.

Q. Beg pardon?

A. I sometimes board, and sometimes live there.

Q. Where did you live before?

A. 103 Mervine Street.

Q. How long did you live there?

A. Five years.

30

Q. Five years?

A. Yes.

Q. Where did you live before that?

A. What say?

Q. Where did you live before that?

A. Where did I live before that?

Q. That is right, before you moved to Mervine Street, where did you live?

A. Before I moved to Mervine Street? Let's see, where did I live? I got to guess it up now. On Second Street and Mervine.

Q. Second and Mervine?

A. Yes, sir.

Q. How long did you live there?

A. Oh, I couldn't tell you the exact time, two or
10 three years, maybe.

Q. Where did you live before you lived at Second and Mervine?

A. Wait a minute; I made a mistake. I lived on Second Street at Mrs. Carr's restaurant, roomed there.

Q. Who?

A. Mrs. Carr; I don't know the number.

Q. How long did you live there?

A. About three years, something like that, four
20 years.

Q. Lived at Mrs. Carr's restaurant, did you say?

A. Yes, Mrs. Carr's restaurant; that is before I went to Second and Mervine, see; I forgot her, Mrs. Carr.

Q. How long did you live there?

A. About three years; Second and Mervine, about two or three years.

Q. That is on Mervine Street or Second Street?

A. Southeast corner Second and Mervine.

30 Q. Where did you live before that?

A. Where did I live before? Got me guessing now. I want to tell the truth. I move around to my jobs. As near as I get at it Mrs. Annie Heston's, Rosewood Street.

Q. Lived at Dannie Heston's?

A. Annie Heston's, Rosewood Street, right above Porter.

Q. On what street?

A. Rosewood Street. That is where I first went when I got turned down.

Q. Just above Porter, is that right?

A. Yes.

Q. How long did you live there?

A. About three or four years, maybe longer than that.

Q. Where did you live before that?

A. I haven't got my dates down, just telling you, 10 I lived there about three or four years.

Q. Where did you live before that?

A. Home.

Q. You lived home?

A. Yes.

Q. Where is your home?

A. Front and Segal.

Q. Who did you live with?

A. My wife.

Q. How long had you lived there with her at Front 20 and Segal?

A. Well, I haven't got the dates down, but a good many years.

Q. Did you always live there with her?

A. I always lived there with her, yes.

Q. You didn't live any other place except Front and Segal with her?

A. We lived Mervine Street. You didn't ask me that. You asked me where I lived. I lived 120 Mervine Street, that is another house. 30

Q. Who lived there with you?

A. My wife; we moved there from Front and Segal, from there to Front and Segal.

Q. Before moving to Front and Segal you lived at one hundred and what? Where did you live on Mervine Street?

A. 103 to Mrs. Fry.

Q. That was Mrs. Fry?

A. Mrs. Fry, 103 Mervine Street, I roomed with her and got accused twice.

Q. You roomed there before you moved to Front and Segal, where did you live?

A. Before I moved to Front and Segal?

Q. You say you moved with your wife to Front and Segal?

10 A. Front and Segal, I moved from my wife running the restaurant.

Q. Where did you live before that?

A. Let's see. She was a pretty good mover, and I couldn't keep track of it. Front and Hoffman.

Q. Front and Hoffman?

A. Yes, Front and Hoffman, my next move.

Q. Where did you live before that?

A. Second and Watkins, in the fruit and produce business.

Q. In what?

20 A. Fruit and produce business.

Q. Where did you live before you lived Second and Watkins?

A. Second above Moore.

Q. How long did you live at Second and Watkins?

A. I guess, I don't know, there a short time, two or three years.

Q. Then you moved?

A. Let's see, where did I go from there, Second above Moore.

30 Q. How long did you live Second above Moore?

A. About three years. House sold under my head there.

Q. Where did you live before that, Mr. Naphas?

A. Second and Reed, next to the school, Second and Reed, I can't give you these numbers; I don't remember the numbers. She destroyed everything had any records on.

Q. How long did you live Second and Reed?

A. About five years.

Q. Where did you live before that?

A. Now you are getting me, hard to think these things up, Front and Tasker, Front above Tasker.

Q. How long did you live there?

A. I lived there just about in that house about six months.

Q. Where did you move from to move there?

A. Then I moved to Tasker Street, above Front, 10 right around the corner.

Q. Then where?

A. Mrs. Hughes' on Lombard Street, 118 Lombard Street—117 Lombard Street; Mrs. Hughes, had rooms there.

Q. Was your wife with you then?

A. Yes, that is when I first got her.

Q. You married her there?

A. No, I didn't marry her there, I married her from Lombard Street, below Second. 20

Q. Where were you before that?

A. What say? Keep that date straight, I am going to start at that date and go down where I was at, then from there I moved to my own home, my father's home, Sixth and Morse.

Q. After you were married?

A. Yes, just after I was married I took her there. I am going to give you the date straight, now start from now.

Q. When were you married? 30

A. Well, that is something I can't tell; she tore up her pillows and throwed it out or something else, I don't know. I was born in 1852, count it-up, I was married twenty-five years of age.

Q. Born when?

A. Born 1852, I was married twenty-five years

afterwards, I was married twenty-five years of age, that is the only way I can get that date.

Q. Born 1852?

A. I was born 1852, yes. I was married twenty-five years afterwards, I was married.

Q. You were married the seventh day of October, 1877, weren't you?

A. About that, yes. I don't know as October. I was married in, I think it was snowing the night I
10 was married.

Q. Think it was snowing, do you?

A. I think it was snowing; I think it was March.

Q. What was your wife's name when you married her?

A. Elizabeth C. Straub.

Q. Elizabeth C. Straub?

A. Straub.

Q. Do you know who this Daniel Naphas might
be?

20 A. Wait a minute till I get my other glasses on.

Q. Do you know who that is?

A. Yes; that is my father.

The Court: What is the date of that?

Mr. Redrow: 1877 looks like; it might be some other date.

A. That is my father.

30 Q. You lived with your father Daniel Naphas, did you, at the time you were married?

A. Let's see that again, "In the year of our Lord, 1844 by"——

Q. That is your father and mother?

A. Certainly, that is where the Bible has went out.

Q. Mr. Naphas, you were never married before that?

A. Never married before.

Mr. McMullin: I object to that.

(Counsel has admitted in his answer.)

The Court: Yes.

10

A. No, sir; I was too much married then.

Q. How long did you and your wife live together?

A. Oh, I guess she died—I will have to count that up, can't change twenty-five—look at them fellows over there—

The Court: Never mind; just answer the question, please.

A. Yes, I am going to try to answer it, Judge, 20
your Honor—tell me the year she died in.

Q. I just asked you how long you lived with your wife?

A. I lived with her until she came down to Jersey is all I can tell you, and she ran all over on me and put me down, ordered me out of the place.

Q. You never lived with her in Jersey?

A. No, sir; she didn't want me, she lied to me on Jersey business; she said she bought the house where it was at.

Q. And according to your testimony, you were living at Segal Street on the last address, were you not? 30

A. I was living at Segal Street when the wife left there and locked her door on me.

Q. Now, as a matter in your testimony just a

few minutes ago you said at that time—when did your wife move to Jersey, do you know?

