

NEW JERSEY COURT OF ERRORS AND APPEALS

DANIEL LINDLEY

VS.

CATHARINE, C. O'REILLY.

ON ERROR.

WRIT OF ERROR.

Filed February 18th, 1887.

10

NEW JERSEY, to wit:

The State of New Jersey to our Justices of our Supreme Court, GREETING:

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our said Supreme Court of Judicature before you, between Catharine C. O'Reilly, plaintiff, and Daniel Lindley, defendant, in a plea of ejectment, manifest error hath intervened, to the great damage of the said Daniel Lindley, as it is said; we being willing that the error, if any there be, should in due manner be corrected, and free and speedy justice done to the parties aforesaid in this behalf, do command

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you that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the first Tuesday of March next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

- 10 Witness our Chancellor and president judge of our said Court of Errors and Appeals, at Trenton aforesaid, the seventeenth day of February, in the year of our Lord one thousand eight hundred and eighty-seven (1887).

HENRY C. KELSEY,
Clerk.

THOMAS B. HARNED,
Attorney.

The answer of the Justices of the Supreme Court of New Jersey within named.

- 20 The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, [L. s.]
C. J.

JUDGMENT RECORD.

- 30 As yet of the fourth day of February, A. D. eighteen hundred and eighty-two. Witness Mercer Beasley, Esquire, Chief Justice.

BENJ. F. LEE,
Clerk.

ATLANTIC COUNTY, ss :

Catharine C. O'Reilly, the plaintiff in this action, by Peter L. Voorhees, her attorney, demands of *David Lindley*, the defendant therein, the possession of a certain tract of land, with the appurtenances, situated in Atlantic City, in the county of Atlantic.

Beginning at a point one hundred and fifty feet southerly from the southerly line of Pacific avenue, and one hundred and fifty feet westerly from the westerly line of 10 Tennessee avenue; thence extending westerly parallel with Pacific avenue fifty feet; thence extending southerly of that width, between parallel lines parallel with said Tennessee avenue, eight hundred feet, more or less, to the Atlantic ocean and the exterior line, as laid down on the map entitled "Map of Atlantic city, Atlantic county, N. J., showing the exterior line established by the Riparian Commissioners of New Jersey, 1876. Filed in the office of the Secretary of State of New Jersey at Trenton."

20

And the plaintiff says that her right to the possession of the same accrued on the eighteenth day of January, in the year of our Lord one thousand eight hundred and eighty-one, and that the defendant wrongfully deprives her of the possession thereof, to her damage five hundred dollars.

And the said Daniel Lindley, by Thomas B. Harned, his attorney, appears and defends the action, and says that he is not guilty of the injury whereof the said Catharine O'Reilly hath complained in her declaration, nor of any part thereof, and of this he puts himself 30 upon the country. And the said Catharine O'Reilly doth the like.

Therefore let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be

holden at Mays Landing, in and for the county of Atlantic, on the second Tuesday of December, in the year of our Lord one thousand eight hundred and eighty-six, by whom, &c., and the same day is given to the parties aforesaid there, &c.

And now, at this day, to wit, the fifteenth day of February, A. D. eighteen hundred and eighty-six, before our said Supreme Court, at Trenton, comes the said plaintiff, by her attorney aforesaid, and the Justice before whom, &c., having sent hither his record had before him in
10 these words, to wit :

"Afterwards, to wit, on the second Tuesday of December, in the year of our Lord one thousand eight hundred and eighty-six, at a Circuit Court holden at Mays Landing, in and for the county of Atlantic, before the Honorable Alfred Reed, one of the Justices of the Supreme Court of the State of New Jersey, according to the form of the statute in such case made and provided, come on the within named Catharine C. O'Reilly as the within named Daniel Lindley, by their respective attorneys within mentioned, and the jurors of the jury whereof
20 mention is within made being summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, say, upon their oaths, that the said Daniel Lindley is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said Catharine C. O'Reilly hath within complained against him, and they assess the damages of the said Catharine C. O'Reilly, by reason thereof, over and above her costs and charges by her about her suit in this
30 behalf expended, to six cents, and for those costs and charges to six cents."

Therefore it is considered that the said plaintiff do recover against the said defendant her term yet to come, of and in the tenements aforesaid, with the appurtenances.

And, also, sixty-five dollars and eighty-six cents for her costs and charges by the court now here adjudged to the said plaintiff and with her assent.

And hereupon the said plaintiff prays the writ of the State of New Jersey, to be directed to the Sheriff of the county of Atlantic aforesaid, to cause her to have possession of her said term yet to come, of, in and to the tenements aforesaid, with the appurtenances, and it is granted to her, returnable, &c. .

Judgment signed this fifteenth day of November, A. D. eighteen hundred and eighty-two. 10

M. BEASLEY,
C. J.

I, Benj. F. Lee, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment in above-stated cause, as the same remains of record in my office.

In testimony whereof I have hereto set my
[L. s.] hand and seal of said court, at Trenton, this 20
twentieth day of February, A. D. eighteen
hundred and eighty-seven.

BENJ. F. LEE,
Clerk.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

CATHARINE O'REILLY

vs.

DANIEL LINDLEY.

} IN EJECTMENT.
 } BILL OF EXCEPTIONS.

Before HON. ALFRED REED and a jury.

MAYS LANDING, December 14, 1886.

APPEARANCES.

PETER L. VOORHEES, Esq.,
 For the Pltff.

10 T. B. HARNED Esq.,
 D. J. PANCOAST, Esq.,
 For Deft.

Be it remembered, that on the fourteenth day of December, A. D. 1886, before Alfred Reed, Esq., Justice of the Supreme Court holding the circuit at May's Landing, in and for the county of Atlantic, the issue joined in the above stated cause between the said parties (pro ut the pleadings) came on to be tried by the court and jury.

The plaintiff offers in evidence the muniments of title;
 20 the record or the division of the estate of Jeremiah Leeds, recorded in Book A of Bounds and Divisions, in the office of the Surrogate of the county of Atlantic, on page 18, &c.; the partition was returned dated the third day of January, 1840, and approved by the court April

28, 1840, and made finally by an order of the Orphan's Court of Atlantic county.

Also, deed of Richard Hackett, of Absecon, and Judith, his wife, to Patrick O'Reilly and Daniel Morris, dated the 15th of September, 1853, acknowledged on the same day before John H. Doughty, Commissioner of Deeds of the county of Atlantic, recorded in the Clerk's office of Atlantic county, in Book G of Deeds, p. 1330, October 1, 1853. It conveys a lot of land containing thirty-three acres.

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Also, deed poll made by Daniel Morris to Patrick O'Reilly, endorsed upon above mentioned deed and conveyance releasing all the interests of Daniel Morris in the tract of thirty-three acres to said Patrick O'Reilly, dated the 20th of November, 1855, acknowledged on the same day, before William W. Thompson, Master in Chancery, and recorded on the 20th of November, 1855, in the Clerk's office of the county of Atlantic, in Book H of Deeds, p. 821.

Also, deed from Patrick O'Reilly and wife to Henry F. Felix, dated January 14, 1861, conveying all the tract of 20 thirty-three acres, except certain lots that had been heretofore conveyed, which are mentioned and excepted from the conveyance. The deed is acknowledged January 14th, 1861, before J. P. Jones, President Judge of the Court of Common Pleas, county of Berks, in the State of Pennsylvania, with the certificate of Adam W. Kaughman, Prothonotary of the Court, certifying he was Judge of the Court in active commission, recorded on January 30, 1861, in the Clerk's office of Atlantic county, in Liber P of Deeds, p. 521.

30

(Objected to on the ground it does not appear to be acknowledged properly, according to the laws of this

State. Objection overruled. Exception taken and allowed and sealed accordingly.)

ALFRED REED, [L. s.]
Judge.

Also, will of Henry F. Felix, dated November 25th, 1865, approved November 25th, 1866, before the Register of Wills of Berks county, Pennsylvania, and was approved and recorded in the office of Atlantic county, April 11, 1882. Recorded Book C of Wills, p. 89.

- 10 (Objected to as not properly proved, according to the laws of the State of New Jersey. Objection overruled. Exception taken and allowed and sealed accordingly.)

ALFRED REED, [L. s.]
Judge.

Also, deed of Right Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, late of the city of Reading, county of Berks, State of Pennsylvania, deceased, to Patrick O'Reilly, of the same place.

- 20 (Objected to, because it is not properly proved, and also because the grantor had no right to make such a deed, affecting land in the State of New Jersey. Objection overruled. Exception taken and allowed and sealed accordingly.)

ALFRED REED, [L. s.]
Judge.

- 30 Also, record exemplified under an act of Congress, of the Court of Common Pleas, county of Berks, in the case of Patrick O'Reilly, plaintiff, against the Right Rev. James P. Wood, executor of the last will and testament of Henry F. Felix, &c.

(Objected to. Objection overruled. Exception taken and allowed and sealed accordingly.)

ALFRED REED, [L. s.]

Judge.

The defendant objects to the offer of the decree, on the ground that it is not properly authenticated, and that it is inoperative in this State. (Objection overruled. Exception taken and allowed and sealed accordingly.)

ALFRED REED, [L. s.]

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Judge.

The plaintiff also offers in evidence certified copy of will of Patrick O'Reilly, dated December 5, 1877. This will devises his entire estate to Catharine C. O'Reilly for life. Proved in Atlantic county, before Solomon R. Devinney, Surrogate, on July 5, 1881, and letters testamentary granted to Mrs. O'Reilly, the executrix therein, named by this will.

(Objected to because it does not appear to be properly proved. Objection overruled. Exception taken, and allowed, and sealed accordingly.)

ALFRED REED, [L. s.]

Judge.

And the plaintiff also offers in evidence the Pamphlet Laws of the State of New Jersey for the year 1872, p. 357, &c.

And the plaintiff having called witnesses to prove the bounds and identity of the land in question, rested her case.

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The defendant thereupon moved a non-suit, on the ground that the plaintiff has failed to make out a legal paper title sufficient to prevail against the title arising from the possession of Mr. Lindley.

(Motion overruled. Exception allowed defendant, and sealed accordingly.)

ALFRED REED, [L. s.]
Judge.

The defendant requested the Court to charge, as follows :

10 "1. That the decree of the Court of Common Pleas of the county of Berks, in the State of Pennsylvania, touching the conveyance of the land in question, offered in evidence by the plaintiff, is not binding or operative in this State, and cannot be considered by the jury as competent evidence in this cause towards establishing title in the plaintiff."

"2. That under and by the will of Henry F. Felix, offered in evidence by the plaintiff, the Right Rev. James F. Wood, his executor, had no right to convey the land in question as a part of the real estate of the testator in this State."

20 "3. That even if he had power of sale under the will, he could not exercise it in this State, without having first proved and recorded the will in this State and taken out letters testamentary thereon."

30 "4. That the act of the Legislature of the State, (Public Laws of 1872, p. 357) offered in evidence by the plaintiff, was inoperative and void and failed to validate the deed from the Right Rev. James F. Wood to Patrick O'Reilly, inasmuch as it was an effort by legislation to transfer the property in question from the heirs-at-law and devisees of Felix, the testator, to Patrick O'Reilly."

"5. That the deed from the Right Rev. James F. Wood

to Patrick O'Reilly, offered in evidence by the plaintiff, has not operated to transfer the property in question from the heirs at-law and devisees of Henry F. Felix to Patrick O'Reilly, either alone or taken in connection with the said act of the legislature of this State purporting to validate the same."

"6. That upon the plaintiff's proofs, she is without sufficient title to recover the land in question in this suit."

Which several requests the court refused to grant, to 10
which refusal the defendant excepted, and the exception is allowed and sealed accordingly.

ALFRED REED, [L. s.]

Judge.

And the court charged the jury as follows:

"I charge you as a matter of law, that the title now resides in Catharine O'Reilly."

To which charge of the court the defendant excepted, and exception is allowed and sealed accordingly.

ALFRED REED, [L. s.]

Judge. 20

EXHIBIT NO. 1.



I. H. S.

IN THE NAME OF GOD, AMEN, I, Henry Francis Felix, of the city of Reading, county of Berks and State of Pennsylvania, being of sound mind, memory and understanding, do make and publish this, my last will and testament, in manner and form following, to wit:

10 Firstly. Should it be the will of God that I should die before my beloved wife, Alicia Kate, all the household and kitchen furniture, of whatever nature they may be, at the time of my death, shall belong to her absolutely. She shall also have the interest of all my estate, real, personal or mixed, as long as she lives. Should the interest arising out of my estate (annually) not be sufficient to maintain her, in her widowhood, my executor, or his successors, shall give her annually a sufficient amount of the principal to maintain her according to her state of life, the same as she is now leading. Should she however marry again, from the date of her marriage she shall only have the interest of all my estate, real, personal or mixed, of whatever nature it may be, until her death, but she shall
20 not be permitted by my executor or his successors to receive any part of the principal to maintain herself and family.

Secondly. After the death of my beloved wife, Alicia

Kate, I hereby direct my executor, or his successors in office, to purchase a suitable farm of from one hundred to two hundred acres of land, in the vicinity of the city of Reading, county of Berks and State of Pennsylvania, the said farm to be held by my executor, or his successors in office, for the use and benefit of the Sisters of the Immaculate Heart of Mary, now established in the city of Reading. Should, however, at any future time, the said Sisters of the Immaculate Heart of Mary not be in communion with the Roman Catholic Bishop 10 of the Diocese in which these lands are located, then and in that case my executor, or his successors in office, shall and are hereby authorized and empowered to eject the said Sisters from the premises hereby so conditionally willed, and appoint any other order of Sisters that are in communion with the said Roman Catholic Bishop and his successors in office aforesaid. And should the order thus appointed again not remain in communion with the said Roman Catholic Bishop of the said Diocese in which these lands are located, he shall again eject them and appoint another order in their stead, and so on for 20 all time to come.

Thirdly. These lands, purchased as above directed, can at no time be encumbered by judgment bond or mortgage, but must forever remain free and unincumbered; any improvements made thereon must be paid for in cash or its equivalent, at the time the said improvements are made.

Fourthly. The balance of the money arising out of my estate (if any) after the death of my beloved wife, Alicia Kate, and the purchase of the aforementioned 30 farm, shall be appropriated for the erection of suitable buildings for a Sisterhood and a seminary of learning for young ladies, under the direction of the Bishop of the Diocese in which these lands are situated. Should

there be a surplus after the above directions are faithfully carried out, then the balance shall be put out at interest and applied for improvements in buildings as necessity requires.

Fifthly. It is my wish and I do hereby ordain and direct, that the Sisters in possession of the premises above willed as aforesaid, shall, for all time to come, maintain and educate four female orphan children (always giving preference to orphans of my relatives.) These children shall only receive the proper education for their state of life (of which the Bishop of the Diocese
 10 shall be the judge) and as soon as one is thus provided for another is to be admitted, so that there always are four in the seminary, but should at any time any of the said orphans have a vocation for a religious life they shall be considered as orphans and enjoy the benefits of the seminary until they are professed Sisters.

Sixthly. It is my wish and desire, and I hereby direct, that the remains of my dear father and mother, myself and my dear wife, and those of the Reverend Sylvester Eagle (now stationed at York, Pa.,) and those of the Reverend James Powers (now temporarily stationed at
 20 Conception, in Noraway county, Missouri) be removed to the grave yard of the Sisters in possession of the aforesaid farm, and that suitable headstones be erected to mark their sepulture, and that on the anniversaries of the death of my father and mother, myself and wife, my father-in-law and my mother-in-law (Edward MacCarthy and Mary MacCarthy) my sister Ann Felix and the Rev. Sylvester Eagle and the Rev. James Powers, have a requiem mass said for the repose of the souls of the
 36 above mentioned, and that the said Sisters offer up their communions on those days for the same object, and also within the octave of the Feast of the Immaculate Conception, a solemn requiem mass be

celebrated for the repose of the souls above mentioned, and also all the souls of my and my wife's relatives, and that the Sisters offer up their communions for the same object. These ceremonies are to be performed annually for all time to come.

Seventhly. Should my beloved wife, Alicia Kate, die before me, then and in that case, after my death, all my estate, of whatever nature it may be, at the time of my death, shall at once be appropriated towards the fulfillment of the aforementioned objects, namely, the purchase of the said mentioned farm and the erection of suitable buildings as aforementioned. 10

And Lastly. I do hereby nominate, constitute and appoint The Right Rev. James F. Wood, Roman Catholic Bishop of Philadelphia, State of Pennsylvania, and his successors in office, my executors as long as the said property shall remain situated in the said diocese, but should this property at any time become situated in any other diocese, then and in that case the Roman Catholic Bishop of said diocese, and his successors, shall be the executors of the trust, with all the powers hereby given to the said the Rt. Rev'd James F. Wood, and his successors in office. 20

In witness whereof, I, the said Henry Francis Felix, have to this, my last will and testament, contained in the six preceding pages, and this, the seventh page, set my hand and seal, to wit: my hand and seal on the margin of each page aforesaid, and my hand and seal to this the seventh page, on the margin and also at the bottom, declaring this to be my last will and testament, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-five. 30

H. F. FELIX, [SEAL.]

The writing contained in this and the six preceding pages was signed and sealed by the above named Henry Francis Felix and by him published and declared as and for his last will and testament, in the presence of us, who have hereunto subscribed our names in the presence of the testator, and in the presence of each other.