A. I don't know; she flew by night.

Q. She what?

A. She flew when I was away, and took all my furniture out.

Q. Took all your furniture out?

A. Yes.

10 Q. Did you come over to Jersey to locate her?

Mr. McMullin: I object. I think I understand counsel's purpose in the questions.

A. I went over to look for her.

20 Mr. McMullin: Wait a minute, Mr. Naphas. But I fail to see what possible bearing it can have, supposing, for instance, it would appear, which I don't admit it would appear—but supposing it should appear that the averment in counsel's answer is correct, that is, that the complainant here deserted his wife twenty years ago, and didn't contribute to her support, I don't think there is anything in New Jersey law which says under those circumstances the husband loses his right of courtesy in his wife's estate.

The Court: What have you to say about that?

30 Mr. Redrow: The thing I have been taking up this morning is this and I would like to—I can't prove the Pennsylvania law until I come to it.

Mr. McMullin: Can't prove the Pennsylvania law anyhow, because no averment in the pleadings.

Mr. Redrow: The situation is this, we in our an-

swer set out that this man has not undertaken to support his wife for at least more than twenty years. Now, as I called to the attention of the Court this morning, the statute of Pennsylvania provides that if a man does not live with his wife or does not support her or is drunk or anything of that kind or becomes intoxicated for a period of one year, that in that event he is not entitled to courtesy in the property.

10

The Court: Then your purpose at the present time is only in so far as the Pennsylvania property goes?

Mr. Redrow: No, I think I have a right to prove by this witness, if the Court please, the allegations that I set out in my answer to the end that this property—and I want to show that he knew the fact—that this property belonged to these children.

20

The Court: That she was holding it as trustee?

Mr. Redrow: Yes.

The Court: I will permit it on that ground.

(Question repeated.)

A. No, I didn't. I told you the reason. Now, if you want to know, she swore she would poison me, and I wasn't coming over to be poisoned, but she left me; I didn't leave her; I supported her up to the date she left the place.

30

Q. Your wife poisoned you, did she?

A. She swore she would poison me.

Mr. McMullin: Besides which I would like to call the attention of counsel that this is his own witness.

A. They told me that by the house, these details

Q. Just a moment; there is no question yet.

The Court: There is no question now.

10 Q. Have you paid your wife anything since she came to Jersey?

A. I didn't have to pay her.

Q. I asked you if you did pay her anything?

A. No.

Q. Did you support your wife after she came to New Jersey?

A. Did I support her?

Q. Did you support your wife after she came to New Jersey? You say yes?

20 A. She didn't want no support; she had plenty.

Q. Did you or did you not?

A. No, I did not.

Q. Did you support your wife while you were living in Pennsylvania?

A. Up to the last hour, last day or so.

Q. Did you ever make any demand on any of the defendants for any of the property involved in this suit?

A. Did I what? I can't understand?

30 Q. Ever make any demand?

A. Did I make any demands?

Q. Yes.

A. No, not until lately here.

Q. Do you know how this property in New Jersey was purchased?

A. I didn't know she had, no, only one, and that

was to be buying, that was all hid from me by my——

Q. Did you know what the children's interest in this property was?

A. Nothing. My money bought them all, never been worth a nickel before, not one nickel.

Q. Do you know when your wife moved to New Jersey?

A. Well, I couldn't give you the date. I was working away that week and when I came home the house was empty, I couldn't tell you. 10

Q. Do you know how many years ago it has been?

A. About between eleven or twelve, I don't know. I didn't take no date of it.

Q. That is all.

No cross-examination.

20

MRS. ELEANOR WEBB, SWORN FOR DEFENDANTS.

Direct examination.

By Mr. Redrow:

Q. Where do you live, Mrs. Webb?

A. Glendora.

Q. Do you know the complainant, Mr. Naphas?

A. I have saw him.

Q. Did you know Mrs. Naphas, the decedent? 30

A. Yes.

Q. Elizabeth Naphas?

A. Yes.

Q. How long have you known her?

A. About forty years.

Q. About forty years?

A. Forty or more.

Q. Did you know them while they were living in Philadelphia?

A. Yes.

Q. Do you know whether or not her husband lived with her all the time while she was living in Philadelphia?

A. Yes, I think he did. Up until the time she moved down to Jersey I don't know about, because
10 I was away from there.

Q. You wasn't there just at that time?

A. No.

Q. After Mrs. Naphas came to New Jersey, did you have any conversation with her?

A. Yes, that May.

Q. Did Mrs. Naphas show you any papers or anything pertaining to any of her properties?

A. No.

Q. You frequently called at her house, did you?
20

A. Oh, yes; every day.

Q. Did you ever see her husband there?

A. No.

Q. Did you ever see any of the defendants there, any of the children?

A. Oh, yes; they were there all the time.

Q. Do you know whether Mrs. Naphas worked herself when she was living in Jersey or what did she do?

A. She, when she started the store, do you mean?
30 She lived private first and then kept the store afterwards.

Q. Were you living right next door to her, were you?

A. No, I lived two or three avenues across the way.

Q. Did Mrs. Naphas and you have any conversation about her husband?

Mr. McMullin: I object.

The Court: Sustain the objection.

Cross-examination.

By Mr. McMullin:

Q. When did Mrs. Naphas move over to New Jersey? 10

A. I just couldn't tell you, in 1911, wasn't it?

Q. What year did she die?

A. What year did she die? About eight years, isn't it, Will?

The Court: You may answer the question and not ask anyone else.

Q. How long did she live in New Jersey before she died? 20

A. I couldn't tell you.

WILLIAM NAPHAS, recalled.

Direct examination.

By Mr. Redrow:

30

Q. William, you are the son of the complainant and one of the defendants?

A. Yes, sir.

Q. You remember when your mother moved to New Jersey?

A. Yes, sir.

Q. Previous to that time, where had she been living?

A. At 1824 South Front Street.

Q. Had your father been living with her at that address?

A. Not at least two years before we moved.

Q. Two years before you moved out?

A. Yes.

Q. What was your mother doing during those two
10 years?

A. We had a little store on the corner of Front and McClelland and I was running it for her.

Q. Front and what?

A. Front and McClelland, I was running it for her with no wages attached.

Q. And what did you do with your money?

Mr. McMullin: I object; it is no matter what he done with it.

20

The Court: How can that be relevant?

Mr. Redrow: The whole proposition is accounting, this thing, that we must show, an effort to show that the money that these children made went to the mother and we are going to undertake to prove that this property was taken in her name for that purpose.

30

The Court: Suppose that all be true, does it defeat his right to the courtesy?

Mr. McMullin: Beside which the testimony is inadmissible on the point the other party being dead.

Mr. Redrow: I don't think there is any question but what it would and if we can show the title

to this property is held in the widow as trustee for the children, I don't think that he would be entitled to any courtesy.

The Court: Suppose she made a declaration of trust two days after she took title, would it divest her husband of the right to courtesy?

Mr. Redrow: Absolutely.

Mr. McMullin: She couldn't do it anyhow without her husband, because a married woman can't alienate herself from land without her husband. 10

Mr. Redrow: Absolutely and I call your Honor's attention to a case where a woman took title to the property and made the declaration of trust in favor of her mother.

The Court: Have you that case with you? 20

Mr. Redrow: No, I haven't any books here, but that is my understanding of it.

The Court: I am very strongly of the view that it is absolutely inadmissible, but in the absence of these cases which you have called my attention to, I think probably it would save a good deal of time by taking the testimony rather than waiting.

Mr. McMullin: I object on another ground. Here 30
is an attempt to charge a claim against the estate brought by the claimant as to transactions with the decedent, which are inadmissible. That is the main basis for the objection to this testimony.

The Court: I don't think it is admissible, but if

counsel wishes to present those two cases to me I will permit him to do so.

I will permit the testimony subject to objection.

Mr. McMullin: Subject to the objection it is not pleaded, therefore the law of Pennsylvania is presumed to be the same as here.

The Court: I will permit the testimony. You
10 agree that is the act?

Mr. McMullin: Yes, I suppose so. There is an Act of 1852, if the husband wilfully deserts and fails to support.

(Witness withdrawn.)

20 C. RICHARD ALLEN, sworn for complainant.

Direct examination.

By Mr. McMullin:

Q. Mr. Allen, you are in the surrogate's office of this county?

A. Yes, deputy surrogate.

Q. Have you the original file of the surrogate of the estate of Elizabeth C. Naphas?

30 A. I have.

Q. Will you produce it, please?

(File produced.)

Q. Will you produce the application for letters of administration?

(Application produced.)

Q. And the renunciation?

(Paper produced.)

Mr. McMullin: I will offer in evidence application of William Naphas for letters of administration upon his mother, Elizabeth C. Naphas, estate.

10

(Paper admitted and marked C4.)

Also renunciation of administration or the right to administer signed by Elizabeth Guetens, Samuel W. Naphas and Joseph Naphas.

(Paper admitted and marked Exhibit C5.)

Q. Were letters granted upon that application to William Naphas?

20

A. They were.

No cross-examination.

Mr. McMullin: They both show affidavits which inferentially at least would lead the surrogate to believe that they had no father.

30

Mr. Redrow: I object. They speak for themselves.

Mr. McMullin: That was my basis for showing them. Of course they speak for themselves. That is the purpose for putting them in.

WILLIAM NAPHAS, resumed.

The Court: Have you anything in addition to say?

Mr. Redrow: I have this to say, in addition to what was said heretofore, if for no other reason it is admissible to show that the husband did not provide for his wife for a period of at least two or three years before she moved to New Jersey.

The Court: I have admitted that, that they did not live together. After examination of the citations referred to, I am convinced that I was correct in the thought that this testimony is inadmissible. I will, therefore, sustain the objection.

Mr. Redrow: For any purpose?

20

The Court: Yes, the question of what money this young man gave his mother, that was the immediate question.

By Mr. Redrow:

Q. William, do you know whether or not your father supported your mother during the last two or three years they were living in Philadelphia?

30

A. He did not.

Q. Do you know whether or not he supported her at all after she moved to New Jersey?

A. He did not give her one cent.

Q. What was the attitude and conduct of your father towards your mother during the time they lived in Philadelphia?

Mr. McMullin: I object.

The Court: Sustain the objection.

Q. Do you know when your father left your mother?

A. Let's see—it has been now close to seventeen years.

Q. Do you know whether or not your father was ever arrested for his treatment of your mother? 10

Mr. McMullin: I object.

The Court: Sustain the objection.

Q. Was any demand ever made on you by your father to turn over any of these properties or the rents or receipts from them?

A. No.

20

Cross-examination.

By Mr. McMullin:

Q. When did your mother move to New Jersey?

A. Mother moved to New Jersey in—around fourteen years ago.

Q. What year did she move?

A. What year?

Q. Yes.

A. 1911.

30

Q. Did she buy the Jersey properties before she moved?

A. She did.

Q. All of it or just the first property?

A. No, just the house.

Q. That is all. Your father was at the funeral, wasn't he?

A. Yes.

Q. And you knew he was living at the time you made application for letters of administration?

A. Dead to us.

MRS. ELIZABETH GUETENS, SWORN for defendants.

10 Mr. Redrow: I understand the Vice-Chancellor's ruling is that no testimony dealing with payment to the mother for any purpose is admissible by reason it is immaterial?

The Court: From these parties, yes.

Direct examination.

By Mr. Redrow:

20

Q. Mrs. Guetens, you are the daughter of Mrs. Naphas?

A. Yes, sir.

Q. Where did she live during the latter part of her life?

A. At 1824 South Front Street.

Q. Where did she die?

A. She died in Jersey.

Q. Do you know when your father left her?

30 A. My father left her, yes, it has been at the rate of fifteen years my father has been away from my mother.

Q. Do you know whether or not during that time he has supported her?

A. No, he has never supported her.

Q. Has any demand ever been made on you for the possession of the properties by him?

A. No, sir.

Q. Or for an accounting?

A. No, sir.

By Mr. McMullin:

Q. You claim he has no interest in these properties?

A. No interest whatever.

10

JOSEPH NAPHAS, sworn for defendants.

Direct examination.

By Mr. Redrow:

Q. Joe, you are a son of Mrs. Naphas and Daniel Naphas, complainant in this suit?

A. Yes, sir.

20

Q. You are one of the defendants?

A. Yes, sir.

Q. Has any demand ever been made on you for any of the profits or possession of these properties by your father?

A. No, sir.

Q. Do you know how long it has been since your father left your mother?

A. Neighborhood of seventeen years.

Q. And where was she then living?

30

A. When he left?

Q. Yes.

A. 1824 South Front Street.

Q. South?

A. Front.

Q. You were also, after your mother died, did you notify your father?

A. At the time of her death, I did.

Q. Where did she go?

A. A woman by the name of Carrs had a restaurant and boarding house on Second Street between Mervine and Moore, I don't know the address.

Q. Have some conversation with him at that time?

10 Mr. McMullin: I object.

The Court: What is the objection?

Mr. McMullin: Conversation not in the presence of the father.

The Court: Conversation with the father.

A. I did.

20 Q. What was it?

A. I went to the woman and I asked her if he was home.

Mr. McMullin: I object to that.

The Court: Not what the woman told you.

A. I asked if he was home, any objections?

Q. You found him?

30 A. Yes, I found him there; the woman directed me to his room.

Q. Say what took place, what happened and what was said and what he said to you now?

A. Well, I went to his room, woke him up, he got awake and I says "Mother is dead." First thing I got "You ain't no son of mine." That was the first. "Don't belong to me." I don't recall all but

he started right off on all kind of pet names under creation and she was no good and I didn't belong to him and he raved like that.

Mr. McMullin: I object and ask that be struck out.

The Court: Let it be stricken out. What did your father say, not the conclusion from what he said, what did he say?

10

A. He didn't acknowledge me as a son.

The Court: Let that be stricken out. What did he say?

A. Well, he says, "You ain't my son; you don't belong to me."

Q. What was his condition at that time?

A. He was asleep when I woke him up, and he never got out of bed because he threatened to shoot me if I didn't get out.

The Court: Let that be stricken out. What did he say?