J. LAWRENCE GETZ.

C. P. ALLGAIER.

BERKS COUNTY, ss.

10 I do hereby certify that the foregoing to be a true and correct copy of the original last will and
[SEAL.] testament of Henry Francis Felix, dec'd, as filed in the Register's office in and for the county of Berks, and the same is certified in the manner required by the laws of Penna. to make it legal evidence in said State.

Given under my hand and seal of office this sixth day of April, A. D. 1882.

JONAS M. SHOLLENBERGER,

Register.

20 COMMONWEALTH OF PENNSYLVANIA, }
CITY OF READING AND COUNTY OF BERKS. } ss.

30 I, Jeremiah Hagenman, President Judge of the Twenty-third Judicial District of Pennsylvania, and Presiding Judge of the Courts of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace in and for the city of Reading and county of Berks, do certify that Jonas M. Shollenberger, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting has thereunto subscribed his name and affixed his official seal, was, at the time of so doing, and now is, Register of the Probate of Wills and granting letters of administration in and for the city of Reading and county of Berks, duly commis-

sioned and qualified, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

In testimony whereof, I have hereunto set my hand this sixth day of April, A. D. 1882.

J. HAGENMAN,
Presd. Judge.

COMMONWEALTH OF PENNSYLVANIA, }
CITY OF READING AND COUNTY OF BERKS. } ss. 10

I, William D. Althouse, Prothonotary of the Court of Common Pleas, in and for the city of Reading and county of Berks, do certify that [SEAL.] the Honorable Jeremiah Hagenman, by whom the foregoing attestation was made and who has thereunto subscribed his name, was, at the time of making thereof, and still is, President Judge of the Court of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace, in and for the city of Reading and county of Berks, duly commissioned and qualified, to all 20 whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court this sixth day of April, A. D. one thousand eight hundred and eighty-two.

WM. D. ALTHOUSE,
Prothonotary.

To Solomon R. Devinney, Surrogate of the County of 30
Atlantic :

The humble petition of James A. O'Reilly respectfully sheweth that he is interested in lands and real estate in Atlantic City, in the county of Atlantic ; that Henry F.

Felix, who formerly owned some of said lands in which this petitioner is interested, died in the city of Reading, in the State of Pennsylvania, having first duly made and published his last will and testament in writing; that said last will and testament has been duly proved and admitted to probate and recorded in the office of the Register of Wills of Berks county, in the State of Pennsylvania; that your petitioner desires the will of the said Henry F. Felix to be recorded in this State, for the purpose of making title to lands or real estate in this State; that the above is a true and exemplified copy of
 10 said will of said Henry F. Felix, exemplified and attested as a true copy in the manner required by the laws of the said State of Pennsylvania to make it legal evidence in said State, and in the courts of said State of Pennsylvania. Your petitioner therefore prays that the said copy of the said will may be filed and recorded in the said office of the Surrogate of the county of Atlantic.

JAMES A. O'REILLY.

STATE OF NEW JERSEY, }
 ATLANTIC COUNTY. } ss.

20 James A. O'Reilly, being duly sworn, deposeseth and saith, that he is the petitioner named in the above petition; that the matters and things set forth in the said petition are true; that this deponent is a practising attorney at law in the city of Reading, in the State of Pennsylvania; that the foregoing copy of the will of said Henry F. Felix is exemplified and attested as a true copy in the manner required by the laws of the State of Pennsylvania to make it legal evidence in the State, and in the courts of the State of Pennsylvania.

36

JAMES A. O'REILLY.

Sworn and subscribed before me, at the county of Atlantic, this eleventh day of April, A. D. 1882.

S. R. DEVINNEY,
Surrogate.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } ss.

I, S. R. Devinney, Surrogate of the said county of Atlantic, and Clerk of the Orphans' Court
[SEAL.] thereof, do hereby certify that the foregoing 10
is a true copy of Henry Francis Felix's will; said will was filed and recorded in my office April the eleventh, in the year of our Lord one thousand eight hundred and eighty-two, and is recorded in Liber C of wills, folio 89, &c.

Witness my hand and seal of office this fifteenth day of April, Anno Domini eighteen hundred and eighty-two.
(1882)

S. R. DEVINNEY,
Surrogate. 20

EXHIBIT NO. 2.

THIS INDENTURE, made the sixteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, between the Right Reverend James F. Wood, executor of the last will and testament of Henry F. Felix, late of the city of Reading, Berks county and State of Pennsylvania, deceased, party hereto of the first 30
part, and Patrick O'Reilly, of the same place, of the second part;

Whereas, the said Patrick O'Reilly, being the owner in fee simple of the lands hereinafter mentioned and

described, did, on the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-one, by his deed of that date, grant and convey the same to the said Henry F. Felix in fee simple. And whereas, after the death of said Henry F. Felix, said Patrick O'Reilly brought his bill in equity in the Court of Common Pleas of Berks county sitting in equity to No. Equity Docket, 1867, setting forth, inter alia, as follows :

“ 3. That previous to and on said 14th day of Janu-
 10 “ ary, 1861, the said Henry Felix was indorser for the ”
 “ said Patrick O'Reilly to the amount of thirty-five ”
 “ thousand dollars and upwards, on the promissory notes ”
 “ of the said Patrick O'Reilly, discounted at the Farm- ”
 “ ers' Bank of Reading, which notes were then lying ”
 “ under protest, and the said Henry F. Felix as in- ”
 “ dorser, was liable to pay.”

“ 4. That under these circumstances, it was agreed by ”
 “ and between the said parties that, in order to secure as ”
 “ far as possible the said Henry F. Felix against loss on ”
 “ account of his liability on the promissory notes afore- ”
 20 “ said, he, the said Patrick O'Reilly, should execute a ”
 “ deed of bargain and sale in common form to the said ”
 “ Henry F. Felix, his heirs and assigns, for the prop- ”
 “ erty owned by the said Patrick O'Reilly above de- ”
 “ scribed, it being expressly understood and agreed ”
 “ between your orator and the said Henry F. Felix ”
 “ that, upon your orator paying said notes, and the ”
 “ said Henry F. Felix being thereby relieved from his ”
 “ liability thereon, he, the said Henry F. Felix, should, ”
 30 “ on demand of your orator, and without further con- ”
 “ sideration, reconvey the whole of said property to ”
 “ your orator, his heirs and assigns, making the title to ”
 “ the same as full and complete in your orator as the ”
 “ same had been previous to said conveyance of your ”
 “ orator to the said Henry F. Felix.”

"5. In pursuance of said understanding and agree-
 "ment, your orator, on the 14th day of January, 1861,"
 "executed and delivered to the said Henry F. Felix a"
 "deed of bargain and sale in fee simple for the whole"
 "of said property, as owned by your orator. The con-"
 "sideration mentioned in said deed was eighteen thou-"
 "sand dollars, but no money whatever was paid by the"
 "said Henry F. Felix to your orator on account of the"
 "same, the true and only consideration for said deed"
 "being the securing of the said Henry F. Felix for his" 10
 "endorsements as hereinbefore stated."

"9. Your orator further avers, that he afterwards"
 "fully paid and discharged the promissory notes afore-"
 "said, on which the said Henry F. Felix was indorser,"
 "so that the said Henry F. Felix sustained no loss or"
 "damage in consequence of said endorsements."

And whereas, said bill prays for reconveyance to the
 said Patrick O'Reilly, his heirs and assigns, by the party
 hereto of the first part, of the property and estate herein 20
 mentioned and described; and whereas, such proceed-
 ings have been had in the above case that the said party
 of the first part is fully satisfied that said allegations
 in the bill in equity aforesaid are correct and true; that
 said deed of fourteenth day of January, in the year of
 our Lord one thousand eight hundred and sixty-one,
 was merely intended to secure the said Henry F. Felix
 on behalf of said Patrick O'Reilly, which liabilities were
 afterwards discharged by the said Patrick O'Reilly so that
 the said Henry F. Felix thereby suffered no loss or dam-
 age; and that after the discharge of said liabilities by the 30
 said Patrick O'Reilly it was the intention of said Henry F.
 Felix to reconvey said property to said Patrick O'Reilly,
 which intention was not carried out, in consequence of
 the sudden illness and unexpected decease of said Henry
 F. Felix.

And whereas, other disputes arose between the parties hereto in regard to partnership assets, in which the said Henry F. Felix and the said Patrick O'Reilly were, at the time of the death of the said Henry F. Felix, jointly interested, which disputes have been happily and satisfactorily compromised, settled and adjusted.

And whereas, no power of sale was directly given by said will, although necessary to carry out its purposes, an act of Assembly was procured, authorizing and empowering the said Right Reverend James F. Wood, executor as
 10 aforesaid, to sell so much of the real estate of which the said Henry F. Felix was seized at the time of his death, as might in his opinion be necessary to effectuate the intention of the testator, either at public or private sale, and to make conveyance for the same as by said act of Assembly No. 760, approved the eleventh day of April, A. D. 1868, (Pamphlet Laws of 1868, page 821) will more fully and at large appear.

Now this indenture witnesseth, that the said party hereto of the first part, for and in consideration of the premises, and in consideration of and as a part of said
 20 compromise, settlement and adjustment, and in further consideration of the sum of one dollar lawful money of the United States of America to them in land paid by the said Patrick O'Reilly, at and before the sealing and delivering hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant bargain, sell, alien, enfeoff, release and confirm, unto the
 30 said Patrick O'Reilly, his heirs and assigns, all that certain tract or piece of land, situate on the Absecom beach, in the county of Atlantic and State of New Jersey, laid out into building lots by Patrick O'Reilly and D. Morris, with the exception of lots numbered in the plan thereof, numbers two (2), three (3), nine (9), eleven (11), twelve

(12), thirteen (13), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-nine (29), thirty (30), thirty-two (32), thirty three (33), thirty-five (35), thirty-six (36), thirty-eight (38), thirty-nine (39) : the one-half part of the following numbers : Number forty (40), fifty-nine (59), seventy-one (71), seventy-two (72), eighty-three (83), eighty-four (84), eighty-six (86), ninety (90), ninety-two (92), ninety-three (93), ninety-six (96), ninety-seven (97), ninety-eight (98), one hundred and thirty-three (133), one hundred and thirty-four (134), one hundred and thirty-five (135), one hundred and thirty-six (136), one hundred and thirty-seven (137), one hundred and thirty-eight (138), one hundred and thirty-nine (139), one hundred and forty (140), one hundred and forty-one (141), one hundred and forty-two (142), which were heretofore sold and conveyed by the party hereto of the first part to different persons in fee simple, the whole of which said tract, the above enumerated and heretofore as aforesaid sold building lots included, is bounded and described as follows, viz : Beginning at the intersection of the the boundary line, north twenty-five degrees ten minutes west of the land formerly held by Richard Hackett and now owned by the "Camden and Atlantic Land Company," and the centre of Arctic avenue, an avenue running parallel to and lying northwest of Atlantic avenue, being the same on which the Camden and Atlantic Railroad is located, and running thence for a distance of nine hundred and ninety feet, more or less, to a point in the intersection of the boundary line of twenty-five degrees ten minutes southeast of land formerly of the said Richard Hackett and now owned by Daniel L. Collins, and thence along said boundary line south twenty-five degrees ten minutes east for a distance of sixteen hundred and fifty feet, more or less, to low water mark on beach, and thence along low water line, as it may in-

crease or decrease, on an average course of about north seventy degrees east for a distance of one thousand feet, more or less, to the first mentioned boundary line of land of "Camden and Atlantic Land Company," formerly of Richard Hacket; thence along said line, north twenty-five degrees ten minutes west, for a distance of about seventeen hundred feet, more or less, to the place of beginning, containing thirty-three acres of land, be the same more or less, (whereof the contents of the above enumerated and heretofore sold building lots are to be deducted).

- 10 Together with all and singular the improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of them, the said parties of the first, in law, equity or otherwise howsoever, of, in, and to the same, and every part and parcel thereof; to have and to hold the said tract or piece of land, hereditaments and premises hereby granted or mentioned, or intended so to
- 20 be, with the appurtenances, unto the said Patrick O'Reilly, his heirs and assigns, to the only proper use and behoof of the said Patrick O'Reilly, his heirs and assigns forever; and the said party of the first part, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said Patrick O'Reilly, his heirs and assigns, by these presents, that he, the said party of the first part, hath not heretofore done or committed any act, matter or thing whatsoever, whereby the premises hereby granted, or any part
- 36 thereof, is, are, or shall or may be impeached, charged or encumbered in title, charge, estate or otherwise howsoever.

In witness whereof, the said The Right Reverend James F. Wood, executor of the said Henry F. Felix, late of the city of Reading, Berks county and State of Pennsylvania, hath hereunto set his land and seal on the day and year first above written.

JAMES F. WOOD,
Executor of Henry F. Felix, deceased.

Signed, sealed and delivered in the presence of us.

R. M. HARTLEY,
AUG. I. McCONOMY.

10

Received the day of the date of the above written indenture of the above named Patrick O'Reilly, the consideration hereinbefore mentioned in full.

JAMES F. WOOD,
Executor of Henry F. Felix, deceased.

Witness present,
R. M. HARTLEY.

20

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } ss.

I, Richard M. Hartley, a commissioner for the State of New Jersey, residing in the city of Philadelphia, in the county and State aforesaid, do certify that on this sixteenth day of October, in the year eighteen hundred and sixty-nine, in the city of Philadelphia, in the county and State aforesaid, personally appeared the above named Right Reverend James F. Wood, executor as aforesaid, to me known to be the individual described in and who 30 executed the foregoing written deed, the contents thereof being first made known to him, he acknowledged to me that he had signed, sealed and delivered the said deed as his voluntary act and deed.

In witness whereof, I have hereunto set my hand and
 [SEAL.] official seal this sixteenth day of October,
 eighteen hundred and sixty-nine.

R. M. HARTLEY,
 A Commissioner for the State of N. J.

EXHIBIT No. 3.

EXEMPLIFICATION.

10

BERKS COUNTY, }
 STATE OF PENNSYLVANIA, } SCT.

Among the records and proceedings of the Court of
 Common Pleas for the county of Berks, State of Penn-
 sylvania, the following may be found as matter of file
 and of record, at No. 118 Equity Term, 1869, to wit:

DOCKET ENTRIES.

Equity Term, 1869.

20	JNO. S. RIGHARDS, Sol. for Pltff. 118.	PATRICK O'REILLY, Plaintiff. vs.	Bill in Equity, Filed December 4, 1867 January 27, 1868, an- swer of defendants to plaintiff's bill filed. January 27, 1868, in open court, by con- sent of parties, Daniel E. Schroeder, Esq., appointed examiner in this case. November 1, 1869, re- port of Examiners filed. Sept. 20, 1880, decree of Court filed.
		THE RT. REV. JAMES F. WOOD, Executor of the last will and testament of HENRY F. FELIX, late of the city of Read- ing, deceased, ALICIA KATE FELIX, widow of said Henry F. Felix, deceased, and the re- ligious order of "THE SISTERS OF THE IM- MACULATE HEART OF MARY," now establish- ed in the city of Read- ing,	
		Defendants.	

IN THE COURT OF COMMON PLEAS OF BERKS
COUNTY.

SITTING IN EQUITY.

BETWEEN PATRICK O'REILLY, Plaintiff,

and

THE RT. REV. JAMES F. WOOD, executor of the last will and testament of Henry F. Felix, late of the city of Reading, deceased, ALICIA KATE FELIX, widow of said Henry F. Felix, deceased, and THE RELIGIOUS ORDER OF "THE SISTERS OF THE IMMACULATE HEART OF MARY," now established in the city of Reading, defendants.

To the Honorable the Judges of said Court :

Your orator complains and says :

1. That the said Patrick O'Reilly is a resident of the city of Reading, Berks county, of which the said Henry F. Felix was a resident at the time of his death. The Rt. Rev. James F. Wood is a resident of the city of Philadelphia; Alicia Kate Felix is a resident of the said city of Reading; and the religious order of "The Sisters of the Immaculate Heart of Mary" is a society established in the said city of Reading. 10

2. That on the 14th day of January, 1861, your orator was the owner in fee simple of a certain tract of land situate on Absecom beach, in the county of Atlantic and State of New Jersey—except forty-one lots hereinafter more particularly designated, which, when said land was purchased by your orator, were a part of the 20

same, but which, previous to the date last mentioned, had been sold and conveyed to various persons. The whole of said tract of land, previous to the sale of said forty-one lots, was bounded and described as follows: "Beginning at the intersection of the boundary line of north $25^{\circ} 10'$ west of the land formerly held by Richard Hackett, and now owned by the "Camden and Atlantic Land Company," and the centre of Arctic avenue, an avenue running parallel to and lying N. W. of Atlantic avenue, being the same on which the Camden and Atlantic Railroad is located, and running thence for a distance of nine
 10 hundred and ninety feet, more or less, to a point in the intersection of the boundary line of $25^{\circ} 10'$ southeast of land formerly of the said Richard Hackett, and now owned by Daniel L. Collins; and thence along said boundary line south $25^{\circ} 10'$ east, for a distance of sixteen hundred and fifty feet, more or less, to low water mark on beach, and thence along low water line, as it may increase or decrease, on an average course of about north 70° east, for a distance of one thousand feet, more or less, to the first mentioned boundary line of land of the
 20 "Camden and Atlantic Land Company," formerly of Richard Hackett; thence along said line of north $25^{\circ} 10'$ west, for a distance of about seventeen hundred feet, more or less, to the place of beginning. Containing thirty-three acres of land, be the same more or less.