A. He says, "I will shoot you."

Q. Did he say anything else?

A. Well, I can't recall all he did say. The conversation was pretty peppy and I don't recall all he did say to me. I recollect the fact that we had a wrestling match over the bed but that isn't in it, that ain't what he said.

30

Q. You did have a wrestling match, you say?

A. Oh, yes.

Q. Was there any cursing?

A. Yes, sir, absolutely.

Q. What was his condition at that time, physically?

A. Physically?

Q. Yes.

A. All right.

Mr. McMullin: I can't see any possible bearing that may have.

10 The Court: I will permit it.

A. Physically all right.

Cross-examination.

By Mr. McMullin:

Q. Before that how long had it been since you had seen your father?

20 A. Before that? Well, I hadn't seen him since we moved to Jersey.

Q. And that had been?

A. Fourteen years.

By the Court:

Q. You say you had a wrestling match on the bed?

A. Yes, sir.

Q. And that he didn't get up?

30 A. He threatened to shoot me and I held him in the bed.

Q. Didn't go out when he threatened to shoot you?

A. Not until I told him mother was dead, no, sir.

Q. Didn't you tell him your mother was dead the first thing?

A. I did, I went in there and I made him under-

stand that she was dead and then he says that I wasn't his son, and he says if I didn't get out he would shoot me.

Q. Then what happened?

A. Finally I wrestled with him on the bed for a minute, I didn't let him get up and then I walked out and left him to himself.

By Mr. Redrow:

10

Q. Was there a gun there?

A. I couldn't swear to that.

MRS. CHRISTIANA BERKLE, SWORN for defendants.

Direct examination.

By Mr. Redrow:

20

Q. Mrs. Berkle, do you know the complainant, Mr. Naphas?

A. Yes, sir; I know Mr. Naphas.

Q. Did you know Mrs. Naphas in her lifetime?

A. Oh, yes, sir.

Q. Did you live right near the other?

A. Right across.

Q. Across the street?

A. Yes, sir.

30

Q. Do you know when Mr. Naphas left her?

A. When Mrs. Naphas left?

Q. When Mr. Naphas left his wife?

A. I couldn't tell exactly the day, but he left way before she did, anyhow over one year or two years.

Q. Before?

A. Before his wife left, but I couldn't say.

Q. Before she came to New Jersey?

A. Yes, sir.

Mr. Redrow: If the Court please, as I understand this ruling, my understanding was that any testimony as to the treatment of the decedent by her husband is not relevant?

The Court: Yes.

10

Mr. Redrow: And that no testimony of moneys paid to the decedent as undertaking to prove the title to these properties being taken in trust?

The Court: Yes.

Mr. Redrow: Well, it is offered and it is overruled?

20

The Court: Yes, that is the ruling.

No cross-examination.

Mr. Redrow: That ruling, so I might have it clear, after considering this Pennsylvania case I spoke about, in which the Pennsylvania statute is involved?

30

The Court: Yes, because I think that you have proven so far the fact that they did not live together at least since she moved to New Jersey, that you have brought proof that they did not live together for from one to three years prior to that time. Of course, he has testified that he did support her before that time. I haven't excluded you

showing that he did not support her from a time prior to the time in which she came to New Jersey.

Mr. Redrow: Under that situation we rest.

Mr. McMullin: I will rest also, if counsel will admit that deed which hasn't come in yet, by the record?

Mr. Redrow: I assume that is all right, Mr. McMullin.

10

Mr. McMullin: It is the second deed mentioned in the bill.

Mr. Redrow: I haven't checked up on it.

TESTIMONY CLOSED.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

20

Between DANIEL B. NAPHAS, <i>Complainant,</i> and WILLIAM NAPHAS, et al., <i>Defendants.</i>	}	On Bill for Account- ing. On Final Hearing Conclusions.
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30

(Not to be published in the official or unofficial reports.)

MR. JOHN D. McMULLIN, for the complainant.
MR. OSCAR B. REDROW, for the defendants.

INGERSOLL, V. C.

Complainant claims to be entitled to a life interest in three certain tracts of land—four lots of land in Camden County, New Jersey, and one tract of land in Philadelphia, Pennsylvania.

10 The defendants, his five children, are in possession of said land, and have excluded him from the possession thereof and have, or someone of them has rented the same and collected the rents thereof, and refused to account therefor, and he now prays an accounting.

The defendants claim that their mother, who held title at the time of her decease, did not hold same in fee, but as trustee for the children.

This claim must fall, as it has not been proven.

20 They further claim, that their father (the complainant) is not entitled to any right of courtesy, or any other interest in said premises for the reason that "the complainant had not provided for his said wife, but had deserted her for a period of more than twenty years."

This claim must also fail.

I find that the complainant is entitled to an accounting, at least insofar as the income of the estate in this State is concerned.

Objection is made that an accounting cannot be decreed for the property in Pennsylvania.

30 Considerable over half a century ago, the late Chancellor Henry W. Green in *Wood v. Warner*, 15 N. J. Eq. 81, held, "that it is no objection to the Court's taking an account, and making a decree in the cause, that the property is out of the jurisdiction of the Court, so that the decree be enforced *in rem*; and that the power of the Court to decree the settlement of the account between the parties, and the payment of the balance, if any found due,

and to enforce such a decree *in personam* cannot be questioned."

The defendants claim further, that the complainant is not entitled to an accounting of the proceeds of the Philadelphia property, alleging that he wilfully and maliciously deserted his wife, and neglected and refused to provide for her for upwards of one year previous to her death, and that Section 5, of the Act of May 4, 1855, of the Commonwealth of Pennsylvania (P. L. 431) provided that under such circumstances, the husband had no right to claim any right as tenant by the courtesy. 10

The defendants should have an opportunity (if they so desire) to present testimony in support of this claim. Such testimony may be taken at a time to be fixed by me in the Chancery Chambers, in Camden, on ten days notice thereof to be given to complainant's solicitor.

There must be a reference to a master for an accounting, the extent thereof to be determined after the hearing of the additional testimony. 20

Determined: December 26th, 1925.

STIPULATION.

It is agreed between the parties that no decree in this case shall be made respecting the real estate situated in the State of Pennsylvania. 30

of her death as described in said bill; that the defendants William Naphas, Elizabeth Guetens, Samuel W. Naphas, Joseph Naphas and Harry Naphas, the defendants to this suit, do deliver unto the complainant any leases which they may have for the premises or any part thereof properly assigned to him; that an account be taken of the rents, issues and profits of and the value of the use of said premises from January 13, 1918, to the date of this order and that it be referred to William T. Boyle, one of the special masters of this court, to take a mutual account of all dealings and transactions between the complainant and defendants in said bill mentioned; for the better clearing of which account the parties are to produce before the said master, upon oath or affirmation, if required, and leave with him, all books and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said master shall direct; and said master is also to have power to examine other witnesses in relation to said account; and in taking of said account, he is to make to all parties all just allowances; and is to report what, upon such accounting, appears to be due from each party to the other; and also the balance which, upon the said account, shall appear to be due from any party to the other. 10 20

And the said master is to make his report touching the matters hereby referred to him, with all convenient speed. And if in taking said account, any special matter shall arise, he is at liberty to state the same to the court. 30

Respectfully advised,

R. H. INGERSOLL,
V. C.

E. R. WALKER,
C.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p>Between DANIEL P. NAPHAS, <i>Complainant-Respondent,</i> and WILLIAM NAPHAS, ELIZABETH GUETENS, SAMUEL W. NAPHAS, JOSEPH NA- PHAS and HARRY NAPHAS, <i>Defendants-Appellants.</i></p>	}	<p>On Appeal from Chancery. Petition of Appeal.</p>	10
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20

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

The petition of William Naphas, Elizabeth Guetens, Samuel W. Naphas, Joseph Naphas and Harry Naphas, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the fourth day of May, 1926, wherein Daniel P. Naphas was complainant and your petitioners were defendants, and hereby appeals from the whole and every part thereof, to wit: That said decree determines that the said Daniel P. Naphas is entitled to a life estate and possession of certain premises described in the bill of complaint, and that your peti-

tioners be required to deliver unto the complainant, any and all leases for said premises and that your petitioners be required to account for the rents, uses and profits of said premises from January 13th, 1918, to the date of said decree. That the relief granted to said Daniel Naphas by the Court of Chancery should have been denied.

Your petitioners humbly appeal from every part of said decree of said Chancellor, upon the ground
10 that the same is erroneous for the reason that:

1. The complainant-respondent, has an adequate remedy in the courts of law, and evidence as to title was improperly excluded.

2. A decree cannot be made in the Court of Chancery for an accounting unless the party entitled to such an account be in possession of the property.

20 3. That there was no proof before the Chancery Court that your petitioners, Elizabeth Guetens, Samuel W. Naphas, Joseph Naphas and Harry Naphas were in possession of the premises in question or that they ever had collected any income or rents therefor, and there should have been no decree made by the Chancery Court for an accounting against such of your petitioners.

Your petitioners therefore pray, that the said
30 decree of the said Chancellor, may be in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

OSCAR B. REDROW,
Solicitor for and of Counsel with Petitioners.

ANSWER TO PETITION OF APPEAL.
NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
DANIEL P. NAPHAS,
Complainant-Respondent, } 10
and } Answer to Petition of
WILLIAM NAPHAS and } Appeal.
others, }
Defendants-Appellants. }

The answer of the above named respondent to the
petition of appeal of the above named appellants. 20

This respondent, not acknowledging all or any of
the matters which in said petition of appeal are con-
tained to be true, for answer thereto, nevertheless,
says and admits that an order was made on the
fourth day of April last past, made and entered in
the Court of Chancery in the cause for that purpose
mentioned in said petition, as is therein stated; but
as to the substance and form thereof, this respon-
dent prays to refer thereto when the same shall be
produced. 30

This respondent is advised and believes, that the
order is agreeable to equity and he prays that the
same may be affirmed, with costs to be adjudged to
this respondent.

JOHN D. McMULLIN,
*Solicitor for and of Coun-
sel with Appellee.*

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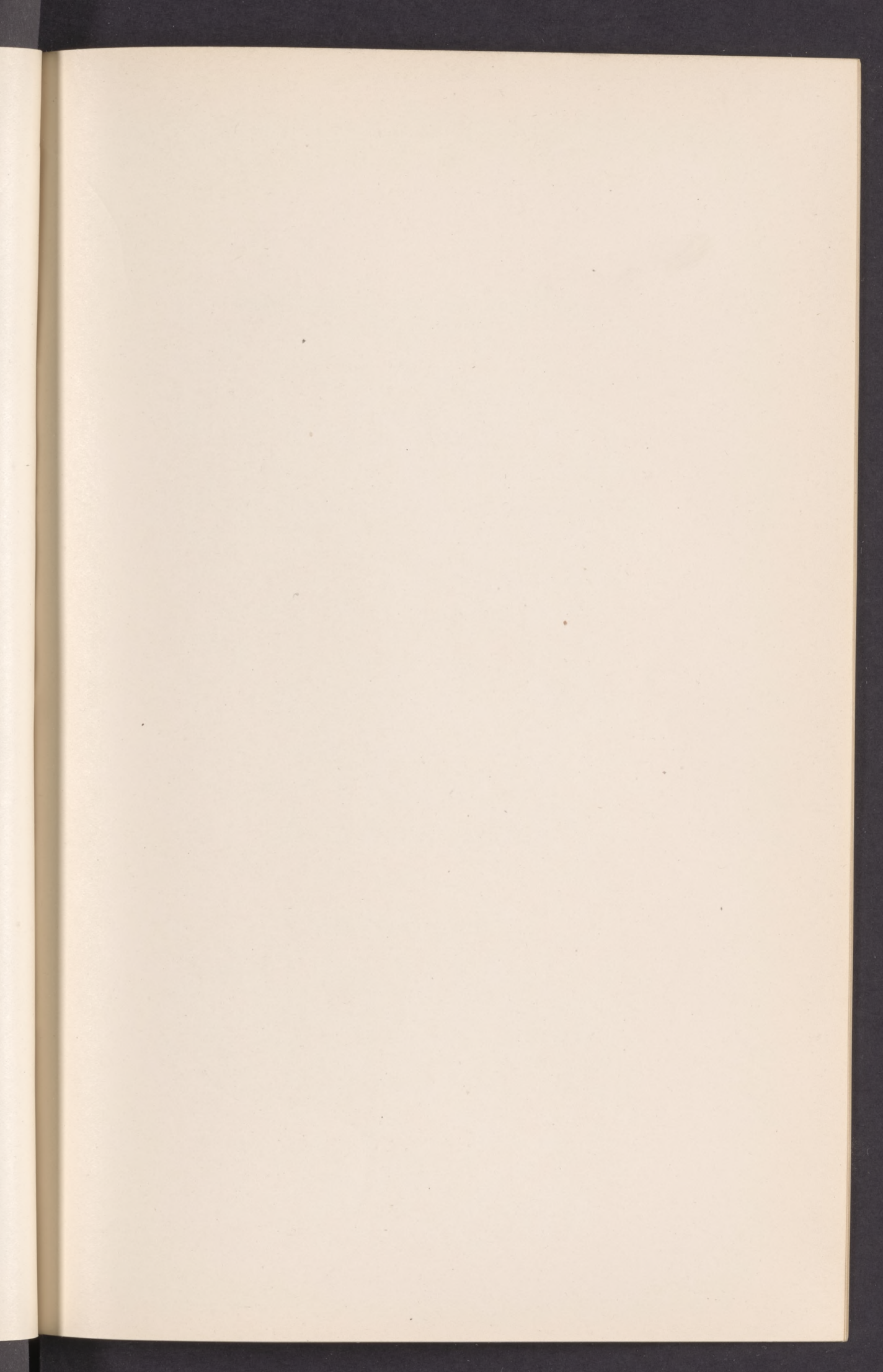
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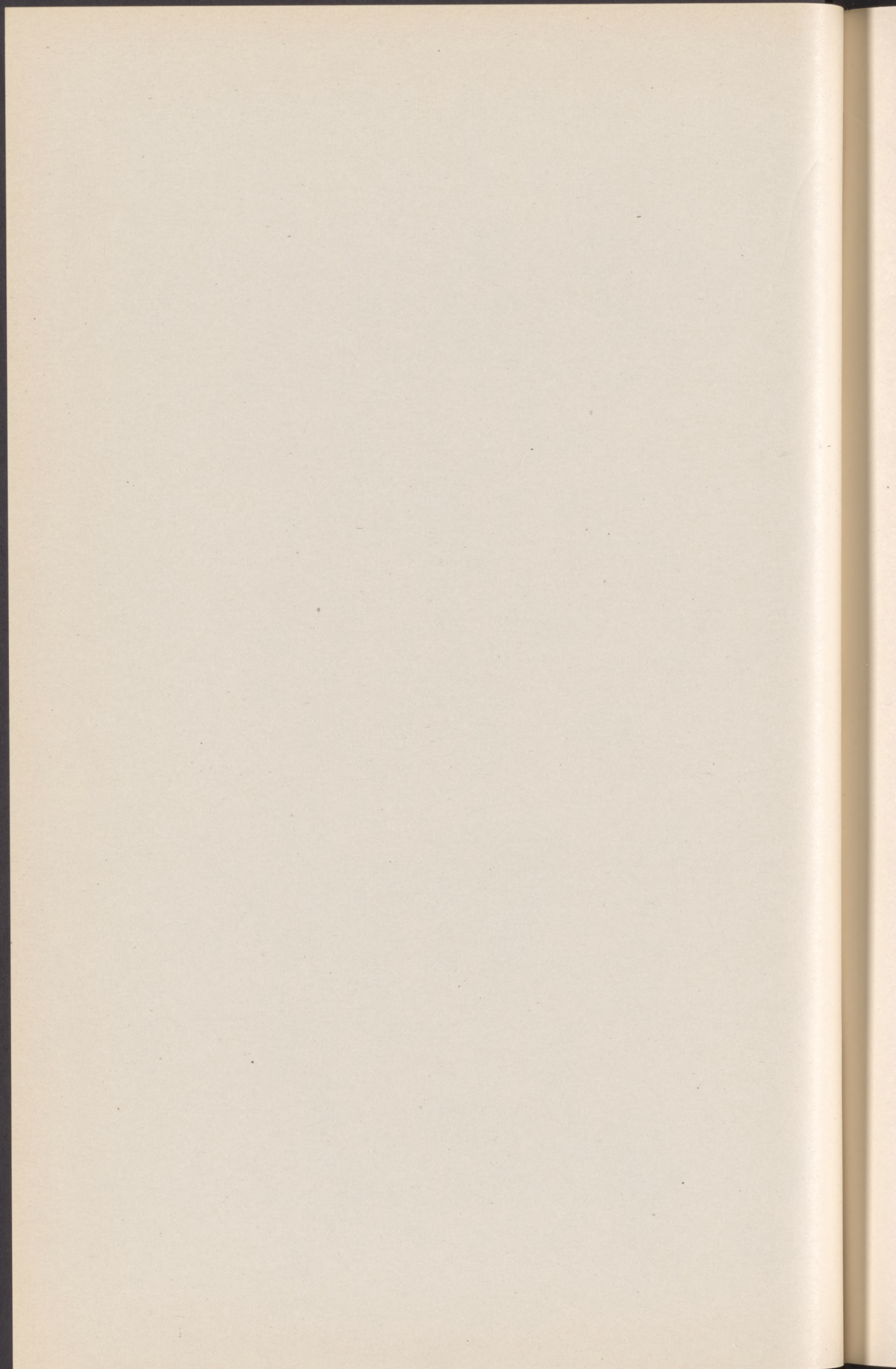
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NEW JERSEY COURT OF CHANCERY
AND APPEALS