The greater portion of said tract of land had been laid out in a town plot, with streets and avenues, and with town lots regularly numbered, marked off and designated therein, according to a plan hereto annexed and made a part of this bill, and the forty-one lots sold from said tract previous to the 14th day of January, 1861, as before
 36 stated, were the following, to wit: Nos. 2, 3, 9, 11, 12, 13, 25, 26, 27, 29, 30, 32, 33, 35, 36, 38, 39, the one-half part of No. 40; Nos. 59, 71, 72, 83, 84, 85, 86, 90, 92, 93.

96, 97, 98, 133, 134, 135, 136, 137, 138, 139, 140, 141 and 142, as marked and numbered upon the plan of said property hereto attached.

3. That previous to and on said 14th day of January, 1861, the said Henry F. Felix was indorser for the said Patrick O'Reilly to the amount of thirty-five thousand dollars and upwards on the promissory notes of the said Patrick O'Reilly, discounted at the Farmers' Bank of Reading, which notes were then lying under protest, and the said Henry F. Felix, as endorser, was liable to pay. 10

4. That under these circumstances, it was agreed by and between the said parties, that, in order to secure as far as possible the said Henry F. Felix against loss on account of his liability on the promissory notes aforesaid, he, the said Patrick O'Reilly, should execute a deed of bargain and sale, in common form, to the said Henry F. Felix, his heirs and assigns, for the property owned by the said Patrick O'Reilly above described, it being expressly understood and agreed between your orator and the said Henry F. Felix, that, upon your orator paying said notes, and the said Henry F. Felix being thereby 20 relieved from his liability thereon, he, the said Henry F. Felix, should, on demand of your orator, and without further consideration, reconvey the whole of said property to your orator, his heirs and assigns, making the title to the same as full and complete in your orator as the same had been previous to said conveyance of your orator to the said Henry F. Felix.

5. In pursuance of said understanding and agreement, your orator, on the 14th day of January, 1861, executed and delivered to the said Henry F. Felix a deed of bargain and sale in fee simple for the whole of said prop- 30 erty, as owned by your orator. The consideration mentioned in said deed was eighteen thousand dollars, but no money whatever was paid by the said Henry F. Felix

to your orator on account of the same, the true and only consideration of said deed being the securing of the said Henry F. Felix for his indorsements as hereinbefore stated.

6. And your orator further charges, that the following real estate owned by your orator, having been levied upon under execution against him in the hands of the Sheriff of Berks county, was exposed to public sale by said Sheriff, that is to say: All that certain lot or piece of ground situate on the east side of Lord street, now called North Tenth street, in the city of Reading, bound-
 10 ed and described as follows, to wit: Beginning at a post on said North Tenth street, corner of Joseph Ryland's lot; thence by the same south eighty-nine and one-half degrees east twenty perches and five-tenths to a corner in a line of Daniel Messersmith, deceased lately; with the same south twenty-three degrees and a half east seven perches and three-tenths to a corner in a line com-
 20 mons lately; south seventy-two and a half degrees west, ten perches to a stone, corner of out lot No. 64; north nine degrees west, fifteen perches and one-tenth to Lord now North Tenth street aforesaid; thence north one
 20 degree east nine perches and eight and a half tenths to the place of beginning. Containing one acre and sixty-four perches and one-half.

7. Your orator having at that time an equal co-partnership interest in the shoe manufacturing business carried on in the name of Henry F. Felix, in the city of Reading aforesaid, it was agreed by and between your orator and the said Henry F. Felix, that the said Henry F. Felix should purchase said property at said Sheriff's
 36 sale and pay for the same out of the partnership funds belonging to your orator and the said Henry F. Felix, and that the said Henry F. Felix should hold the same in trust for your orator, and reconvey the same to him in

fee simple on demand, your orator, however, previous to said conveyance, to be charged in the books of the firm with the amount advanced by said firm as purchase money, and in payment of a certain mortgage upon said property, hereinafter mentioned, with the interest upon said mortgage and the insurance upon said property.

8. In pursuance of said agreement, said Henry F. Felix became the purchaser of said property at said Sheriff's sale, and paid for the same the sum of \$51, said property being sold subject to a certain mortgage for purchase money to Henry Gensimer in the sum of \$800. The said sum of \$51, the said Henry F. Felix paid to the Sheriff, and received from him a deed for said property, subject to the lien of said mortgage, which said deed was acknowledged by the said Sheriff in the Court of Common Pleas of Berks county, on the 11th day of November, 1861. The amount of said mortgage, with interest and insurance on said property, was afterwards paid by the said Henry F. Felix out of said partnership funds, and charged by the said Henry F. Felix in the books of said firm to "Real Estate."

9. Your orator further avers, that he afterwards fully paid and discharged the promissory notes aforesaid, on which the said Henry F. Felix was indorser, so that the said Henry F. Felix sustained no loss nor damage in consequence of said indorsements. The said partnership account between your orator and the estate of the said Henry F. Felix has not yet been fully settled and closed, but your orator is willing and has proposed, that he should be therein charged with the amount so as aforesaid advanced by said firm for said property, or he is ready and willing in any other way to refund to the estate of the said Henry F. Felix so much as may be owing by your orator on account of said property having been paid for as hereinbefore stated.

10. The said Henry F. Felix having in manner aforesaid been relieved and exonerated from his liabilities incurred for your orator, the securing him against which had been the consideration for the conveyance to him herein first mentioned, and your orator, having informed the said Henry F. Felix that he was ready and willing to have the amount expended by said firm in the purchase and payment of the mortgage, interest and insurance on said property purchased from said Sheriff, charged to your orator in the books of said firm, or otherwise paid by your orator, your orator was, on settlement
10 with the said Henry F. Felix for the amount advanced as aforesaid for said property sold by the Sheriff, entitled to demand and to receive from the said Henry F. Felix a reconveyance in fee simple of all the property hereinbefore described, except such portion of said property in New Jersey herein first described as had been sold subsequent to the conveyance of the same by your orator to the said Henry F. Felix, as hereinafter mentioned.

11. The said Henry F. Felix at various times suggested the propriety of having the reconveyances made, stated that he was ready and willing to reconvey all said
20 property to your orator, and repeatedly recognized and acknowledged the title in your orator to the same, but although it was fully agreed between your orator and the said Henry F. Felix, that the said conveyance should be executed, yet the making of the same was neglected up to the period when the said Henry F. Felix became ill, and, on the thirty-first day of October, 1866, died.

12. After the conveyance by your orator to the said Henry F. Felix, on the fourteenth day of January, 1861,
30 and previous to the death of the said Henry F. Felix, and while the title to said property in New Jersey was nominally in the said Henry F. Felix, nineteen other lots, parts of the same, were sold, to wit: Nos. 28, 34, 40,

41, 65, 87, 94, 100, 102, 103, 106, 107, 119, 120, 121, 154, 155, 160 and 161 and deeds for the same, to the purchasers, were made by the said Henry F. Felix.

13. All these sales were negotiated and made by your orator, the said Henry F. Felix merely signing the deeds. All the purchase money paid by the buyers of said lots was paid to your orator; in some cases the whole of the purchase money was paid down, in others a portion thereof, and mortgages given for the balance. All payments made upon said mortgages, whether of principal or interest, were paid to your orator. The whole of the title papers to said property, including the said deed from your orator to the said Henry F. Felix, as also the mortgages given for lots sold, remained, during the lifetime of the said Henry F. Felix, and yet are, in the possession of your orator, who also paid all the taxes assessed upon said property after the said conveyance to the said Henry F. Felix, and up to the date of the filing of this bill, as he had previously done. All this was with the approval of the said Henry F. Felix, and under the arrangement made between the said Henry F. Felix and your orator, the said Henry F. Felix never taking any interest in said property except the holding of the title to the same as security for his liabilities before mentioned, and never exercising any authority or right of ownership in the same, except giving his signature, when necessary, in the execution of deeds for lots sold, when called upon for that purpose by your orator.

14. The mortgages given for the purchase money, or the balance of purchase money, of lots sold after said conveyance of the 14th of January, 1861, and the amounts due on the same, are as follows:

(1) Mortgage dated May 29, 1865; George Kelly to H. F. Felix for \$750, on lot No. 103. Interest paid to May 29, 1866. The whole amount of this mortgage,

with interest from May 29, 1866, at seven per cent., remains due and unpaid.

(2.) Mortgage dated June 5, 1865, John Schaeffer to H. F. Felix, for \$700, on lot No. 94. Interest paid to June 5, 1866. The whole amount of this mortgage, with interest from June 5, 1866, at seven per cent., remains due and unpaid.

(3.) Mortgage dated July 15, 1865, Charles Marbacker to H. F. Felix for \$600, on lot 65. Interest paid to July 15, 1866. The whole amount of this mortgage, with interest from July 15, 1866, at seven per cent., remains due
10 and unpaid.

(4.) Mortgage dated February 26, 1866, William Conner to H. F. Felix for \$800, on lots Nos. 106 and 107. Interest paid to February 26th, 1867. This mortgage is payable on the 26th day of February, 1869, with interest at seven per cent.

(5.) Mortgage dated June 1, 1866, F. Holt to H. F. Felix for \$1,100, on lot No. 41. The whole amount of this mortgage, with interest from date thereof, at seven per cent., remains due and unpaid.

(6.) Mortgage dated August 30, 1866, George Conner
20 to H. F. Felix for \$2,500, on lot No. 28. This mortgage is payable on the 30th day of August, 1871, with interest at seven per cent., less seventy dollars paid on account of interest.

15. And your orator contends, that in addition to a reconveyance of the property by him, conveyed to the said Henry F. Felix, not since said conveyance sold, he is entitled to an assignment of all said mortgages, so that he may collect to his own use the moneys due thereon.

36 16. And your orator further shows, that on the 25th day of February, 1859, he gave to the said Henry F. Felix his bond in the penal sum of seventy-two thousand eight hundred and ninety-five dollars and seventy-four

cents, conditioned for the payment of thirty-six thousand four hundred and forty-seven dollars and eighty-seven cents, on the first day of March, 1859, with warrant of attorney to confess judgment for the last mentioned amount, upon which said warrant, judgment was entered against your orator, and in favor of the said Henry F. Felix, in the Court of Common Pleas of Berks county, to January term, 1859, No. 182, for said last mentioned sum. Upon said judgment bond is the following indorsement, made at the time the same was executed, to-wit: "This judgment is given to secure the within named Henry F. Felix, for indorsements made by him for said O'Reilly." Said bond was left by the parties to the same in the possession of the attorney who drew it, where it still remains. Inasmuch as all negotiable paper indorsed by the said Henry F. Felix, for your orator, has been taken up and satisfied by your orator, and the said Henry F. Felix, during his lifetime, or his estate since his death, never sustained any loss from any liabilities incurred by him for your orator, and no such liabilities now exist, your orator desires that the said judgment should be marked satisfied upon the records of said Court of Common Pleas of Berks county.

17. Your orator further avers, that the following judgments stand open against him on the records of the Court of Common Pleas of Berks county, all of which have been marked to the use of, or assigned to, the said Henry F. Felix, to wit:

(1.) Samuel B. Wentzell vs Patrick O'Reilly, No. 241, November term, 1858. Judgment for \$282.81, with interest from December 11, 1858. On the Appearance Docket, entry of the suit on which this judgment was obtained, is marked the following memorandum: "December 19, 1859. This judgment stands for the use of Henry F. Felix."

(Signed)

HIESTER CLYMER,
Attorney for Plaintiff.

(2.) William Werner vs. Patrick O'Reilly, No. 10⁷ April term, 1859. Judgment for \$233.35, with interest from February 19, 1859. The docket on which this judgment appears contains the following assignment of the same: "February 12, 1864. For a valuable consideration I do hereby assign, transfer, and set over unto Henry F. Felix, his executors and administrators, the above judgment, and all interest accrued thereon.

(Signed,)

J. S. LIVINGOOD,

Att'y pro quer."

10 (3) Gottlieb Moyer vs. Patrick O'Reilly, No. 380, April term, 1859. Judgment for \$475.25, with interest from May 21, 1859. The docket on which this judgment appears contains the following assignment of the same: June 27, 1862, for a valuable consideration, I do hereby assign, transfer and set over unto Henry F. Felix the above judgment.

(Signed)

SAMUEL L. YOUNG,

Att'y for Pl'ff.

18. The several plaintiffs by whom these judgments
20 were obtained have been paid the amounts of the same in full, and the amount advanced for that purpose by the said Henry F. Felix was, during his life time, fully refunded to him by your orator. He therefore contends that the said judgments should be marked satisfied on the records of said court by the executor of the said Henry F. Felix, on payment of costs, which payment your orator is ready and willing to make.

Wherefore your orator prays equitable relief as follows:
30

1. That the said Rt. Rev. James F. Wood, executor of the last will and testament of the said Henry F. Felix, may be directed and enjoined by your Honorable Court to execute and deliver to your orator a deed of

conveyance in fee simple of all the hereinbefore described property, situated on Absecom beach, in the county of Atlantic and State of New Jersey, so far as the title to the same now stands in the name of the said Henry F. Felix, on payment by your orator of the costs of such conveyance.

2. That the said Rt. Rev. James F. Wood, executor as aforesaid, may be directed and enjoined by your Honorable Court to execute and deliver to your orator a deed of conveyance in fee simple of the hereinbefore described property, situated on North Tenth street in the city of Reading, conveyed by the Sheriff of Berks county to the said Henry F. Felix, as before mentioned in this bill, on payment by your orator of the costs of such conveyance. 10

3. That the said Rt. Rev. James F. Wood, executor as aforesaid, may be directed and enjoined by your Honorable Court to assign to your orator all the hereinbefore mentioned mortgages on portions of said property in New Jersey, sold subsequent to the conveyance of the 14th of January, 1861, and any bonds or other securities relating to the same, on payment by your orator of the costs of such assignments, so that your orator may collect to his own use any moneys remaining due thereon. 20

4. That the said Rt. Rev. James F. Wood, executor as aforesaid, may be directed and enjoined by your Honorable Court to enter satisfaction upon the records of the said Court of Common Pleas of Berks county, on said judgment of No. 182, January term, 1859, for thirty-six thousand four hundred and forty-seven dollars and eighty-seven cents, on the payment of costs by your orator. 30

5. That the said Rt. Rev. James F. Wood, executor as aforesaid, may be directed and enjoined by your Honorable Court to enter satisfaction upon the records of the said Court of Common Pleas of Berks county on the three

hereinbefore mentioned judgments of Samuel B. Wentzel, William Werner and Gottlieb Moyer, on payment of costs by your orator.

6. Such further and other relief as to your Honors shall seem meet.

JOHN S. RICHARDS,
Solicitor for Plff.

BERKS COUNTY, SS.

10 Personally appeared before the subscriber, one of the Aldermen in and for the city of Reading, in said county, Patrick O'Reilly, the plaintiff above named, who, having been duly sworn, upon oath says, that the facts set forth in the foregoing bill are correct and true.

P. O'REILLY.

Sworn and subscribed before me this fourth day of December, 1867.

WASHINGTON RICHARDS,
Alderman.

IN THE COURT OF COMMON PLEAS OF BERKS
COUNTY.

IN EQUITY.

PATRICK O'REILLY

vs.

THE RT. REV. JAMES F. WOOD, executor of the last will and testament of Henry F. Felix, late of the city of Reading, deceased, ALICIA KATE FELIX, widow of said Henry F. Felix, deceased, and the RELIGIOUS ORDER OF THE SISTERS OF "THE IMMACULATE HEART OF MARY," now established in the city of Reading.

The answer of the defendants above named, to the above Bill of Complaint.

10

The said defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say :

1. That as we are informed and believe, on the 14th day of January, A. D. 1861, the said Patrick O'Reilly was the owner in fee of certain property in the second section of said bill described, and that he did on that day execute a deed of bargain and sale in fee simple of said property to Henry F. Felix, deceased, but that we have no papers in our possession to show that the con-
sideration for said property was other than that men-
tioned in the said deed. Further, if said transfer of
property was made as security for liabilities, as alleged

20

in said bill, we have no papers in our possession to show what was the nature or extent of such liabilities, or whether they have been paid and satisfied in whole or in part.

2. And further, as we are informed and believe, the real estate described in Section 6 of complainant's bill was purchased by said Henry F. Felix for said P. O'Reilly, as in said bill alleged, and that the sum due the estate of said Felix by said O'Reilly, for payments made on account of said last mentioned property, amounts to the sum of \$1,100.00, or thereabouts.

10 3. And this defendant, further answering, saith, he knows not, and has not been informed, save by said complainant's bill, and cannot set forth as to his belief, or otherwise, whether "the said Henry F. Felix at various "times suggested the propriety of having the reconvey- "ances made," &c., &c., as set forth in Section 11 of said complainant's bill.