Thomas B. Nathan
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and
Various Federal Reserve Banks
Various State Banks and Trust
Companies

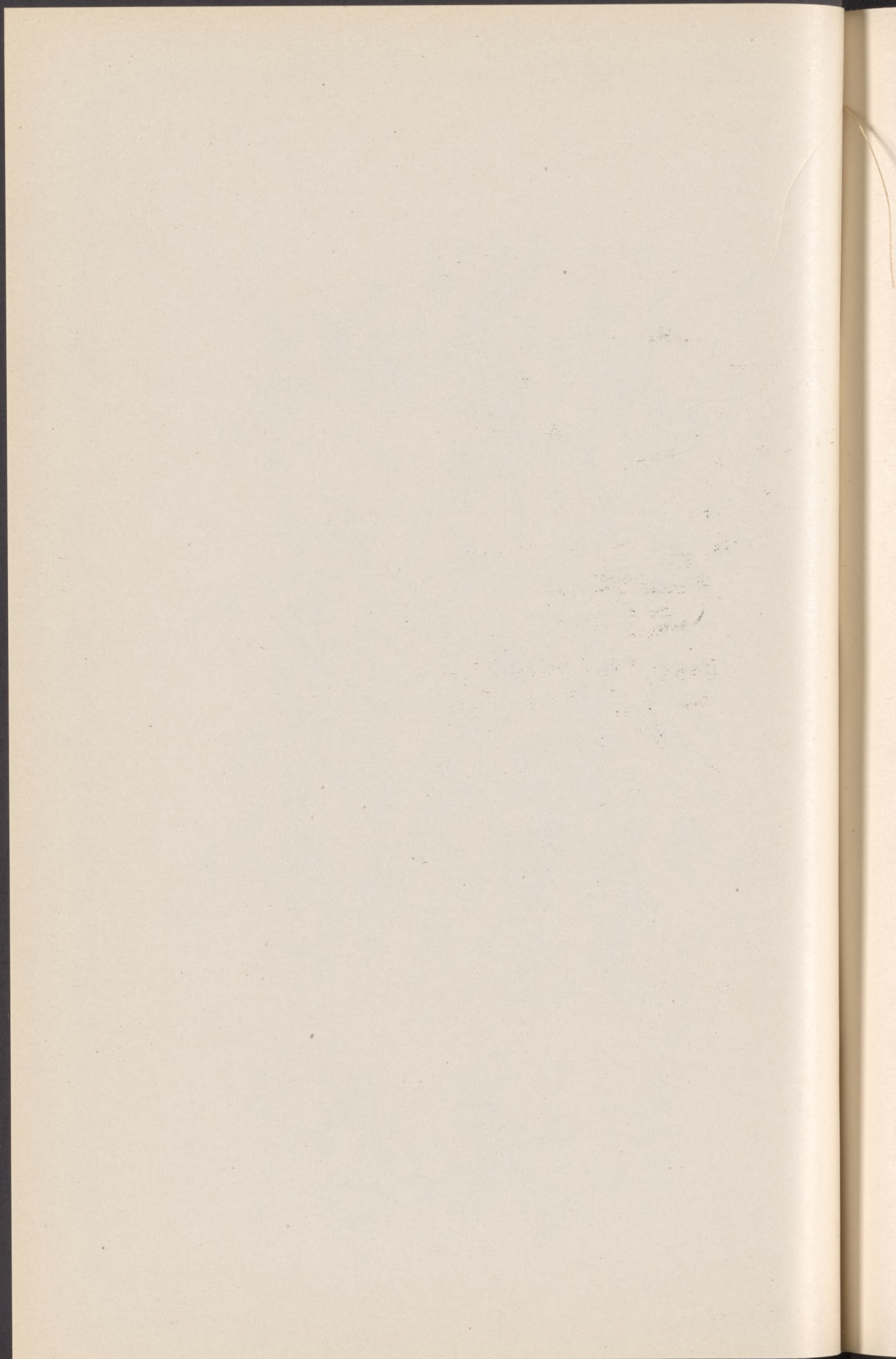
Of New York

Appeal from the

COURT OF APPELLATES

STATE OF NEW YORK

Thomas B. Nathan and in favor of the
various banks and trust companies
appellants, against the State of New York
appellee.



NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
DANIEL B. NAPHAS,
Complainant-Respondent,
and
WILLIAM NAPHAS, ELIZABETH GUETENS, SAMUEL W.
NAPHAS, JOSEPH NAPHAS and HARRY
NAPHAS,
Defendants-Appellants.

ON BILL, ETC.

APPEAL FROM CHANCERY.

BRIEF OF APPELLANTS.

STATE OF CASE.

Elizabeth C. Naphas died on January 13, 1918, and at that time was the record owner of a dwelling house and eight small lots of land at Glendora, New Jersey. Daniel B. Naphas, her husband, had not lived with his wife for more than ten years before her death. After the death of Mrs. Naphas, her

son, William Naphas, collected the rents of the above property and paid the taxes, repairs and other incidental expenses and still continues to do so. In 1925, Daniel B. Naphas, the husband, filed a bill for an accounting in which he made all the children defendants and set forth that these defendants were in possession. The defendants answered the bill and claimed that Elizabeth C. Naphas held the property as trustee for said defendants, and that these defendants claimed title thereto, and that complainant had no legal right of curtesy therein. On proper notice before the hearing the defendants objected to the bill on the ground that the complainant had a legal remedy and should bring a suit in ejectment, and that the Court of Equity should not undertake to determine the title to real estate but that the title should be determined by a court of law. These objections were overruled and the Court below advised a decree against the defendants for an accounting as to the New Jersey property and left the Pennsylvania property open for further proofs. The property in Pennsylvania has since been disposed of by stipulation and is not to be considered in this appeal.

ARGUMENT.

The appellants present the appeal under the following points:

1. The pleadings raised a question of title to the property which can only be determined in a Court of Law.

2. The complainant below was not in possession of the property and should have been compelled to proceed at law by ejectment.

3. The lower Court excluded all testimony offered by appellants to show that Elizabeth C. Naphas held the property as trustee for appellants.

4. That no decree should have been made by the lower Court for an accounting against Elizabeth Guetens, Samuel W. Naphas, Joseph Naphas and Harry Naphas, as there was no testimony that any of these appellants had received any moneys from the property in any way.

POINT I.

THE PLEADINGS RAISED A QUESTION OF TITLE WHICH CAN ONLY BE DETERMINED IN A COURT OF LAW.

Curtesy is a legal right, and if a legal right, the law courts provide an adequate remedy.

The appellants claim title to the property and say that Elizabeth C. Naphas held the title as trustee for them.

William Naphas, one of the appellants, has possession.

The title to the real property was the only issue in dispute and should have been determined in a court of law.

Ballantine v. Harrison, 37 N. J. Eq. 560;

Hart v. Leonard, 42 N. J. Eq. 416;

Outcalt v. Helme Co., 42 N. J. Eq. 665-676;

Worthington v. Moon, 53 N. J. Eq. 46;

D. L. and W. R. R. v. Breckenridge, 55 N. J. Eq. 141 af. Id. 593;

Toad v. Staats, 60 N. J. Eq. 507;
Collopy v. Shaw, 80 N. J. Eq. 405;
Myen v. Kelly, 83 N. J. Eq. 474;
McGann v. LaBrecque, 109 Atl. 601;
Brown v. Simandl, 114 Atl. 749, af. 115 Atl.
925.

The question involved is strictly a legal question of title, to be settled through an appropriate action at law.

POINT II.

THE COMPLAINT BELOW HAD AN ADE- QUATE REMEDY AT LAW BY EJECTMENT.

“Rents and profits recoverable at law, in an action on ejectment, or after judgment in ejectment, cannot be recovered by a bill in equity for that purpose.”

New Jersey Land Company v. Gardner Lacy Lumber Company, 161 Fed. 768.

“It is well settled that where an adequate remedy at law has been available that has been lost, either through positive negligence or merely failure to seek it at the proper time, equity will not interpose to grant relief.”

Vaughn v. Johnson, 9 N. J. Eq. 173.

Ejectment is the proper remedy to obtain possession of a legal title to real estate and mesne profits are the pecuniary benefits, recovered in ejectment, and are those profits which are received between the original right of entry and the restoration of possession of the premises. The complainant in this case admits he has not possession of the property, and if he is entitled to possession of the property, he

is entitled to such possession as a legal right and should be required to bring a suit in ejectment in which the mesne profits, if any, would accompany a judgment for possession. The courts of equity have always refused heretofore to take cognizance of any case in which the complaining party had a remedy at law. In this particular case the complainant would recover in an action at law everything that he is asking this Court for relief.

Courts of equity only have jurisdiction where an adequate remedy cannot be had in the courts at law, and courts of equity will not entertain jurisdiction where there is an adequate remedy at law.

Kiernan v. Jersey City, 76 Eq. 114;

Bloomer v. Fowler, 85 Eq. 600.

One relying on a legal title, or one whose rights are sufficiently protected by putting them in possession has an adequate remedy at law by ejectment.

Attorney General v. Central Railroad Company, 68 Eq. 198, af. 70 Eq. 797;

Smith v. Morrow, 84 Eq. 395;

Thorpp v. Public Service Company, 84 Eq. 144.

This rule is applied where the issue to be tried is one that can be raised in ejectment. The jurisdiction of equity does not extend to the determination of a legal title.

Hoe v. Hoe, 84 Eq. 401.

There is no relief in which this Court can give the complainant, but what the complainant cannot secure and obtain for himself in an action at law.

The ejectment bill which, under the guise of as-

serting equitable rights, in fact seems to accomplish an ejectment, will not be entertained.

New Jersey Land Company v. Gardner Lacy Lumber Company, 161 Fed. 768.

Relief of the character obtainable in ejectment has been denied even in cases where equity would ordinarily retain jurisdiction for the purpose of a complete adjustment of the controversy.

Hubatka v. Maierhoefer (N. J. Ch.) (65 Atl. 1002).

A bill in equity to recover lands cannot be maintained on the ground of preventing a multiplicity of suits, nor can a bill be maintained to establish title and recover possession of lands against a number of defendants on the ground of avoiding a multiplicity of suits.

New Jersey Land Company v. Gardner Lacy Lumber Company, 161 Fed. 768.

POINT III.

THE LOWER COURT EXCLUDED ALL TESTIMONY OFFERED BY APPELLANTS TO SHOW THAT ELIZABETH C. NAPHAS HELD THE PROPERTY AS TRUSTEE FOR APPELLANTS.