20 4. And this defendant, further answering, saith, he knows not and has not been informed, save by said complainant's bill, and cannot set forth as to his belief, or otherwise, whether said complainant is entitled or not to a reconveyance of the mortgages described in Section 14 of said complainant's bill.

36 And this defendant, further answering, saith, that true it is that on the 25th day of February, 1859, said complainant gave to said Henry F. Felix his bond in the penal sum of \$72,895 74, conditioned for the payment of \$36,447.87, on the 1st day of March, 1859, with warrant of attorney to confess judgment for the last mentioned amount, upon which judgment was entered to January term, 1859, No. 182, for said last mentioned sum. But this defendant further saith, that upon said judgment bond is the following endorsement, made at the time the same was executed, to wit: "This judgment is given to secure

"the within named Henry F. Felix for indorsements made by him for said O'Reilly, and all other liabilities incurred by him for said O'Reilly," and not for indorsement only, as alleged in said complainant's bill.

This defendant further saith, he is not informed, and cannot say, whether all negotiable paper endorsed by the said Felix for said complainant has been taken up and satisfied by said complainant; and further saith, he is informed and believes, from papers in his possession, that said complainant is still indebted to the estate of said Felix for liabilities assumed and paid by said Felix for said complainant, in a sum exceeding twelve thousand dollars (\$12,000) with interest. 10

5. And this defendant, further answering, saith he knows not and has not been informed, save by said complainant's bill, and cannot set forth as to his belief or otherwise, whether or not said complainant is entitled to have the judgments, set forth in Sec. 17 of said complainant's bill, marked satisfied on the records of the court. 20

JAMES F. WOOD,
Executor of Henry F. Felix, deceased.

CITY OF PHILADELPHIA, SS.

James F. Wood maketh oath and saith, that what is contained in his above answer, as far as concerns his own act and deed, is true to his own knowledge, and that what relates to the act and deed of any other person, he believes to be true.

JAMES F. WOOD,
Executor of Henry F. Felix, deceased. 30

Sworn and subscribed this 31st day of December, 1867, before me.

CHAS. E. PANCOAST,
Alderman.

REPORT OF D. E. SHROEDER, EXAMINER.

IN THE COURT OF COMMON PLEAS FOR BERKS
COUNTY—IN EQUITY.

PATRICK O'REILLY, Plff.,

vs.

THE RIGHT REV. JAMES F. WOOD, Executor, etc., et al.

No. 118, Equity Docket.

February 20th, 1868.

JOHN F. O'REILLY, a witness produced by the plaintiff, being duly sworn, deposes and says:

10 I am a son of P. O'Reilly, the plaintiff; am in my twenty-first year; will be twenty-one on the fifteenth day of March next. I am acquainted with the property spoken of in this case as the "Atlantic City property." I have been upon it three times. I am aware of the fact that my father executed a deed for this property to Henry F. Felix. Since the deed was made lots being a part of this property were sold, and mortgages taken for purchase money therefor. I wrote some of the deeds for these lots, also some of the bonds and mortgages given by the purchasers. The deeds for the lots were signed
20 by Henry F. Felix. I wrote the deeds, bonds and mortgages at the request of my father. Some of them were written in Reading, Penna., and some of them in Philadelphia, Penna. I was at the Polytechnic School, in Philadelphia, after the execution of the deed to Henry F

Felix, during a session of ten or eleven months. After the execution of the bonds and mortgages above mentioned, my father always detained them in his possession. He still has the greater part of them here and some of them in Philadelphia. He has had an office there for some years past. All those sales were made principally in Philadelphia, and by my father. My father frequently visited that city while I was in Philadelphia. I was at home a year or more before Mr. Felix's death. I was engaged in the shoe store and manufactory which he carried on at the corner of Fifth and Penn streets, Reading. I remember writing deeds and mortgages for Atlantic City lots, while at home, after returning from Philadelphia. I wrote them at the request of Mr. Felix and my father. My father negotiated the sales for these lots. As far as I know Mr. Felix gave the matter very little attention, except to instruct me how to write the deeds. I do not know that he made a single sale. I think he visited the property once in the bathing season and took all of us along. My father came next day, with my two youngest brothers. It was a family party. I had a conversation with Mr. Felix about the Tenth 20 street or "Gensemer property," about two or three months before he died. Sometimes, before, I had written a deed or mortgage for him, at home, for Atlantic City lot. I asked him why he always signed those deeds. He gave me no further answer than this, "The property is not mine; it belongs to your father, and so also the Tenth street property. I had another conversation with him, about a month before he died; it was either going to or returning from Vollmer's vineyard. We were in his carriage. As we passed the Tenth street property, I 30 asked him about it. He laughed and said I should mind my own business. We had another conversation at the store on the same subject (this was before the conversa-

tion in his carriage.) He complimented me for trying to do what was right in the store, and the conversation came round in that way. I asked him about the properties again, whether both the Tenth street and Atlantic City properties really belonged to my father. He said they both did. He then changed the subject and called Frank to him. He said there were reasons why these properties were in his name, but that they really belonged to my father.

Cross-examined :

- 10 I do not know the date of the deed given by my father to Mr. Felix, for the above properties—"Atlantic City properties." I heard my father say he had made this deed to Mr. Felix, and I also saw the deed. Sometimes I was present when Mr. Felix signed deeds for "Atlantic City" lots. They were taken to Judge Woodward to be acknowledged, and then given to my father by Mr. Felix. I suppose my father gave them to the purchasers. I was never present when delivered. I never was present when the mortgages were executed. The mortgages were always made to Mr. Felix. While I was in Philadelphia
- 20 I had the mortgages in my charge there. About a month after I returned to Reading, they were brought up and my father had them in his safe. The three conversations referred to above are the only ones I ever had with Mr. Felix regarding the above properties.

FEBRUARY 20th, 1868.

LEWIS J. HANOLD, being duly sworn according to law, deposes and says:

- 36 I am general clerk in the Farmers' National, late Farmers' Bank of Reading, and have been for eighteen years or more. On the 14th day of January, 1861, Henry F. Felix was liable to the Farmers' Bank of Reading, as endorser or otherwise of P. O'Reilly, in the sum

of \$43,457.96. This indebtedness was paid by Mr. O'Reilly on the 22d day of March, 1862. The estate of Henry F. Felix is not liable in any manner at this time to said bank, for debts or obligations of any kind of P. O'Reilly.

22 : FEBRUARY, 1868.

ALICIA KATE FELIX, having been duly sworn according to law, deposes and says :

I am the widow of Henry F. Felix, deceased. I remember hearing my husband remark that all of Mr. P. O'Reilly's property stood in his (Mr. Felix's) name. 10
I always kind of understood from what my husband said, that Mr. O'Reilly owned the "Atlantic City" property ; but my husband at times spoke of a lot there upon which he was to build a cottage. This was three or four years before his death. I heard my husband say that the property he bought at Sheriff's sale was his own.

The plaintiff offers in evidence :

1. Deed from Richard J. Hackett and wife to Patrick O'Reilly, dated September 15, 1853, for thirty-three acres 20
of land, more or less, situated on Absecom Beach, in the county of Atlantic and State of New Jersey, being the property mentioned in paragraph 2d of plaintiff's bill.

Also the following mortgages, described in paragraph 14th of plaintiff's bill :

1. Mortgage dated 29th May, 1865, George Kelly to H. F. Felix for \$750, on lot No. 103, and bond of same date and amount.

2. Mortgage dated 5th June, 1865, John Schaeffer to H. F. Felix for \$700, on lot No. 94, and bond of same 30
date and amount.

3. Mortgage dated July 15th, 1865, Charles Marbacker to H. F. Felix for \$600, on lot No. 65, and bond of same date and amount.

4. Mortgage dated 25th February, 1866, William Conover to H. F. Felix for \$800, on lots Nos. 106 and 107, and bond of same date and amount.

5. Mortgage dated 1st June, 1866, F. Holt to H. F. Felix for \$100, on lot No. 41, and bond of same date and amount.

6. Mortgage dated 30th August, 1866, George Conner to H. F. Felix for \$2,500, on lot 28, and bond of same date and amount.

And now: November 1st, 1869.

- 10 The examiner appointed by the court to take the testimony of witnesses, to be produced, sworn or affirmed and examined in the foregoing cause, respectfully reports, that he held a meeting pursuant to notice, on the 20th day of February, 1868, at his office, No. 624 Penn street, Reading, and thereafter by adjournments.

That the annexed and foregoing testimony was duly taken before him, in the manner and at the times and places as therein expressed.

Respectfully submitted,

D. E. SCHROEDER,

Examiner.

20

Reading, 1 November, '69.

PATRICK O'REILLY

vs.

THE RIGHT REV. JAMES F. WOOD,
 executor of the last will and tes-
 tament of Henry F. Felix, de-
 ceased.

In the Court of
 Common Pleas of
 Berks County.

No. 118 Equity Docket, 1867.

And now to wit:

This case came on to be heard by consent, on the bill, answer and report of examiner, and the respective counsel of the several parties having appeared and been fully heard, and the Court being satisfied that the allegations of the plaintiff's bill are correct and true, and that all notes endorsed by the said Henry F. Felix, or liabilities incurred by the said Henry F. Felix for the said Patrick O'Reilly as well as all claims of the estate of said Henry F. Felix against the said Patrick O'Reilly, except a mortgage on Pine street property, have been by the said Patrick O'Reilly fully paid, discharged and satisfied, doth adjudge, order and decree—

1. That the said Right Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, late of the city of Reading, deceased, execute and deliver to the said Patrick O'Reilly a deed of conveyance in fee simple for the real estate described in the plaintiff's bill, situated on Absecom beach, in the county of Atlantic and State of New Jersey, so far as the title to the same stood in the name of the said Henry F. Felix at the time of

the filing of the plaintiff's bill, on the payment by the plaintiff of the cost of such conveyance.

2. That the said Right Rev. James F. Wood, executor as aforesaid, execute and deliver to the said Patrick O'Reilly a deed of conveyance in fee simple of the property in plaintiff's bill mentioned and described, situate on North Tenth street, in the city of Reading, on the payment by the plaintiff of the cost of such conveyance.

10 3. That the said Right Rev. James F. Wood, executor as aforesaid, assign to the said Patrick O'Reilly all the mortgages in the said plaintiff's bill mentioned and described, on portions of property situate in the State of New Jersey sold subsequent to the conveyance of January 14, 1861, and any bonds or other security relating to the same, on payment by the said plaintiff of the costs of such assignment, so that the said plaintiff may collect to his own use any money remaining due thereon.

20 4. That the said Right Rev. James F. Wood, executor as aforesaid; enter satisfaction upon the records of said Court of Common Pleas of Berks county, on Judgment No. 182, January Term, 1869, on \$36,447.87, on payment of costs by said plaintiff.

5. That the said Right Rev. James F. Wood, executor as aforesaid, enter satisfaction upon the records of the Court of Common Pleas of Berks county, on three judgments mentioned in said plaintiff's bill, of Samuel B. Wentzel, William Werner and Gottlieb Moyer, on payment of costs by said plaintiff.

6. And the Court further order and decree that the costs be paid by the plaintiff.

30 And now, 20 Sept., 1880, the above decree is this day signed *nunc pro tunc*.

By the Court.

AUG. S. SASSAMAN,

Judge.

THE COMMONWEALTH OF PENNSYLVANIA, } ss.
COUNTY OF BERKS.

I, William D. Althouse, Esq., Prothonotary of the Court of Common Pleas for the county of Berks, do certify that the foregoing is a true copy of the whole record in the cause wherein Patrick O'Reilly is plaintiff, and The Rt. Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, late of the city of Reading, deceased, Alicia Kate Felix, widow of said Henry F. Felix, deceased, and the religious order of "The Sisters of the Immaculate Heart of Mary," now established in the city of Reading, are defendants; of Equity Term, 1869, number 118, as full, entire and complete as the same remains on file in the Court of Common Pleas for the county of Berks, in the case there stated. 10

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court this eighth day of April, in the year of our Lord one thousand eight hundred and eighty-two.

WM. D. ALTHOUSE,
Prothonotary. 20

COUNTY OF BERKS, SS.

I, Jeremiah Hagenman, President Judge of the Court of Common Pleas for the county of Berks, do certify, that the foregoing record and attestation, made by William D. Althouse, Esq., Prothonotary of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand, this eighth day of April, in the year of our Lord one thousand eight hundred and eighty-two. 30

J. HAGENMAN,
President Judge.

COUNTY OF BERKS, ss.

I, William D. Althouse, Esq., Prothonotary of the Court of Common Pleas of the county of Berks, do certify, that the Honorable Jeremiah Hagenman, by whom the foregoing

attestation was made, and whose name is thereto subscribed, was, at the time of making thereof, and still is, President Judge of the Court of Common Pleas for the county of Berks, duly commissioned and sworn, to all whose acts, as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this eighth day of April, in the year of our Lord one thousand eight hundred and eighty-two.

WM. D. ALTHOUSE,
Prothonotary.

NEW JERSEY COURT OF ERRORS AND APPEALS.

20

DANIEL LINDLEY,

VS.

CATHARINE C. O'REILLY.

} ASSIGNMENT
OF ERRORS.

And the said Daniel Lindley, by Thomas B. Harned, his attorney, comes and says that in the record and proceedings aforesaid, and also in giving judgment in favor of the said Catharine C. O'Reilly and against the said Daniel Lindley, and also in the matters recited and contained in the bill of exceptions in this case, there is manifest error in this, to wit:

1. Because the court at the trial admitted in evidence the will of Henry F. Felix.

2. Because the court at the trial admitted in evidence the deed of Right Rev. James F. Wood, executor, &c., to Patrick O'Reilly.

3. Because the court at the trial admitted in evidence the record of the Court of Common Pleas of Berks county, Pennsylvania, in the case wherein Patrick O'Reilly was plaintiff against said Right Rev. James F. Wood, executor, &c., and others.

10

4. Because the court at the trial admitted in evidence the decree made in above stated cause.

5. Because the court at the trial admitted in evidence the Pamphlet Laws of the State of New Jersey for the year 1872, p. 357, &c.

6. Because the court at the trial refused to non-suit the plaintiff, upon the request of the defendant.

7. Because the court at the trial improperly instructed 20 the jury as follows: "I charge you as a matter of law, that the title now resides in Catharine O'Reilly."

8. Because the court at the trial improperly refused to instruct the jury "That the decree of the Court of Common Pleas of the county of Berks, in the State of Pennsylvania, touching the conveyance of the land in question, offered in evidence by the plaintiff, is not binding or operative in this State, and cannot be considered by the jury as competent evidence in this cause towards establishing title in the plaintiff."

30

"That under and by the will of Henry F. Felix, offered in evidence by the plaintiff, the Right Rev. James F. Wood, his executor, had no right to convey the land in question as a part of the real estate of the testator in this State."

"That even if he had power of sale under the will, he could not exercise it in this State without having first proved and recorded the will in this State and taken out letters testamentary thereon."

"That the act of the legislature of the State, public laws of 1872, p. 357, offered in evidence by the plaintiff, was inoperative and void, and failed to validate the deed from the Rt. Rev. James F. Wood to Patrick O'Reilly, inasmuch as it was an effort by legislation to transfer the property in question from the heirs-at-law and devisees of Felix, the testator, to Patrick O'Reilly."

10 "That the deed from the Right Rev. James F. Wood to Patrick O'Reilly, offered in evidence by the plaintiff, has not operated to transfer the property in question from the heirs-at-law and devisees of Henry F. Felix to Patrick O'Reilly, either alone or taken in connection with the said act of the legislature of this State purporting to validate the same."

"That upon the plaintiff's proofs, she is without sufficient title to recover the land in question in this suit."

9. Because the said judgment aforesaid, by the record
20 aforesaid, appears to have been given for the said defendant in error; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff in error, and against the said defendant in error.

Therefore, the said Daniel Lindley prays that the judgment aforesaid, by reason of the aforesaid errors, and of other errors appearing in the record and proceedings, and also in giving judgment in a certain plea of ejectment against him as aforesaid, be reversed, annulled, and held for nothing, and that the said Daniel Lindley
30 may be restored to all things he has lost on occasion of the said judgment.

THOMAS B. HARNED,
Attorney of Plaintiff in Error.

New Jersey Court of Errors and Appeals.

DANIEL LINDLEY,

Plaintiff in Error,

vs.

CATHARINE C. O'REILLY,

Defendant in Error.

Error to
Supreme Court.

BRIEF OF JAMES A. O'REILLY.

The summons in this case was tested January 21, 1882.

The narr sets out that the defendant in error is lawfully possessed of the following tract of land, situate in Atlantic City, County of Atlantic, and State of New Jersey: Beginning at a point one hundred and fifty feet southerly from the southerly line of Pacific avenue, and one hundred and fifty feet westerly from the westerly line of Tennessee avenue; thence extending westerly parallel with Pacific avenue, fifty feet; thence extending southerly of that width, between parallel lines parallel with said Tennessee avenue, eight hundred feet, more or less, to the Atlantic Ocean and the exterior line as laid down on the map entitled "Map of Atlantic City, Atlantic County, N. 20

J., showing the exterior line established by the Riparian Commissioners of New Jersey, 1876. Filed in the office of the Secretary of State of New Jersey, at Trenton."

On September 12, 1882, the cause was tried before the Honorable Alfred Reed and jury, and verdict rendered in favor of the defendant in error.

On appeal to this Court at June Term, 1884, the judgment was reversed.

On December 14, 1886, the cause was again tried and
10 verdict rendered in favor of the defendant in error.

On September 5, 1853, Richard Hackett and Judith, his wife, (the said Judith being one of the children and heirs of Jeremiah Leeds, late of the County of Atlantic, of whose lands partition was made January 3, 1840, approved by the court April 28, 1840), conveyed by deed to Patrick O'Reilly and Daniel Morris, thirty-three acres of land on Absecon Beach, in the said County of Atlantic, being part of the tract assigned to Judith (Leeds) Hackett. This deed was acknowledged before John H. Doughty, Commissioner of Deeds, September 5, 1853, and recorded,
20 October 1, 1853, in the clerk's office, liber 6, folio 1330.

On November 20, 1855, Daniel Morris, by deed poll on the back of the above deed, conveyed all his title and interest in the above tract of land to Patrick O'Reilly, acknowledged same day before William W. Thompson, Master in Chancery, and recorded November 20th, in liber H of deeds, folio 821.

On January 14, 1861, Patrick O'Reilly and wife, by deed, conveyed their title and interest in the said tract to
30 Henry F. Felix, acknowledged same day before Hon. J. P. Jones, President Judge of the Court of Common Pleas of Berks County, Pennsylvania, with the certificate of Adam W. Kauffman, prothonotary, that the Hon. J. P. Jones,

before whom the acknowledgment was made, was at the time the President Judge of the various courts of Berks County.

On April 11, 1882, a certified copy of the will of Henry F. Felix, dated November 25, 1865, and probate, together with petition to the Surrogate of Atlantic County, was filed and recorded in the Surrogate's office of Atlantic County. The will of Henry F. Felix was approved in Berks County, Pennsylvania, on the day of November, 1866, and letters testamentary granted to The Rt. Rev. 10 James F. Wood, the executor named therein.

On December 4, 1867, Patrick O'Reilly filed his bill in equity in the Court of Common Pleas of Berks County, Pennsylvania, Sitting in Equity, against The Rt. Rev. James F. Wood, the executor of Henry F. Felix, deceased; Alecia Kate Felix, his widow, and the religious order of "The Sisters of The Immaculate Heart of Mary," devisees named in said will, praying the court, *inter alia*, to order and direct said executor to reconvey to him the land, which the said Patrick O'Reilly had conveyed to the said Henry 20 F. Felix, January 14, 1861.

On January 27, 1868, the answer of Rt. Rev. James F. Wood, executor, for himself and co-defendants, filed.

Same day examiner appointed.

On October 16, 1869, The Rt. Rev. James Wood, executor of Henry F. Felix, deceased, in obedience to the decree of the said Court of Common Pleas of Berks County, conveyed to the said Patrick O'Reilly the land described in the bill filed by the said O'Reilly. This deed was acknowledged same day before Richard M. Hartley, a Com- 30 missioner of Deeds for the State of New Jersey, residing in the city of Philadelphia, Pennsylvania, and recorded in the Clerk's office, Atlantic County, November 3, 1869, in liber 37 of deeds, page 176.

On September 20, 1880, decree of Court of Common Pleas of Berks County, Pennsylvania, *nunc pro tunc* filed.

On July 5, 1881, will of Patrick O'Reilly, dated December 5, 1877, approved in Berks County, January 24, 1881, and letters testamentary granted to Catharine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors named therein, and proved in Atlantic County on July 5, 1881, before S. R. Devinney, Surrogate, and letters testamentary granted to Mrs. O'Reilly, one of the executors therein named.

The plaintiff in error at the trial objected to the deeds and records forming part of the chain of title of the defendant in error, which objections were overruled by the court. The admission of them in evidence constitute the only errors assigned; the defense of adverse possession and accretion having been disposed of by the verdict of the jury, in favor of the defendant in error, for the second time.

The first objection, which, however, is not assigned for error, is that the court erred in admitting in evidence the deed from Patrick O'Reilly and wife to Henry F. Felix, "on the ground it does not appear to be acknowledged properly, according to the laws of this State." (Page 7, printed case, line 31.) This deed was acknowledged by Patrick O'Reilly and wife before Hon. J. P. Jones, President Judge of the Court of Common Pleas of Berks County, Pennsylvania. Adam W. Kauffman, the prothonotary, certifies under the official seal of the court that the Hon. J. P. Jones is the President Judge of said court, in active commission. "A certificate of acknowledgment of a deed is good if it shows a substantial, though not a verbal, compliance with the requirements of the act respecting conveyances."

Den vs. Geiger, 4 Hal, 225.

The first assignment of error is that the court erred "in admitting in evidence the will of Henry F. Felix," for the reason that it was "not properly proved according to the laws of the State of New Jersey." Henry F. Felix died in Reading, Pennsylvania, and his will was duly admitted to probate in the County of Berks, and letters testamentary were granted to the executor named therein. A copy of said will certified under the hand and official seal of the Register of Wills for Berks County, whose signature and official seal were duly certified to by 10 Hon. J. Hagenman, President Judge of the courts of said county, also the certificate of W. D. Althouse, prothonotary of said court, under his hand and official seal, that the Hon. J. Hagenman was, and still is, the President Judge of said courts, was presented with the petition of James A. O'Reilly, to the Surrogate of Atlantic County, praying that the said copy of said will may be filed and recorded in his said office, which prayer, upon due consideration, was granted. There was a literal compliance with the statute and the court was not guilty of error in overruling 20 the objection of the plaintiff in error.

Allaire vs. Allaire, 8 Vr., 312.

The 2, 3, 4 and 8 assignments of error, relating to the same subject matter will be considered together. The errors complained of are in admitting in evidence the deed from the Rt. Rev. James F. Wood, executor to Patrick O'Reilly; the record of the Court of Common Pleas of Berks county, Pennsylvania; the decree of said court; and the refusal of the court to instruct the jury that the decree of the said Court of Common Pleas of 30 Berks County was inoperative and void; that under the will of Felix, his executor had no right to convey land in this State; that no letters testamentary were granted; that the act of the Legislature of New Jersey was void;

that the deed from the Rt. Rev. James F. Wood, executor to Patrick O'Reilly, did not operate to transfer the property from the heirs-at-law and devisees of Felix to O'Reilly, and that the plaintiff below has no title to the land in question.

As to the deed from the executor of Felix to O'Reilly, that deed was made in compliance with the order and decree of the court having jurisdiction of the parties.

Patrick O'Reilly filed his bill in the Court of Common
 10 Pleas of Berks County, Sitting in Equity, against the executor of Henry F. Felix, his widow and the devisees named in the will. They were all duly served, and the executor filed an answer to said bill for himself and co-defendants. The parties, therefore, were all subject to the jurisdiction of said court. The bill prayed, *inter alia*, a re-conveyance of the real estate, situate in Atlantic City, this State. On page 29 of printed case the bill states:

3. "That previous to and on said 14th day of January, 1861, the said Henry F. Felix was endorser for the said
 20 Patrick O'Reilly to the amount of thirty-five thousand dollars and upwards on the promissory notes of the said Patrick O'Reilly, discounted at the Farmers' Bank of Reading, which notes were then lying under protest, and the said Henry F. Felix, as endorser, was liable to pay."

4. "That under these circumstances it was agreed by and between the said parties that in order to secure, as far as possible, the said Henry F. Felix against loss on account of his liability on the promissory notes aforesaid, he, the said Patrick, should execute a deed of bargain and sale, in
 30 common form, to the said Henry F. Felix, his heirs and assigns, for the property owned by the said Patrick O'Reilly, above described, it being expressly understood and agreed between your orator and the said Henry F. Felix that upon your orator paying said notes, and the

said Henry F. Felix being thereby relieved from his liability thereon, he, the said Henry F. Felix, should, on demand of your orator, and without further consideration, reconvey the whole of said property to your orator, his heirs and assigns, making the title to the same as full and complete in your orator as the same had been previous to said conveyance of your orator to the said Henry F. Felix."

5. "In pursuance of said understanding and agreement, your orator, on the 14th day of January, 1861, executed 10 and delivered to the said Henry F. Felix a deed of bargain and sale in fee simple for the whole of said property, as owned by your orator. The consideration mentioned in said deed was eighteen thousand dollars, but no money whatever was paid by the said Henry F. Felix to your orator on account of the same, the true and only consideration of said deed being the securing of the said Henry F. Felix for his endorsement, as hereinbefore stated."

9. "Your orator further avers that he afterwards fully paid and discharged the promissory notes aforesaid, on 20 which the said Henry F. Felix was endorser, so that the said Henry F. Felix sustained no loss nor damage in consequence of said endorsements."

The prayer was, 1. "That the Rt. Rev. James F. Wood, executor of the last will and testament of the said Henry F. Felix, may be directed and enjoined by your honorable court to execute and deliver to your orator a deed of conveyance in fee simple of all the hereinbefore described property, situated on Absecon Beach, in the County of Atlantic, and State of New Jersey, so far as the title to 30 the same now stands in the name of the said Henry F. Felix, on payment by your orator of the costs of such conveyance."

The answer (printed case, p. 39), admits the execution

of the deed, avers ignorance of the consideration or whether the liabilities had been paid and satisfied.

The decree of the court (page 47) was, "that being satisfied, that the allegations of the plaintiff's bill are correct and true," * * * "doth adjudge, order and decree."

- "1. That the said Right Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, late of the City of Reading, deceased, execute and deliver to the said Patrick O'Reilly, a deed of conveyance in fee simple
 10 for the real estate described in the plaintiff's bill, situate on Absecon Beach, in the County of Atlantic, and State of New Jersey, so far as the title to the same stood in the name of the said Henry F. Felix, at the time of the filing of the plaintiff's bill, on the payment by the plaintiff of the costs of such conveyance." As stated before, all the parties in interest were subject to the jurisdiction of the Court of Common Pleas of Berks County, Pennsylvania, Sitting in Equity, having been duly served, and appearance entered; consequently, they were bound by the
 20 decree made. The decree was not *in rem*, but *in personam*. Wharton on the Conflict of Laws, 2d Ed, section 288, says: "Notwithstanding the rigor with which the English Courts have applied the *lex rei sitae* to immovables, the Court of Chancery has claimed the right to compel parties, subject to its jurisdiction, to take specific action with regard to foreign real estate. Thus an injunction has been granted to restrain the prosecution of claims for such foreign realty; specific performance of articles of agreement for the sale of foreign realty has been
 30 enforced, and reconveyances and releases ordered of estates fraudulently acquired in foreign lands. * * * *
 On the other hand, to quote from Mr. Westlake, the claim to affect foreign lands *must be strictly limited to those cases where the relief decreed can be entirely obtained*

through the parties' personal obedience; if it went beyond that, the assumption would not only be presumptuous, but ineffectual. Thus a bill will not lie for partition of lands beyond the jurisdiction or to settle boundaries, nor can equity be enforced by sequestration of such lands; nor, again, will the court try any question which, like the validity of a will in a foreign land, does not involve a special equity between the parties, but is a general one affecting the land, and therefore solely dependent on the *lex situs*, on which law another 10 tribunal than its own can only pronounce incidentally and not directly. Yet while direct action on foreign immovables is thus out of the range of judicial power, a court of equity, when it has a trustee or other defendant before it who cannot be compelled to do justice in any other way, will direct him, as a condition of his release from heavier penalties, to take certain action with regard to foreign immovables. But in order to enable a court of equity to compel a party subject to such court to perform acts in reference to foreign real estate, there must be a fiduciary 20 relation between the party on whom the decree acts, and the party asking for the decree. And either the defendant must be domiciled within the jurisdiction of the court granting the relief, or the contract must be performable within that jurisdiction. When these conditions exist and when there is no other way of compelling the execution of a trust, or the prevention of fraud, a court of equity will direct a party subject to it to execute a deed in another State, and such a decree will be regarded as binding the person acted on by the courts of the *situs*." 30

In *Wood vs. Warner*, 15, *N. J. Eq.*, 84, Chancellor Green says: "Upon the question of jurisdiction I entertain no doubt. * * *. The defendants are all citizens of this State, and their appearance has been duly

effected. It may be the court cannot enforce its own decree *in rem* by making a sale of defendant's title to the Island of Sombrero, as prayed for in the bill.

* * * The strict primary decree of a court of equity is *in personam* and not *in rem*. In *Penn vs. Lord Baltimore*, 1 *Vesey, Sen.* 444, the court decreed the specific performance of articles of agreement, between the proprietors of Pennsylvania and Maryland, relating to the boundaries of the two provinces. In delivering his opinion
 10 in that case, Lord Hadwicke said: 'As to the courts not enforcing the execution of their judgment, if they could not at all, I agree it would be in vain to make a decree, and that the court cannot enforce their own decree *in rem* in the present case; but that is not an objection against making a decree in the cause; for the strict primary decree in this court as a court of equity, is *in personam*.'
 * * * In Lord King's time, in the case of *Richardson vs. Hamilton*, attorney general of Pennsylvania, which was a suit of land and a house in the town of Philadel-
 20 phia, the court made a decree, though it could not be enforced *in rem*. In the case of Lord Anglesey, of land lying in Ireland, I decreed for distinguishing and settling the parts of estate, though impossible to enforce that decree *in rem*; but the party being in England, I could enforce it by process of contempt *in personam* and sequestration, which is the proper jurisdiction of the court."

"The proposition," says Mr. Justice Story, "may be laid down in the most general form, that to entitle a court of equity to maintain a bill for the specific performance
 30 of a contract respecting land, it is not necessary that the land should be situate within the jurisdiction of the State or county where the suit is brought. It is sufficient that the parties to be affected and bound by the decree are resident within the State or county where the suit is brought,

for in all suits in equity the primary decree is *in personam* and not *in rem*." 1 *Story's Eq. Jur.*, Sec. 744.

"Equity acts *in personam*. It was against the *person* that the jurisdiction of the court of chancery was originally acquired. One of the ordinary means of enforcing obedience to the decrees of a court of equity is by an attachment against the person of the defendant. Hence when the *parties* are within the jurisdiction of a court of chancery it will not ordinarily hesitate to grant relief, although the property to be ultimately affected by the decree may lie in another forum; * * * and a trustee residing in one State may be compelled to make a conveyance of real estate situated in another." *Bispham's Equity*, 3d Edition, Sec. 47, and cases cited. 10

It thus appearing from the record that the court having had jurisdiction over *all* the parties interested, they were bound by the decree; and that the decree was in accordance with equity and right is manifest by the acquiescence of the executor, the widow and the devisees. The executor having, in obedience to said order and decree, executed and delivered the deed to Patrick O'Reilly, for all the land in Atlantic City, which the said O'Reilly had conveyed to Felix in 1861, excepting such lots which had been sold while the title was in Felix, respectfully submit that the court did not err at the trial in admitting the same in evidence. 20

As to the admission of the record of the Court of Common Pleas of Berks County, Pennsylvania, and of the decree made in said cause, the objection was "that it is not properly authenticated, and that it is inoperative in this State." The act of Congress, 1 *R. S.*, Section 905, requires that "the records and judicial proceedings of the courts of any State or territory, or of any such county, 30

shall be proved or admitted in any other court within the United States, by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings authenticated shall have such faith and credit given to them in every court within the United States as they have been by law or usage in the courts of the State from whence the said records are taken." In the present case the records were certified to by the prothonotary under the seal of the court, with the certificate of the president judge, that the record and attestation made by the prothonotary were in due form and by the proper officers, and that the Hon. J. Hagenman, by whom the attestation was made, was at the time of making, and still is, president judge of the Court of Common Pleas for the County of Berks; submit was a literal compliance with the act and were properly admitted. *Gavit, Snowhill & Butcher*

20 The objection to the act of 1872, confirming the deed from the Rt. Rev. James F. Wood, executor to Patrick O'Reilly, because it "was inoperative and void, inasmuch as it was an effort by legislation to transfer the property in question from the heirs-at-law and devisees of Felix, the testator, to Patrick O'Reilly," is without merit.

By the will of Mr. Felix his widow was to receive the income of his estate for life, and, if necessary, the principal, and after her decease to the executor in trust for the "Sisters of the Immaculate Heart of Mary." The
30 heirs of Mr. Felix cannot in any event be a question in this case. As before shown, the suit in equity was between Mr. O'Reilly and the executor of Mr. Felix, his widow and his devisees. All who were *interested* in the estate of

Mr. Felix were made *parties* to this proceeding, and the court having jurisdiction, the decree made therein was binding and conclusive. The deed from the executor of Mr. Felix to Patrick O'Reilly was in obedience to that decree, and the act of 1872 was merely confirming the title conveyed by said deed. Had the Legislature of New Jersey the power to do this? If the act had been of the character claimed by the plaintiff in error, viz: "the transferring of the property in question from the heirs-at-law and devisees of Felix to Patrick O'Reilly," then the objection 10 would be proper, for the reason that it would not be within the legitimate exercise of the power of the Legislature, and therefore unconstitutional and void. But the act does not transfer the property in the manner averred by the plaintiff in error; in fact it does not "transfer" the property at all. The title passed, when the executor of Mr. Felix, in compliance with the decree of a court of competent jurisdiction, conveyed the same to Mr. O'Reilly, and this act merely confirmed the deed of the executor and cured defects, if any, in said conveyance. *In State vs. 20 City of Newark*, 3 *Dutch*, 196, Elmer J., said: "A statute which undertakes to take away from one person vested rights of property and transfer them to another, against the actual or fairly implied assent of the party injuriously affected, may be well considered as not a legitimate exercise of the legislative power, and as therefore unconstitutional and void. * * * But laws curing defects which would otherwise operate to frustrate what must be presumed to be the desire of the party affected, cannot be considered as taking away vested rights. Courts do not regard rights as 30 vested contrary to the justice and equity of the case.