Case, page 37, line 23:

“I am very strongly of the view that it is absolutely inadmissible.”

Case, page 40, line 13:

“After examination of the citation referred to, I am convinced that I was correct in the thought that this testimony is inadmissible. I will, therefore, sustain the objection.”

Case, page 42, lines 10 to 14;

Case, page 48, lines 10 to 20;

“That no testimony of moneys paid to the decedent as undertaking to prove the title to these properties being taken in trust” would be admitted.

POINT IV.

THAT NO DECREE SHOULD HAVE BEEN MADE BY THE LOWER COURT FOR AN ACCOUNTING AGAINST ELIZABETH GUETENS, SAMUEL W. NAPHAŠ, JOSEPH NAPHAS AND HARRY NAPHAS, AS THERE WAS NO TESTIMONY THAT ANY OF THESE PARTIES HAD RECEIVED ANY MONEYS FROM THE PROPERTY IN ANY WAY.

The undisputed proofs are that William Naphas has at least since the death of his mother, had complete charge of the properties in question and that the other children had not received anything whatever from the property (Case, pages 20, 21, 22.)

For these reasons the appellants submit that the decree of the lower Court should be set aside and reversed.

OSCAR B. REDROW,
*Solicitor for and of Counsel with
Defendants-Appellants.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

DANIEL B. NAPHAS,

Complainant-Respondent,

and

WILLIAM NAPHAS, ELIZABETH GUETENS, SAMUEL W.

NAPHAS, JOSEPH NAPHAS and HARRY NAPHAS,

Defendants-Appellants.

ON BILL, ETC.

APPEAL FROM CHANCERY.

BRIEF OF RESPONDENT.

STATE OF THE CASE.

For some ten years prior to the death of Elizabeth C. Naphas in January of 1918, she and her husband, Daniel B. Naphas, the respondent, had not lived together. In 1901 there was conveyed to her a house and lot in Philadelphia, in 1909 four lots in Camden County, New Jersey, in 1910 three lots in Camden County and in 1918 three lots in Cam-

den County, all of which lands were in her name and in her possession at the time of her death. Elizabeth C. Naphas left surviving her beside her husband, five children who are the defendants. These children or some of them from her death to the present time, have collected the rents and profits of these properties and according to William Naphas, one of the defendants, the proceeds have been held in trust by him (S. of C. 21, L. 15). In 1925 the plaintiff filed his bill for an accounting of the rents.

After the final hearing and before the decree, the difficulties of the parties so far as Philadelphia property was concerned were settled and a stipulation filed in the case that no decree as to Philadelphia property should be made. Thereafter on May 4, 1926, the Court made its order referring the case to a special master to state an account. From this interlocutory order this present appeal is taken.

ARGUMENT.

Appellants' first objection is that the pleadings raise a question of title which can only be determined in a court of law.

Their answer raises no objection to the jurisdiction. It raises a jurisdictional question (since disposed of by stipulation) as to the right of the New Jersey Court of Chancery to make any order concerning the rents, issues and profits of real estate located in Philadelphia (S. of C. 6). While in the opening of his case (S. of C. 11), counsel suggests to the Court that he has been unable to find any case where an accounting has been demanded and ordered where complainant has a legal remedy, yet

there was no motion at any time to dismiss on the ground now urged.

While it is true that where a question to title is set up in the answer the court of equity will, prior to hearing the case, leave the parties to their trial at law, yet in *Hart v. Leonard*, 42 N. J. Eq. 416, nine exceptions to the rule are laid down and this case has been approved and the exceptions enforced repeatedly.

Saling v. Saling, 95 N. J. Eq. 611 at 614;

Banks v. Sempkins, 88 N. J. Eq. 1 at 20;

Renwick v. Hay, 90 N. J. Eq. 148 at 154;

Mann v. Vockroth, 94 N. J. Eq. 511 at 514.

The instant case falls within at least two of the exceptions. A multiplicity of suits is avoided. The plaintiff left to his remedy at law would be compelled to bring ejectment in Philadelphia for the Philadelphia property, another suit in ejectment in New Jersey to cover so much of the New Jersey property as is improved, a bill to quiet title in New Jersey on the unimproved property, of which no one is in actual possession.

A complicated accounting is involved. The defendants or some of them, collected rents, paid taxes, building and loan association dues, repairs, all of the items of which are in their knowledge and in their knowledge alone.

Again this case comes under the exception of "cases in which the legal right, although formally disputed, is clear." The defendants claim their mother held this land in trust for them. No formal declaration of trust is averred or offered. From statements of counsel in the record it would appear that their claim is a resulting trust. The defendants, therefore, would in no wise be benefited were

complainant compelled to bring ejectment. The only defense to such an action which they could interpose would be "resulting trust" which is a strictly equitable estate; although it would have the result of delaying their father, who is seventy-four years of age, from obtaining what the Court has found to be his right.

It is submitted that appellants' second point that ejectment should have been brought has already been specifically answered.

Appellants' third point: The exclusion of testimony as to the trust is not borne out by the State of the Case. The only questions asked by appellants' counsel which could have any bearing at all on the question of a trust are as follows:

William Naphas was asked (S. of C. 36):

"Q. What was your mother doing during those ten years?"

A. We had a little store on the corner of Front and McClelland and I was running it for her.

Q. Front and what?

A. Front and McClelland, I was running it for her with no wages attached.

Q. And what did you do with your money?

Mr. McMullin: I object; it is no matter what he did with it."

On page 37 the Court said:

"I don't think it is admissible, but if counsel wishes to present those two cases to me I will permit him to do so."

Then counsel withdraws the witness.

There is nowhere in the case any offer of testimony as to a trust excepting that to the effect that

William Naphas gave his mother money and particularly is there no offer to show that the money was given for any specific purpose, or that there was any agreement regarding the purchase of the properties.

Lastly appellants object that the accounting should not go against anyone but the defendant, William.

All of the others were necessary defendants. They claimed ownership in the properties, therefore, in the rents. William Naphas, who appears from the testimony to have been the active manager, testified (S. of C. 20 and 21), regarding the rents, that he holds them in trust, paying out of them taxes and other charges and then holds them in trust for the children who are the other defendants. These other defendants claim to be entitled to these moneys and are, therefore, necessary parties to the accounting. If on the accounting they are found to have received no money, then no harm can be done them by the order.

Reading the testimony discloses that there exists a bad feeling between these children and their father. They desire at any cost to delay and hinder him from receiving any income from these properties, and it is respectfully submitted that in this case delay may mean denial.

Respectfully submitted,
JOHN D. McMULLIN,
*Solicitor for and of Counsel
with Complainant-Respondent.*

The Board of Directors has received a report from the Finance Committee regarding the proposed budget for the year ending 1912. The report indicates that the proposed budget is in accordance with the policy of the Board and is recommended for adoption.

The Finance Committee has also reported on the results of its investigation into the proposed changes in the method of determining the value of the property owned by the Corporation.

The Board has considered the report of the Finance Committee and has decided to approve the proposed budget for the year ending 1912.

The Board has also decided to approve the proposed changes in the method of determining the value of the property owned by the Corporation.

The Board has further decided to approve the proposed changes in the method of determining the value of the property owned by the Corporation.

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