In *Tate and Wife vs. Stooltzfoos and others*, 16 *S. & R.*, Duncan J. said: "It is objected that this act is unconstitutional. The general rule is, that all laws are in their

nature prospective, yet this does not prohibit the Legislature from passing some laws which have a retrospective operation. Where the laws do not impair the obligation of contracts, or are not *ex post facto*, (*ex post facto* relates to crime only), every confirmatory act is in its nature retrospective; and in the opinion of the court delivered in *Underwood vs. Lilly*, 10 S. & R., 101, it is stated: 'that confirming acts are not uncommon; deeds acknowledged defectively by *femes covert*, proceedings and judgments of
 10 commissioners and justices of the peace, who were not commissioned agreeable to the constitution, or when their power ceased on the division of counties, until a new appointment. Retrospective laws, which only vary the remedies, divest no rights, but merely cure a defect in proceedings otherwise fair, the omission of formalities which do not diminish existing obligations, contrary to their situation when entered into; these and several like acts are clearly constitutional.' I have seen no reason to change that opinion. I will just add, that it is an abuse of
 20 terms, to contend that this is an act divesting vested rights. Such acts would be odious and unjust, as well as unconstitutional; for it is not intended by a vested right that it shall be a right to do wrong; to take advantage of a mere slip in form, where the transaction is a *bona fide* one, and to avoid an honest conveyance, fairly acknowledged, in the hands of an innocent purchaser."

Mercer vs. Watson, 1 Watts, 355.

It is a potent fact that all the parties interested in the estate of Mr. Felix, have acquiesced in the legal right of
 30 Mr. O'Reilly to this, as well as the other property in Atlantic City; that under this same title a large amount of real estate has been conveyed to various persons and corporations, during the life of Mr. O'Reilly, and since his decease by the defendant in error. It remained for a

mere trespasser, a wrong-doer, who could not obtain by purchase the property in question, to cast a cloud or doubt upon this title, so that it might in some way enure to his benefit. Submit that no court will permit such an injustice to be done.

Gavit vs. Snowhill, 2 *Dutch*, 76.

If we suppose for the sake of argument that the title to the property in question, (and it might be remarked here that this title covers all the land of the defendant in error), is not in the defendant in error, but is outstanding in the devisees of Henry F. Felix, as contended by the plaintiff in error. What then? How is he benefitted? He is a mere trespasser whom the law does not favor, and when he endeavors to defeat the title of the defendant in error by setting up an outstanding title in another, he is bound to a strict proof of it. In *Den vs. Sinnickson*, 4 *Hul*, 149, Drake Justice said: "These outstanding titles are not to be favored. Whoever sets them up should prove them strictly and show them to be subsisting and available." 10

In *Leport vs. Todd*, 32 *N. J. L.*, 124, the present Chief Justice said: "The complexion of the case, as it appeared at the trial, was this: the defendant, Todd, it could not be pretended, was possessed of any legal claim to the premises, nor was Bell, under whom he entered, in any better situation; for, although he had a mortgage on the land, the title at law, it was clear, had not passed to him by force of that instrument from admitted defects in the line of its transfer to him. In a court of law the defendant stood in the light of a mere trespasser, and to this effect the jury were properly instructed. This being the position of the defendant, it is clear that, as against him, it was not necessary to prove anything more than a right springing 20 30

out of a prior peaceable possession. Whether such prior possession had been under a claim of right and adverse in a technical sense, or had continued for any particular period, were not inquiries which the defendant as a mere wrong-doer could bring into the controversy."

Den Watson et al. vs. Kelty et al., 16 N. J. L., 517.

It is thus manifest that even if the title of the defendant in error is, as contended by the plaintiff in error, yet having been in possession through her decedent from 1853 10 to 1861, and through Felix from 1861 to 1869, and again through her decedent from 1869 to 1881, the plaintiff in error, being a mere trespasser, cannot inquire into.

Submit that the rulings of the trial justice, having been according to law, should be affirmed.

JAMES A. O'REILLY,

Attorney for Defendant in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS

DANIEL LINDLEY	}	In Ejectment.
vs.		On Error to the
CATHARINE C. O'REILLY.		Supreme Court.

This was an action of ejectment commenced in the Supreme Court by summons, tested January 21, 1882; returnable February 4, 1882.

The case was tried at the September Term of the Atlantic Circuit Court for the year 1882, and verdict rendered for the plaintiff, on which judgment was entered November 7, 1882. On writ of error that judgment was reversed by this court at the June Term of this court for the year 1884, and *venire facias de novo* awarded. 10

The case was tried a second time at the December Term of the Atlantic Circuit Court for the year 1886, and a verdict rendered for the plaintiff, on which judgment was entered February 15, 1887. From this judgment this writ of error is brought and is tested February 17, 1887, and is returnable the first Tuesday of March, 1887. 20

The suit was brought to recover the possession of a tract of land in Atlantic City, beginning at a point one

hundred and fifty feet southerly from the south line of Pacific avenue, and one hundred and fifty feet westerly of the west line of Tennessee avenue; thence westerly parallel with Pacific avenue fifty feet; thence extending southerly of that width between parallel lines parallel with Tennessee avenue eighteen hundred feet, more or less, to the Atlantic ocean and the exterior line established by the Riparian Commissioners.

10 The lands claimed were nearly all of them accretions, made within less than thirty years prior to the commencement of the suit, in front of a tract of land part of the estate of Jeremiah Leeds, partitioned among his heirs by commissioners appointed by the Orphans' Court of Atlantic county, about the year 1839, and part of the lands set off by the said commissioners to Judith Leeds, afterwards wife of Richard Hackett, and which were conveyed by Richard Hackett and Judith, his wife, to Patrick O'Reilly and Daniel Morris, by deed dated September 5, 1853, describing said lands in said deed as running to low water mark of the Atlantic
20 ocean. The title to these lands, or to the parts unsold, afterwards became vested in the plaintiff in severalty.

Patrick O'Reilly and wife and Daniel Morris conveyed a lot, part of said lands, to John Morris, by deed dated April 30, 1855, describing said lot in said deed as beginning on the south side of Pacific avenue one hundred and fifty feet west of Tennessee avenue; thence extending along the side of Pacific avenue on a course south sixty-seven degrees west fifty feet; thence south twenty-three degrees east one hundred and fifty feet towards the
30 surf; thence north sixty-seven degrees east fifty feet; thence north twenty-three degrees west one hundred and fifty feet to the beginning. This lot by several conveyances, all describing it as above, became vested in the defendant, the land for which this suit is brought extend-

ing from the southeasterly end of the above described lot to the ocean.

At the trial the plaintiff offered in evidence the several conveyances, &c., transferring the title of these lands from Jeremiah Leeds to the plaintiff as follows:

1. Partition of the lands late of Jeremiah Leeds, deceased, made by commissioners and approved and confirmed by the Orphan's Court of Atlantic county April 20, 1840, setting off the lands to Judith Leeds, afterwards Hackett. 10

2. Deed, Judith Hackett, nee Leeds, and Richard Hackett, her husband, to Patrick O'Reilly and Daniel Morris, dated September 5, 1853, conveying thirty-three acres, describing the land as running to low water mark of the Atlantic ocean.

3. Deed of Daniel Morris to Patrick O'Reilly, dated November 20, 1855, conveying Morris' half or moiety of said lands remaining unsold to Patrick O'Reilly.

4. Deed, Patrick O'Reilly and wife to Henry F. Felix, dated January 14, 1861, acknowledged on the day of 20 date, before J. P. Jones, Judge of the Court of Common Pleas of Berks county, in the State of Pennsylvania, with the certificate of A. W. Kauffman, Prothonotary of said court, under the seal of said court, certifying that J. P. Jones was the judge of said court and that he was, by virtue of his office, empowered to take acknowledgments of deeds, &c.

5. Will of Henry F. Felix, dated November 25, 1865, proved before the Register of Wills of Berks county, Pennsylvania, and copy filed and recorded in the Surrogate's office of Atlantic county, April 11, 1882, in Book 30 C. of Wills, page 89, &c., James F. Wood being sole executor of said will.

6. Deed, Rt. Rev. James F. Wood, executor of Henry F. Felix, deceased, to Patrick O'Reilly, dated October 16,

1869, acknowledged the day of the date thereof, before Richard M. Hartley, a Commissioner of Deeds for New Jersey residing in Philadelphia, Pennsylvania.

7. Will of Patrick O'Reilly, dated December 5, 1877, proved before the Register of Wills of Berks county, in the State of Pennsylvania, and proved under the statute before the Surrogate of Atlantic county July 5, 1881, and letters testamentary thereon granted by said Surrogate to Catharine C. O'Reilly, one of the executors named
10 therein.

Also 8. Exemplified copy of the record of the case of Patrick O'Reilly, plaintiff, against The Right Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, and others, in the Court of Common Pleas of the county of Berks and State of Pennsylvania.

9. Act of the Legislature of the State of New Jersey, entitled, "An act to confirm a certain deed made by the Right Reverend James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, of lands
20 in Atlantic City, county of Atlantic and State of New Jersey;" approved March 5, 1872, being Chapter 142 of the Laws of 1872. See Laws of 1872, page 357, &c.

The plaintiff also offered in evidence the several deeds conveying the title of the lot owned by the defendant from O'Reilly and wife and Daniel Morris to John Morris, as above stated, and from Morris to and from others to the defendant. There was no proof at the trial, nor was it in any other way claimed, that the title of the defendant included any part of the lands in the
30 plaintiff's declaration. The claims of the defendant were, 1st, that the deed made by P. O'Reilly and Daniel Morris to John Morris above set forth, and under which the defendant claims title, conveyed the land to high water mark, and 2nd, adverse possession. At the trial

several bills of exception as to the admission of evidence and as to the rulings and charge of the court were sealed at the request of the defendant.

The assignments of errors in this case are on page 50, &c., of the printed case. The assignments of errors, from No. 1 to 5, refer to the admission of evidence; No. 6 refers to a refusal to non-suit; Nos. 7 and 8 to the charge of the judge, and No. 9 assigns mere general errors.

The first bill of exceptions sealed, (see pages 7 and 8 10 of printed case) is to the admission in evidence of the original deed of Patrick O'Reilly and wife to Henry F. Felix, dated January 14, 1861, acknowledged the day of the date thereof before J. Pringle Jones, President Judge of the Court of Common Pleas of the county of Berks, in the State of Pennsylvania, stating that January 14, 1861, Patrick O'Reilly and Catharine C., his wife, appeared before him; that he was satisfied they were the grantors named in the conveyance; that he having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their 20 voluntary act and deed; that Catharine C. O'Reilly, being of full age and by him privately examined, separate and apart from her said husband, acknowledged that she signed, sealed and delivered the same freely, without any fear, threat or compulsion of her said husband, and certified the same on the said deed, under his hand and seal. Endorsed on the deed was a certificate of A. W. Kauffman, under the seal of the Court of Common Pleas of Berks county, certifying that he was the Prothonotary of said court; that Hon. J. Pringle Jones, before whom the within indenture was acknowledged, was the Presi- 30 dent Judge of the Court of Common Pleas of Berks County, and by virtue of his office empowered to take acknowledgments of deeds, &c., and that the signature and seal purporting to be his signature and seal are

genuine, and dated January 14, 1861. This deed was recorded January 30, 1861, in the Clerk's office of Atlantic county, in Liber P of Deeds, page 921, &c.

The statute, in case a deed is acknowledged out of this State, authorizes the same to be acknowledged before a judge of any Court of Common Pleas of the State in which the party to the deed may be, and requires a certificate under the seal of the county court in which it is made, that he is such officer, shall be deemed sufficient
 10 authority for that purpose, and such acknowledgment shall be as good and effectual as if such acknowledgment had been made within this State before the Chancellor thereof, and had been certified by him. Rev. Stats. 1847, page 641, § 5; Nix. Dig., page 145, § 5; Revision 1877, page 154, § 7.

The third bill of exceptions (see page 8 of printed case, line 15; and second assignment of errors, page 51, line 1,) is to the admission in evidence of the original deed of the Right Rev'd James F. Wood, executor of the last will and testament of Henry F. Felix, late of the
 20 city of Reading, Berks county, and State of Pennsylvania, deceased, to Patrick O'Reilly, dated October 16, 1869, acknowledged the day of the date thereof, before Richard M. Hartley, a Commissioner of Deeds for the State of New Jersey, residing in the city of Philadelphia and State of Pennsylvania, and certifying, under the official seal of said commissioner, upon said deed, that before him "personally appeared the above named Right Reverend James F. Wood, executor as aforesaid, to me known to be the individual described in and who
 30 executed the foregoing written deed, and the contents thereof being first made known to him, he acknowledged to me that he had signed, sealed and delivered the said deed as his voluntary act and deed." This deed was recorded November 3, 1869, in the Clerk's office of Atlantic county, in Liber No. 37, of Deeds, page 176, &c.

The appointment of commissioners resident in other States to take the acknowledgement of deeds for lands in this State was duly authorized.

See Rev. Stat. 1847, page 855, § 5; Nix. Dig. p. 154, &c., § 52, 59; p. 158, § 74; Revision, p. 160, § 41.

The certificates of acknowledgment in the above cases are each in compliance with the law. A certificate of acknowledgment of a deed is good if it shows a substantial though not a verbal compliance with the requirements of the act respecting conveyances. 10

Den vs. Geiger, 4 Hals., 225.

Den vs. Hamilton, 7 Hals, 109.

These acknowledgements if defective in any way are cured by act approved March 27, 1884, (see supplement Revision, p. 136, § 29,) and are made admissible in evidence by the act approved March 23, 1883. See supplement Rev., p. 136, § 26, which enacts, "that all acknowledgments or proofs of deeds heretofore made or taken, or hereafter to be made or taken, after the lapse of ten years from the date of such acknowledgment or proof, notwithstanding any errors or imperfections in said acknowledgments or proofs, shall be held and taken to be good and sufficient in law; provided however, that all such deeds shall have been duly recorded." 20

By the statute, (see Revision, page 153, § 4,) it is enacted that all deeds duly acknowledged or proved shall be received in evidence in any court of this State. Submit that in this case the acknowledgments of the above deeds showing a substantial compliance with the requirements of the statute, and the same having been acknowledged and recorded more than ten years before they were offered in evidence, they were admissible in evidence and the court below did not commit any error in admitting said deeds in evidence. 30

The second bill of exceptions, (see page 8 of printed case, line 5, &c., No. 1 of errors assigned, page 50) is to the admission in evidence of a certified copy of the will of Henry F. Felix, certified under the hand and official seal of the Surrogate of Atlantic county. The will is dated November 25, 1865. It was duly executed by the testator, in the presence of two witnesses, who signed the following attesting clause to the will, viz: "This writing contained in this and the six preceding pages was signed and sealed by the above named Henry Francis Felix, and by him published and declared as and for his last will and testament, in the presence of us, who have hereunto subscribed our names in the presence of the testator and in the presence of each other." This will was proved in the county of Berks, in the State of Pennsylvania, and letters testamentary thereon issued to the Rt. Rev. John F. Wood, the executor therein named, and a copy thereof was filed and recorded in the office of the Surrogate of the county of Atlantic, on April 11, 1882; under the provisions of the act of the legislature, approved March 17, 1882. See Laws of 1882, p. 112. This act was an amendment of the 26th section of the act respecting the Orphan's Court. &c. Revision, page 757, § 26. The act of 1882 enacts, among other things, that where any will shall have been admitted to probate in any State or Territory * * and any person shall desire to have the same recorded in this State, for the purpose of making title to lands or real estate in this State, it shall be lawful for any Surrogate of any county in this State, upon an exemplified copy of such will being filed in his office, exemplified and attested as a true copy in the manner required by the laws of the State, * * * in which such will shall have been admitted to probate, to make it legal evidence in such State, * * * to record such will and file the said

copy in his office, and any such will, on being so recorded, shall have the same force and effect to all lands and real estate whereof the testator died seized, as if said will had been admitted to probate in this State, and all conveyances of such real estate heretofore or hereafter made by any executor or executors, or the survivor or survivors of them, or by any devisee or devisees, shall be as valid as if said will had been admitted to probate in this State, and such record or certified copies of said will shall be received in evidence in all courts of this State. (See this will, certificates, &c., pages 12-19 of the printed case.) This will was exemplified and attested as a true copy in the manner required by the laws of the State of Pennsylvania, where it had been admitted to probate, to make it legal evidence in said State, under the hand and official seal of Jonas M. Schollenberger, Register of Wills of said Berks county, in the State of Pennsylvania, to which was annexed a certificate of J. Hagenman, President Judge of said Berks County Court of Common Pleas, certifying, among other things, that he was President Judge of the Court of Common Pleas and Orphan's Court of said Berks county; that Jonas M. Shollenberger, who had made and signed the above mentioned certificate, was the Register of the Probate of Wills, and granting letters of administration in said Berks county, and that the said record, certificate and attestation are in due form of law and made by the proper officer. At the time the copy of this will was filed, there was a short petition presented to the Surrogate, setting out all the facts concerning the necessity for filing said will in the State of New Jersey, which petition was sworn to by a practicing attorney of the State of Pennsylvania, stating among other things, that the foregoing copy of the will was exemplified and attested in the manner required by

the laws of the State of Pennsylvania to make it legal evidence in the State and in the courts of the State of Pennsylvania.

10 The copy offered in evidence was certified under the hand and seal of S. R. Devinney, Surrogate of Atlantic county, as a true copy of the will of Henry F. Felix, filed and recorded in his office April 11, 1882. By the act approved May 11, 1886, (see Laws 1886, page 360; Suppl't to Revision, p. 775, § 1,) the act of March 17, 1882, was changed so as to require not only that an exemplified copy of the will, but also of the certificate of probate thereof, and of the letters testamentary or of administration with the will annexed issued thereon, should be filed and recorded in the Surrogate's office.

Submit that this will was filed and recorded in full compliance with the statute, and that the copy thereof was by the statute made admissible in evidence, and that the court in admitting said will in evidence did not commit any error.

20 The sixth bill of exceptions, (see page 9 of printed case, line 12, &c.,) was to the admission of the certified copy of the will and codicil of Patrick O'Reilly in evidence. The will is dated December 5, 1877. The codicil is dated November 1, 1880. This will devises his entire estate to his widow, Catharine C. O'Reilly, for her life. It was proved and admitted to probate January 21, 1881, before the Register of Wills in Berks county, in the State of Pennsylvania, June 1, 1881. Catharine C. O'Reilly, one of the executors named in the will, filed an exemplified copy of the will in the office of the Surrogate of the county of Atlantic, with a petition praying said Surrogate to make an order to show cause, to be published not less than thirty days nor more than six months, why a copy of said will and codicil should not be filed and recorded in his office, and letters testamentary thereon

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issued to Catharine C. O'Reilly. On the said June 1, 1881, Solomon R. Devinney, Surrogate of Atlantic county, made an order to show cause before him, at his office in May's Landing, on the fifth day of July, 1881, why said will and codicil should not be filed and letters testamentary issued thereon. And that said order should be published in the *May's Landing Record* for thirty days before said time. On July 5, 1881, said Surrogate, after reciting the making of the above order, and that it was proved to his satisfaction that said order had been duly advertised and published in the manner therein directed and no sufficient cause appearing or being shown to the contrary, he ordered or certified that he had recorded said will and codicil, and filed said copy thereof, and granted letters testamentary to the said Catharine C. O'Reilly, one of the executors therein named, bond having been by her given as required by law in such cases. By the statute, see Revision 757, § 24, duly certified copies of will and codicil, proved as above stated, shall be evidence in the same manner and have the same force and effect in all courts of law and equity as such record or copies thereof would have if such will and codicil had been proved in the usual manner, under the laws of this State.

This will was executed in the presence of two witnesses, who signed the attesting clause certifying in the following words, viz: "Signed, sealed, published and declared by the above named Patrick O'Reilly as and for his last will and testament, in the presence of us, who have hereunto subscribed our names at his request, as witnesses thereto, in the presence of the said testator and of each other." The attesting clause to the codicil being in similar words, signed by two witnesses. Submit that the court committed no error in admitting in evidence the duly certified copy of the will of Patrick O'Reilly in this case.

The 4th and 5th bills of exception, (see page 8, line 27, and page 9 of printed case; see also Nos. 3 and 4 of errors assigned, p. 51 of printed case) is to the admission of the record of the case and judgment or decree, in the case of Patrick O'Reilly, plaintiff, and the Right Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, late of the city of Reading, deceased, Alicia Kate Felix, widow of said Henry F. Felix, deceased, and the religious order of "The Sisters of the Immaculate Heart of Mary," now established in the city of Reading, defendant, of the Berks County Court of Common Pleas, in the State of Pennsylvania, duly certified under the act of Congress, a copy of which record, &c., is printed as Exhibit No. 3. See pages 26-50 of printed case.

This record was certified to be a true copy of the whole record in the cause by William D. Althouse, Prothonotary of the said Berks County Court of Common pleas, under his hand and the seal of said court. And a certificate of Jeremiah Hagenman, President Judge of the said Court of Common Pleas of the county of Berks, certifying that the record and attestation made by William D. Althouse, Prothonotary of the said court, whose name was thereto subscribed and seal of office affixed, are in due form and made by the proper officer, with a further certificate made by said William D. Althouse, Prothonotary of said Court of Common Pleas of Berks county, under his hand and the seal of said court, certifying that the said Jeremiah Hagenman was the President Judge of said Court of Common Pleas of said Berks county.

By the act of Congress (See Rev. Stats., p. 170, § 905) it is among other things enacted, that the records and judicial proceedings of the courts of any State or Territory, * * * shall be proved or admitted in any other

court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken. 10

The bill in this case was in the nature of a bill for specific performance or to enforce the performance of a trust. It set out, among other things, that January 14, 1861, Henry F. Felix was indorser for and responsible upon the notes of Patrick O'Reilly to an amount upwards of \$35,000; that said notes had been discounted by the Farmers' Bank of Reading, and were held by said bank, and were due and protested; that in order to secure said Henry F. Felix against loss on account of his liability on said promissory notes, it was agreed that O'Reilly should execute a deed of bargain and sale in common form to said Felix for the property owned by O'Reilly in Atlantic City, (including the lands claimed in this suit,) and that upon O'Reilly's paying said notes and Felix being relieved from his liability thereon, he should, on demand of O'Reilly, and without further consideration, reconvey the said property to O'Reilly, making the title to the same as full and complete in O'Reilly as it was before his conveyance to Felix; that in pursuance thereof O'Reilly conveyed said tract of land in Atlantic City, describing the premises, &c.; that the consideration mentioned in the deed was \$18,000, but that no money whatever was paid by said Felix on account of the same, the true and only consideration for said deed being the securing of said Felix for his indorsements on said promissory notes; that O'Reilly fully paid and 20 30

discharged the said promissory notes on which the said Felix was indorser, so that said Felix sustained no loss or damage in consequence of his said indorsements; that said Felix at various times suggested the propriety of having the reconveyance of said property made, and stated he was ready and willing to reconvey all of said property to O'Reilly, and repeatedly recognized and acknowledged the title of O'Reilly to the same, but although it was fully agreed between O'Reilly and Felix that said reconveyance should be executed, yet the making of the same was neglected until Felix became ill and died October 31, 1866. The prayer of the bill, among other things, was that the Rt. Rev. James F. Wood, executor of the last will and testament of the said Henry F. Felix, may be directed and enjoined to execute and deliver to O'Reilly a deed of conveyance in fee simple of all the thereinbefore described property, situate on Absecon beach, in the county of Atlantic and State of New Jersey, so far as the title to the same then stood in the name of said Henry F. Felix, on payment by O'Reilly of the costs of such conveyance. To this bill an answer was made and filed in the case by the Rt. Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, and the other defendants, (see page 39 of printed case,) and January 27, 1868, an order was made in open court, by consent of parties, that Daniel F. Schroeder, Esq., be appointed examiner in the case, (see Docket Entries, p. 26 of case.) The Master examined witnesses, among others Alicia Kate Felix, widow of Henry F. Felix, deceased, and made his report of the testimony November, 1869. (See report, pages 42-46 of printed case.) A decree was made that the said Rt. Rev. James F. Wood, executor, &c., as aforesaid, execute and deliver to the said Patrick O'Reilly a deed of conveyance in fee simple for the real estate described in the bill, situate on Absecon beach, &c., Atlantic City.

In pursuance of this suit or decree, James F. Wood, executor, &c., executed the deed to Patrick O'Reilly, offered in evidence in this case. See Exhibit No. 2, page 19 of printed case.

By the will of Henry F. Felix, offered in evidence in this case, (see Exhibit No. 1, page 12, &c., of printed case,) in the first clause, after giving to his wife, Alicia Kate, his household and kitchen furniture, he directs that she should have all the *interest* of the estate, real, personal or mixed, so long as she lives, with a provision that if the *interest* be not sufficient, his executor should give her annually a sufficient amount of the *principal* to maintain her according to the state of life in which she was then living. By the second clause he directs his executor, after the death of his wife, to purchase a suitable farm of from one to two hundred acres, in the vicinity of the city of Reading, to be held by his executor, or his successor in office, for the use and benefit of the "Sisters of the Immaculate Heart of Mary," now established in the city of Reading, with provisions that if said Sisters should not be in communion with the Roman Catholic Bishop of the diocese in which the lands are located, for some other order of Sisters in such communion. By the third clause of the will, he directs that said lands shall not be encumbered by judgment or mortgage. By the fourth clause, he directs that the balance of the money arising out of his estate, if any, after the death of his wife and the purchase of said farm, should be appropriated for the erection of suitable buildings for a sisterhood and a seminary of learning for young ladies, under the direction of the Bishop of the diocese in which the lands are situate, and should there be a surplus after the above directions are faithfully carried out, then the balance shall be put out at interest and applied for improvements in buildings as necessity requires. By the fifth

clause he directs that the Sisters in possession of said premises shall for all time maintain and educate four female orphan children, &c. By the sixth clause he directs that the remains of his father, mother, self and wife and others be removed to and buried on said farm, and that certain masses be said yearly for the repose of the souls of certain persons named; and by the seventh clause he appointed Rt. Rev. James F. Wood, Roman Catholic Bishop of Philadelphia, and his successors, his executor of said will. It will thus be seen that by the bill in this case, the executor and all the devisees under the will of Henry F. Felix were made parties defendants thereto, and appeared to and answered the bill. In a bill for the specific performance of a contract, or to compel a trustee to convey lands, if the vendor or trustee is deceased, his executor and devisees are the proper parties to the suit—Waterman on Spec. Perf. Contracts, § 62. The will in this case, requiring the executor to pay the interest to the wife, to purchase a farm and to erect a seminary thereon, could not be executed without a sale of the lands of which the testator died seized, and gave the executor an implied power to sell the real estate.

Dewey's Exects. vs. Ruggles, 10 C. E. Gr., 35.

Whitehead vs. Wilson, 2 Stew. Eq., 396.

Hagerty vs. Lauterman, 3 Stew. Eq., 37.

Brown vs. Brown, 4 Stew. Eq., 422, 426.

Lippincott vs. Lippincott, 4 C. E. Gr., 121.

In this case the court had full jurisdiction of the parties and of the subject matter of the case set out in the bill, and its decree is conclusive in the premises.

30 In *Massie vs. Watts*, 6 Cranch's R. 143, a suit was brought in the Circuit Court of the U. S. in Kentucky, by Watts, a citizen of Virginia, against Massie, a citizen of Kentucky, to compel the performance of an agreement to convey lands in the State of Ohio. Marshall,

Ch. J., referring to an objection to the jurisdiction of the court, on page 158, says, "were this cause therefore to be considered as involving a naked question of title * * *

* the jurisdiction of the Circuit Court of Kentucky would not be sustained. But where the question changes its character, when the defendant in the original action is liable to the plaintiff, either in consequence of contract, or as trustee, or as the holder of a legal title acquired by any species of *mala fides* practiced on the plaintiff, the principles of equity give a court jurisdiction wherever the person may be found, and the circumstance that a question of title may be involved in the inquiry and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction," and cites and comments on a number of cases fully sustaining his views. 10

In *Penn vs. Lord Baltimore*, 1 Ves. Sr., 444, see S. C. 3 W. and Tudor leading cases in Eq., page 476, (767), the Court of Chancery in England decreed the specific performance of a contract in reference to lands in America. 20

In the notes to the case of *Penn vs. Lord Baltimore*, in 3 Leading Ca. in Eq. above cited, p. 491, (788,) it is stated that "the authority of a Court of Chancery may be exerted whenever the case is one of equitable cognizance, and the parties are within its jurisdiction, although the property in dispute lies beyond it;" and citing a number of cases continues, "Chancery acting *in personam*, and not *in rem*, and holding the conscience equally bound, whatever may be the situation of the thing." The cases cited are numerous and fully sustain the jurisdiction of the court and the conclusiveness of such decrees. 30

Wood vs. Warner, 2 McCar., 81, 84. This was a case in which the complainants sought relief in reference to certain rights claimed in the Island of Sombrero, in

the Caribbean sea, and an account. The jurisdiction of the court over the matter was questioned. Green, Chancellor, says, "Upon the question of jurisdiction I entertain no doubts. * * * It may be that the court cannot enforce its own decree *in rem* by making sale of the defendant's title to the Island of Sombbrero, as prayed for in the bill * * * the strict primary decree of a court of equity is *in personam* and not *in rem*. * * *

These cases establish the authority of the court to deal with contracts in relation to land not within the jurisdiction of the court." *See also Davis v. Hadley* 7 C. E. Gr. 118

The decree in the record offered in evidence was a decree *in personam* and requiring the executor and devisee of the testator—(vender)—to execute a conveyance of the land, the title of which was held by the testator for O'Reilly, under the agreement set out in the bill of complaint, to convey to him, and it was admissible in evidence to show the nature and character of the title to the land held by the plaintiff in the ejectment suit.

A judgment or a decree may be offered in evidence for two purposes:

1st. To establish the mere fact of its rendition and those legal consequences which result from the fact.

2d. In addition to the first purpose, for the further purpose of proving some fact as found by the verdict or upon whose supposed existence the judgment is based.

For the first of these purposes every judgment is admissible in evidence against the whole world. Judgments *in rem* are generally considered as admissible against all persons. * * *

A judgment may constitute part of a chain of title to real or personal estate, or though not amounting to title, it may show the character of the possession of one of the parties to a suit. In either case it is admissible in evidence for or against strangers, as well as for or against parties to the original

suit. Whenever a judgment transfers a title, or is the foundation of a claim to possession, it is admissible upon the same principle as a voluntary conveyance.

Freeman on Judgments, § 416 and cases.

A decree of a Court of Chancery may be given in evidence on the same footing and under the same limitations as a verdict, or judgment of a court of common law.

Freeman on Judgments, § 420 and cases.

10

In this case I submit that there was no error in admitting in evidence this record; that it was duly authenticated and its decree conclusive and operative.

The fifth error assigned, on page 51 of printed case, is that the court admitted in evidence the Pamphlet Laws of the State of New Jersey for the year 1872, chapter CXLII, page 357, &c. This act was approved March 5, 1872. It is entitled "An act to confirm a certain deed made by the Right Reverend James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, of lands in Atlantic City, county of Atlantic and State of New Jersey." After reciting in a preamble that in pursuance of an act of the legislature of the State of Pennsylvania the said Right Reverend James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, by deed bearing date October 16, 1869, did convey in fee simple the land mentioned in said deed in Atlantic City to Patrick O'Reilly, which deed was duly executed and recorded November 3d, 1869, in the Clerk's office of Atlantic county, and that Patrick O'Reilly had sold and conveyed to 30 different persons parts of said lands, and that doubts had arisen as to the validity of said deed from the said Right Reverend James F. Wood, executor as aforesaid, to the said Patrick O'Reilly, it enacted,

“that the said deed above mentioned, made by the said James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, to said Patrick O'Reilly, shall be and the same is hereby declared to be valid and effectual in law, and the title of the several purchasers of said lands from said Patrick O'Reilly is further declared to be valid and effectual in law. This was an act of the legislature of the State of New Jersey, retrospective in effect, and is a confirmation of the deed and title
 10 thereby conveyed mentioned in said act, from James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, to Patrick O'Reilly. Laws passed to remedy defective executions of powers, though retrospective in their operation, are not unconstitutional.

State vs. Newark, 3 Dutch., 185.

2 Stewart's Dig. 822, § 401, cases cited (municipal matters.)

State vs. Reed, 2 Vroom 123, validating bounty bonds, &c.

In Kearney vs. Taylor, 14⁵ How. U. S. 494, sale was
 20 made of lands of tenants in common, some of whom were infants, by order of the court in proceedings in partition. The lots were sold to several purchasers and sales reported to the court and confirmed and deeds ordered by the court to be executed to the several purchasers. By an arrangement between the purchasers, a deed for a number of the lots was taken in the name of one of the purchasers. This deed was held not to convey the title. The legislature February 14, 1844, passed an act making valid the deeds made by the commission-
 30 ers. See Laws 1844, p. 80. Suit was brought by the heirs to recover the lands. The court held the act cured the defect in the deed and the bill was dismissed.

See question discussed in Cooley's Const. Lim., 456, (370) and following pages, where such acts are sustained.

In the notes to *Barnett vs. Barnett*, 16 Am. Decision, p. 518, &c., in speaking of retrospective acts it is said: When they are remedial in their nature, when they do not disturb vested rights, or impair the obligation of contracts, and go only to confirm rights already existing, by curing defects of execution and giving the means of enforcing existing obligations; such statutes have been sustained, when they are clearly just and reasonable and conducive to the general welfare. * * * *
 On the same principle legislative acts validating con- 10
 tracts have been sustained.

When these acts go no further than to bind a party by a contract which he has attempted to enter into, but was invalid by reason of some personal inability on his part to make it, or through neglect of some legal formality, or in consequence of some ingredient in the contract forbidden by law, the question which they suggest is one of policy and not of constitutional limitation, and among other authorities cites:

Cooley's Const. Lim., (374).

Grim vs. Weissenberg, 57 Penna. St., 433.

Woodruff vs. Scruggs, 27 Ark., 26.

20

By the fourteenth section of the act relative to statutes, Revision 1122, § 14, it is enacted, that all the laws heretofore printed, and that may hereafter be printed by the authority of this State, shall before any court in this State be received in evidence, any thing in any law notwithstanding.

This act was a mere confirmation of the deed made by the executor of Felix to O'Reilly. It operated only on the deed and estate thereby granted, mentioned in the 30
 act. It did not bind the interests of any person in said premises not mentioned in the act. The defendant in this case was a mere trespasser on the lands of the

plaintiff. He had no vested right in any defence, based upon an informality not affecting his substantial rights. The true rule in such cases is stated by Sir Matthew Hale in *Lucy vs. Levington*, 1 Ventris, 175, where he says, "that though every man be so far a party to a private act of Parliament as not to gainsay it, yet he is not so far a party as to give up his interest" in the matter affected thereby, if not named therein. See also

Jackson v. Catlin, 2 John R., 263.

10 Ib. Ib. 8 John R., 520.

See *Condict v. Neighbor*, 1 Gr., 83.

Submit that this act being in confirmation of the plaintiff's title, and showing the character of said title, there was no error committed in admitting it in evidence.

The next bill of exceptions is that the court refused to non-suit the plaintiff on the request of the defendant. See page 51 of case. The bill of exceptions to this is on page 9, line 30. The defendant moved to non-suit on the ground that the plaintiff had failed to make out a legal paper title sufficient to prevail against the title
20 arising from the possession of Mr. Lindley.

To maintain her suit, it was necessary for the plaintiff to show that she had the legal interest and a possessory title not barred by the statute of limitations; that she had a legal estate in the premises at the time laid in the declaration and had the right of entry therein.

2 Greenleaf's Evid., § 303, 304. *By the statute the question is as to whether the plaintiff is entitled to recover the possession Rev 37, § 40*

In this case the verdict of the jury showed that the defendant had no title to the premises; that he was on
30 the land of the plaintiff only as a trespasser.

In this case it was shown that the lands had been owned and occupied by Jeremiah Leeds; that the part set off by the partition proceedings to Judith Hackett was afterwards occupied by her and her husband, Rich-

ard Hackett, up to the time of the sale thereof to Patrick O'Reilly and Daniel Morris; that Daniel Morris and Patrick O'Reilly had made conveyances of parts of the land; that Daniel Morris conveyed to Patrick O'Reilly his undivided moiety of the land, and that Patrick O'Reilly conveyed the premises as a mortgage or security by his deed dated January 14, 1861, to Henry F. Felix; that Henry F. Felix died seized of the land, having first made and executed his last will and testament, bearing date November 25, 1865, which was duly proved and recorded in the office of the Register of Wills, &c., of the county of Berks, in the State of Pennsylvania, and a duly certified copy thereof was afterwards duly filed in the office of the Surrogate of the county of Atlantic, on April 11, 1882; that by this will the estate of the testator was devised and bequeathed to James F. Wood, the executor therein named, to hold, to pay the interest to his wife, to purchase a farm near Reading and erect thereon an educational institution, and that said James F. Wood, executor and devisee of the said will, by his deed dated October 16, 1869, conveyed said land to Patrick O'Reilly; that said deed was made and executed under the powers given by the said will of said Henry F. Felix, and in pursuance of a decree of the court of the State of Pennsylvania directing said conveyance, and that said deed had been made valid and effectual by the statute of the State of New Jersey; that Patrick O'Reilly was seized and possessed of said lands in his life time after the said conveyance to him, and died so seized and possessed in January, 1881, having first duly made and executed in writing his last will and testament, dated December 5, 1877, with a codicil thereto, dated November 1, 1880, which will was duly proved in the office of the Register of Wills of Berks county, in

the State of Pennsylvania, and a duly certified copy thereof proved and recorded in the office of the Surrogate of Atlantic county July 5, 1881, whereby the testator devised the said lands to the plaintiff for the term of her natural life. I submit that the muniments of title above set forth, executed and certified in the manner shown above and admitted in evidence, showed that the plaintiff had a *prima facie* case against this defendant, who was a mere trespasser on the land, without any title whatever, and showed the plaintiff had a legal title to
 10 the premises and a right to the possession thereof at the time of the commencement of this suit, and at the time laid in the declaration in this case, and that there was no error committed by the refusal of the Justice to nonsuit as requested.

The seventh and eighth errors assigned are in reference to the charge of the court. The eighth exception specifies the several grounds (in part considered in the bills of exceptions and errors to the admission of evidence).

20 First, In reference to the decree of the Court of Common Pleas of the county of Berks, in the State of Pennsylvania, that it was not binding or operative in this State and could not be considered by the jury as competent evidence towards establishing title to the land. As above shown this was a mere decree *in personam*, requiring the defendant therein to carry out the agreement made by his testator or execute and perform the trust held by his testator. It was binding on the defendant therein and could not and did not in any way change
 30 the title of Patrick O'Reilly, under whom the plaintiff claims, and that the refusal of the Justice to instruct the jury as requested, or to leave the effect of this decree to the consideration of the jury, was not an error.

Second, That the Justice improperly refused to instruct the jury that the executor of Henry F. Felix had no right to convey the land in question; that if he had such right he could not exercise it without having proved the will in this State, and that the deed from the said executor to Patrick O'Reilly did not transfer the property in question. As above shown, the will of Henry F. Felix could not be executed by the executor without a sale and conveyance of the land, (being a number of unimproved building lots in Atlantic City,) conveyed to Patrick O'Reilly. And by the will, as also above shown, the estate was bequeathed and devised to the executor to hold the properties to be purchased and erected in accordance with the provisions thereof. Under the decision of the court, H. F. Felix and his executor and devisee only held the land for the use of O'Reilly, and the deed conveyed the title held by the executor either as executor or devisee under the will. (See the deed, Exhibit No. 2, p. 19 of printed case.)

The right to convey by executor was given by the will. 20
The record of the will in the State of New Jersey was but evidence of the right given by the will. The statute under which the will was recorded (See Laws of 1882, page 112, &c.) enacts that all conveyances of such real estate, of which the testator died seized, heretofore or hereafter made by any executor or executors, or by any devisee or devisees, shall be as valid as if the will had been admitted to probate in this State. If this statute had not fully validated such deeds, executed by the executor or devisee of testators dying in other States, for lands in this State, the full title would have been conveyed by the deed. Such has always been held to be the law. See the case, if any should be required to sus-

tain this principle, of *Bromley vs. Miller*, 2 T. & C. New York, 575.

Third. That the Justice improperly refused to instruct the jury that the act of the legislature of this State above mentioned, (See Laws 1872, p. 357, offered in evidence) was inoperative and void, &c. The act simply enacted that the deed therein mentioned should be valid and effectual in law. Its purpose was to remove a doubt which the preamble of the act stated had arisen in reference to the effect of the deed as executed and recorded.

10 It did not attempt to convey the land. Conveyance by statute was one of the acknowledged means of transferring title to land by the law. (See 2 Blk. Com, 344; 5 Cruise's Dig., p. 1-40.) This act simply confirmed the acts of the party in executing the deed. The legislature has full power to pass such acts.

5 Comyn's Dig. Parliament, H5.

19 Viner's Abidgt Statutes, A2, D, E2.

5 Cruise's Dig. (p. 4), § 10.

Cooley Const. Lim., 456, (370)-472 (383) 5 Edition.

20 Pollard vs. Kibbee, 14 Peter's R., 353.

Kearney vs. Taylor, 15 How. R. 494.

In the last case a similar healing act passed by the legislature of this State was sustained. (See L. 1844, p. 80.) The effect of the act was simply to bar persons not claiming under the deed from questioning the conveyance.

30 I submit that there was no error committed by the Justice in refusing to instruct the jury that the said act of the legislature was inoperative and void and failed to validate the deed from the executor of Henry F. Felix to P. O'Reilly, inasmuch as it was an effort by legislation to transfer the property in question from the heirs-

at-law and devisees of the testator to O'Reilly, and that there was no error committed by the Justice in charging that the title was in the plaintiff, and that there was no error in any way affecting the defendant below or his rights in the admission of evidence, or the charge of the court, and that the judgment in this case should in all things be affirmed with costs.

P. L. VOORHEES, 10
Att'y for Defendant in Error.

...of the testator to O'Reilly, and that
...by the Justice in charging
...the plaintiff, and that there was no
...the defendant below or his
...of evidence, or the charge of
...in this case should in
...with...

TO
J. L. VOORHEES,
Attorney at Law in New York.

NEW JERSEY COURT OF ERRORS AND APPEALS

DANIEL LINDLEY,

Plaintiff in Error,

vs.

CATHARINE C. O'REILLY.

Defendant in Error.

} Plaintiff's Brief.

The main question in this case is, whether or not the plaintiff in ejectment, Catharine O'Reilly, at the trial below, made out a good and sufficient paper title to the premises in question in the possession of the defendant, Daniel Lindley. 10

The plaintiff, at the trial, offered in evidence a deed of conveyance of the premises in question, made by Patrick O'Reilly to Henry F. Felix, dated the 14th day of January, 1861, investing him with the legal title thereto, (p. 8) and followed it by offering in evidence a paper purporting to be the last will and testament of Henry F. Felix, wherein he devised the premises in question to his wife, Alicia Kate, for life; and at her death directed his estate to be used for certain religious purposes by his executor, The Right Reverend James F. Wood, Roman 20

Catholic Bishop of Philadelphia, Pa., and his successors in office, but conferring upon him no power of sale of his lands (p. 12).

To the offer of this will the defendant below interposed an objection, on the ground "that it does not appear to be properly proved," which was overruled and an objection was sealed accordingly (p. 8).

This exception is made the ground of the first assignment in error (p. 50.)

10 And the question upon this assignment is, whether the said will, as offered and admitted, was competent and legal evidence.

This will as offered and received was without any proofs of its execution according to the requirements of our law, or even of the law of Pennsylvania. Accompanying it was simply the certificate of the foreign Register of Wills, "that it is a true and correct copy of the original *as filed* in his office," (p. 16).

20 The 26th section of our Orphans' Court act, Rev. 757, provides that a foreign will, when filed and recorded in this State, "shall have the same force and effect in respect to all land and real estate therein devised, as if the same had been admitted to probate in this State, and such record or certified copies thereof shall be received in evidence in all courts of this State." Now the force and effect of a certified copy of a will probated in this State, which has with it *no proof of its due execution*, is absolutely nothing: Of itself the mere copy of the will has no probate force. It wholly depends upon the record of the proofs accompanying it.

30 Morris v. Keyes, 1 Hill, 540.

Allaire v. Allaire, 8 Vr. 312.

If we are right in this view of the law, then the will admitted was incompetent to prove title to land in New Jersey and a fatal link is wanting in the plaintiff's title.

The will having been received as competent evidence, the next step of the plaintiff below was to offer in evidence a deed of the premises in question by the Right Reverend James F. Wood, Bishop and executor as aforesaid, to Patrick O'Reilly, dated the sixteenth day of October, 1869, to which the defendant objected on the ground "that it was not properly proved, and also because the grantor had no right to make such a deed affecting land in the State of New Jersey," which objection was overruled and the deed admitted and an exception was sealed accordingly (p. 8); and this exception is the foundation of the plaintiff's second assignment of error (p. 51,) which raises the question of the power of the executor to make the conveyance in question. 10

By an examination of the will, it will be observed that the only possible ground that such a conveyance could be justified under the will would be the power to apply the land to the religious uses indicated, but an examination of the recitals in the deed will show that it was not made to further that trust, but was made solely as the result of some equitable claims O'Reilly had to the title, which were acquiesced in by the executor, and was not made until after an act of the Assembly of the State of Pennsylvania was procured, passed April 11th, 1868. The recital of this act in the deed is as follows (p. 22): "And whereas, no power of sale was directly given by said will, although necessary to carry out its purposes, an act of Assembly was procured, authorizing and empowering the said Right Rev. James F. Wood, executor as aforesaid, to sell so much of the real estate, of which the said Henry F. Felix was seized at the time of his death, as might in his opinion be necessary to effectuate the intention of the testator, either at public or private sale, and to make conveyance for the same as by said act 20 30

of Assembly, No. 760, approved the eleventh day of April, A. D. 1868, (pamphlet laws of 1868, page 821) will more fully and at large appear."

But that act, even in the State of Pennsylvania, was no authority for the conveyance of land for purposes other than the special trusts set forth. The power to convey land in settlement of an adverse claim is quite a different thing from the mere power to sell to effectuate a particular trust.

10 Even if he had power of sale under the will he could not exercise it in this State without having first taken out letters testamentary on it here (Rev. 757) which proposition was denied by the court below and is the subject of an exception, upon which error is assigned. (pp. 16 and 52.)

We therefore submit that in any view of the executor's power to convey land he had none to make such a conveyance as is contained in the deed in question.

20 And the plaintiff's counsel below, feeling the fatal weakness of her case on this point, attempted to support it by the offer of an exemplified copy of a decree of the Court of Common Pleas of Berks county, sitting in equity, in the case of Patrick O'Reilly, plaintiff, and the executor of, Felix, defendant, made on the 20th of September, 1880, to the effect "That the said Right Rev. James F. Wood, executor of the last will and testament of Henry F. Felix, late of the city of Reading, deceased, execute and deliver to the said Patrick O'Reilly a deed of conveyance in fee simple for the real estate described in the plaintiff's bill, situate on Absecon beach, in the
30 county of Atlantic and State of New Jersey, so far as the title to the same stood in the name of the said Henry F. Felix at the time of the filing of the plaintiff's bill, on the payment by the plaintiff of the cost of such conveyance."

That neither the foreign act recited in the deed, nor the decree of the foreign court, could have any force and effect in this State, is too plain a proposition to be seriously argued.

In *Wilkinson v. Leland*, 2 Peters, 655, it was held that the legislative and judicial authority of a State were bounded by its territory and could not be rightfully exercised to pass estates lying in another State, and that an executor's deed of land made by virtue of an order of the court of a State, "other than that in which the land is situate, is a mere nullity and utterly void." 10

In *Allaire v. Allaire*, 8 V. 321, the Supreme Court said: "It is a principle of international law, that with regard to real property, that the laws of the place where such property is situate exclusively govern in respect to the rights of the parties, the modes of transfer, and the solemnities which should accompany them." 20

So we confidently assume that this court will give no force or effect to the foreign act recited, the foreign decree or the foreign will produced in aid of the plaintiff's title to the lands in question in this State.

Not satisfied with the competency of the act of the Legislature of the State of Pennsylvania to cure her defective title to the land here in New Jersey, the plaintiff resorted to the Legislature of New Jersey and procured an act to be passed on the 5th day of March, 1872, (Pamphlet Laws, 357) entitled, "An act to confirm a certain deed made by the Right Reverend James F. Wood, executor of the last will and testament of Henry F. Felix, deceased, of lands in Atlantic City, county of Atlantic and State of New Jersey," whereby she hoped to quiet and perfect her said title. And the aid of this act 30

having been invoked at the trial, it is now before the court as the plaintiff's chief muniment of title; but we submit that the said act is unconstitutional and void.

In *Maxwell vs. Goelchus*, 11 V. 383, it was held that a sale of land under unauthorized proceedings in an Orphan's Court of this State could not be validated by an act of the legislature of this State.

10 In *Shonk vs. Brown*, 61 Pa. St., 326, it was held that where a married woman held real estate under a devise with a limitation upon her power of alienation, and she made a deed in excess of her power, it could not be validated by an act of the legislature.

20 In *Forster vs. Forster*, 129 Mass. 561, it was held that an act validating tax sales, that had been made without the required statutory notice, was unconstitutional and void upon two grounds: "First, the statute assumes to take away private property without due process of law and without compensation." "Second, the statute is an attempt to exercise judicial power by the legislature."

And *Cooley on Constitutional Limitations*, 1883, p. 467, says: "If a grantee undertake to convey more than he possesses, or contrary to the conditions or qualifications which for the benefit of others are imposed upon his title, or in fraud of the rights of others whose representative or agent he is, so that the defect in his conveyance consists not in any want of due formality nor in any disability imposed by law, it is not in the power of the Legislature to validate it retrospectively."

30 In accordance with these views, the trial court was requested to instruct the jury "That upon the plaintiff's proofs she was without sufficient title to recover the land in question;" which it refused to do and on the contrary

erroneously, as we insist, charged the jury that as a matter of law the title was in the plaintiff, Catharine O'Reilly. (p. 11.)

We therefore ask that the judgment in the plaintiff's favor be set aside as contrary to law.

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